

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

FOSS MARITIME COMPANY, LLC

Employer

and

Case 19-RC-379479

**INTERNATIONAL ORGANIZATION OF
MASTERS, MATES & PILOTS**

Petitioner

DECISION AND ORDER

The above-captioned matter is before the National Labor Relations Board (the “Board”) upon a petition duly filed under § 9(c) of the National Labor Relations Act (the “Act”), as amended. A hearing was held before a hearing officer of the Board on January 29, January 30, and February 5, 2026. Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.

I. SUMMARY

Foss Maritime Company, LLC (“Employer”) is a Washington corporation that is engaged in the business of providing maritime services, including tugboat services.

International Organization of Masters, Mates & Pilots (“Petitioner”) filed the instant petition seeking to represent a bargaining unit of all captains and chief mates¹ employed by the Employer in its Oceans/Project Services Division on the Employer’s ocean towing vessels. The Employer contends that the petitioned-for unit is improper because the petitioned-for Oceans/Project Services Division captains and chief mates are statutory supervisors as defined in § 2(11) of the Act who are subject to exclusion from the protection of the Act.

I have carefully reviewed and considered the record evidence and the arguments made by the parties both at the hearing and in their post-hearing briefs.² As explained further below, I find that the Employer has met its burden of establishing that the petitioned-for captains and chief mates are supervisors under § 2(11) of the Act. Accordingly, I dismiss the petition.

¹ While this Decision primarily uses the job titles “captains” and “chief mates,” the record establishes that captains are also referred to as “masters” or “vessel masters” and chief mates are also referred to as “2nd captains” or “1st mates.”

² Both parties filed timely briefs.

II. RECORD EVIDENCE

A. The Employer's Operations

The Employer has two major segments in the maritime industry. One is a local harbor towage company, which involves bringing large ships in and out of port and putting them to the dock. The Employer's harbor services group stays permanently in one geographic area (*e.g.*, the local PNW Harbor division, which services Seattle, Tacoma, and the Anacortes, Washington areas). Those vessels go out, do a brief job, and come right back to the dock.

In contrast, the segment at issue in this case is the Employer's Ocean Towing/Project Services group ("Oceans/Project Services"), which performs a combination of long towing operations, either transporting cargoes or towing ships. Any given Oceans/Project Services voyage can span from around 45 to 105 days in length, with much of the towage occurring through international routes or in remote locations, such as the Canadian and U.S. Arctic Ocean regions. The group is also involved in large project management of marine assets, including oil and gas "energy-makers." On occasion, the company sets up temporary project structures for energy development projects that may last from 12 to 24 months in duration. Individual crew members are assigned to work on Oceans/Project Services operations or voyages for variable amounts of time, but an average work assignment lasts 35 to 45 days and some work assignments are for 55 or even up to 120 days.

The record is not clear on exactly how many crew members are assigned to any given Oceans/Project Services vessel at once. However, the Ocean and Coastwise Towing Supplement to the parties' collective bargaining agreement (CBA) covering the crew other than captains and chief mates provides that when running light, vessels may be manned with *minimum* five-person crews comprised of three employees covered by the CBA, plus the captain and chief mate. However, per the CBA, for vessels greater than 2500 hp, the minimum crew must include four employees represented by Petitioner, plus captain and chief mate. Perhaps more helpfully, an internal email in the record entitled "Projects / Oceans fleet underway" exchanged between members of management indicates that as of June 2024, the Oceans/Project Services Division had 14 vessels actively crewed by a total of 163 mariners – for an average of over 11 total crew per vessel, including the captain and chief mate. This approximation of the average crew per vessel is supported by the uncontroverted testimonial evidence that Oceans/Project Services voyages are generally staffed with a captain, a chief mate, sometimes a second mate (but not always), a navigational/deck officer or officers, a chief engineer, an assistant engineer or engineers, the qualified or "Q" man in the engineering department if one is assigned, an able-bodied seaman or seamen ("ABs"), an ordinary seaman or seamen ("OSs"), and a cook or cooks.

There are approximately 26 total captains and 19 total chief mates in the petitioned-for bargaining unit. The Oceans/Project Services crew that report to the chief mate and captain are already represented by the Petitioner in a separate bargaining unit. Through this petition, Petitioner seeks a separate, standalone unit of captains and chief mates. The Employer argues that all 45 captains and chief mates are statutory supervisors.

The record consists of various exhibits and the testimony of two Employer witnesses. Director of Project Operations Ed Ehler ("Ehler") oversees both the entire Oceans/Project Services

Division and the Employer's harbor services division. The Employer's second witness was Blair Teddy ("Teddy"), Manager of Marine Operations for the Oceans/Projects Fleet. The Employer's Marine Operations Managers (including Teddy), Port Captains, and Marine Operations Superintendents report directly to Ehler, while the seagoing personnel (including the petitioned-for captains and chief mates) report up through Port Captains, then Marine Operations, then to Ehler. No witnesses were called by the Petitioner. Neither party called one of the petitioned-for captains or chief mates as a witness.

The captain, chief mate, and crew all follow the Employer's Safety Management System ("SMS"), essentially the Employer's rulebook or operational document. The SMS sets forth guidelines on operations, safety, the responsibilities of managerial and nonmanagerial employees, human resources, and environmental issues.

B. Duties and Responsibilities of Captains

The record establishes that the "ISM code" – the regulations set forth by the International Maritime Organization in its International Safety Management system – dictates that the captain/vessel master is the ultimate and overriding authority while in command of his or her vessel, meaning that the captain can deviate from any law, regulation, or Employer policy if he or she deems this necessary to protect the safety of the vessel or of the crew or to prevent pollution. The ISM code requires that this be explicitly stated in each employer's policy documents, and this statement can be found in the Employer's SMS policy documents.

The Employer's SMS policy manual, in a section entitled "Master's Responsibility and Authority," notes that the captain or master is responsible for:

- Implementing the safety and environmental protection policies of the Company;
- Motivating the crew in observation of that policy;
- Issuing appropriate orders and instructions in a clear and simple manner;
- Verifying that specified requirements are observed; and
- Periodically reviewing the SMS and reporting any deficiencies to shore-based management.

The SMS further provides:

1.3 Master's Authority

1.3.1 The Master is ultimately responsible for the safe operation of the vessel and for preventing pollution. The Master is empowered in all situations with overriding authority to act decisively and according to best judgment criteria to:

- Prevent injury to crew members and other persons;
- Protect the vessel and other vessel or property from damage; and
- Prevent pollution from the vessel.

1.3.2 This responsibility and authority includes deviation from the SMS when it is believed that such a deviation is reasonably necessary for the safety of the crew, the vessel, or to prevent a pollution incident.

1.3.3 The Master may request assistance from the Company at any time in order to fulfill these responsibilities.

1.4 Authority Statement

1.4.1 The Master shall have the OVERRIDING AUTHORITY and RESPONSIBILITY to make decisions with respect to safety and pollution prevention conditions or activities. Nothing stated in any agreement, contractual or otherwise, shall reduce this authority.

1.4.2 The Master is responsible at all times for the seaworthiness and safety of the crew, vessel, and tow, integrity of the cargo, equipment, and safe navigation of the vessel.

1.4.3 Under no circumstances shall the Master of any vessel feel compelled to endanger the safety of the crew, vessel or the integrity of the environment to meet an operational requirement.

