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

**CLEAR CHOICE CANNABIS**

**Employer**

**And**

**Case 19-RC-389220**

**UNITED FOOD AND COMMERCIAL WORKERS LOCAL 367**

**Petitioner**

# DECISION AND DIRECTION OF ELECTION

United Food and Commercial Workers Local 367 ("Petitioner)" seeks to represent a unit of all full-time and regular part-time employees employed by Clear Choice Cannabis ("Employer") at its Tacoma, Washington facility. This would include budtenders, inventory specialists, shift leads, and front-of-house employees. The Employer maintains that the shift lead classification are supervisors and therefore exempt from representation under the National Labor Relations Act (the "Act"). The Employer also contends that the front-of-house ("FoH") employees are guards and should be excluded from the unit. Petitioner and the Employer agree that the unit should include all full-time and regular part-time employees employed by the Employer at its facility located at 8001 S Hosmer Street, Tacoma, WA and exclude all managers, confidential employees, and guards and supervisors as defined by the Act.

A hearing officer of the Board held a hearing in this matter, and the parties subsequently filed briefs with me. As explained below, based on the record and relevant Board law, I find that the shift leads are not supervisors as defined by the Act, and should be included in the petitioned for unit. I find that the front of house employees are guards as defined by the Act and cannot be included in the petitioned for unit.

## I. EMPLOYER'S OPERATIONS

The Employer operates a retail cannabis dispensary located at 8001 South Hosmer Street, Suite B, Tacoma, Washington 98408 ("Hosmer store"). The Employer operates three store locations, each under a separate LLC entity. At the Hosmer store it employs workers in the following job classifications: (1) sales manager; (2) inventory manager; (3) shift lead; (4) inventory specialist; (5) budtender; and (6) front-of-house. There are approximately 36 people who work at the Hosmer store. There are approximately 6 shift leads, 4 inventory specialists, 4 FoH employees, 17 budtenders, 1 sales manager, and 1 inventory manager.

The Employer employs budtenders to serve as traditional sales associates to facilitate customer sales. The budtenders are assigned to individual tills where they receive customers, answer questions, prepare orders, and collect payment. There are also budtenders who have some form of medical accreditation to work with people who have medical needs. The inventory specialists are responsible for the accuracy and organization of the store's inventory. The Employer also employs shift leads and front of house employees; both of whom will be explored in greater detail below. There is substantial interchange between the job classifications. Both inventory specialists and shift leads typically work dedicated budtender shifts in addition to their other roles. Budtenders also regularly cover FoH duties.

Sales Manager Paul Yoon is the manager of the Hosmer store and is responsible for its overall operations. Director of Finance and Administration Michelle Lund oversees financial operations, bookkeeping, state and federal reporting, and serves as the de facto HR manager for the Employer's operations. The record does not include testimony concerning the Inventory Manager.

The shift leads are paid $19 an hour, the FoH employees are paid $18.50 an hour, inventory specialists are paid $22.28 an hour, and budtenders are paid $17.13 an hour. The record establishes that tips represent a large part of budtenders pay. Sales Manager Yoon testified that the Employer had a difficult time keeping dedicated inventory specialists because of the budtenders tips; which is why the inventory specialist is assigned dedicated budtender shifts. Similarly, Yoon testified that the FoH employees frequently express interest in budtending because of the access to tips and that in the past the Employer has allowed FoH employees to have dedicated budtender shifts; although no current FoH employees have a hybrid budtender role. The FoH desk has a tip jar on it to alleviate this discrepancy but according to Yoon the FoH employees typically only receive $5 or $6 in tips for a shift. Without providing amounts, the record indicates that the budtenders and shift leads receive far more in tips.

## II. SHIFT LEADS

### A. Facts

The record establishes that the shift lead classification is primarily a budtender. Shift Lead Daphanni Forvour testified that she budtends for the majority of her shift as a shift lead. All of the shift leads are also regularly scheduled to work shifts as non-lead budtenders. When working as a budtender they perform only the same duties as any other budtender. When working as a shift lead they are also responsible for opening and closing the facility, facilitating returns and discounts for customers, directing other budtenders, and accessing the safe in the store which is where the cash and till drawers are stored. The Employer maintains a list of discrete cleaning tasks beyond typical sales duties that must be completed during the operation of the facility. It is the shift lead's responsibility to delegate these tasks to the budtenders on duty. The shift lead also assigns individual budtenders to individual tills.

