

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**NEVADA CVS PHARMACY, L.L.C. d/b/a CVS
PHARMACY STORE 08787**

Employer

and

Case 28-RC-372677

**THE PHARMACY GUILD, affiliated with the
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. SUMMARY

On September 3, 2025, the instant petition was filed under Section 9(c) of the National Labor Relations Act (the Act). I have the authority to hear and decide these matters on behalf of the Board under Section 3(b) of the Act. The parties were provided an opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board) on September 19, 22, 23, and 29, 2025.

Nevada CVS Pharmacy, L.L.C. d/b/a CVS Pharmacy Store 08787 (the Employer) operates retail pharmacies and general goods stores, including its facility located at 1551 W. Sunset Boulevard in Henderson, Nevada, the only facility at issue here (the Employer's store). The Pharmacy Guild, affiliated with the International Association of Machinists & Aerospace Workers, AFL-CIO (the Petitioner) filed this petition, seeking to represent a bargaining unit comprised of one Staff Pharmacist; two Pharmacy Technicians, FSS;¹ one Pharmacy Lead Technician; one Inventory Specialist; and five Pharmacy Technicians who work at the Employer's store.²

The Employer asserts that the Staff Pharmacist and the two Pharmacy Technicians, FSS are supervisors within the meaning of Section 2(11) of the Act and that the Pharmacy Technicians, FSS do not share a community of interest with the rest of the petitioned-for-unit and that both classifications should be therefore excluded from any bargaining unit.

¹ FSS is an abbreviation for Front Store Supervisor.

² The initial petition included Technicians in Training and Cross-Source Store Associate Rx classifications, but the Petitioner amended its petition to exclude these classifications during the hearing.

The Petitioner contends the Staff Pharmacist and Pharmacy Technicians, FSS are not statutory supervisors and that the petitioned-for-unit shares a community of interest and is an appropriate unit.

Having considered the parties' positions, the evidence, and the entire record, I find that the Employer has not met its burden of demonstrating that the Staff Pharmacist and Pharmacy Technicians, FSS are supervisors under Section 2(11) of the Act. I further find that the Staff Pharmacist and the Pharmacy Technicians, FSS share a community of interest with the petitioned-for-unit. Accordingly, I find that the petitioned-for unit is appropriate and am therefore directing an election.

II. STATEMENT OF FACTS

A. The Employer's Operations

The Employer's store is split between two departments, the front of store and the pharmacy. The front of store is managed by a Front Store Manager who does not supervise any employees in the petitioned-for-unit.

With respect to the pharmacy staff, the Employer's store employs one Pharmacy Manager³, one Staff Pharmacist, five Pharmacy Technicians, one Inventory Specialist, one Pharmacy Lead Technician, and two Pharmacy Technicians, FSS.⁴ Under Nevada State law, at least one pharmacist must be present when the pharmacy is open. Up to 10 Technicians can be working in the pharmacy alongside the pharmacists. However, the Nevada Board of Pharmacy only permits a pharmacist to oversee three Technicians at a time. Therefore, the Employer also employs District Support Pharmacists (DSPs) at the pharmacy, who float between the Employer's pharmacies, and whose coverage supplements the hours that the Pharmacy Manager and Staff Pharmacist work. The petition does not seek to include any DSPs in the petitioned-for-unit.

As for the pharmacy operating hours at the Employer's store, excluding a half hour lunch period each day, the pharmacy is open 77 hours per week, between 8:00 a.m. and 8:00 p.m. on weekdays, between 9:00 a.m. and 6:00 p.m. on Saturday, and between 10:00 a.m. and 6:00 p.m. on Sunday. A pharmacist must be present during the pharmacy's operating hours; if no pharmacist can be present, the pharmacy must close. The pharmacists have keys which allow them to unlock the pharmacy. No pharmacy employees other than pharmacists are able to unlock the pharmacy.

³ The parties stipulated that the Pharmacy Manager is a supervisor within the meaning of Section 2(11) of the Act. The record reflects that the Pharmacy Manager has the authority to hire, discipline, and terminate employees.

⁴ Unless otherwise noted, the terms Technician or Technicians will be used to describe the classifications of Pharmacy Technician, Pharmacy Lead Technician, Inventory Specialist, and Pharmacy Technician, FSS, because the record shows that the Inventory Specialist is a Pharmacy Technician with additional inventory duties. See Tr. 78:17-23 and Tr. 311:23-24 (The Pharmacy Manager testified that the Inventory Specialist is a Technician). Also see Tr. 709:21-25 (The Staff Pharmacist testified that the Pharmacy Lead Technician; Pharmacy Technicians, FSS; and Inventory Specialist are all pharmacy Technicians).

The Pharmacy Manager is a licensed pharmacist responsible for opening and closing the pharmacy, overseeing the pharmacy Technicians, directing workflow, patient consultation and conflict resolution, and addressing colleague conflicts if they arise. The Pharmacy Manager works an average of 40-41 hours per week and reports to the Employer's District Leader, who oversees the pharmacies of the 19 stores in his district. At the time of the hearing, the Pharmacy Manager and the Staff Pharmacist worked together for two hours on Tuesdays, six hours on Wednesdays, and about three hours on Thursdays. The Pharmacy Manager schedules the work hours for the Staff Pharmacist and Technicians employed at the pharmacy at the Employer's store approximately three weeks in advance.

The pharmacy at the Employer's store has cash registers, production stations, drop-off and pick-up windows, and a drive-through window. The pharmacy operates and fills prescriptions through a process called Workflow. The process begins when prescriptions are entered into the Employer's computer system after being received from a customer drop-off or electronically by a medical provider. The prescriptions then move into Queue Triage, where they are typed into the computer system and placed into a patient's profile. A pharmacist then reviews the prescriptions, noting any allergies or drug interactions that a patient may have, and then signs off on the prescriptions. The Technicians fill the prescriptions, following a second verification by a pharmacist, and the prescriptions are then ready to be picked up by the customer at the counter or at the drive-through window. The pharmacy also provides vaccines, entered in the Employer's system as prescriptions, administered to patients by its Technicians. All but two of the pharmacy's Technicians are certified immunizers.

B. Job Duties of the Staff Pharmacist and Pharmacy Technicians

The Staff Pharmacist starts her workday by disengaging the alarm and unlocking the pharmacy. The Staff Pharmacist does a cycle count of the Schedule II drugs (CII drugs)⁵ to make sure they match the system inventory. Once the Technicians begin filling prescriptions, the Staff Pharmacist begins the verification process and also consults with patients as needed. The Staff Pharmacist also assigns Technicians to perform certain tasks as needed to maintain pharmacy customer service and efficiency.

The Technicians' main job is to fill prescriptions utilizing the Workflow process described above. Technicians cannot fill CII drugs, verify prescriptions, or counsel patients. Technicians work the various stations in the pharmacy, including drop-off, production (filling prescriptions), pick-up, and the drive-through. They also handle incoming calls from patients, doctors' offices, and insurance companies. Primarily, Technicians choose which station they work, but Technicians can be moved from station to station as needed by the pharmacist on duty.

The Inventory Specialist is a Technician that fills prescriptions and oversees all inventory functions in the pharmacy, including maintaining accurate inventory cycle counts to verify the physical stock of specific prescription medications against the Employer's digital inventory records, and returns items to stock, as appropriate. A Pharmacy Lead Technician typically has

⁵ The DEA defines CII or Schedule II drugs as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. See <https://www.dea.gov/drug-information/drug-scheduling>.

more tenure than Technicians but does not supervise any Technicians. Technicians also complete monthly awareness and compliance trainings during working time when not performing Workflow duties.

As noted above, all but two of the Technicians are certified immunizers. The Pharmacy Manager determines the designated immunizer for the day and that Technician receives an additional \$2 per hour. All Technicians, including those that are not immunizers, receive an annual bonus based upon certain vaccination goals.

The Staff Pharmacist receives a salary of \$138,382.40, based on her level of education, continuing education, and training to maintain her pharmacy license. The Staff Pharmacist receives a discretionary bonus calculated differently than the bonuses of the Technicians. The employees in the petitioned-for-unit are paid between \$17.50 and \$27.44 per hour. The Pharmacy Lead Technician is the highest paid employee in the petitioned-for-unit.

All pharmacy employees work 40 hours per week, except for the Inventory Specialist and one Pharmacy Technician, who work 33 and 29 hours per week, respectively.

The Staff Pharmacist wears a white coat. The Technicians wear blue scrubs.

III. LEGAL ANALYSIS

A. The Employer's Argument that the Board Lacks a Quorum is Moot

At the outset, the Employer argues that I lack the requisite authority to process and decide questions concerning representation at times when the Board lacks a proper quorum, as at the time of the hearing. Since the hearing in this matter, the Board issued its decision in *Satellite Healthcare*, 374 NLRB No. 25 (2026) resolving this issue, reaffirming that it interprets Sec. 3(b) of the Act to permit Regional Directors to continue to exercise their delegated authority while the Board lacks a quorum.