1.4.4 The Master shall never be punished, reprimanded, or disciplined for the good faith refusal to undertake any activity that is unlawful and/or, in the Master's opinion, hazardous to life to company property or the environment.

1.5 Ultimate Work Authority

1.5.1 The Master has what is known as the "Ultimate Work Authority" to stop or approve any work on the vessel that impacts the safety of the crew and vessel. This includes resumption of activities after hazards have been addressed following a "Stop Work" decision.

Finally, the SMS continues:

3.0 PERSONNEL MANAGEMENT

3.1 General

3.1.1 All "departments" fall under the direct jurisdiction of the Master. All departments work at the direction of the Master. The Master is directly responsible and accountable for ensuring that all Company policies and procedures, across all departments, are followed and complied with.

3.1.2 The Master shall work in close cooperation with the crew regardless of makeup, whether on an ocean vessel with a large crew or a harbor vessel with a much smaller crew. A prudent Master shall listen to suggestions made by Deck Officer, engineers and seamen but shall keep in mind that they alone shall be responsible for whatever final action is taken. All crewmembers shall understand that the Master is the final decision maker with the final say on all operations.

3.1.3 The Master shall issue appropriate orders and instructions in a clear manner.

3.1.4 The Master shall motivate the crew in the maintenance and compliance of the SMS. The crew shall read and understand the contents of the SMS. The Master shall set a high standard of personal and professional conduct to provide leadership onboard the vessel.

3.1.5 The Master shall supervise deck and engine crews' performance of **Job Safety Analysis (JSA)** and ensure that all crewmembers conduct all operations and tasks in accordance with **(JSA)** principles in order to avoid injuries. Refer to **SMS 2.03 - Job Safety Analysis (JSA)**.

3.1.6 The vessel Master is accountable for **SMS 3.03 - Officer and Crew Responsibility and Authority**.

3.2 Personnel Evaluations

3.2.1 The Master shall encourage and take the lead in the training of the officers and crew in the functions of the next higher level position on board.

3.2.2 The Master shall conduct Crew Evaluations on an annual basis or when requested by operations. Refer to **SMS 6.03 - Qualified and Certified Personnel**

3.2.3 The Master shall include an onboard evaluation of the Engineer, as the Master is usually the best person to judge the individual's performance on board the vessel. Shore side engineering staff shall review such evaluations and may supplement the Engineer's evaluation.

3.2.4 Evaluations of new hires or individuals promoted to higher positions shall be done upon completion of their Probationary Period.

All personnel on the vessel – including the chief mate, the second mate when one is assigned, the navigational/deck officer or officers, the chief engineer or engineers, the assistant engineer or engineers, the Q man in the engineering department if one is assigned, the AB or ABs, the OS or OSs, and the cook or cooks – report to the captain, and are expected to take orders from the captain. All but the captain report to the chief mate.

The captain's job description provides that the captain has the primary authority, responsibility and accountability for the safe operation of the vessel and crew; directs the crew in all aspects of vessel operations, including safe navigation, shipboard training and drills (emergency preparedness), general and preventative maintenance of the vessel's machinery, operating systems, and the rigging and maintenance of the vessel's working gear; and determines work schedules and establishes routines. The job description further details a captain's responsibilities to direct his/her crew in the deployment and recovery of working gear; continually monitor the status of other traffic, prevailing and forecasted weather conditions, under-keel clearance of the tug and tow, maneuverability, handling characteristics, and available maneuvering room; maintain a healthy work environment and positive morale aboard the vessel; supervise, guide, and monitor the performance of the crew in matters of training, safety, seamanship, maintenance, navigation, and

all aspects related to the day to day activities and mission of the tug; and assess individual performance of crew members and dispense corrective action when necessary.

To this end, per the job description, the captain must be well versed in company policies and procedures, government regulations, and collective bargaining agreements governing labor issues. The job description warns that the stress level imposed by the job is intermittently very high due to work demands and supervisory and managerial responsibilities and that the job requires a high amount of people skills, as the captain is responsible for 24-hour supervision of the crew for the duration of the voyage, which can last multiple months.

C. Duties and Responsibilities of Chief Mates

Everyone aboard the vessel with the exception of the captain also reports directly to the chief mate, aka 2nd captain. The SMS dictates that the chief mate is responsible for the supervision of activities during his or her watch and shall take command of the vessel should the master/captain become incapacitated for any reason. Further, the SMS details that the chief mate's duties include:

1. Monitoring the performance of all work on the vessel in compliance with all relevant rules, regulations, policies, procedures and work practices;
2. Assisting in the organizing of watch schedules and routines;
3. Assisting the Master in keeping order and assisting in maintaining positive crew morale (This may include shipboard counseling and discipline);
4. Be responsible in following the Master's orders while on watch;
5. Maintaining a proper Vessel Logbook while on watch;
6. Assigning tasks during their watch including supervising the vessel housekeeping and deck department maintenance, including all accommodation spaces and galley;
7. Assisting the Master as needed with preparation of requisitions and deficiency reports and/or repair work lists;
8. Standing proper bridge/navigational watch as instructed by the Master (See SMS 7.05 - Watchstanding);
9. Maintaining current and corrected Navigational charts and Publications with proper records of all corrections;
10. Supervising emergency drills. Coordinating crew and persons other than the crew at muster points as pre-arranged on the emergency station bill; and
11. Assisting the Master in the training all crewmembers.

The chief mate job description similarly states that the chief mate is responsible for assisting the captain in towing, docking, and undocking of barges and other vessels from port to port, and supervises the crew in the operation of the vessel when the captain is off watch, including when the captain is resting or sleeping. The job description further provides that the chief mate is responsible for the safety of the vessel and crew while underway and for the safe movement and navigation of the vessel and its tows. It explains that the job requires the ability to deal with

intermittently high stress, due to job related situation and supervisory requirements as well as quality people skills, since the chief mate must supervise and live with 4-6 other crew members.

Per Director of Project Operations Ehler, in addition to taking over for the captain when he or she is off watch, the chief mate's supervisory duties include assigning job duties and overtime and directly supervising the crew on deck in the making and breaking of tow: in other words, interpreting the needs of the captain as well as exercising independent judgment on how to administer the needs of the vessel or to interpret SMS or regulatory policy as it pertains to the tasks at hand. In sum, they are the right hand of the captain. Ehler testified that on board the vessel, only the chief mate and captain can assign tasks to the remaining crew.

D. Indicia of Supervisory Status

1. Hire

Manager of Marine Operations Teddy testified that captains have been primarily involved in the hiring or promotion process for their peers, *i.e.*, chief mates and captains. It is the Employer's practice that no captain is ever hired without a captain or chief mate participating in the interview process. Per Teddy, in recent history, a captain or chief mate has been present in every single interview for a new hire. After each interview, Teddy will get either the captain's or chief mate's input on the candidate before deciding whether they should be hired. The record contains evidence that captains and chief mates have participated in many recent interviews.

According to Teddy, the captains are the subject matter experts on what they need on the boat and who they need their opposites to be on the boats next to them. The candidates for hire are people the company would be hiring to put on the captains' and chief mates' boats, so the current captains and chief mates need to be satisfied with their proficiency, attitude, and ability to work together. Per Teddy, if the captains and chief mates don't think that a candidate has those skills, the company will not hire them. With respect to finding and recommending candidates for hire, the captains are the individuals who have met other potential job candidates and have been flag bearers and recruiters for the company on the job. Thus, per Teddy, a captain's referral of a candidate carries an extreme amount of weight with the company, since they know whether a candidate will be a good fit.