The Employer considers the shift leads to be a part of the supervisory team. When Sale Manager Yoon is not present the shift leads are the highest-ranking employees on-site; however, the record establishes that Yoon is expected to be available via call or text to address issues in the store. The shift leads report directly to Yoon.

The shift leads do not perform or sit in on interviews, review resumes, and no one asks for their opinions on hiring decisions. According to Sales Manager Yoon, shift leads may recommend a person for hiring or promotion, but the decision lies entirely with him. Yoon testified that he values those recommendations but that he does not give preference based on a shift lead's recommendation. Director of Finance and Administration Lund testified that shift leads are not involved in decisions about hiring.

If an employee's conduct merits discipline or discharge, the shift lead reports those issues to Sales Manager Yoon, who then makes a disciplinary decision. According to Shift Lead Forvour, she has no authority to enforce directives and that if an employee was not performing assigned duties her only recourse would be to report it. Forvour also testified that she is not informed about discharge or lay off decisions and that she does not know if any employee departure was a discharge or if the person quit. Director of Finance and Administration Lund testified that the shift leads do not issue discipline themselves. Sales Manager Yoon testified that shift leads can send an employee home early as a punishment.

The Employer maintains a "buyout" system which functions as a form of immediate bonus or reward. Essentially, the Employer provides employees with an amount of its products up to certain monetary amounts. These buyouts are provided to employees regularly; Forvour testified that as a shift lead she receives a $60 buyout every month. The Employer may also provide discretionary buyouts for employees. Shift leads can provide discretionary buyouts but these buyouts are reviewed and audited by Yoon. The record only included the dollar amount of discretionary buyouts in the range of $30 to $40. The leads are not involved with raises or bonuses.

Authority to set the schedule is maintained by Sale Manager Yoon. Shift leads may make immediate, discreet, scheduling decisions based on operational need, but they cannot order an employee to effectuate this. Some examples are soliciting a volunteer to clock out early if the store is overstaffed, soliciting a volunteer to come in a few hours early if the store is busy, or soliciting a volunteer to cover a shift due to a call out.  Director of Finance and Administration Lund testified that requests for use of sick leave go through her.

B. Analysis

Supervisory status under the Act depends upon whether an individual possesses authority to act in the interest of the employer in the matters and in the manner specified in Section 2(11) of the Act. The Act defines 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."

Possession of any one of these authorities is sufficient to confer supervisory status if the authority is exercised with independent judgment and not in a routine manner. *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006); *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711 (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* at 692. 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). Supervisory status cannot be established by record evidence which is inconclusive or otherwise in conflict. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). When there is conflicting testimony on the issue, the Board reasonably "prioritizes the testimony of those witnesses who occupy the alleged supervisory role at the time of the hearing," who denied having that authority. *Avante at Wilson, Inc.,* 348 NLRB 1056, 1057 (2006). 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. *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 Healthcare Center*, 348 NLRB at 731, citing *Training School at Vineland*, 332 NLRB at 1416. If such authority is used sporadically, the putative supervisor will not be deemed a statutory supervisor. *Coral Harbor Rehabilitation and Nursing Center*, 366 NLRB No. 75, slip op. at 17 (2018) (citing *Gaines Electric*, 309 NLRB 1077, 1078 (1992)).

The authority to effectively recommend an action means that the recommended action is taken without independent investigation by supervisors, not simply that the recommendation is ultimately followed. See *DirecTV U.S. DirecTV Holdings LLC*, 357 NLRB 1747, 1748–1749 (2011) (quoting *Children's Farm Home*, 324 NLRB 61 (1997)). See also *Veolia Transportation Services, Inc.*, 363 NLRB No. 98, slip op. at 5 (2016) (*Veolia I*); *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998). The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. See *Oakwood*, 348 NLRB at 693; *J. C. Brock Corp.*, 314 NLRB 157, 158 (1994).

