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

HH SUB 1 LLC d/b/a TREE OF LIFE DISPENSARY

Employer

and

Case 28-RC-353928

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 711

Petitioner

DECISION AND ORDER DISMISSING PETITION

On October 30, 2024, United Food and Commercial Workers International Union, Local 711 (Petitioner) filed a petition in the above-referenced matter seeking an election in a unit of certain employees of HH Sub 1 LLC d/b/a Tree of Life Dispensary (Employer). During the processing of the petition, the Employer raised the issue that Customer Care Leads were statutory supervisors and supervisory taint of the showing of interest, though no evidence was submitted by the Employer in support of this contention.

Ultimately, by entering into a stipulated election agreement, the parties agreed to proceed to an election in a unit including all full-time and regular part-time Customer Care, Delivery/Fulfillment, Inventory Processor, and Packager employees employed by the Employer at its facility located in Las Vegas, Nevada, excluding all other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the National Labor Relations Act (the Act). The parties further agreed that Customer Care Leads would vote by challenged ballot since no determination had been made regarding their eligibility.

On November 13, 2024, a stipulated election agreement was signed by the parties and approved by me, scheduling an election for December 4, 2024. On December 3, 2024, processing of this matter was blocked by the unfair labor practice charge filed in Case 28-CA-355941, and the election scheduled to take place on December 4, 2024, was postponed indefinitely until the conclusion of the investigation of Case 28-CA-355941.[1]

In the course of the investigation of Case 28-CA-355941, the Region determined that the Employer's Customer Care Leads are supervisors within the meaning of Section 2(11) of the Act and that the showing of interest underlying the instant petition was tainted on the basis of supervisory involvement in the solicitation of the showing of interest.

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[1] The Region has not yet made its determination on the merits of the allegations in Case 28-CA-355941 and also the related charges in Cases 28-CA-356731, 28-CA-361348, 28-CA-364169, and 28-CA-364877.

I. CUSTOMER CARE LEADS' SUPERVISORY AUTHORITY AND ITS EFFECT ON THE PETITIONER'S SHOWING OF INTEREST

A. The Organizing Campaign

The Employer operates a cannabis dispensary store in Las Vegas, Nevada that, at the time of the filing of the petition, employed approximately 35 employees in the petitioned-for-unit. About September 2024, the Petitioner was contacted by one of the Employer's Customer Care Leads, hereinafter referred to as Employee Lead Organizer. Thereafter, the Employee Lead Organizer met with one of the Petitioner's Staff Organizers on about September 11, 2024, and they discussed the processes for filing a petition for election with the National Labor Relations Board (the Board). About that same day, the Petitioner's Staff Organizer texted the Employee Lead Organizer a link to the Petitioner's website for employees to sign and complete electronic authorization cards. Between September 12, 2024, and October 22, 2024, the Petitioner obtained a sufficient number of signed authorization cards to file the instant petition.

The investigation disclosed that the Employee Lead Organizer led the solicitation of signatures for the majority of the card signers. In order to accomplish this, the Employee Lead Organizer attended numerous organizing meetings held in-person and by the Zoom platform including on September 12, 2024, which was attended by another Customer Care Lead; September 19, 2024, which was attended by another Customer Care Lead; and September 27, 2024; October 2, 2024; October 16, 2024; and October 21, 2024, which were attended by another Customer Care Lead.

One of the Petitioner's Staff Organizers testified that during these meetings, the Employee Lead Organizer spoke to employees, including backing up what the Petitioner's Staff Organizer was telling employees about the Board's election process, and answered some questions from employees. The investigation showed that the Employee Lead Organizer was directly involved in soliciting approximately 64% of the Petitioner's signed electronic authorization cards by forwarding the link to the electronic authorization cards on the Petitioner's website to other employees and being the lead advocate for and encouraging support for the Petitioner. The investigation revealed that by forwarding the link to other employees, the Employee Lead Organizer was engaging in direct solicitation by asking employees to sign the cards. When forwarding the link, the Employee Lead Organizer commented to other employees:

- "Hey, my man here is that form for ya. LMK ya have any questions! [sic]"
- "I'm still making things happen. But now thanks to them it's a FULL TIME basis lol [sic]."
- "Fill it out as you can dude."
- "Ok would you do me a huuuugggeee favor dude? Will you send this to her and have her send it in ASAP? [sic]"
- "Cool ty dude. Just getting the finishing touches done. And we are good to go! [sic]"

- “I’m gonna send ya that card dude [sic].”