Teddy testified explicitly that when a captain recommends that someone be hired, as long as the company has the capacity to hire, he takes their word for it and doesn't have any issues signing off on the captain's recommendation. For example, the company hired a captain on the recommendation of a current captain, despite that Teddy himself was not enamored with the new captain during the interview process (and even though the new captain did not end up being a good fit and has since separated from the company). Similarly, the company hired a second mate on the recommendation of a captain even though Teddy himself found the prospective second mate to be a middling candidate during his interview.

As another example, the Employer hired an individual into a chief mate role instead of the captain position for which he had interviewed because a captain who had previously worked with the candidate said that he was not ready to be a captain. In a separate but similar case, the Employer hired a candidate into the lesser chief mate role even though he had interviewed for a captain role,

based on the input of the two captains present at his interview. The Employer also recently hired an AB (able-bodied seaman) on the recommendation of a captain; a new captain on the recommendation of a captain; and an AB on the recommendation of a captain.

Teddy testified that a chief mate's referral, like a captain's, carries considerable weight because they have experience and industry knowledge of mariners outside of the Employer's umbrella and know who would be good candidates to come work for the company. For example, a chief engineer was recently hired when a chief mate became aware that the chief engineer was eligible for hire, informed management, and recommended to management that he be hired.

2. *Reward and Promote*

As dictated by the SMS, captains are responsible for their crew's performance reviews. These evaluations occur at least annually and sometimes more frequently. The Employer's HR department initiates the evaluation process and then remits the captain's evaluation to each crew member. Shoreside management also signs off on the captain's review, but simply to verify that the review has been completed timely by the captain. While the Employer's ideal process is that the captain will then sit down directly with the employee to review the evaluation with them, for timing reasons, this one-on-one discussion does not always happen.

The record establishes that a positive review or recommendation from a captain can result in a promotion when the position is available; that receiving a positive review is a prerequisite for eligibility for the Employer's tuition reimbursement program; and that the most positive reviews even result in "top mariner" bonuses. Also, an evaluation provided by a captain or chief mate is the chief deciding factor in determining whether a probationary employee will be kept on past their probationary period.

While a positive performance review alone does not automatically translate into a wage increase unless it results in a promotion to a higher-paid position, top performers who are not being promoted can receive one-time top mariner bonuses because of a captain's or chief mate's positive review. In addition, only those employees who receive a minimum average evaluation score and a letter of recommendation from their captain are eligible for the Employer's tuition reimbursement assistance program. A captain's positive review of a candidate is considered by management to constitute a qualifying letter of recommendation for a crew member for purposes of approval for the tuition reimbursement program. A captain (or multiple captains') positive review(s) of a candidate for the tuition reimbursement program have even overridden the other factors necessary for eligibility for the program. Manager of Marine Operations Teddy testified that budget constraints have been the only reason he has ever declined to approve an employee's application for the company's tuition reimbursement program where a captain had recommended the employee.

Beyond eligibility for bonuses and other financial benefits, a positive performance review from a captain makes a crew member eligible for promotion. While a promotion is not guaranteed since there is not always an opening, a captain's positive review of an employee results in shoreside management keeping the individual in mind for promotion when the opportunity arises.

Further, the record includes concrete examples of times a captain's positive review or recommendation did in fact result in an employee being promoted. Teddy made clear that if an employee has the proper licensure and a promotion is available, they will be promoted as a result of a captain's recommendation or positive performance review. Without a captain's or chief mate's recommendation, shoreside management would have no idea who to promote, since they do not work alongside the seagoing employees to know which employees are prepared for promotion.

While the record is sparser about chief mates' involvement in the evaluation and promotion process, it does contain at least one example of a time when a chief mate's recommendation that a cadet should receive a bump in his pay rate resulted in the cadet immediately receiving the raise. According to Teddy, a chief mate's positive review of a crew member can also override the tuition reimbursement program's requirement of a minimum of one year in service. As Teddy explained, on certain operations, a chief mate has more visibility of the performance of the crew than a captain (and therefore more knowledge about which crew members are prepared for promotion), as the captain may be primarily maneuvering the vessel while the chief mate works side-by-side with the crew, communicating the maneuver.

3. *Assign and Responsibly Direct*

Rule B4.02 of the CBA between the Employer and Petitioner, which covers the terms and conditions of employment of all seagoing personnel beneath the captain and first mate, states:

It is understood the Master and/or Mate are representatives of the Company. The Master has the overall authority and responsibility for the vessel on or off watch. With this responsibility, the Master and/or Mate has the necessary authority to insure that all members of the crew perform all the duties assigned to them safely.

Director of Project Operations Ehler testified that captains are responsible for ensuring that safety drills are conducted in a safe manner and for supervising and coaching the crew during and after such drills; removing a crew member from the watch cycle or from the vessel entirely at the next port of call if he or she deems this necessary for safety reasons, with shoreside management having no ability to override this authority; ensuring the engineering department is conducting all routine and non-routine maintenance tasks if the captain deems it necessary, and awarding overtime, if appropriate, for the performance of such tasks; assigning roles and responsibilities to crew members when connecting and disconnecting tow or coming alongside another vessel or barge, then exercising direct oversight over the operation; and shutting an entire operation down under their overriding stop-work authority if things are not being done in a safe manner. Ehler testified that captains use their independent judgment and experience to determine how to operate their vessel safely.

The record reflects that captains have been held accountable by the Employer for failing to enforce the Employer's safety policies. For example, Manager Teddy issued written discipline to a captain for admitting that he had failed to enforce the company's personal protective equipment (PPE) policies aboard his vessel, including by tolerating his crew members not routinely wearing their life jackets. No witness disputed that this was why Teddy issued this written discipline.

Teddy testified that the captains' authority to assign work to vessel personnel is laid out in detail in SMS Sections 3.03 and 5.01. He testified that captains (and chief mates) are responsible for assigning crew members their job duties, including assigning individuals to certain watches (or schedules) and determining what tasks will be performed by each crew member on each given watch. However, Teddy admitted the captains' assignment of the watch schedule generally follows "200 years of tradition," with watch times being assigned by rank: captains work from 8:00 a.m. to noon and then are back on from 8:00 p.m. to midnight; chief mates are on from 4:00 p.m. to 8:00 a.m. and then from 4:00 p.m. to 8:00 p.m.; if there is a 2nd mate on the boat, they will work from midnight to 4:00 a.m. and noon to 4:00 p.m.; etc. However, the captain's job description instructs that captains may adjust the crew's watch schedules to fit the vessel's operational schedule and maximize rest periods. If a seaman is not happy with the watch or tasks they've been assigned, their recourse is limited to talking to the captain or chief mate who assigned them that watch or task(s). Teddy testified that when a seaman calls shoreside management to complain, Teddy tells the seaman that assigning watches and tasks is the captains' and chief mates' job and that this is not his problem.