The Employer contends that the shift leads possess supervisory indicia in the following categories; hiring, promotion, transfer, discipline, assign, reward, scheduling, and responsible direction. I will address those indicia as follows:

1. Hiring and Promotion

The only testimony regarding the shift leads' involvement in the Employer's hiring or promotion procedures concerned the practice of making informal recommendations. These recommendations most often are based on personal relationships i.e. recommending a friend for a job opening. Sales Manager Yoon testified that he does give weight to a shift lead's recommendations but that he does not give preference based off of them. The shift leads are not involved in hiring or promotion decisions in any other way. Making an informal recommendation does not constitute holding hiring or promotion authority. The record is clear that these recommendations do not constitute an effective recommendation.

2. Transfer

In *Oakwood Healthcare, Inc.*, the Board majority did not affirmatively define "transfer," but it signaled that "transfer" is not "merely a subset of 'assign,'" and rejected the suggestion that it means "to reassign . . . to a different [job] classification." For cases finding supervisory status based on the authority to transfer, see *Detroit College of Business*, 296 NLRB 318, 319–320 (1989) (based on evaluations, putative supervisors effectively recommended transfer); *Wolverine World Wide, Inc.*, 196 NLRB 410, 410 & fn. 4 (1972) (putative supervisors transferred employees "from one job to another, from machine to machine based on production needs and their knowledge of the employees' capabilities to perform the work"). For cases finding that the authority to transfer had not been established, see *Community Education Centers*, 360 NLRB 85, 88 (2014) (purely conclusionary evidence insufficient to show recommendation of transfers); *Chrome Deposit Corp.*, 323 NLRB 961, 963 (1997) (putative supervisor only concurred in superior's recommendation to transfer, and single instance was de minimis); *Ten Broeck Commons*, 320 NLRB 806, 813 (1996) (transfers not based solely on LPN recommendations, but instead determined by superior based on her assessment of situation); *Robert Greenspan, D.D.S., P.C.*, 318 NLRB 70 (1995) (transfer recommendations merely "a means of ensuring compatibility among employees who work closely together" and exercised too infrequently); *J.C. Brock Corp.*, 314 NLRB 157, 158–159 (1994) (transfers were merely putative supervisor following superior's instructions).

Like in *Robert Greenspan,* the shift leads' ability to recommend transfers to different shifts are exercised too infrequently, and like *Broeck Commons* the recommendations are subjected to Yoon's investigation. The lone instance in the record when a shift lead made a permanent shift change recommendation based on independent judgement was found in Employer's Exhibit 30; wherein the shift lead noticed that an employee was pervasively calling out on Mondays and suggested that Yoon explore making a shift change. Furthermore, in that example the shift lead suggested that Yoon "have a conversation" with the employee in question, not simply make the change. Even if Yoon did implement the shift change without further investigation this lone example cannot demonstrate that shift leads hold this supervisory authority.

3. Discipline

The record establishes that the shift leads are expected to report disciplinary issues to Yoon but cannot make formal discipline decisions independently. Sales Manager Yoon testified that he takes the shift leads' reporting "seriously," and takes them into consideration when taking further action – this indicates that the shift leads' reporting does not constitute an effective recommendation because it is subject to further consideration by Yoon.

The testimony of Shift Lead Forvour establishes that shift leads do not have the ability to send employees home early. This contradicts the testimony of Sales Manager Yoon that a different shift lead had sent an employee home early as punishment. I give priority to Forvour's testimony because she actually occupies the role of shift lead. *Avante at Wilson, Inc.* Even without prioritizing Forvour's testimony, Yoon's examples are too isolated and sporadic to find supervisory status.

4. Assign

"Assignment" is defined as the "giving [of] significant overall duties, i.e., tasks, to an employee," as well as "designating an employee to a place (such as location, department, or wing) [and] appointing an employee to a time (such as a shift or overtime period)." *Oakwood Healthcare,* 348 NLRB 686. However, every instruction in the workplace is not assignment; “significant overall duties” do not include “ad hoc instructions to perform discrete tasks;” these instructions are considered "direction" of a nonsupervisory nature. *Id*.

The record establishes that shift leads do not have authority to make assignments. Their designation of certain budtenders at certain tills does not constitute giving those employees significant duties. The duties of budtenders are largely the same no matter which till they work. Furthermore, the direction of cleaning tasks constitutes ad hoc discrete tasks which are not the employees’ overall duties.