In *Satellite Healthcare*, the Board denied the Employer's Request for Review of the Regional Director's Decision Overruling Employer's Election Objection and Certification of Representative as it raised no substantial issues warranting review. *Id.* In denying review, the Board rejected the Employer's argument that the Regional Director had no authority to rule on its objections or certify the results of the election because the Board lacked a quorum when the objections were filed and when the Regional Director issued her Decision. *Id.* The Board explained that it interprets Section 3(b) of the Act to permit Regional Directors to continue to exercise their delegated authority while the Board lacks a quorum and, consistent with that interpretation, maintains a policy instructing Regional Directors to continue to process cases and issue appropriate certifications when quorum is lost. *Id.* The Board rejected the Employer's argument that circuit court cases upholding the Board's interpretation of Section 3(b) under *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), are now invalid because *Chevron* has since been overruled by *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (*Loper Bright*). *Id.* The Board further concluded that *Loper Bright* does not provide a basis to change its established interpretation of Section 3(b). *Id.*

B. The Petition and Petitioned-for-Unit are Appropriate

As a further preliminary matter, during the hearing, the Employer objected to the petition, as amended, because the petitioned-for-unit includes the Pharmacy Technician, FSS (Front Store Supervisor) classification that includes the term “supervisor” in its job title. The Employer argued during the hearing and in its post-hearing brief that it is the Petitioner’s burden to prove the appropriateness of its petition under Section 9(a) of the Act, citing *Williams-Sonoma Direct, Inc.*, 365 NLRB 111 (2017) (*Williams-Sonoma*).

Contrary to the Employer’s contention, *Williams-Sonoma* says nothing about the Petitioner carrying the burden to prove the appropriateness of its petition on its face. Instead, referencing the Regional Director’s pre-election hearing decision, *Williams Sonoma* correctly states that if the parties refuse to stipulate to the appropriateness of a unit before an election is held, Section 9 of the Act obliges the Board to determine whether the petitioned-for unit is appropriate, by taking evidence and making a determination of whether the employees in the petitioned-for unit share a sufficient community of interest to warrant inclusion in the unit. *Id.* at 112.

As in *Williams Sonoma*, the purpose of this Decision is for me, on behalf of the Board, to determine if the petitioned-for-unit is appropriate. I decline to separately address whether the petition is appropriate simply because, as the Employer asserts, it includes a classification with the term “supervisor” in its job title. As detailed below, I find that the petitioned-for-unit is appropriate, and accordingly, so is the instant petition.

C. The Staff Pharmacist and Pharmacy Technicians, FSS are not Supervisors under Section 2(11) of the Act

1. Board General Supervisory Legal Authority

Section 2(3) of the Act excludes from the definition of “employee” “any individual employed as a supervisor.” Section 2(11) of the Act defines a supervisor as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Thus, the Board will find individuals to be supervisors if: (1) they hold the authority to engage in any 1 of the 12 supervisory functions listed in Section 2(11); (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;” and (3) their authority is held “in the interest of the employer.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006) (*Oakwood*), citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001). As the Board explained in *Oakwood*, “to exercise

independent judgment an individual must at a minimum act, or effectively recommend action, free of control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood*, 348 NLRB at 692-93. But “a judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Id.* Furthermore, a judgment is not independent if “there is only one obvious and self-evident choice” or “if the assignment is made solely on the basis of equalizing workloads[.]” *Id.*

In addition to the factors identified in the Act, the Board also considers secondary indicia that can provide support for a supervisory finding but are not sufficient alone to establish supervisory status. *Training School at Vineland*, 332 NLRB 1412, 1412 fn. 3 (2000). Secondary indicia may include factors such as a higher rate of pay, or an employer holding out the employee as a supervisor. *American Commercial Barge Line Co.*, 337 NLRB 1070, 1072 (2002); *Carlisle Engineered Products*, 330 NLRB 1359, 1360 (2000).

The burden of establishing supervisory status rests on the party asserting that status. *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006) (*Croft Metals*). That party must establish supervisory status by a preponderance of the evidence. *Oakwood*, 348 NLRB at 687. Supervisory status cannot be established by record evidence which is inconclusive or otherwise in conflict. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

Mere inferences or conclusory statements, without detailed, specific evidence, are insufficient to establish supervisory authority. *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Any lack of evidence in the record on an element necessary to establish supervisory status is construed against the party asserting supervisory status. *Veolia Trans.*, 363 NLRB 1879, 1883–1884 (2016) (citing *Lynwood Manor*, 350 NLRB 489, 490 (2007)); *see also Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003). The Board looks to evidence of supervisory authority in practice, not simply paper authority; job descriptions or other documents suggesting the presence of supervisory authority are not given controlling weight. *See Golden Crest*, 348 NLRB at 731, citing *Training School at Vineland*, 332 NLRB at 1416.

Persons with the power “effectively to recommend” the actions described in Section 2(11) are supervisors within the statutory definition. *Entergy Systems & Service*, 328 NLRB 902 (1999); *Detroit College of Business*, 296 NLRB 318, 319–320 (1989); *Westwood Health Care Center*, 330 NLRB 935, 938–939 (2000). The evidence must, of course, show that the recommendation is undertaken with independent judgment. *Tree-Free Fiber Co.*, 328 NLRB 389, 391–392 (1999); *F.A. Bartlett Tree Expert Co.*, 325 NLRB 243, 245 (1997). The authority to effectively recommend generally means that “the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed.” *Children’s Farm Home*, 324 NLRB 61, 61 (1997); *see also DirecTV U.S. DirecTV Holdings LLC*, 357 NLRB 1747, 1748–1749 (2011); *Ryder Truck Rental*, 326 NLRB 1386 (1998); *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982), *enf. denied on other grounds* 712 F.2d 40 (2d Cir. 1991).

2. Assignment of Work

a. Board Assignment of Work Legal Authority

The authority to “assign” refers to “designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant over-all duties, i.e., tasks, to an employee . . .” *Oakwood*, 348 NLRB at 689. These are designations of an employee’s “significant overall duties,” not an “ad hoc instruction that the employee perform a discrete task.” *Id.*

b. Application

The Employer did not meet its burden to establish that the Staff Pharmacist assigns work under Section 2(11) of the Act and current Board precedent. According to the Employer, the Staff Pharmacist is nearly equivalent to the Pharmacy Manager because under Nevada law, the pharmacy must be supervised by a licensed pharmacist at all times and at the Employer’s facility, the Pharmacy Manager and Staff Pharmacist share that responsibility, “quarterbacking” the team of Technicians. However, the record reflects that the Pharmacy Manager is the registered pharmacist in charge with the Nevada Board of Pharmacy.

The Employer maintains that the Staff Pharmacist is a Section 2(11) supervisor, asserting that the responsibilities of the pharmacist in charge are assumed by the Staff Pharmacist when the Pharmacy Manager is not working. However, the record evidence establishes that the Staff Pharmacist is only the pharmacist on duty when the Pharmacy Manager is not there and that the title of registered pharmacist in charge under Nevada law cannot be transferred from the Pharmacy Manager to the Staff Pharmacist.

The District Leader and the Pharmacy Manager both testified that the Staff Pharmacist spends between 33 to 44 percent of her working time on team leadership and management. To support this assertion, the Pharmacy Manager testified that the Staff Pharmacist is “quarterbacking the team of Technicians, calling the plays, watching workflow, and moving Technicians as needed to make the goal line.” The Pharmacy Manager also testified that the Staff Pharmacist rotates Technicians through different stations as she is analyzing the workflow.

The Employer further asserts that the Staff Pharmacist exercises Section 2(11) authority to assign work by selecting which Technician(s) provide vaccines if the designated immunizer is not present that day. The pharmacy is allotted designated vaccine hours (DVH) during peak flu season in August, September, and into October. During those months, the pharmacy offers vaccination appointments for four hours on Monday, Tuesday, and Wednesday, and the Pharmacy Manager schedules one Technician to serve as the pharmacy’s designated immunizer each day, entitling that Technician to an extra \$2 per hour. The Staff Pharmacist can only choose a replacement to the designated immunizer when the designated immunizer is unavailable, and the Staff Pharmacist testified that she is not sure if the replacement immunizer receives the additional \$2 per hour pay.

To show that the Staff Pharmacist is a Section 2(11) supervisor, the Employer provided the following examples of the Staff Pharmacist assigning work to the Technicians in its post-hearing brief, by the Staff Pharmacist:

- Asking a Technician to perform return to stock duties for prescriptions that have been on the shelf for 14 days;
- Asking a Technician to first complete Queue Triage tasks for time sensitive prescriptions and then return to performing return to stock duties;
- Reassigning a new Technician to perform side tasks and directing a more experienced Technician to perform production work on a busy day because the more experienced Technician was more skilled in production than the new Technician;
- Reassigning a Technician from production to pick-up to help manage a larger volume of patients;
- Asking another Technician to take over the pick-up counter after the Technician who was performing that task finished dealing with a difficult customer;
- Requesting that two Technicians exchange tasks, from filling prescriptions to doing immunizations, because one of the Technicians was a seasoned immunizer; and
- Moving a Technician from performing production duties to immunizations, to give the newly certified immunizer experience in administering vaccines.

The Employer asserts that these examples of “in-the-moment assessment and decision making is precisely what the Staff Pharmacist does as the pharmacist on duty—she sees an issue, decides on the right Technician for the job, and assigns the work.” Employer’s brief at 14. For example, the pharmacist on duty can give the Inventory Specialist time to perform inventory duties when the Workflow process assignments become calmer and more peaceful. Further, if there is a high influx of prescriptions coming in, the pharmacist on duty can move Technicians from other tasks and have them perform production work to fill the prescriptions.