The SMS also directs captains to issue Standing Orders and Night Orders for all onboard personnel to follow. Teddy confirmed that the Employer expects its captains to develop and publish standing orders directing how the crew is supposed to perform each and every task. Captains are also responsible for creating job safety analyses ("JSAs") for all tasks aboard the vessel, are expected to propose revisions or "corrective actions" when provided task checklists are inapplicable and can even ignore assigned tasks if they deem them to be unnecessary. According to Teddy, a captain or chief mate can even assign work to a crew member who does not have the appropriate endorsements if he determines this is necessary. The section of the SMS defining the duties and responsibilities of OSs (Ordinary Seamen) concludes, "Perform all other duties as assigned at the discretion of the master" – leaving room for the assignment of tasks that are not specifically prescribed by policy or regulation.

The record makes clear that any duties performed by the crew when they are not on watch are subject to overtime, which must be approved by the captain. As one example, the CBA forbids Chief Engineers from doing any repair work off watch "without the authorization of the captain." Teddy testified that "the payroll system goes through the boat"; in other words, the captain and chief mate are the only ones with access to the pay program and are responsible for knowing how many hours each crew member has worked; coding in their crew's payroll; logging their reasons for approving any overtime; and resolving any discrepancies directly with the crew on the boat. Teddy testified that he and the port captains cannot physically approve or modify overtime already approved by the captains – he only gets a report during the month after the month in which the overtime was already paid out. Manager Teddy also testified that shoreside management only reviews the captains' grants of overtime in this manner if payroll flags them for some reason, but generally, he trusts that the captains have granted overtime appropriately. Shoreside management is not on the boat with the crew; only the captain (and chief mate) is aware of how many hours of work have been performed by whom. Teddy expects that his captains and chief mates have a very good knowledge of the CBA between the Employer and Petitioner, to assist them in assigning overtime appropriately. The record contains no evidence of a post-hoc shoreside "audit" resulting in the revocation of overtime already assigned to a crew member by a captain or chief mate.

Finally, according to Director Ehler, the Authority Statement set forth in SMS 1.4.1 means that the vessel master has overriding authority and a responsibility to use that overriding authority to make an independent judgment whether to deviate from any SMS or regulatory or contractual obligation that they may have to conduct the vessel in a safe manner to protect the environment or to protect the safety of their mariners under their supervision. Further, according to Ehler, in the event that a captain becomes incapacitated, the chief mate would assume this overriding authority.

As an example of a Foss captain exercising his or her overriding authority, Ehler testified about a situation where a captain was instructed by shoreside management to proceed through an ice concentration in the entrance to the Arctic Ocean that he felt was unsafe for his vessel and crew. The captain therefore utilized his overriding authority to reject the sailing order from management. He decided that his crew would not proceed on the voyage until the ice abated, contrary to shoreside management's explicit direction. Ehler made clear that while any crew member can invoke their stop-work authority if they feel that an operation is unsafe, only the captain can determine when it is safe for the work to resume.³ The SMS corroborates this and provides that only captains have the Ultimate Work Authority to stop or approve any work on the vessel that impacts the safety of the crew and vessel, including the resumption of activities after hazards have been addressed following a stop work decision. Notably, both a captain and a chief mate have received written warnings from the Employer for failing to exercise their stop-work authority, resulting in their vessels being placed in unsafe situations that resulted in them being grounded. While all crew have stop-work authority, the record contains no evidence that any crew member of lesser rank than a chief mate has been held accountable by the Employer for failing to exercise stop-work authority.

Thus, captains have the right to make "go or no-go" calls to determine whether it is safe or advisable to proceed along a given route – for example, due to weather conditions, current, obstructions, mechanical issues, personnel issues, or any other reason. Shoreside managers will explicitly defer customers' questions about whether and when a voyage will proceed to the captain assigned to the voyage, who, according to Manager Teddy, is solely responsible for making such decisions. Captains also have the right to refuse or insist on revisions to the vessel's voyage plan or tow plan – the plan for the entire point A to point B voyage that the crew, helmed by the captain, is assigned to – before it begins.

Teddy gave the example of the tow plan for the Red Dog operation in the Arctic North in Alaska. A vessel captain was specifically assigned as the "designated responsible manager" and representative of the Employer who was in charge of the entire operation and had authority to make any necessary revisions to the plan, including those requested by other captains. This captain was also personally responsible for ensuring that any captain departing on the Red Dog voyage completed a Voyage Planning form to confirm that all safety precautions were first taken and had the authority to stop these other captains from departing on their assigned voyages if this form wasn't completed satisfactorily. In other words, this captain was responsible for going over the

³ Ehler also gave examples of times he himself used this overriding authority in assigning tasks to other employees when he worked as a vessel master at another company, prior to coming to work at the Employer. I do not consider this testimony in reaching my conclusions in this matter, since it is not relevant to the question before me about whether the Employer's Oceans/Project Services captains and chief mates are Section 2(11) supervisors.

voyage plan with all the other captains to make sure all of their crews were on the same page about the orchestrated event and could stop entire other crews from proceeding on their assigned voyage if he deemed it necessary.

With respect to chief mates, Teddy testified that while the captain is the general overseer and has the veto power when it comes to assigning work, the chief mate is the one who actually does the leg work to look at what tasks need to be done and assign them out. While underway, it is the duty of the chief mate to assign routine work duties, including those involving routine inspections and maintenance. According to Teddy, these duties are not all pre-defined or prescriptive, since no boat is the same. The chief mate is the safety officer of the vessel and is in charge of making sure that inspections are either performed by the chief mate him or herself or that he or she delegates those jobs to other crew members so that they are thoroughly and appropriately carried out. A chief mate uses their experience and competence to determine how these things need to be done. Specifically, the chief mate is initially responsible for orientating the crew on the boat, assessing them, and then making team and/or task assignments to each crew member for various drills and safety billets, including for emergency events including fire, man overboard, and flooding of the vessel. The chief mate is there to prioritize the work list and assign tasks to the people that are best at doing each task or to people who need more training on a given task, depending on the situation. The chief mate is then responsible for ensuring the work is completed and done right.

Notably, Teddy testified in some detail that on various occasions, including during the maintenance and repair (M&R) period when a vessel is sitting at a dock for repairs, after the crew has reported to the vessel but before the vessel has departed on its voyage, and at all other times when crew is aboard the vessel but the vessel is not underway, there often is no captain aboard and the chief mate is the only supervisor onboard to manage the boat and its crew. The time periods when a vessel is not underway and only a chief mate is aboard the vessel (without a captain) can vary widely but, for example, can include up to month-long periods where the crew is preparing an off-season vessel for the upcoming season and the vessel is docked and not moving. Teddy estimated that there have been more than four occasions within the last year when a chief mate was supervising a crew aboard a vessel for a length of time, with no captain on board. This testimony was not disputed by any witness.

As with captains, the record contains evidence that chief mates have been held responsible by the Employer through discipline for not maintaining safe conditions on a vessel. As noted above, a chief mate received written discipline over an incident where his vessel was grounded and damaged as a result of his failing to exercise independent judgment to interpret that a situation had become unsafe enough that he should utilize his stop-work authority. The record contains no evidence that any crew member below the chief mate rank has been held accountable for failing to exercise their stop-work authority.

The record also contains evidence that when chief mates are the “boss of the boat” (when the captain is not on watch or is not on board the vessel), they are responsible for assigning overtime to crew members just like captains.