5. Reward

Supervisory status can be found based on a putative supervisor’s authority to reward employees. However, the Board has declined to find supervisory status based on a supervisor’s authority to reward that is isolated, infrequent, or sporadic. See *Veolia Transportation*, 363 NLRB No. 188 (2016) (even assuming distribution of $25 gift cards could constitute reward, evidence did not establish this was more than sporadic or involved independent judgment); *Veolia Transportation Services*, 363 NLRB No. 98 (2016) (assuming one-time $100 award is sufficient to establish authority to reward, supervisory status not shown due to lack of evidence as to how frequently purported recommendation resulted in award, or as to who determined award or how determination was made).

The record is inconclusive on the shift leads’ authority over discretionary buyouts. According to Shift Lead Forvour, buyout amounts are set by the Employer and are provided to all employees on a regular basis. Further, she testified that she has no authority to adjust the amount of a buyout. She testified that her text message to Sales Manager Yoon in Employer Exhibit 17 was in the context of a directive she had received directly from him – in that instance she did recommend a smaller buyout amount, which Yoon agreed with.

Sales Manager Yoon testified that shift leads will provide additional buyouts to employees that go “above and beyond,” and that they exercise their judgement when providing those buyouts. He testified that there is no set parameter but that the shift leads may ask him if the amount is “questionable.” He testified that the shift leads are expected to just keep him informed; however, he went on to testify that this is only the case if he has no objections. The record does not include an instance of Yoon denying a buyout but the implication is that he reviews discretionary buyouts and simply rarely, or never, has objections. Yoon testified that shift leads may provide buyouts without asking first but went on to say that all buyouts are regularly audited and that issues would still be addressed at that time.

I find that there is insufficient evidence to establish that the shift leads use of discretionary buyouts is frequent enough to establish supervisory status. Furthermore, the record is inconclusive as to the shift leads’ use of independent judgement when making buyout recommendations because it is strongly implied by Yoon that he maintains the authority to deny any buyout.

6. Scheduling

The decision to send employees home early based on observation of workload does not involve the use of independent judgment. See *Millard Refrigerated Services*, 326 NLRB 1437, 1438 (1998) (decision to send employees home based on observation that there is no other work to be done does not involve the use of independent judgment*)*; *Shaw, Inc*., 350 NLRB No. 37, slip op. at 4 (2007) (finding authority to allow employees to leave work shortly before the end of their workday insufficient to show independent judgment).

The testimony of Shift Lead Forvour is clear that she does not have the authority to send an employee home early or have them stay late and that she can only solicit volunteers. Even if the solicitating of volunteers could be an exercise of authority, this decision making does constitute a use of independent judgement. The shift leads ability to approve a shift swap does not require the use of independent judgment. The record does not establish that the shift leads can approve time off requests.

7. Responsibly Direct

The difference between assignment of work and responsible direction of work is a question of accountability: the Section 2(11) function of assign can exist even when the putative supervisor is not accountable for how the staff performs their assignments. In contrast, the Section 2(11) function of "responsibly to direct" only exists when the putative supervisor is "accountable" for the proper performance of tasks by other employees. *Oakwood Healthcare*, 348 NLRB at 692. Accountability is established where putative supervisors have the authority to take corrective action and are subject to adverse consequences for the performance of their staff. *Oakwood Healthcare*, supra.

Though Sales Manager Yoon testified that shift leads are responsible for the performance of the other budtenders, the record contains no details as to how they are responsible. This type of conclusory evidence cannot be used to show supervisory status. *Lynwood Manor*, 350 NLRB 489, 490 (2007).

## III. FRONT OF HOUSE

### A. Facts

Front of House employees are stationed at the store entrance. Their duties are to check customer IDs, greet customers and answer questions, direct customers by controlling customer flow and monitoring occupancy limits, monitor camera feeds for suspicious activity, attempt to deescalate minor issues, and to report major issues. In the course of performing these duties they use a walkie talkie to communicate codes to back of house staff; code blue is a product delivery, code green is for a minor with a medical card, code red is for emergencies which require the police, and code orange are for minor nuisances like panhandlers and public drug use. Sales Manager Yoon testified that FoH employees have to remove a customer from the store approximately once a month. According to FoH Brian Moore's testimony they are also expected to assist with end of day cleaning duties.