- “Here you go brother. Let me know if ya have any questions and when you fill it out [sic].”

In addition to soliciting the electronic authorization cards, the Employee Lead Organizer also coordinated with the Petitioner’s Staff Organizer to collect signatures for a demand for recognition letter that the Employee Lead Organizer hand-delivered with another employee to the Employer on about October 29, 2024. Prior to delivering the letter, the Petitioner’s Staff Organizer sent a draft of the letter to the Employee Lead Organizer for his approval. The investigation disclosed that the Employee Lead Organizer was involved in the collection of several of the 20 signatures that were collected as photographs of the signatures and copied and pasted onto the demand for recognition letter that included the signatures of three other Customer Care Leads.

Additionally, the investigation showed that the Employee Lead Organizer was in almost constant contact with the Petitioner’s Staff Organizers and was also consistently communicating the status of the organizing campaign and percentage of signed authorization cards that had been collected to file for the petition for election to other employees in the petitioned-for-unit. In order to communicate with the employees in the petitioned-for-unit, the employees created a WhatsApp chat group in September 2024, wherein they discussed the organizing campaign, the status of collecting signed authorization cards and demand for recognition letter signatures, the alleged unfair labor practices, among other organizing campaign subjects. The investigation showed that the Employee Lead Organizer rallied the employees in the WhatsApp chat group to support the Petitioner including, for example, on October 25, 2024, stating that the “gang” has to finish up getting the signatures for the demand for recognition letter that he will be holding off on serving the Employer until the following Monday, which will be the same day that the Petitioner files the instant petition. The Employee Lead Organizer ended his message with, “please get your signatures in ASAP.”

Employees testified regarding the Employee Lead Organizer’s role in the organizing campaign. One employee testified that the Employee Lead Organizer: started the campaign; sent the employee a text message asking if he would be interested in being represented by the Union; sent all employees information about the Union, including the authorization card on the Union’s website, which the employee signed; received the employee’s signature, which Employee Lead Organizer put on the demand for recognition letter; and started the WhatsApp group, wherein employees discussed the campaign.

Another employee testified that the Employee Lead Organizer: was the main proponent to get the Union; was the first one who brought the Union up to the employee at work and asked what the employee would think if the employees got a union; held face-to-face meetings with employees at restaurants and was very informative about the Union and very open and did not pressure anyone to sign an authorization card; met with the employee and another employee at a place of business near the Employer’s facility and provided information about unionization, informed the employees about their rights and what it would mean to put the process in motion, and told employees that at the end of all this, if it sounds great and the employees wanted to sign a card, that was great, but he want to present this as a factual thing for the employees to look at and decide; may have texted the employee a link to the digital authorization card; and, once the cards were gathered, told the employee that he wanted the employee, another employee, and another Customer Care Lead on the Union committee and on the negotiating team.

Based on the evidence summarized above, the Region determined that the Employee Lead Organizer was the key player in soliciting employees to sign the electronic authorization cards for Petitioner to have a sufficient showing of interest to file the instant petition.

B. Customer Care Leads' Section 2(11) Primary Supervisory Indicia

1. Assignment and Responsible Direction of Work

The investigation disclosed that the Customer Care Leads assign and responsibly direct employees' work, including by enforcing the Employer's workplace standards. For example, the Employee Lead Organizer has emailed and warned employees about cell phone usage on the sales floor, reminding them that it is prohibited during working hours and is crucial to the success of the Employer. In another example, a Customer Care Lead reminded other Customer Care Leads about the Employer's policies of dealing with cash and to remind and enforce these policies with the employees on their shifts. Another Customer Care Lead has also enforced the industry standards of employees having the proper credentials to work in the cannabis industry and for the Employer.

Further, the Customer Care Leads enforce the Employer's lunch and break periods and have directed security staff to use the correct radio channels to be available if and when needed and to be present when on duty. A Customer Care Lead testified that employees are instructed to notify the Customer Care Leads by text or email if they are going to be late or not make it to work. The Customer Care Lead further testified that, if employees switch shifts with each other, they must email all the Customer Care Leads and the managers to let them know.