4. *Discipline and Suspend*

Manager Teddy testified that captains can and are expected to issue discipline to their crew.⁴ There was substantial testimony about captains' and chief mates' day-to-day role in coaching and informally counseling their crew members aboard the vessel. Further, a captain's signature appears on a formal written warning that was issued to a cook staffed on his vessel in July 2023. While a port captain's name appears at the top of this document, Teddy's uncontested testimony was that the vessel captain whose name appears on the signature line initiated, drafted, and issued this written discipline after multiple attempts to informally coach and train the cook on the importance of wearing his hard hat. According to Teddy, while the captain first submitted the draft discipline to HR for review before he issued it to the cook, HR's review was of a limited procedural nature whereby HR confirmed the language drafted by the captain was satisfactory but did not change the corrective action.

Teddy testified that chief mates are also responsible for discipline of the personnel on their vessel and regularly engage in coaching and counseling to correct immediate behavior on the vessel. Teddy also testified that chief mates can issue written warnings to their crew members, just like captains. Further, as discussed *supra*, the record establishes that there are periods when no captain is aboard the vessel and the chief mate is left solely in charge; for example, during M&R periods and when the vessel is being prepared for an upcoming voyage. While the record does not contain specific examples of chief mates issuing written discipline, Teddy testified that they can do so (at all times), and that particularly when a captain is not aboard, they are solely responsible for issuing discipline to the crew when necessary.

Unique to the maritime industry, the record establishes that captains can even physically confine crew members to their quarters if necessary while the vessel is underway. The Handbook provides that restriction or confinement to quarters is "the most forceful disciplinary action that the company authorizes the master," and that the master may only exercise this option if a member of the crew is deemed to be dangerous and creates or poses a danger to others on the vessel. By its very words, this policy leaves it to the discretion of the captain to deem whether a situation has become dangerous enough to necessitate this forceful disciplinary action.

Both Ehler and Teddy testified that a captain can also make the decision to remove a crew member from the vessel entirely at the next port of call, for any reason they deem necessary. Teddy clarified that when the chief mate is in charge as the only manager (when the captain is resting, for example), the chief mate can also make the decision to remove someone from the boat. Ehler explained that this might happen for various reasons, including personal behavior, performance, safety, health, and/or mental health concerns. According to Ehler, if a captain makes this decision, they must inform shoreside management of their intent for the purpose of coordinating the repatriation of that person and dispatching a new crew member to the vessel to replace them due to minimum staffing requirements. However, Ehler made clear that if the captain decides to remove someone from their vessel, shoreside management cannot and will not overrule their decision. This testimony was not disputed by any witness. In addition, removal from a vessel by

⁴ According to Teddy, both captains and chief mates can also put their crew members on performance improvement plans ("PIPs"). The record contains an example of a PIP Captain Earl issued to a second mate.

the captain automatically results in shoreside management issuing a corrective action to the crew member removed after consulting with the captain as to his or her reasons for the removal – and removal by a captain often results in shoreside management deciding termination is appropriate, with some exceptions.

Teddy corroborated this testimony: he explained that a captain does not have to ask permission from shoreside management before kicking a crew member off their boat. The record contains at least one example of a captain making the decision to do so: In January 2025, after efforts to resolve the situation had not been fruitful, a captain informed Teddy that he no longer felt that having a particular cook on the vessel allowed for a conducive environment for the rest of the crew to work in. As a result of the captain's removal of the cook from the vessel, the cook was fired.⁵

With respect to formal suspension, Teddy noted that the primary responsibility of captains and chief mates in the suspension process is to notify shoreside management of the need to investigate a situation, since shoreside management is not present on the vessel and would not know of such a need without the captains' notification.

5. *Other Primary Indicia of Supervisory Status*

There was a dearth of specific information in the record of captains or chief mates having any direct involvement in transferring, laying off, recalling, or discharging employees, or adjusting their grievances, or effectively recommending any of these actions. While there is some record evidence that a captain's recommendation (or decision to remove a crew member from the vessel at the next port of call) has resulted in the employee's termination, the record evidence is insufficient to support a finding that the Employer's captains and chief mates have the authority to effectively recommend termination without further investigation by shoreside management.

6. *Secondary Indicia of Supervisory Status*

The record contains significant evidence of captains' and chief mates' role in training the rest of the crew. As noted above, both the captain and chief mate job descriptions specifically state that captains and chief mates are responsible for training. Manager Teddy repeatedly characterized both captains and chief mates as "trainers" and "coaches" of their crew. In the context of captains' and chief mates' hiring recommendations, for example, Teddy stressed that

⁵ The record further establishes that even where a captain or chief mate has not explicitly recommended discipline, shoreside management takes captains' and chief mates' input about crew members' performance very seriously in determining appropriate discipline. For example, a captain's negative off-cycle performance review of a crew member which noted that the captain strongly felt that this job was not the place for him in light of his attitude and demeanor – coupled with earlier negative input from another captain and chief mate about the same crew member – resulted in that crew member's termination. Teddy made the decision to terminate this employee, who he had never met, purely based on the input of these two captains and one chief mate. As another example, a captain's negative evaluation of his cook resulted in that cook's immediate termination – despite that Teddy (who fired him) had never worked with him or eaten his food. Finally, the record contains evidence that where two captains informed shoreside management that a probationary captain was performing poorly in the role, this input resulted in Teddy deciding to fire the captain in question.

the captains and chief mates are the ones who will be training any new hires, so he values their input on whether the candidates seem trainable. Teddy also testified about how a chief mate will sometimes assign a task to a crew member who lacks experience with the task, as a training exercise. In the context of the occasion when two captains recommended that a probationary captain should not continue working for the Employer, Teddy noted that the captains were familiar with this probationary captain's abilities because they were directly training him in the role. And Teddy testified that before the captain discussed above decided to remove the cook from his vessel, that captain first made several attempts to coach and train the cook before determining that these efforts had not been fruitful.

As noted above, while the record is a bit unclear, it supports a conclusion that the ratio of alleged supervisors to employees aboard an average Oceans/Project Services vessel ranges from a minimum-staffing ratio of 2 alleged supervisors (captain and chief mate) to 3 non-supervisory personnel, to a more likely actual average ratio of 2 alleged supervisors to around 8 or 9 non-supervisory personnel.

The record does not contain evidence about whether the captains and chief mates are salaried or paid hourly and how their pay compares to that of the various personnel covered by the existing CBA.

In addition, there is substantial record evidence of captains' role in developing certain of the Employer's policies and operational frameworks. Teddy testified at length about captains' role in crafting voyage and tow plans (and, on occasion, entire operational plans covering multiple vessels' voyages, as in the case of the Red Dog operation), developing and revising policies in the Employer's Special Operations Manual (SOM) and its Job Safety Analyses (JSAs), and proposing changes to all variety of task checklists and other policies.

The record further establishes that both captains and chief mates represent the Employer in all interactions with customers along the voyage and that shoreside management defers many customer questions and most decisions about when and how customers will be served directly to the captains, who are in charge of their voyages.

III. ANALYSIS

A. Captains' Supervisory Status

Under § 9(a) of the Act, a labor organization must be designated or selected by a majority of "employees" in an appropriate unit to become the employees' exclusive collective bargaining representative. Under § 2(3) of the Act, individuals employed as supervisors are excluded from the definition of "employee." § 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 of a merely 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 § 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), citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001).

Individuals will be found to possess supervisory authority if they can independently take any of the actions enumerated in § 2(11), or if they can effectively recommend such actions. *Oakwood Healthcare, Inc.*, 348 NLRB at 687. The Board considers individuals’ authority to recommend actions to be effective if the recommendations are usually followed without independent investigation by a superior. *DirectTV*, 357 NLRB 1747, 1749 (2011), citing *Children’s Farm Home*, 324 NLRB 61, 61 (1997).