When asked initially, Sales Manager Yoon's description of the FoH duties did not mention any specific security functions; instead focusing on customer services and ID compliance. Later in his testimony he revises this to include monitoring and reporting on security issues; in doing so he never specifically mentions that the FoH employees are expected to monitor surveillance cameras. However, Yoon does testify that the FoH desk has a small monitor on it with a mouse that the employee can use to cycle through camera feeds. FoH Brian Moore does not mention the camera feeds in his testimony at all; although he does testify that he is expected to monitor for security threats and nuisances.

The FoH employees do not patrol the facility or check doors. They are not expected to fill out incident reports. They cannot search or detain suspicious customers; they are explicitly instructed never to touch a customer unless to defend themselves. According to Sales Manager Yoon, FoH employees are expected to monitor other employees for drug use and other infractions however, he went on to say that every employee is expected to monitor others for drug use and other infractions.

The FoH employees do not have uniforms, or badges which designate them as guards. They wear name tags which are similar to those of the other employees. They do not have keys to the facility.

FoH employees have access to a switch which locks down the store in case of emergencies. The record does not cover an instance where this was used. Similarly, they have access to a hammer kept at their desk which is to be used only in extreme cases of self-defense.

They are not given special training beyond a one-day orientation. This orientation primarily covers compliance issues but also touches on deescalation and monitoring. Budtenders will perform the front of house role when there is a lapse in the schedule and when the front of house employee goes on break or takes lunch. The record indicates that a budtender will cover the FoH role for the time the FoH is on break or lunch during every single shift.

B. Analysis

Under § 9(b)(3), a unit is not appropriate "if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." To be a guard within the meaning of § 9(b)(3), an employee must enforce against employees and other persons rules to protect the property of the employer's premises. *Petroleum Chemicals*, 121 NLRB 630 (1958). Unlike a finding of supervisory status, finding an employee is a guard does not limit or eliminate their rights under the Act, however, § 9(b)(3) does limit who may represent them.

The Board reiterated the factors it uses when determining whether an employee is considered a guard in *Boeing Co*., 328 NLRB 128 (1999). The Board looks at factors "typically associated with traditional police and plant security functions, such as the enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security procedures; weapons training and possession; participation in security rounds or patrols; the monitor and control of access to the employer's premises; and wearing guard-type uniforms or displaying other indicia of guard status." (Internal citations omitted). *Id*. at 130. An employee is a statutory guard when guard functions constitute more than "a minor or incidental part of their overall responsibilities." *Id*. In weighing guard and non-guard responsibilities, the Board assesses the "primary function" of an employee. *55 Liberty Owners Corp*., 318 NLRB 308, 310 (1995). It is the nature of the duties of guards, not the percentage of time spent in such duties, which is controlling. *Madison Square Garden*, 333 NLRB 643, 645-646 (2001) (citing Walterboro Manufacturing Corporation, 106 NLRB 1383, 1384 (1953)). Employees who spend 10 to 90 percent of their time engaged in guard duties at a watchman and janitorial service company, notwithstanding that they also do general maintenance work when not doing guard duty, are "guards" as they are responsible for the safety of the building and its contents and are required to report to the police any threat to customer's property. *Watchmanitors, Inc.*, 128 NLRB 903 (1960); see also *A. W. Schlesinger Geriatric Center,* 267 NLRB 1363, 1364 (1983) (maintenance employees also employed for security purposes).

Guard status is not limited to individuals with police powers. The Board has consistently recognized that when the employees in question meet the statutory requirement for guards, the fact that they do not take direct action against violators, but instead report suspicious activity to a third party, will not defeat their guard status. In this regard, the Board has held that dispatchers who do not personally confront employees or others but merely report violations may be found guards where their "authority to observe and report infractions is not merely incidental to their duties, but instead constitutes one of their primary responsibilities, which is an essential link in their employer's effort to safeguard its employees and enforce its rules." *Rhode Island Hospital,* 313 NLRB 343, 347 (1993) (security dispatchers who monitor hospital's closed-circuit television system and dispatch security officers to respond to calls from employees and other individuals regarding problems and emergencies, including those involving security and safety, are guards). See also, *MGM Grand Hotel*, 274 NLRB 139, 140 (1985) (operators who monitor hotel's sophisticated life-safety system for significant security functions and report security problems and infractions to security officers are "closely involved in protecting the employer's property and enforcing security" and are guards).