With respect to assignment of work, the Staff Pharmacist testified regarding the following:

- There have been times when a Technician at pick-up asks for help and she will ask another Technician to help out but there are also times when the Technicians take the initiative and help out where needed without being directed by her;
- At the beginning of the shift, each Technician that comes into work chooses which station to work at and then as customers come in, the Technicians “fill out and round out the other tasks;”

- As the day goes on, the Technicians switch positions, for example, if a Technician was working at the drive-through for a while, they may be asked if they would like to switch to another task;
- If a Technician is working at drive-through on a hot summer day, they may be switched to another task so that they are not working near the open window for a long period of time;
- If a Technician is arriving at the start of their shift, she would ask that Technician to take over a task based on the needs of the pharmacy at that time;
- She asked a Technician to return prescriptions to stock that have been on the shelf for 14 days and have to be returned to stock;
- The Technicians are equally qualified to do tasks such as return to stock and typing prescriptions but there are some that are newer than others or others that may have more experience doing return to stock and accordingly, they have different skill levels. As such, she has had Technicians who are faster at filling prescriptions remain doing that task and has asked a less experienced Technician to perform return to stock or other tasks;
- She asked a Technician to help out with administering vaccinations because the other two immunizers were performing other tasks with patients, so she chose the one that was not with a patient to perform the vaccination;
- She has moved Technicians from stations to work on tasks that are time sensitive;
- She does not have to delegate each task to Technicians in terms of telling each Technician to do which task; and
- The Technicians usually choose where they work and she does not have to tell them where to go to work and that during the day, the Technicians figure out amongst themselves where to work.

This Staff Pharmacist testimony was supported by the testimony of one of the Pharmacy Technicians, FSS, indicating that typically, Technicians choose where they work on a first-come, first-serve basis, and at times, the pharmacist on duty will assign them to different stations. He further testified that all Technicians, at some point, work at each station in the pharmacy and that when he and only one other pharmacist are working, including the Pharmacy Manager, he and the pharmacist on duty work as a two-person team instead of a boss directing an employee.

Notably, the Staff Pharmacist also testified that although she has the ability to call in staff and ask someone to come in and help if the pharmacy is busy, she has never done so on her own without checking with the Pharmacy Manager or District Leader. According to the Staff Pharmacist, she cannot make a Technician come into work during the times that she has called for replacements; Technicians have refused her request to come into work when not scheduled

on many occasions; and the Technicians who refused her requests were not disciplined for doing so.

According to the Pharmacy Manager, the pharmacist on duty can call an employee in to work if there is a call out and would check the schedule to see who is available. The pharmacist on duty can call in an employee who would be paid overtime, but that would not be the first choice since they are encouraged to limit overtime. The pharmacist on duty can approve a last-minute request from a Technician to have a day off with the caveat that the pharmacist would need to find a replacement. Like the Staff Pharmacist, the Pharmacy Manager testified that under CVS policy, even she cannot force an employee to come to work on their day off.

Similarly, the Pharmacy Manager testified that although the pharmacist on duty does not have any responsibility for monitoring meal and rest periods, the pharmacist on duty can change or move Technicians' meal periods depending on Workflow. According to the Pharmacy Manager, even she cannot require an employee to take his or her lunch period at a different time of day if needed and admitted that she did not know if the Staff Pharmacist has ever asked a Technician to take their lunch period at a different time than their originally scheduled time.

The Employer further asserts that on one occasion, the Staff Pharmacist authorized overtime, allowing two Technicians to stay until 8:13 p.m. to maintain appropriate pharmacy customer service. However, the Staff Pharmacist testified that she calls the Pharmacy Manager or District Leader to get their approval for Technicians to work any overtime. Although the Pharmacy Technician, FSS testified that he asked the Staff Pharmacist to leave work early on one occasion and she approved, he clarified that he likely could have left without her approval.

The record reflects that about two weeks prior to the hearing, the pharmacy began utilizing its Workplace Assignment Board system to assign Technicians to their tasks. The Workplace Assignment Board system is a chart on the computer dashboard that labels what role each Technician should be performing based on the employee schedule and current data. This system can assign Technicians to their duties including Queue Triage, drop-off, drive-through, pickup, and prescription filling. However, this system does not know, for example, if there is a line of customers waiting at the pick-up counter and therefore, if a Technician is performing return to stock duties, the system cannot assign that Technician to move to the pick-up counter to assist the waiting customers.

The Workplace Assignment Board is a system accessible on all pharmacy computers that assigns Technicians to different places based on the schedule the Pharmacy Manager creates and the number of Technicians that are working at that time. The Pharmacy Manager enters the skill levels of the Technicians into the Workplace Assignment Board and the computer algorithm places the Technicians into positions based upon the Pharmacy Manager's entered data. According to the Pharmacy Manager, the Workstation Assignment Board initially assigns Technicians their tasks, but the pharmacist on duty may adjust the Technicians' tasks throughout the day, to maintain efficiency and customer service in the pharmacy.

With respect to the Technicians' monthly awareness and compliance training, the Pharmacy Manager or the Front Store Manager typically notifies employees of such training.

While the Staff Pharmacist has asked Technicians if they have done the training and if not, reminded them to do the training, the Staff Pharmacist has never instructed Technicians to take the training. The Pharmacy Manager testified that the training takes between 15 and 45 minutes to complete and that the pharmacist on duty can rearrange Technicians at the stations to allow Technicians to do their training.

To further support its argument that the Staff Pharmacist assigns work within the meaning of Section 2(11) of the Act, the Employer cites several cases which it asserts the Board and an Administrative Law Judge (ALJ) have repeatedly found supervisory status based on assignment of work with facts much less compelling than here.

First, the Employer cites *Acumen Cap. Partners, LLC*, 372 NLRB No. 129 (2023) (*Acumen*), contending that the Board's finding of supervisory status of a chief engineer who "run[s] the day-to-day operations," including assigning work and overtime is less compelling of supervisory status of what we have here regarding the Staff Pharmacist. Contrary to what the Employer claims, the chief engineer in *Acumen* also had the authority to interview candidates for hire and effectively make hiring recommendations; issue verbal and written warnings; assigned employees to their overall shifts and altered employees' schedules to avoid overtime; determined when overtime work was necessary in conjunction with his assignment of work; created schedules for preventative maintenance using independent judgment; and assigned specific tasks to employees, that when completed, they would return to the chief engineer to be assigned another specific task. *Id.* at 8. No record evidence of this sort of Section 2(11) authority is present here with respect to the Staff Pharmacist.

Next, the Employer cites *Entergy Miss., Inc.*, 367 NLRB No. 109 (2019) (*Entergy*), arguing that dispatchers who relied on their "knowledge, experience and judgment" in the absence of standard operating procedures to prioritize powerline repairs used independent judgment and are therefore supervisors, is less compelling than the issue here. However, in determining that the dispatchers were statutory supervisors, in *Entergy*, the Board relied on the fact that the dispatchers undisputedly assigned employees to places which were selected by exercising independent judgment. *Id.* at 3. Here, the Staff Pharmacist does not assign employees to their overall place of work, such as working in the pharmacy versus working in the front of store, and her ad hoc acts of moving employees from, for example, filling prescriptions to the pick-up line when customers are waiting, is clearly different than how the dispatchers prioritized and reassigned employees to particular places during electrical outages.⁶

The Employer also cites the ALJ's decision in *Silver Services Group Corp.*, No. JD(NY)-17-17, 2017 WL 5127652 (Nov. 3, 2017), asserting that construction foremen who "run the job" and told laborers "what kind of work are they going to do today" had less compelling Section 2(11) supervisory authority than the Staff Pharmacist. Again, contrary to what the Employer

⁶ For example, the dispatchers considered whether a priority customer is affected, the location of the trouble spots, whether additional trouble is likely to occur, current and future weather conditions, and whether a particular outage is likely to cause damage to the Respondent's property, when prioritizing outages and how to respond to them. Additionally, the dispatchers did not utilize standard operating procedures or rules to follow when prioritizing outages. No record evidence supports that the Staff Pharmacist here makes any such similar considerations when moving Technicians based on pharmacy priorities.

claims, the ALJ in *Silver Services Group Corp.* found the foremen to be statutory supervisors because one of the laborers testified that when he finished one assignment, he asked the foreman what to do next, stating “[w]e don’t do things on our own. [w]e wait for instructions from the foremen” thus, showing that the foremen assign employees to their *overall* duties. Another laborer testified that one of the foremen would tell each laborer what to do because the foreman was “in charge of the job.” *Id.* at 3. Here, the Pharmacy Manager is in charge of the pharmacy and assigns Technicians to their overall duties when she creates their work schedules. Additionally, the Technicians do not wait for the Staff Pharmacist to tell them what to do. At most, the Staff Pharmacist may move Technicians around within the pharmacy as needed to maintain customer service.

Finally, the Employer cites *RCC Fabricators, Inc.*, 352 NLRB 701 (2008) (*RCC Fabricators*),⁷ asserting that two foremen who exercised independent judgment in making work assignments on a daily basis had less Section 2(11) supervisory authority than the Staff Pharmacist. Contrary to the Employer’s claims, in *RCC Fabricators*, the Board agreed with the ALJ that the two foremen in question were Section 2(11) supervisors because they effectively recommended the assignment of employees to departments and significant overall tasks.⁸ *Id.* One employee testified that once they were finished with a project, employees would find either foreman to see what needed to be done next, and then the foremen would assign the next task. *Id.* at 712. The ALJ also found that, “at a minimum” the evidence established that the two foremen and the shop manager, formed a “troika” responsible for the assignment of all job tasks in the production process. *Id.* at 713. Here, the Staff Pharmacist does not assign Technicians to significant overall tasks; the Technicians do not wait or ask the Staff Pharmacist what they should do next; and again, at most, the Staff Pharmacist may move Technicians around to maintain customer service.