To establish that a putative supervisor exercises independent judgment in exercising supervisory authority, a party must show that the individual takes or recommends the relevant actions “free of the control of others” and that he or she “form[s] an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare, Inc.*, 348 NLRB at 692-93. The Board will find that an individual has not exercised independent judgment if the relevant actions or recommendations are “dictated or controlled by detailed instructions,” including the employer’s rules and policies. *Id.* at 693.

The burden of proving supervisory status, by a preponderance of the evidence, rests with the party asserting such status. *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). Here, that burden rests with the Employer. The Board will not “construe supervisory status too broadly because the employee who is deemed a supervisor is denied the rights which the Act is intended to protect.” *Chicago Metallic Corp.*, 273 NLRB 1677, 1689, *affd.* in relevant part 794 F.2d 527 (9th Cir. 1986). Thus, “purely conclusory” evidence is not sufficient to establish supervisory status, and a party must present evidence that the individual at issue “actually possesses” supervisory authority to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Conflicting or inconclusive evidence concerning particular indicia of supervisory status will lead to a finding that supervisory status has not been established, at least with respect to those indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

Here, the Employer asserts that its Oceans/Project Services Division captains and chief mates have the authority to hire, suspend, promote, discharge, assign, reward, discipline, and responsibly direct employees, and to adjust their grievances. Petitioner contends that these captains and chief mates do not possess any indicia of supervisory status. Each of the indicia of supervisory status at issue herein is addressed in turn below.

1. Hire

To establish supervisory status, an individual's influence on the hiring process must be based on actual "delegated authority to participate in the hiring process" and not merely on respect for the judgment of the person making the recommendation. *Plumbers Local 195*, 237 NLRB 1099, 1102 (1978). In determining whether referring applicants for hire constitutes effective recommendation of hiring within the meaning of § 2(11), the Board considers the amount of weight the employer gives the referral. *Empress Casino Joliet Corp.*, 204 F.3d 719, 721 (7th Cir. 2000); *F.A. Bartlett Tree Expert Co.*, 325 NLRB 243, 245 (1997). Where the weight given to such referrals is not established in the record, evidence concerning the authority to make referrals will be found insufficient to establish supervisory status. *Id.* at 245.

Here, there is extensive record evidence that the Employer has included a captain and/or chief mate in almost every if not every single interview of a potential fellow captain or chief mate and in many interviews of other crew members, and gives their recommendations a significant amount of weight due to their subject matter expertise about what is needed aboard the vessel.

Petitioner points out that potential new hires must pass a background check and licensure requirements before being interviewed or hired; however, under the Employer's policy, these steps apply whether the applicants are recommended by captains/chief mates or by shoreside management. Manager Teddy made clear that if a job candidate has the proper licensure and a captain recommends that they be hired, they are hired.

Petitioner's focus on examples of occasions where someone was hired despite the negative input of a captain also does not take away from the fact that captains have been regularly involved in hiring decisions and that the Employer has given their recommendations much weight. The Employer's witnesses were also able to explain many of these discrepancies. In one such instance, Teddy clarified that based on the negative feedback of the captains involved in the interview process, the candidate – who was interviewing for a captain position – was instead hired into the lower-ranking position of chief mate. In another instance he was pressed on, Teddy clarified that while a captain who was part of the interview process was initially not a fan of the interviewee, he did not say "no" to him being hired, and because of the captain's reservations, the candidate was subject to additional interviews before shoreside management made the decision to hire him.

In sum, the record is clear that captains and chief mates are regularly if not always involved in the interview process and regularly make recommendations on who should be hired and that these recommendations are frequently adopted by shoreside management.

In light of the above and the record as a whole, I find that the Employer has met its burden to prove that its Oceans/Project Services Division captains and chief mates possess the authority to effectively recommend that employees be hired.

2. *Reward and Promote*

As summarized above, the record contains evidence that both captains' and chief mates' positive evaluations or reviews of their crew members can and have directly resulted in those crew members receiving bonuses, tuition assistance, and even raises and/or promotions. Manager Teddy testified extensively that the captains and chief mates are the Employer's only direct eyes on their crew members during lengthy ocean voyages and that shoreside management would have

little idea of who was doing well and was ready to be promoted without the captain's and/or chief mate's input. This testimony corroborates the idea that captains and chief mates routinely effectively recommend who should be rewarded and promoted. With respect to chief mates specifically, in addition to the record evidence that they are solely in charge and responsible during the captains' eight hours off watch each day, as well as for sometimes lengthy periods when the vessel is docked without a captain aboard, the record also establishes that on at least one occasion, a chief mate's recommendation in fact resulted in a crew member receiving a raise without further investigation by shoreside management.

Contrary to Petitioner's arguments, the fact that HR administratively initiates the performance review process and then ultimately remits captains' written reviews to their crew does not take away from the fact that the captain is responsible for writing his or her crew members' performance reviews.

In light of the above and the record as a whole, I find that the Employer has met its burden to prove that its Oceans/Project Services Division captains and chief mates possess the authority to effectively recommend that employees be rewarded and/or promoted.

3. *Assign and Responsibly Direct*

The Board has defined "assignment" as "the act of designating an employee to a place, such as a location, department, or wing; appointing an employee to a time, such as a shift or an overtime period; or giving significant overall duties to an employee." *Brusco Tug and Barge, Inc.*, 359 NLRB 486, 490 (2012), citing *Oakwood Healthcare*, 348 NLRB at 689. The Board has found that the "ad hoc instructions that an employee perform a discrete task" is not the type of "designation of overall duties" that constitutes an assignment. *Id.*

With respect to direction, the Board has found that if an individual decides "what job shall be undertaken next or who shall do it," he or she is a supervisor, if such direction is responsible, meaning that the individual will be held accountable for the task's performance, and if the individual exercises independent judgment in giving the direction. *Brusco Tug and Barge*, 359 NLRB at 490, citing *Oakwood Healthcare*, 348 NLRB at 691-92.

To show that an individual is accountable for a task's performance, a party must show that the individual could suffer adverse consequences if the task is not performed. *Id.* In *Brusco*, in applying these standards, the Board found that "conclusory assertions" about mates' accountability for deckhands' work, such as testimony to the effect that mates were "ultimately responsible" or that mates are "accountable under federal law for the actions of their crew" were too conclusory to establish supervisory status. *Id.* at 492-93. There, the Board stated that the party asserting supervisory status failed to "delineate...for what or how the mates are actually held accountable." *Id.* at 493. Moreover, maritime law does not substitute for traditional § 2(11) analysis. *Id.*

Thus, to show that directing employees to perform particular tasks requires the exercise of independent judgment, a party must show that the direction is more than a routine or clerical "ad hoc instruction that the employee perform a discrete task." *Id.* at 490. The Board has also determined that the authority to direct the work of employees is not indicative of supervisory status, if it is based on greater technical expertise and experience, rather than actual supervisory authority.