Although the Board uses the phrase "traditional police and plant security functions," it does not require guards to wear uniforms, carry weapons, or receive special training to be considered guards. Nor does indicia such as the use of a guard or security-related job title alone confer guard status. *Ford Motor Co.*, 116 NLRB 1995, 1997 (1956). Other Board cases have similarly found that such employees who do not carry firearms or have the same type of training required of police officers is not dispositive. *A.W Schlesinger Geriatric Center*, 267 NLRB 1363, 1364 (1983) (maintenance employees who make rounds are guards although they have no special training and do not wear guard uniforms or carry firearms); *Wright Memorial Hospital*, 255 NLRB 1319, 1320 (1980) (employees who make security rounds but do not wear guard uniforms or carry firearms are guards).

In *Wackenhut Corp*., 196 NLRB 278, 278-279 (1972), the Board found employees to be guards even where they "do not themselves have the power of police to ultimately determine and compel compliance by violators," as long as they possess and exercise responsibility to observe and report infractions. In *Allen Services Company, Inc*., 314 NLRB 1060, 1062 (1994), the Board concluded that unarmed part-time weekend security employees who did not directly confront others but instead reported suspicious circumstances were guards because "they possess and exercise responsibility to observe and report trespass infractions [which] is an essential part of the employer's procedures for protecting the premises and equipment." Thus, employees are guards if they are "directly responsible for being alert to any incident, situation, or problem which needs responsive action and for reporting such incidents to the proper authorities" (emphasis in original). *Rhode Island Hospital*, supra at 347 (citing MGM Grand Hotel, 274 NLRB 139 (1985)).

The FoH employees are expected to monitor the Employer's facility and report on observed security threats. To accomplish this, they are provided with a monitor that shows the security cameras feeds and they have a walkie-talkie to report on issues. The Board has held that employees that are charged with simply observing and reporting security issues are guards when this is a primary function of their duties. Furthermore, the FoH employees are expected to assist in maintaining order by intervening when a customer becomes unruly or refuses to leave.

The fact that the FoH employees primarily function as a greeter and compliance check point does not preclude them from being guards based on their other duties. In *Rhode Island Hospital* the Board held that a group of employees were guards in spite of the fact that their primary job was to assist and direct people coming to the employer's facility because they were also responsible for security in the employer's parking lots. These employees were expected to regularly patrol the facility, to enforce rules against employees and visitors, and report serious issues to security dispatchers. Similarly, the FoH employees are expected to be a friendly face, greet customers, and maintain compliance in addition to their monitoring and reporting duties.

## IV. CONCLUSION

For the reasons stated above and based on the record evidence and relevant Board law, the evidence demonstrates that the Front of House employees are guards and must be excluded from the proposed unit. The evidence does not establish that shift leads are statutory supervisors such that they must be excluded from the proposed unit.

Based upon the entire record in this matter and in accordance with the discussion above, 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 engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[1]

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

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

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

   Included: All full-time and regular part-time employees employed by the Employer at its facility located at 8001 S Hosmer Street, Tacoma, WA.

   Excluded: All confidential employees, managers, and guards and supervisors as defined by the Act.

[1] The Employer, Evergreen Retail Group, LLC d/b/a Clear Choice Cannabis, is a State of Washington limited liability company, with a facility located at 8001 S Hosmer Street, Tacoma, WA 98408, engaged in the retail business of selling cannabis and related products. Within the past twelve months, a representative period, the Employer received gross revenue in excess of $500,000 and purchased and received at its operations within the State of Washington, goods valued in excess of $50,000 directly from enterprises who received the goods directly from points located outside the State of Washington.

There are approximately 27 employees in the unit found appropriate.

## DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Food and Commercial Workers Local 367.

### A. Election Details

The election will be held on **Friday, September 11, 2026** from 3:00 P.M. to 5:00 P.M. in the medical area of the Employer's facility located at 8001 S Hosmer Street, Tacoma, WA 98408.