I note that at the hearing and in its brief, the Employer stresses how Nevada Pharmacy law and certain Employer policies show that the Staff Pharmacist must be a statutory supervisor because she is the highest-ranking person at the pharmacy when the Pharmacy Manager is not working. However, those same Employer policies also undermine the Employer’s argument because they show that there is little room for the Staff Pharmacist to use any independent judgment. For example, the District Leader admitted that the Employer decides how many hours the Technicians will work, not the Staff Pharmacist.

While there are discrepancies between the witnesses at hearing about the authority that the Staff Pharmacist exercises regarding the assignment of work, even if I were to only rely on the Employer’s the evidence and arguments, the Employer did not meet its burden to establish that the Staff Pharmacist has the authority to assign work as defined in Section 2(11) of the Act and by current Board precedent.

⁷ I note that this decision was made at a time when the Board had only two members and was invalidated by the Supreme Court’s decision in *New Process Steel, LP v. NLRB*, 560 US 674 (2010). I address it here to respond to the Employer’s arguments, by distinguishing that case from this petition.

⁸ The ALJ also found that the foremen possessed the power to discipline and effectively recommend discipline, but the Board did not pass on this further finding.

Rather, the record evidence reflects that the Pharmacy Manager creates the pharmacy staff schedule and accordingly assigns the Technicians to their place and hours of work. While the Staff Pharmacist at times may move Technicians around the pharmacy from station to station, such assignments are made on either a rotational basis or are based on well-known skills including whether a Technician is a certified immunizer or a less experienced Technician, to equalize workloads, or based on Technicians' availability. These are actions that the Board has long held do not amount to assignment of work as defined in Section 2(11) of the Act. See *Oakwood*, 348 NLRB at 693.

Indeed, the Board has held that no independent judgment is shown if “there is only one obvious and self-evident choice” or “if the assignment is made solely on the basis of equalizing workloads[.]” *Id.* Assignments based merely on employee availability do not involve independent judgment. *Springfield Terrace LTD*, 355 NLRB 937, 943 (2010). Assignments based on a rotational basis or based on detailed instructions do not involve independent judgment. See *Shaw, Inc.*, 350 NLRB 354, 355–56 (2007). Assignments based on employees' expressed preferences or reached by consensus of the employees on a shift also do not involve independent judgment. *Children's Farm Home*, 324 NLRB 61, 64 (1997). Putative supervisors must have the power to require certain actions be taken; it is not enough that the putative supervisor can merely request certain actions of employees. *Golden Crest Healthcare Center*, 348 NLRB 727, 729 (2006).

Likewise, assignments based on employees' well-known skills are not made with independent judgment. *UPS Ground Freight, Inc.*, 365 NLRB 1123, 1124 (2017), *enfd.* 921 F.3d 251 (D.C. Cir. 2019); *CNN America, Inc.*, 361 NLRB 439, 460 (2014) (citing *KGW-TV*, 329 NLRB 378, 381–382 (1999)); *S.D.I. Operating Partners, L.P.*, 321 NLRB 111 (1996). Nor is independent judgment shown where an assignment is simply based on whether or not an individual is capable of performing the task assigned. See *G4S Government Solutions, Inc.*, 363 NLRB 977, 979 (2016) (citing *Volair Contractors, Inc.*, 341 NLRB 673, 675 *fn.* 10 (2004)); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1154 (2015) (citing *Croft Metals, Inc.*, 348 NLRB 717, 722 (2006)). Making assignments to employees who are able to perform all assignment options, and none of whom have special training or education that make them qualified for any particular assignment, does not involve independent judgment. *NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury*, 372 NLRB No. 35, slip op. at 9-10 (2022).

With respect to the Employer's argument that the Staff Pharmacist can assign employees to overtime or authorize overtime when, on one occasion, she allowed two Technicians to stay until 8:13 p.m. in order to take care of patients on that single day, this lone instance of permitting overtime based on necessity does not establish an assignment of work that would cause the Staff Pharmacist to be a Section 2(11) supervisor. See *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997) where the Board found that a putative supervisor who authorized overtime on an emergency basis was not found to be a statutory supervisor.

Further, the Employer has not provided any evidence that the Pharmacy Technicians, FSS assign employees work except for asserting that their job description shows that they do when

working as Front Store Supervisors. However, as detailed in this Decision, the record reflects that the Pharmacy Technicians, FSS do not work in the front of store.

Based on the foregoing and the record as a whole, I find that the Employer has not met its burden to establish that the Staff Pharmacist and the Pharmacy Technicians, FSS have the authority to assign work to employees under Section 2(11) of the Act.

3. Responsibly Direct

a. Board Responsibly Direct Legal Authority

With regard to “responsibility to direct,” the Board in *Oakwood* held “if a person on the shop floor has ‘men under him’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible’ ... and carried out with independent judgment.” *Oakwood*, 348 NLRB at 691. Direction includes authority to manage an assigned team to ensure timely completion of projects by deciding the order in which work is to be performed and telling employees to follow that order, instructing employees how to perform jobs properly, correcting improper performance, and moving employees, when necessary, to do different tasks. *Croft Metals*, 348 NLRB at 722.

To be responsible direction, the putative supervisor “must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” *Oakwood*, 348 NLRB at 691-92. The Board also said, “[I]t must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It must also be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” *Id.* at 692.

b. Application

The record evidence shows that the Staff Pharmacist is not held accountable for the actions of the Technicians. Although the Employer asserts that the Staff Pharmacist was held accountable for their actions when the District Leader was considering issuing the Staff Pharmacist a Level 1 warning when the pharmacy’s metrics suffered during a time when the Pharmacy Manager was not at work in order to care for her grandchild, the evidence shows that the Staff Pharmacist was assigned another Pharmacy Manager as a mentor (the Pharmacy Manager Mentor) who participates in the Employer’s Emerging Leaders Program. The Employer asserts that this mentorship itself shows the Staff Pharmacist’s accountability.

The Pharmacy Manager Mentor testified that she is also a mentor to pharmacists at other stores as she herself is a licensed pharmacist. She testified that in June 2025, she mentored both the Staff Pharmacist and Pharmacy Manager at the store in this matter and a few pharmacists at other stores. The Pharmacy Manager Mentor testified that she was directed to mentor them by the District Leader.

According to the Pharmacy Manager Mentor, about June 9, 2025, she first met with the Pharmacy Manager and said that she was there to partner with her, to plan for the Staff Pharmacist's development, and to help and support the Pharmacy Manager with the pharmacy team to get them back on track. She testified that she told the Pharmacy Manager that she would like to see the Staff Pharmacist take charge more often during the shifts and to let the Staff Pharmacist provide communication to the team, lead the workflow, and for the Pharmacy Manager to coach the Staff Pharmacist from the sidelines. The Pharmacy Manager Mentor met only with the Pharmacy Manager during her first visit to the Employer's store. According to the Pharmacy Manager Mentor, the Pharmacy Manager admitted that she did not prepare the Staff Pharmacist to manage the store in her absence and that the Staff Pharmacist did not have the proper training with the metrics, leading the team, and with workflow.

Employer's Exhibit 11, an email dated June 9, 2025, from the Pharmacy Manager Mentor to the District Leader regarding her first visit to the Employer's store where she only met with the Pharmacy Manager concludes by stating:

This was a productive first visit with [the Pharmacy Manager]. She was open about recent challenges and is committed to regaining control of the store's operations. I'll continue providing support—especially around developing [the Staff Pharmacist], building familiarity with reporting tools, and preparing the team for inventory & peak season.

About June 19, 2025, the Pharmacy Manager Mentor made her second visit to the Employer's store and met with the Staff Pharmacist to provide support. Employer's Exhibit 12, an email dated June 22, 2025, from the Pharmacy Manager Mentor to the District Leader about her second visit to the Employer's store ends with: "Overall Impression. . . [the Staff Pharmacist] is off to a solid start – professional, process-focused, and engaged."

Both of these emails from the Pharmacy Manager Mentor suggest that the Pharmacy Manager, not the Staff Pharmacist, was held accountable for the pharmacy performance due to the Pharmacy Manager's absence, and the Pharmacy Manager admitted she had not properly trained the Staff Pharmacist. Although the Employer asserts that the assignment of the Pharmacy Manager Mentor to mentor the Staff Pharmacist shows accountability since it was done in response to the pharmacy's metrics under the Staff Pharmacist which reflected substandard performance directly linked to her leadership, the Employer failed to meet its burden to establish that the Staff Pharmacist possesses the Section 2(11) indicia to responsibly direct. Indeed, the Pharmacy Manager Mentor admitted there is no written documentation in the Staff Pharmacist's personnel file that reflects any type of leadership problem or any other problem with the store performance during the time period in question and that in her professional opinion, "the problem that the store experienced was lack of leadership" from the Pharmacy Manager.