Chevron Shipping Co., 317 NLRB 379, 382 (1995). Moreover, the Board has found that “the size and complexity of the machinery and the potential dangers in operating it, are not per se marks of statutory supervisory authority.” *Id.*

Here, there is no dispute that shoreside management – not captains or chief mates – assigns the crew to specific vessels and voyages (other than where a captain has specifically requested not to work with a certain crew member) and that the crew work under varying overall job responsibilities (*i.e.*, those of a navigational/deck officer, chief engineer, assistant engineer, “Q” man, able-bodied seaman (“AB”), ordinary seaman (“OS”), or cook). However, there is a dispute as to whether and how the captains and chief mates designate crew members to watch schedules, overtime assignments, or other “significant overall duties.”

The record establishes that while captains do assign watch schedules, their method for assigning them is largely established by tradition and rank. However, Manager Teddy testified that captains can err from this tradition if they deem it necessary. Further, the record establishes that captains and chief mates assign crew members to teams and/or specific responsibilities when navigating and towing, as well as for drills and maintenance tasks; assign watch schedules and watch tasks to individual crew members; make “go and no-go” decisions in terms of stopping and resuming the entire operation; develop and publish “standing orders” and “night orders” for all crew to follow; and determine when overtime is appropriate and to whom to assign overtime-incurring tasks. In addition, the record establishes that captains actually develop and revise their voyage plans themselves, which dictate for how long and on what route the entire crew will perform their duties.

Perhaps most importantly, the record contains evidence that a captain has been held responsible by the Employer through written discipline for failing to enforce the Employer’s safety/PPE policies and that both a captain and a chief mate has been disciplined for failing to appropriately exercise their stop-work authority for safety reasons.

The record also establishes that captains (and chief mates when captains are off watch) can and do award overtime and assign overtime-accruing tasks to their crew. The Board has defined “assignment” within the meaning of Section 2(11) to include the assignment of overtime. *Oakwood Healthcare*, 348 NLRB at 689. Petitioner argues that the operational requirements of the job often dictate when overtime is necessary and that captains’ decisions regarding overtime are later subject to a post-hoc audit by shoreside, with payroll flagging any outliers and shoreside management reviewing the flagged entries for appropriateness. However, Teddy made clear that it is captains – not shoreside management – that grant overtime to members of their crew, and that he and the port captains who comprise the shoreside management team only review overtime awards if they are flagged in the payroll system for some reason.

In *Brusco Tug and Barge, Inc.*, the Board noted that “[a] mate overseeing a crew that includes more than one deckhand or engineer must exercise greater discretion in deciding which deckhand to choose in a given situation or which engineer to call on in the case of an engine failure” in concluding that the chief mates at issue there, who oversaw only a single deckhand and a single engineer, did not exercise independent judgment in their assignment of deckhand work to

the single deckhand on the vessel and engineering work to the single engineer.⁶ 359 NLRB 486, 494 (2012). *See also Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153 (2015) (assignment by captains did not involve independent judgment where the employer's vessels typically had only one deckhand, such that the assignments had only one obvious and self-evident choice); *ISR-73 And Lakeside Avenue Operations LLC d/b/a Powerback Rehabilitation, 113 South Route 73*, 365 NLRB 1188, 1188 (2017) (reassignment of a patient requiring care with which one nurse had difficulty to the only other nurse on the wing did not involve the exercise of independent judgment). The Board in *Brusco* specifically distinguished a set of older Board cases involving the maritime industry that had found supervisory status where the alleged supervisors oversaw larger crews, citing *Masters, Mates & Pilots Local 28 (Ingram I)*, 136 NLRB 1175 (1962), *enfd.* 321 F.2d 376 (D.C. Cir. 1963) (where the crew included two engineers and four deckhands); *Bernhardt Bros. Tugboat Service*, 142 NLRB 851 (1963), *enfd.* 328 F.2d 757 (7th Cir. 1964) (same); *Ingram Barge Co. (Ingram II)*, 336 NLRB 1259, 1259 *fn. 1* (2001) (one or two engineers and four to six deckhands); and *Alter Barge Line, Inc.*, 336 NLRB 1266 (2001) (at least two deckhands). The Board agreed with the Regional Director that “if both the captain and the mate were supervisors, there would be a ratio of one supervisor to each employee aboard the vessel..., which hardly seems likely in circumstances where captains have testified that everyone on board, including the deckhand, generally knows what they are supposed to do and need little direction.” 359 NLRB at 494.

Here, the record suggests that the captain and chief mate oversee a crew significantly larger than the single deckhand and single engineer involved in *Brusco*. As discussed above, while there was no specific testimony from either witness about the average number of crew per vessel, the CBA dictates that the *minimum* crew required on one of the Employer’s Oceans/Project Services vessels must comprise no fewer than three to four employees represented by Petitioner (overseen by the captain and chief mate). In practice, though, at least as of June 2024, the record supports that each crew averaged around 11 members, or around nine employees overseen by the captain and chief mate, for a ratio of 1 supervisor to 4.5 reports. And, unlike in *Brusco*, the instant record does not contain testimony from any witness that everyone on board knows what they are supposed to do and needs little direction. On the contrary, the two witnesses testified that the captains and chief mates are responsible for assigning their crew members to all variety of teams and tasks and for training and evaluating their crew on all such tasks. No witnesses were called by the Petitioner to rebut this testimony. The Board in *Brusco* found a ratio greater than one supervisor to one employee – as is the case here – to be distinct from the one-to-one ratio considered in that case. Thus, based on the record evidence, I conclude that the ratio of supervisors to employees on an average Oceans/Project Services vessel is reasonable and supports the conclusion that the captains’ and chief mates’ assignment of tasks to the non-supervisory crew requires independent judgment.

Furthermore, the example of a vessel captain being designated as the responsible manager in charge of the entire Red Dog operation shows that the Employer’s captains not only assign individual tasks to crew members, but they determine both when and how *any* work toward the ultimate mission of a given voyage (or several voyages) is accomplished. The Red Dog example underscores the recurring theme that the Employer’s shoreside managers are not present in the middle of the ocean during these often months-long voyages to make complex operation-level

⁶ *Brusco* involved only the alleged supervisory status of the chief mate; the parties had stipulated that the captains were statutory supervisors. 359 NLRB at 491.

decisions, let alone to make day-to-day decisions involving the direction of and assignment of work to the crew – only the captains and chief mates are present and able to do so.

Pre-*Oakwood*, where vessel officers possessed the authority to responsibly direct and assign crew members during hazardous towing operations, the Board found that the inherently dangerous nature of the work and the serious consequences of failing to properly supervise the crew supported a determination of supervisory status. *American Commercial Barge Line Co.*, 337 NLRB 1070 (2002). And, in another pre-*Oakwood* case, the Board found that vessel officers who were responsible for managing high-risk operations, assigned duties, and bore responsibility for operational errors were supervisors within the meaning of Section 2(11) of the Act. *Sun Refining & Marketing Co.*, 301 NLRB 642 (1991). However, it is important to note that the Board in *Brusco* found such pre-*Oakwood* cases dealing with the supervisory status of tugboat mates to be of limited precedential value, since they did not apply the *Oakwood* standard that is the current test for Section 2(11) status. 359 NLRB at 494.

The Petitioner’s primary argument seems to be that captains and chief mates do not craft the Employer’s policy or other applicable maritime regulations; they only direct their crew members to follow a web of existing policies and thus do not use independent judgment. However, a supervisor does not have to be a policy-maker – only a policy-enforcer, using independent judgment in that enforcement. Nonetheless, the record contains sufficient evidence that the petitioned-for captains (and sometimes chief mates) are instrumental in *crafting* certain policies, including voyage and tow plans, Job Safety Analyses (JSAs), and even policies in the Special Operation Manual (SOM), and even have discretion to disregard policies based on their independent judgment and “overriding authority.”