### B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **immediately preceding the date of this decision**, 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 **Tuesday, August 25, 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.nlrb.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.nlrb.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.nlrb.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: August 21, 2026

Ronald K. Hooks

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave., Ste. 2948
Seattle, WA 98174-1006

Form NLRB-707
(4-2015)

United States of America
National Labor Relations Board

# NOTICE OF ELECTION

**19-RC-389220**

**<u>PURPOSE OF ELECTION</u>: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.**

**<u>SECRET BALLOT</u>: The election will be by SECRET ballot under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to an NLRB agent. Your attention is called to Section 12 of the National Labor Relations Act which provides: ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE, OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN $5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.**

**<u>ELIGIBILITY RULES</u>: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also include employees in the military service of the United States who appear in person at the polls. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are *not* eligible to vote.**

**<u>SPECIAL ASSISTANCE</u>: Any employee or other participant in this election who has a handicap or needs special assistance such as a sign language interpreter to participate in this election should notify an NLRB Office as soon as possible and request the necessary assistance.**

**<u>PROCESS OF VOTING</u>: Upon arrival at the voting place, voters should proceed to the Board agent and identify themselves by stating their name. The Board agent will hand a ballot to each eligible voter. Voters will enter the voting booth and mark their ballot in secret. DO NOT SIGN YOUR BALLOT. Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of the Board agent and leave the polling area.**

**<u>CHALLENGE OF VOTERS</u>: If your eligibility to vote is challenged, you will be allowed to vote a challenged ballot. Although you may believe you are eligible to vote, the polling area is not the place to resolve the issue. Give the Board agent your name and any other information you are asked to provide. After you receive a ballot, go to the voting booth, mark your ballot and fold it so as to keep the mark secret. DO NOT SIGN YOUR BALLOT. Return to the Board agent who will ask you to place your ballot in a challenge envelope, seal the envelope, place it in the ballot box, and leave the polling area. Your eligibility will be resolved later, if necessary.**

**<u>AUTHORIZED OBSERVERS</u>: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the voting place and at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.**

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**WARNING:** This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

Form NLRB-707
(4-2015)

United States of America
National Labor Relations Board
# NOTICE OF ELECTION

## VOTING UNIT

**EMPLOYEES ELIGIBLE TO VOTE:**

**Those eligible to vote are: All full-time and regular part-time employees employed by the Employer at its facility located at 8001 S Hosmer Street, Tacoma, WA who were employed by the Employer during the payroll period ending immediately preceding issuance of the Decision and Direction of Election dated August 21, 2026.**

**EMPLOYEES NOT ELIGIBLE TO VOTE:**

**Those not eligible to vote are: All confidential employees, managers, and guards and supervisors as defined by the Act.**

## DATE, TIME AND PLACE OF ELECTION

| | | |
|---|---|---|
| **Friday, September 11, 2026** | **3:00 P.M. to 5:00 P.M.** | **In the medical area of the Employer's facility located at 8001 S Hosmer Street, Tacoma, WA 98408.** |

**EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.**

**UNITED STATES OF AMERICA**
National Labor Relations Board
**19-RC-389220**

**OFFICIAL SECRET BALLOT**
For certain employees of
**CLEAR CHOICE CANNABIS**

Do you wish to be represented for purposes of collective bargaining by
**UNITED FOOD AND COMMERCIAL WORKERS LOCAL 367?**

**MARK AN "X" IN THE SQUARE OF YOUR CHOICE**

| YES | NO |
|---|---|
| ☐ | ☐ |

SAMPLE

**DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY. MARK AN “X” IN THE SQUARE OF YOUR CHOICE ONLY.**
**If you make markings inside, or anywhere around, more than one square, return your ballot to the Board Agent and ask for a new ballot. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted.**
The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

**WARNING:** This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

Form NLRB-707
(4-2015)

# United States of America
# National Labor Relations Board
# NOTICE OF ELECTION

**RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

**It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.**

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.
If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

**The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:**

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

**The National Labor Relations Board protects your right to a free choice.**

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law

**Anyone with a question about the election may contact the NLRB Office at (206)220-6300 or visit the NLRB website** www.nlrb.gov **for assistance.**

**WARNING:** This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.