Further, there is no record evidence to support that the Staff Pharmacist is responsible for the Technicians' performance. The Pharmacy Manager Mentor admitted that the Staff Pharmacist's compensation is not affected by the performance of the Technicians. While the Pharmacy Manager may ask for the observations of the Staff Pharmacist when she conducts Technicians' performance evaluations because the Pharmacy Manager is not always present in

the pharmacy, the Staff Pharmacist is not otherwise involved in the Technicians' performance evaluation process. Rather, the Pharmacy Manager alone does the performance evaluations of the Staff Pharmacist and the Technicians.

Additionally, the Employer argues that the Staff Pharmacist is a statutory supervisor because Nevada law requires that the pharmacy must be supervised by a licensed pharmacist at all times and that since the Staff Pharmacist is sometimes the only licensed pharmacist on duty, I therefore must find that she is a statutory supervisor under the Act, citing *Spentonbush/Red Star Cos. v. NLRB*, 106 F.3d 484 (2d Cir. 1997), (the 2nd Circuit found that the Board erred in finding that tugboat captains/masters were not statutory supervisors because the captains were responsible and held accountable for their crew under Coast Guard and other maritime regulations). Likening *Spentonbush* to the instant matter, the Employer urges me to find that the Staff Pharmacist is a statutory supervisor because Nevada pharmacy regulations make her responsible for the Technicians' performance as a matter of law and that the Nevada Board of Pharmacy laws function as de facto Employer policy.

This Employer argument is unavailing and has been rejected by the Board. See *Buchanan Marine, L.P.*, 363 NLRB 523, 524 (2015) (even assuming that the Coast Guard would hold a captain accountable for violating maritime law in that circumstance, it does not follow that the [e]mployer also would, and supervisory authority must be exercised "in the interest of the employer" under Section 2(11); *Brusco Tug & Barge, Inc.*, 359 NLRB 486, 493 (2012) ("this case is not about a mate's privileges and obligations under maritime law. Rather, the question is whether the mate is a supervisor under Section 2(11) of the Act. . . Without an evidentiary record establishing 2(11) indicia, such questions cannot be answered merely by the assertion of maritime law."); and *McAllister Bros.*, 278 NLRB 601, 614 (1986) (captains' legal "responsibility" under Coast Guard regulations " does not confer supervisory status under the Act" because the captains do not exercise supervisory authority in the interests of the employer), enfd. 819 F.2d 439 (4th Cir. 1987).

Moreover, on March 23, 2026, the Board recently rejected the Employer's argument in an unpublished decision that involves the same parties as here. In *Rhode Island CVS Pharmacy, L.L.C. (Rhode Island CVS)*, the Board denied the Employer's request for review of the Regional Director's Decision and Direction of Election noting that "[a]lthough Rhode Island law provides that pharmacy Technicians must work under the direction of a licensed pharmacist and makes pharmacists broadly responsible for the dispensing of medications, this does not constitute non-conclusory evidence that the Employer itself would impose adverse consequences on a pharmacist based on the performance of a pharmacy Technician." In making this decision, the Board cited *Pain Relief Centers, P.A.*, 371 NLRB No. 70, slip op. at 2-3 (2022) (observing that "[w]hether the State of North Carolina may hold a nurse accountable for medical actions does not establish that the Respondent holds Edwards accountable for the performance of the medical assistants within the meaning of Section 2(11)"), enfd. 2023 WL 5380323 (4th Cir. 2023).

Consistent with the Board's analysis in *Rhode Island CVS*, here, contrary to the Employer's arguments, Nevada pharmacy laws and regulations do not determine whether someone is a statutory supervisor under the Act. Rather, Board law controls. Since the Board has rejected these Employer arguments, I reject these Employer arguments.

To further support its contention that pharmacists are statutory supervisors, the Employer points to three additional Board cases which are also distinguishable from the instant case.⁹

First, the Employer relies upon *SuperX Drugs of Texas, Inc.* 217 NLRB No. 186 (1975) (*SuperX Drugs*), asserting that the Board found the *SuperX Drugs* pharmacists to be statutory supervisors because of the time spent by regular full-time pharmacists in a supervisory role, the authorities afforded to them during those periods, and the employer's expectation that regular full-time pharmacists step-in as supervisors in the absence of a store manager. However, again, the Employer fails to note that the *SuperX Drugs* pharmacists had the authority to suspend employees, assign work to employees, sign and approve payrolls, and were also responsible for the efficient operation of the entire store. Here, the Staff Pharmacist is the only pharmacist on duty in the Employer's store when the Pharmacy Manager or a DSP are not working but she does not have the authority to suspend employees or to assign work to them as defined in Section 2(11) of the Act and by current Board precedent. There is no record evidence to support that the Staff Pharmacist is responsible for the efficient operation of the Employer's store and substitutes to supervise the entire store for the Front Store Manager.

Second, the Employer notes that in *Walgreens Co., Inc.*, 186 NLRB 129 (1970) (*Walgreens*), the Board determined that employees titled "pharmacist (assistant manager registered)" were statutory supervisors. The Employer asserts that the Board found supervisory status by pointing to the fact that the pharmacists were responsible for the pharmacy when the manager was not scheduled to work a significant amount of time during the week. *Id.* However, the Employer fails to mention that the *Walgreens* pharmacists/assistant managers registered were responsible for:

counseling employees about their jobs; assigning work; interviewing job applicants and making recommendations on their suitability; making recommendations on promotions; enforcing company rules; making decisions about unforeseen occurrences; calling in replacements to fill temporary vacancies; approving customers' checks; approving sales refunds; taking surprise cash counts; processing special discounts; signing and approving payroll reports; taking action on shoplifters; possession of keys to the store and to restricted areas; and taking charge in the event of an accident.¹⁰

Here, there is no record evidence supporting the Staff Pharmacist interviews job applicants, makes recommendations on suitability or promotions, or assigns work to other employees as defined in Section 2(11) of the Act or by Board law. While the Staff Pharmacist controls access to restricted areas, this alone does not render her a statutory supervisor.

Third, the Employer relies upon *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997), and asserts that the Board found that if the putative supervisors are in charge on

⁹ I note these three cases were decided prior to the Board's decision in *Oakwood*, 348 NLRB 686 (2006).

¹⁰ The *Walgreens* decision also indicates that the pharmacists/assistant managers registered were solely responsible for the entire store instead of only the pharmacy. 186 NLRB at 129.

weekends or evenings, that alone is sufficient.¹¹ I note that the Board in *St. Francis Medical Center-West* did not find that the putative supervisor, when substituting for his superior from November 1994 to April 1995, exercised Section 2(11) supervisory authority by filling out and making effective recommendations on employee evaluations and administering discipline – authorities that are wholly absent in this record regarding the Staff Pharmacist. *Id.* Further, the Board found that the putative supervisor’s substitution from 1994 to 1995 was not regular enough to remove him from the proposed bargaining unit. *Id.* The Board also analyzed the putative supervisor’s duties that he performed when he returned to his regular position and whether they caused him to exercise Section 2(11) authority. *Id.* The Board did not make that finding, noting that although he was the highest-ranking employee in his area during late afternoons and on Saturdays, his direction of employees at those times was routine. *Id.* During those times, the putative supervisor authorized overtime in an emergency, suggested to an ill employee that she take an additional day off, resolved a squabble between employees, and on two instances, changed a schedule to grant an employee’s time off request. *Id.* The Board found that the putative supervisor was not a statutory supervisor but rather “an experienced employee who directs the work of other employees engaged in routine work.” *Id.*

Finally, there is no record evidence to support that the Pharmacy Technicians, FSS responsibly direct other employees. Based on the foregoing and the record as a whole, I find that the Employer has not met its burden to establish that the Staff Pharmacist and the Pharmacy Technicians, FSS have the authority to responsibly direct employees as defined by Section 2(11) of the Act.

4. Discipline

a. Board Authority to Discipline Legal Authority

To establish the supervisory authority to discipline or effectively recommend discipline, asserted disciplinary authority “must lead to personnel action without independent investigation by upper management.” *Veolia Transportation Services*, 363 NLRB 902, 908 (2016) (citing *Sheraton Universal Hotel*, 350 NLRB 1114, 1116 (2007), and *Beverly Health & Rehabilitation Services*, 335 NLRB 635, 669 (2001), enfd. in pertinent part 317 F.3d 316 (D.C. Cir. 2003)); see *Lucky Cab Co.*, 360 NLRB 271 (2014) (quoting *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002)); *Pepsi-Cola Bottling Co.*, 154 NLRB 490, 493–494 (1965).

Where the evidence is in conflict as to whether a particular type of corrective action constitutes discipline, the Board will find that the party asserting supervisory status has not met its burden. *Veolia Transportation Services*, 363 NLRB 902, 908-909 (2016). The authority to issue verbal reprimands, without more, does not establish the authority to discipline. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999); *Washington Nursing Home*, 321 NLRB 366, 371 (1996); *Ohio Masonic Home*, 295 NLRB 390, 394 (1989); *Passavant Health Center*, 284 NLRB 887, 889 (1987); *Beverly Manor Convalescent Centers*, 275 NLRB 943, 945 (1985). “[T]he mere factual reporting of oral reprimands and the issuance of written warnings that do not

¹¹ The Employer’s brief does not mention anything else about the putative supervisors in *St. Francis Medical Center-West*, including whether the Board determined that they were statutory supervisors as defined in Section 2(11) of the Act.

alone affect job status or tenure do not constitute supervisory authority.” *Passavant Health Center*, 284 NLRB 887, 889 (1987) (citing *Heritage Manor Center*, 269 NLRB 408, 413 (1984); see also *Republican Co.*, 361 NLRB 93, 99-100 (2014); *Hausner Hard-Chrome of KY., Inc.*, 326 NLRB 426, 427 (1998); *Azusa Ranch Market*, 321 NLRB 811, 812–813 (1996); *Ten Broeck Commons*, 320 NLRB 806, 812 (1996).