With respect to chief mates, the record establishes that chief mates act as “relief captains” whenever the captain is resting or not on board the ship and regularly run a vessel without any captain on board when the vessel is docked. In *Brusco*, the record established that the employer only used a chief mate in the capacity of a “relief captain” when a captain was off the vessel because of vacation or illness or during the period between a captain's leaving the employer's employment and the hiring of a new captain, but did not reveal how often a mate worked in such a capacity. On those facts, the Board concluded that the employer had failed to show that any particular mate served as a relief captain with the frequency necessary to establish supervisory status. 359 NLRB at 492, *citing Oakwood Healthcare*, 348 NLRB at 699 (an employee engaged part of the time in a supervisory position and part of the time in a nonsupervisory position must spend a “regular” and “substantial” portion of time working in the supervisory capacity, and “regular” means according to a pattern or schedule as opposed to sporadic substitution).

In our case, the record establishes that chief mates routinely act as relief captains whenever the captains are off watch and asleep (several hours a day over a sometimes multi-month voyage), and that this watch schedule follows a regular pattern. Perhaps more notably, the chief mates can be assigned to manage a vessel for a significant length of time with no captain on board, while the vessel is docked and the crew is doing M&R work or otherwise preparing for a voyage. The record established that this has taken place more than four times in the last year. Thus, our facts are distinguishable from those in *Brusco*: it is clear that the Employer’s Oceans/Project Services chief mates act as relief captains regularly and according to a defined schedule while the vessel is

underway, in addition to 100% of the time on a somewhat frequent basis when work is being done at the dock.

Based on the above and the record as a whole, I conclude that the record contains sufficient evidence to meet the Employer's burden of showing that its Oceans/Project Services Division captains and chief mates possess the authority to assign and/or responsibly direct other employees, or effectively to recommend the same, within the meaning of the Act.

4. *Discipline and Suspend*

In addition to general testimony that captains and chief mates can issue discipline, the record contains an example of a written warning actually issued by a captain. When it has been established that an individual initiates the disciplinary process, the Board will decline to find that the individual is a supervisor if the party asserting supervisory status fails to introduce evidence of the extent and nature of the review process undertaken in determining whether discipline should actually issue. *DirectTV*, 357 NLRB at 1749. Here, Manager Teddy testified that while the discipline, drafted by Captain Earl, went through HR review, the review by HR was simply to confirm that Earl's language was satisfactory and that the recommended corrective action was applied fairly, but did not change the corrective action itself.

There is ample record testimony that both captains' and chief mates' disciplinary recommendations are taken very seriously by the Employer. The record contains several examples of times the Employer relied solely on a captain's or chief mate's recommendation or negative input about a crew member's performance to support a decision to discipline. Teddy explained that shoreside management gives great weight to the recommendations of its captains and mates since they are management's only eyes and ears aboard the vessel.

There is also evidence that captains can confine crew members to quarters or remove them from the vessel, if necessary, in their sole discretion, and the Employer's policy documents refer to this as "disciplinary." Teddy gave the example that a captain chose to remove a cook from his vessel after multiple attempts to remedy the situation were not fruitful. While the record is clear that a captain's removal of an employee from the vessel does not automatically result in a formal suspension or termination, Teddy testified that shoreside management will issue a corrective action of some kind in every instance that a crew member is removed by a captain. Teddy's testimony on these points was not contradicted by any witness.

I find based on the above and the record as a whole that the Employer has met its burden of establishing that the Employer's Oceans/Project Services Division captains and chief mates possess the authority to discipline or to effectively recommend discipline.

However, I find based on the above and the record as a whole that the Employer has not met its burden of establishing that the petitioned-for captains and chief mates possess the authority to suspend or effectively recommend suspension.

5. *Other Primary Indicia of Supervisory Status*

Because the record contains insufficient evidence that the Oceans/Project Services Division captains or chief mates have any role in transferring, laying off, or recalling employees, or adjusting their grievances, or effectively recommending such, the Employer cannot establish supervisory status on the basis of any of these indicia. Although there is limited record evidence of captains providing input that ultimately resulted in employees being discharged, I conclude that this evidence is insufficient to support the conclusion that the captains (or chief mates) have the authority to discharge or effectively recommend discharge.

6. *Secondary Indicia of Supervisory Status*

The Board may use non-statutory indicia, including the ratio of supervisors to employees, the presence of other supervisors on-site, differences in terms and conditions of employment, and attendance at management meetings, as background evidence in resolving supervisory issues. *Empress Casino Joliet Corp. v. NLRB*, 204 F.3d 719 (7th Cir. 2000); *Ken-Crest Services*, 335 NLRB 777 (2001); *American Commercial Barge Line Co.*, 337 NLRB 1070 (2002); *Dean & Deluca New York, Inc.*, 338 NLRB 1046 (2003). In *Brusco Tug and Barge, Inc.*, for example, the Board noted that the fact that if mates were found to be supervisors, there would be a ratio of one supervisor to each employee aboard a vessel, and this weighed against a finding of supervisory status. *Brusco Tug and Barge, Inc.*, 359 NLRB at 494.

Here, the record reflects an approximate ratio of 2 alleged supervisors to between 3 and 9 non-supervisory employees assigned to the average Oceans/Project Services vessel. As noted above, the Board in *Brusco* found this to be a legally significant distinction compared to the 1:1 ratio in that case. No supervisor other than the captain and chief mate is present on the vessel at any time during these frequently months-long voyages in the remote ocean. Further, the record establishes that the captains' and chief mates' job duties in maneuvering and overseeing all operations aboard the vessel are significantly different from those of the crew reporting to them. The remaining crew are all members of an existing bargaining unit from which the captains and chief mates are excluded and are subject to a CBA that does not cover the terms and conditions of the captains or chief mates. There is record evidence that captains attend various meetings with management and participate in all or nearly all job interviews. All of these secondary indicia weigh in favor of a finding of supervisory status.

Finally, the record contains evidence that shoreside management defers to captains as the primary representatives of the Employer in dealing with customers along their routes and that captains serve an important role in crafting some of the Employer's policy documents and many of its operational plans and are given wide latitude to even choose not to follow existing policy when they deem this necessary. Thus, while this question is not before me (and I do not reach this conclusion), the record suggests that the captains may in fact be managers of the Employer within the meaning of Section 2(13) of the Act. *See Wolf Creek Nuclear Operating Corp.*, 364 NLRB 1619 (2016) (employees who formulate and effectuate high-level employer policies or who have discretion in the performance of their jobs independent of their employer's established policy are managerial employees who are excluded from the protection of the Act).

IV. CONCLUSION

In light of the above and the record as a whole, I find that the petitioned-for Oceans/Project Services captains and chief mates possess certain indicia of supervisory authority as that term is defined in § 2(11) of the Act and are statutory supervisors. Accordingly, it is hereby ORDERED that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide.

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5:00 p.m. Eastern Time) on May 11, 2026**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on May 11, 2026**.

Filing a request for review electronically may be accomplished 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. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such

request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated at Seattle, Washington, this 27th day of April 2026.



Ronald K. Hooks, Regional Director
National Lanor Relations Board, Region 19
915 Second Avenue, Suite 2948
Seattle, Washington 98174