Independent judgment must be shown to establish disciplinary authority. See, e.g., *G4S Regulated Security Solutions*, 362 NLRB 1072, 1073 (2015); *Green Acres Country Care Center*, 327 NLRB 257 (1998). Testimony that discipline may be a collaborative effort, without specificity as to what collaboration entails or how often it occurs, may suggest that putative supervisors do not exercise independent judgment. *Veolia Transportation*, 363 NLRB 1879, 1885-1886 (2016), *enfd. sub nom. Transdev Services, Inc. v. NLRB*, 991 F.3d 889 (8th Cir. 2021); *Shaw, Inc.*, 350 NLRB 354, 356–357 (2007); *Tree-Free Fiber Co.*, 328 NLRB 389, 391–392 (1999).

b. Application

The record is unclear whether the Employer is asserting that the Staff Pharmacist can discipline employees and/or effectively recommend discipline. Throughout its brief and during the hearing, the Employer asserts that Technicians are required to follow the Staff Pharmacist’s direction or they are subject to discipline. However, when the Staff Pharmacist was asked if having to correct Technicians’ work could lead to discipline, the Staff Pharmacist testified that if she had to “repeat all the time to the same individual” it could, but she has no knowledge of it happening to any employees.

To support its claim that the Staff Pharmacist can discipline employees, the Employer relies upon the testimony of the Pharmacy Manager who stated that if Technicians did not follow the Staff Pharmacist’s directions, that could subject them to discipline. The Employer also relies upon the testimony of a Pharmacy Technician, FSS who simply said that he has never refused to move to another workstation when asked by either the Pharmacy Manager or the Staff Pharmacist. However, the same Pharmacy Technician, FSS also testified that he did not know if he could refuse direction of daily tasks by the Staff Pharmacist and does not consider her to be his supervisor even when she is the only pharmacist on duty.

The Staff Pharmacist testified that she cannot discipline employees, has not been trained in the Employer’s disciplinary process, and has never been informed what her role in the disciplinary process is. Instead, she testified that if she sees an employee making a mistake, such as inputting a prescription for a drug called GaviLyte with directions to “take as directed,” she will request for the Technician to clarify the directions to “mix with water and drink by mouth as directed.” This request or directive by the Staff Pharmacist is not written down and as stated above, she does not know whether such directives or corrections have led to an employee receiving discipline.

During the hearing, the Employer introduced its attendance policy in its employee handbook which states that infractions of the policy should be addressed by the supervisor or manager and depending on the circumstances, may result in corrective action or termination of

employment. Although the Pharmacy Manager testified based on her bare assertion that the terms manager and supervisor refer to her and the Staff Pharmacist, when asked by the Hearing Officer if there is any part of the employee handbook that defines the terms managers and supervisors as used in the handbook, the Pharmacy Manager answered that she was not aware. The Employer also introduced its “Your Appearance” policy in the Employer’s employee handbook, but the Pharmacy Manager was unable to testify whether the Staff Pharmacist has ever enforced this policy which only states that when necessary, managers and supervisors may respectfully and discreetly counsel colleagues whose dress and hygiene are not acceptable with the policy and practices for their respective line of business.

It is well established that in order for discipline by an individual to confer supervisory status, the discipline must lead to personnel action without independent investigation or review by other management personnel. *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002); *Beverly Health and Rehabilitation Services*, 335 NLRB 635, 664 (2001), *enfd.* in pertinent part, 317 F.3d 316 (D.C. Cir. 2003). Here, there is no record evidence to show that the Staff Pharmacist has ever issued or recommended any employee discipline. Likewise, there is no record evidence that the Pharmacy Technicians, FSS have the authority to discipline or to recommend discipline. Based on the foregoing and the record as a whole, I find that the Employer has failed to meet its burden to establish that the Staff Pharmacist and the Pharmacy Technicians, FSS are statutory supervisors based upon having the authority to discipline or to effectively recommend discipline.

5. Hiring, Transferring, Suspending, Laying Off, Recalling, Promoting, Discharging, Rewarding, and Adjusting Grievances

I note that the Employer does not assert that the Staff Pharmacist has the authority to hire or perform evaluations of employees. Indeed, there is no record evidence reflecting that the Staff Pharmacist and Pharmacy Technicians, FSS can hire, transfer, suspend, lay off or recall, promote, discharge, reward, or adjust the grievances of employees. The District Leader testified that he is responsible for hiring Staff Pharmacists and Pharmacy Managers and that Pharmacy Managers hire the Technicians. The Staff Pharmacist testified that she is not involved in the hiring process and that the Pharmacy Manager interviews the Technician applicants.

With respect to firing employees, according to the District Leader, Pharmacy Managers can fire Technicians with the input of Colleague Relations,¹² but admitted he was unsure if a Staff Pharmacist possessed such authority to fire employees. As noted above, the Employer also asserts that the Staff Pharmacist can grant employees overtime or authorize overtime, based on one workday where the Staff Pharmacist allowed two Technicians to stay until 8:13 p.m. in order to take care of customers. Again, the Board has found that a putative supervisor who authorized overtime on an emergency basis was not found to be a statutory supervisor. See *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997).

Based on the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden to establish that the Staff Pharmacist and Pharmacy Technicians, FSS are

¹² The Employer’s Human Resources is known as Colleague Relations.

statutory supervisors based upon having the authority to hire, transfer, suspend, lay off or recall employees, promote, discharge, reward, or adjust their grievances.

6. Part-Time, Limited, Occasional, or Sporadic Supervisory Duties

a. Legal Authority

Employees who spend a “regular and substantial” part of each workday or workweek in supervisory positions are customarily excluded as such from the bargaining unit. *Benchmark Mechanical Contractors, Inc.*, 327 NLRB 829 (1999); *OHD Service Corp.*, 313 NLRB 901(1994); *Gaines Electric Co.*, 309 NLRB 1077, 1078 (1992); *Canonie Transportation Co.*, 289 NLRB 299, 300 (1988); *U.S. Radium Corp.*, 122 NLRB 468, 472–473 (1958). As explained in *Oakwood*, 348 NLRB 686, 694 (2006), “regular” means according to a pattern or schedule, rather than sporadic; as for substantiality, the Board has not adopted a strict numerical definition but has found supervisory status where the individuals have spent 10–15 percent of their total work time serving in a supervisory role. See also *Swift & Co*, 129 NLRB 1391 (1961) (15 percent sufficient); *Archer Mills, Inc.*, 115 NLRB 674, 676 (1956) (10 percent sufficient). Cf. *Benchmark Mechanical Contractors*, 327 NLRB 829, 829–830 (1999) (evidence did not show that, even if individual had not quit on day of election, he would have spent a regular and substantial portion of his time as supervisor).

By contrast, those who exercise supervisory authority for a portion of the year and perform rank-and-file functions for the remainder are described as “seasonal supervisors” and are included in the bargaining unit with respect to their rank-and-file duties. *Great Western Sugar Co.*, 137 NLRB 551, 553 (1962). But if the time spent in the supervisory capacity is in excess of 50 percent, they will not be included. *Shattuck School*, 189 NLRB 886, 887 fn. 3 (1971). In *St. Francis Medical Center-West*, 323 NLRB 1046 (1997), the Board found that substitution for a substantial period of time (5 of the 10 months before the election) was not regular because it was caused by extraordinary circumstances and was not likely to reoccur. Thus, the Board found that the individual was not a supervisor.

b. Application

The burden of establishing supervisory status rests on the party asserting that status, *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711–712 (2001). The Employer asserts that the Pharmacy Technicians, FSS are statutory supervisors because they possess Section 2(11) authorities in connection with their job titles of front store supervisor. To show this, the Employer points to the Pharmacy Technician, FSS job description at Employer Exhibit 3.

There is no record evidence that Pharmacy Technicians, FSS have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action. Instead, the record shows that one of them has not worked in the front

of the store for over a year prior to the hearing and the other had not worked in the front of the store for nine months prior to the hearing. Further, the Staff Pharmacist testified that no pharmacy employee has ever replaced a front store employee.

The Employer is relying on the testimony of its District Leader who testified that the job description of Pharmacy Technicians, FSS accurately reflects their job duties which states that 25% of a Pharmacy Technician FSS's time is to be spent on Front Store Supervisor duties.¹³

The Employer heavily highlights that the Pharmacy Technicians, FSS having alarm codes, safe combinations, and door keys make them statutory supervisors, but none of these constitute Section 2(11) indicia. Moreover, despite the fact that the job descriptions of the Pharmacy Technicians, FSS describe that they have the authority to assign, direct, and discipline employees, there is no record evidence describing what they actually do regarding assignment, direction, and discipline because the record shows that they do not work as front of store employees.

Although the Employer also argues in its brief that status as supervisors is based on the authority they possess, not the frequency with which they exercise it, citing *Connecticut Humane Society*, 358 NLRB 187 (2012), which is correct and supported by *Fred Meyer Alaska, Inc.*, 334 NLRB 646, 649 fn. 8 (2001); *U.S. Gypsum Co.*, 93 NLRB 91, 92 fn. 8 (1951); *Wasatch Oil Refining Co.*, 76 NLRB 417, 423 fn. 17 (1948) (Individuals who possess the authority spelled out in the statutory definition contained in Section 2(11) are, of course, "supervisors" and can be held to be supervisors even if the authority has not yet been exercised), the Employer once again ignores the fact that the two disputed employees do not work in the front of the store, and even if they still did, relying upon a job description fails to support a finding of Section 2(11) supervisory status because paper evidence is not a substitution for real evidence of supervisor status, of which the Employer failed to provide for the record. See *Lakewood Health Ctr.*, 365 NLRB 51(2016).

Based on the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden to establish that the Staff Pharmacist and Pharmacy Technicians, FSS are statutory supervisors based upon spending a regular and substantial portion of their time as supervisors.

7. Secondary Indicia

The Board has long held that secondary indicia on its own is insufficient to establish supervisory authority when there is no evidence, as here, presented that an individual possesses

¹³ The job description describes Pharmacy Technicians, FSS job duties as "assigning, directing, and following up on all activities (i.e., receiving/unloading delivery truck, daily/weekly tasks, etc.), documenting front store team member callout or no-show, working with the team to identify and implement coverage, escalating emergent staffing issues to the Store Manager to identify adequate coverage to support operations, and the appropriate usage of register and door keys, alarm codes, and safe combinations, and executing locking of safe and security doors and setting of alarms when closing the store. Complete random cash verifications as instructed by the Store Manager, Asset Protection, or District Leader."

any one of the several primary Section 2(11) indicia. *Training School at Vineland*, 332 NLRB at 1412 fn. 3.

b. Application

The Employer strongly emphasizes the Staff Pharmacist is the person in charge of the pharmacy when the Pharmacy Manager is not working. For example, in its brief, the Employer asserts that the Petitioner “ignores the factors that matter most, and has no answer to the question: who is in charge for the 30+ hours per week that the Pharmacy Manager is not working? The Petitioner has no answer to this question, but CVS and Nevada law do.” Employer brief at 25.

Although the Employer argues that I should decide that the Staff Pharmacist is a Section 2(11) supervisor because she is in charge of the pharmacy when the Pharmacy Manager is not working according to Nevada law, I must follow Board law, and the Employer’s argument has been rejected by the Board. See *Lakewood Health Center*, 365 NLRB 51(2016) (The Board rejected the argument that the highest authority employees in the nursing department on weeknights and weekends conferred 2(11) status to them, noting that “highest authority” is a secondary indicium of supervisory status which does not confer 2(11) status where, as here, the putative supervisors are not shown to possess any of the primary indicia of supervisory status); *Beverly Enterprises-Minnesota, Inc.*, 348 NLRB 727, 730 (2006) (Board rejected the argument that nurses “in charge” during the night shifts and every other weekend conferred 2(11) status to them); and *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997) (Absence of other supervision is one of the secondary indicia which may be considered but which standing alone is insufficient to establish supervisory status of highest person in charge).

Additionally, the Employer argued during the hearing that the Staff Pharmacist’s job description shows that she is to manage the team and also her performance evaluation shows that she herself wrote that she can “operate the pharmacy and manage the team fairly smoothly” during her shifts and that she also tries to keep the morale of the team high and motivated in a positive environment. The Employer asserts that such words in the job description and in her performance evaluation reinforce that the Staff Pharmacist is a Section 2(11) supervisor. However, as noted above, relying upon a job description that at most shows secondary indicia, without more, fails to support a finding of Section 2(11) supervisory status because paper evidence is not a substitution for real evidence of supervisor status. *Lakewood Health Ctr.*, 365 NLRB 51 (2016). Additionally, the Staff Pharmacist’s definition or understanding of the word “manage” is not a substitute for legal definitions under Board law.

The Employer further contends that the Staff Pharmacist’s authority to responsibly direct the Technicians using independent judgment is bolstered by secondary indicia, including that the Staff Pharmacist is paid differently and significantly more than the Technicians; she has keys to the Pharmacy; she is often the only person in charge of the Pharmacy; she is held out by management as the supervisor; and staff view her as a supervisor, and that her own words reveal that she considers herself a supervisor.

The Technicians are paid between \$17.50 and \$27.44 per hour with the Pharmacy Lead Technician being the highest paid employee. The Staff Pharmacist is paid a salary of

\$138,382.40 and is attributed to her level of education and continuing education and training to maintain her pharmacy license. All pharmacy employees work 40 hours per week except for the Inventory Specialist and one Pharmacy Technician who work 33 and 29 hours per week, respectively. The Pharmacy Manager testified that all pharmacy employees receive the same benefits, including health insurance and a retirement plan.

As noted above, the Staff Pharmacist wears a white coat and the Pharmacy Technicians wear blue scrubs and the record shows that the Staff Pharmacist does not attend management meetings and has never attended a management meeting. Although the Employer asserts that employees view the Staff Pharmacist as their supervisor, the Pharmacy Technician, FSS who testified stated the opposite, that he does not view her as his supervisor and the Staff Pharmacist testified that she does not view herself as the supervisor of the Technicians.

Moreover, as noted above, these and any other secondary indicia are insufficient to establish supervisory authority when there is no evidence, as here, presented that an individual possesses any one of the several primary Section 2(11) indicia. *Training School at Vineland*, supra.

8. Section 2(11) Supervisor Conclusion

As the party asserting that the Staff Pharmacist and Pharmacy Technicians, FSS are statutory supervisors, the Employer must prove by a preponderance of the evidence that they have the authority to engage in, or to effectively recommend, any of the supervisory indicia enumerated in Section 2(11) of the Act as long as their exercise of at least one of the indicia requires or would require independent judgment. Based on the foregoing and the record as a whole, the Employer has not met its burden, because the record shows that neither the Staff Pharmacist nor the Pharmacy Technicians, FSS possess or exercise any of the primary Section 2(11) indicia.

B. The Pharmacy Technicians, FSS Share a Community of Interest with the Petitioned-for-Unit

1. Board Community of Interest Legal Authority

The Act does not require a Petitioner to seek representation of employees in the most appropriate unit possible, but only in *an* appropriate unit. *Overnite Trans. Co.*, 322 NLRB 723 (1996). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. When the Board determines that the unit sought by a petitioner is readily identifiable and employees in that unit share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that the unit employees could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an “overwhelming community of interest” with those in the petitioned-for unit. *See American Steel Construction, Inc.*, 372 NLRB No. 23 (2022), overruling *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017) as modified in *Boeing Co.*, 368 NLRB No. 67 (2019), and returning to the standard articulated in *Specialty Healthcare &*

Rehab. Ctr. of Mobile, 357 NLRB 934 (2011) enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013).

The first inquiry is whether the job classifications sought by Petitioner are readily identifiable as a group and share a community of interest. An important consideration is whether the employees sought are organized into a separate department or administrative grouping. Also important are whether the employees sought by a union have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002).

a. Department Organization and Common Supervision

In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire, or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing, and assigning work, scheduling work, and providing guidance on a day-to-day basis. *NCR Corporation*, 236 NLRB 215 (1978). The fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact, or functional integration. *United Operations*, 338 NLRB at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, 349 NLRB 603, 607, n.11 (2007). The Board has found that "such common upper-level supervision can be [. . .] outweighed by other factors favoring a separate unit." *Macy's, Inc.* 361 NLRB 12, 18 (citing *Grace Industries*, 358 NLRB 502 (2012)). See also *Guide Dogs for the Blind, Inc.*, 359 NLRB 1412 (2013) (no overwhelming community of interest where employees report to separate managerial chains).

The record reflects that the employees in the petitioned-for-unit primarily work in the pharmacy, including the Pharmacy Technicians, FSS. All pharmacy employees are supervised by, report to, and are assigned schedules by the Pharmacy Manager. Pharmacy employees do not report to the Front Store Manager who schedules the front store employees. Pharmacy employees first notify the Pharmacy Manager if they are not going to be available for work and may also notify other pharmacy employees. The Pharmacy Manager evaluates all Technicians, and the Front Store Manager evaluates all front store employees.

Based on the foregoing and the record as a whole, I find this factor of common supervision and departmental organization heavily weighs in favor of finding that the petitioned-for-unit is a readily identifiable group that shares a community of interest.

b. Nature of Employee Skills and Functions

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties, or skills. If they cannot be distinguished, this factor weighs

in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603; *J.C. Penny Company, Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992).

Where there is also evidence of similar terms and conditions of employment and some functional integration, evidence of similar skills and functions can lead to a conclusion that disputed employees must be in the same unit, despite a lack of common supervision or evidence of interchange. *Phoenician*, supra. However, “[t]he fact that other employees perform some of the same tasks is not sufficient in itself to render the requested unit inappropriate.” *Charles H. Tompkins Co.*, 185 NLRB 195, 196 (1970). See also *Grace Industries, LLC*, 358 NLRB 502, 505 (2012) (although the evidence showed “some degree of overlap between the asphalt pavers and other employees, this alone does not render a separate unit of asphalt pavers inappropriate.”).

The record shows that pharmacy employees use Employer workstations for the prescription filling process and all but two of the pharmacy employees are qualified to perform immunizations – a task that is only performed by licensed pharmacy employees. The Staff Pharmacist must be licensed in the state that they practice and Technicians must complete the required training in order to be licensed in order to work as Technicians in the pharmacy. The Staff Pharmacist has a Doctorate of Pharmacy degree and must fulfill continuing education requirements to maintain her pharmacy license. Front store employees may occasionally work in the pharmacy, but only as cashiers because they do not have the requisite training and licenses as the pharmacists and Technicians.

Based on the foregoing and the record as a whole, I find that this factor of employee skills and functions heavily weighs in favor of finding that the petitioned-for-unit is a readily identifiable group that shares a community of interest.

c. Contact and Interchange

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange “may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081).

There is no record evidence that the employees in the petitioned-for-unit work in the front of the store other than that pharmacy Technicians occasionally work in the front of the store

to cover front store employees performed in addition to their regular pharmacy hours. The only record evidence of this is when one Pharmacy Technicians, FSS worked in the front of the store approximately nine months prior to the hearing and the other Pharmacy Technicians, FSS worked in the front of the store over a year prior to the hearing. Additionally, according to one of the Pharmacy Technicians, FSS, front store employees and pharmacy employees do not regularly take their breaks together.

Based on the foregoing and the record as a whole, because pharmacy employees rarely have contact and interchange with front-of-store employees, I find that this factor heavily weighs in favor of finding that the petitioned-for-unit is a readily identifiable group that shares a community of interest.

d. Functional Integration

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the employer's workflow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

As described above, pharmacy employees only perform work in the pharmacy except a couple of times when both Pharmacy Technicians, FSS worked in the front of the store two times more than nine months prior to the hearing. Based on the foregoing and the record as a whole, I find this factor of functional integration weighs heavily in favor of finding that the petitioned-for-unit is a readily identifiable group that shares a community of interest.

e. Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. However, the fact that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. *Bradley Steel, Inc.*, 342 NLRB 215 (2004); *Overnite Transportation Company*, 322 NLRB 347.

As described above, the petitioned-for-unit almost exclusively works in the pharmacy and is only supervised by the Pharmacy Manager. Additionally, all pharmacy employees are required to follow the Employer's policies, including its Employee Handbook. Except the Staff Pharmacist who earns a salary of \$138,382.40, all employees in the petitioned-for-unit are paid between \$17.50 and \$27.44 per hour. All pharmacy employees work 40 hours per week except

for the Inventory Specialist and one Pharmacy Technician who work 33 and 29 hours per week, respectively. The Pharmacy Manager testified that all pharmacy employees receive the same benefits, including health insurance and a retirement plan.

All Pharmacy Technicians, including those that are not immunizers, receive an annual bonus based upon certain vaccination goals. The Staff Pharmacist's bonus is calculated differently than the bonuses of the Pharmacy Technicians. A portion of it is based upon her annual salary and the remainder is discretionary. The Staff Pharmacist's 2024 bonus was less than half of the Pharmacy Manager's bonuses.

Based on the foregoing and the record as a whole, I find that this factor of terms and conditions of employment weighs in favor of finding that the petitioned-for-unit is a readily identifiable group that shares a community of interest.

f. History of Collective Bargaining

The record reflects that there is no history of collective bargaining covering any of the employees at issue in this proceeding. Based on the foregoing and the record as a whole, this factor does not lean either in favor, or against, finding that the petitioned-for-unit is readily identifiable as a group that shares a community of interest.

g. Summary

Based on the foregoing and the record as a whole, I find that the petitioned-for unit constitutes a readily identifiable group that shares a community of interest with each other. Generally, employees in a petitioned-for group are readily identifiable when they share job classifications, departments, functions, work locations, skills, or similar factors, as described above. *American Steel Construction, Inc.*, 372 NLRB No. 23, slip op. at 16. All of these shared factors are present here among the employees in the petitioned-for-unit. As set forth above, the record reflects that the pharmacy employees are readily identifiable as a group, working at the Employer's store, in a common department with common supervision. Except for the Staff Pharmacist, they have the same or similar job classifications, duties, and responsibilities and are paid in a similar fashion. They are all functionally integrated with each other, sharing similar skills and duties, to ensure that the pharmacy can properly serve its customers.

IV. CONCLUSION

Based upon the foregoing and the record as a whole, including the parties' stipulations set forth at Board Exhibit 2, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.¹⁴

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner claims to represent the petitioned-for employees, but the Employer declines to recognize the Petitioner.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

6. There is no collective-bargaining agreement covering any of the employees in the unit sought in the petition herein, and there is no contract bar to an election in this matter.

7. In concluding that the Staff Pharmacist and the Pharmacy Technicians, FSS are not statutory supervisors and that the petitioned-for-unit shares a community of interest, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Pharmacists; Pharmacy Technicians; Pharmacy Technicians, FSS; Lead Pharmacy Technicians; and Inventory Specialists employed at the Employer's 1551 W. Sunset Boulevard, Henderson, Nevada facility (Store No. 08787); but excluding all other employees, office clerical employees, guards, confidential employees, managers, and supervisors as defined in the Act.

8. There are no petitions pending in other National Labor Relations Board Regional offices involving other facilities of the Employer.

9. The parties agreed on the record, and I find that the classification identified below as included in Voting Group A (Professional Unit) are professional employees under Section 2(12) of the Act. The parties further agreed and I find that the classifications identified below as included in Voting Group B (Non-Professional Unit) are non-professional. Because the parties agree that the petitioned-for unit includes both professional and non-

¹⁴ The Employer, Nevada CVS Pharmacy, LLC d/b/a CVS Pharmacy Store 08787, a Nevada limited liability company with an office and place of business located in Henderson, Nevada, is engaged in the operation of a retail pharmacy and general goods store. During the 12-month period ending September 3, 2025, the Employer, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its Henderson, Nevada, facility goods valued in excess of \$5,000 directly from points outside the State of Nevada.

professional employees, I find that a *Sonotone* election¹⁵ is appropriate, and I therefore direct an election in the following voting groups:

VOTING GROUP A (PROFESSIONAL UNIT)

Included: All full-time and regular part-time Pharmacists employed at the Employer’s 1551 W. Sunset Boulevard, Henderson, Nevada facility (Store No. 08787).

Excluded: All other employees, office clerical employees, guards, confidential employees, managers, non-professional employees, and supervisors as defined in the Act.

VOTING GROUP B (NON-PROFESSIONAL UNIT)

Included: All full-time and regular part-time Pharmacy Technicians; Pharmacy Technicians, FSS; Lead Pharmacy Technicians; and Inventory Specialists employed at the Employer’s 1551 W. Sunset Boulevard, Henderson, Nevada facility (Store No. 08787).

Excluded: All other employees, office clerical employees, guards, confidential employees, managers, professional employees, and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. There will be two voting groups in the election as set forth above, **Voting Group A** and **Voting Group B**. Two questions shall appear on the ballot of the professional employees in **Voting Group A**:

1. Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining? The choices on the ballot will be “Yes” or “No.”
2. Do you wish to be represented for purposes of collective bargaining by **THE PHARMACY GUILD A/W INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO**? The choices on the ballot will be “Yes” or “No.”

¹⁵ Section 9(b)(1) of the Act prohibits the inclusion of professional employees in a unit with employees who are not professional, unless a majority of the professional employees vote for inclusion in such a unit. To carry out the statutory requirement, the Board has long held that the *Sonotone* self-determination election procedure is the appropriate method to allow professional employees to decide for themselves whether they wish to be included in such a diverse unit. See *Sonotone Corp.*, 90 NLRB at 1241–1242; *Barnes-Hind Pharmaceuticals, Inc.*, 183 NLRB 301, 303 (1970); *Firestone Tire & Rubber Co.*, 181 NLRB 830, 833 (1970); *New England Telephone & Telegraph Co.*, 179 NLRB 527, 529–530 (1969).

The question on the ballot for the non-professional employees in **Voting Group B** will be: “Do you wish to be represented for purposes of collective bargaining by the **THE PHARMACY GUILD A/W INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO?** The choices on the ballot will be “Yes” or “No.”

If a majority of the professional employees voting in **Voting Group A** vote “Yes” to the first question on the ballot, indicating their desire to be included in a unit with non-professional employees in **Voting Group B**, they will be so included, and their votes on the second question on the ballot regarding whether or not they wish to be represented for purposes of collective bargaining by **The Pharmacy Guild a/w International Association of Machinists & Aerospace Workers, AFL-CIO?** will be counted together with the votes of the nonprofessional employees in **Voting Group B** to decide the question concerning representation for the overall unit consisting of the employees in **Voting Group A** and **Voting Group B**.

If, on the other hand, a majority of the professional employees voting in **Voting Group A** do not vote “Yes” to the first question on the ballot, their ballots will be counted separately to decide the question concerning representation in a separate **Voting Group A**.

A. Election Details

The election will be held on **Friday, July 31, 2026** from **2:30 p.m. to 3:30 p.m. in the Employee Break Room at the Employer’s store** located at 1551 W. Sunset Boulevard in Henderson, Nevada.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Saturday, July 18, 2026**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board’s designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this Decision a list of the full names (that employees use at work), work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Friday, July 10, 2026**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this Decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found

appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this Decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review. Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated in Phoenix, Arizona this 8th day of July, 2026

/s/ Cornele Overstreet

Cornele A. Overstreet, Regional Director