Two Customer Care Leads testified that they could approve employees to leave work early. Another testified that Customer Care Leads report if an employee leaves early from work in Slack and then the employee would get a point if they left work early. One of the Customer Care Leads testified that they are held responsible for the conduct of employees, including if an employee is late for work and the Customer Care Leads do not report it to management, they are responsible for not notifying the Employer.

The Employee Lead Organizer testified that he could prioritize work. The Employee Lead Organizer requires employees to audit product signs to make sure that the signs accurately reflect the inventory of products on hand. The Employee Lead Organizer testified that Customer Care Leads are responsible for inspecting the work of employees including inspecting the restrooms after they are cleaned and are held responsible if they are not cleaned to the Employer's standards.

Another Customer Care Lead testified that, if an employee gave bad customer service, a Customer Care Lead would correct the employee or give the employee a coaching on how to prevent bad customer service. Customer Care Leads also make sure that employees are compliant with the Cannabis Control Board standards, such as making sure that a compliance label is included with sold products. Further, Customer Care Leads walk the floor and make sure that employees are performing their job duties.

Another Customer Care Lead testified that, for delivery of products, the Customer Care Leads ran an app called OnFleet to coordinate and optimize the delivery drivers' routes. Customer Care Leads could also stop delivery service through a program called "I Heart Jane" if delivery got too busy without prior approval from management. Customer Care Leads have also reassigned employees to other positions when employees have been absent or when there have been schedule changes.

The Customer Care Leads are also responsible for training new employees in their job duties and responsibilities for receptionist, curbside, and delivery positions. They also train new employees with general duties and responsibilities including:

- Clocking in and out;
- Requesting paid time off;
- Proper call-out procedures;
- Reviewing the employee manual;
- Understanding the Employer's point system;
- Understanding the dress code;
- Accessing information systems platforms;
- Applying employee discounts;
- Security protocols;
- Alcohol and cannabis onsite consumption policies;
- Customer identification requirements;
- Customer conflict resolution; and
- Performing end-of-day tasks and down-time tasks.

Additionally, Customer Care Leads perform on-the-job training for new employees by having them shadow the Customer Care Leads and also assign new employees to work with experienced employees in the different positions. Customer Care Leads are also responsible for retraining employees with the proper usage of the Slack platform, restocking of products, proper procedures for customer identification scanning, and compliance procedures.

2. Recommending and Issuing Discipline to Employees

The Employer has a progressive disciplinary policy and also a point system wherein employees will be terminated if they exceed 12 points in a 12-month period. Points can be given to employees for infractions, such as unexcused call-outs, early-outs, and tardiness.

Customer Care Leads, including the Employee Lead Organizer, have recommended discipline for employees on numerous occasions, including recommending that employees be docked pay for taking excessive breaks. Examples of types of discipline that Customer Care Leads have issued include discipline for: infractions of the dress code, proper labeling of products, and giving customers the wrong products and wrong amounts of products.

For example, after the Employee Lead Organizer reported particular employee misconduct to the Store Manager and recommended discipline, the Store Manager emailed a corrective action template to the Employee Lead Organizer and asked him to write what happened so the Store Manager could complete the corrective action form and return it to the Employee Lead Organizer to issue to the employee. In this instance, the Store Manager gave the Employee Lead Organizer a single day to return the discipline form for the Store Manager to complete, and the same day, the Employee Lead Organizer emailed a copy of the completed corrective action form directly to the disciplined employee.

In another example, the Employee Lead Organizer and the Store Manager issued the first progressive discipline to a delivery driver for insubordination to the Employee Lead Organizer as his supervisor. In this instance, the delivery driver told the Employee Lead Organizer that he was unable to read the numbers on a customer's driver's license that was uploaded to the system. The Employee Lead Organizer was able to read the numbers and asked the delivery driver to fill the order. In response, the delivery driver loudly read the customer information within earshot of other customers. The Employee Lead Organizer asked the delivery driver not to read confidential customer information out loud and said that he would not appreciate it if his own information were to be read out loud. The delivery driver then pulled out his own driver's license and proceeded to read the numbers out loud. The delivery driver was then issued a progressive discipline for insubordination to his supervisor, the Employee Lead Organizer.

Another example provided is when the Employee Lead Organizer recommended disciplining two employees for fighting while at work. The Employee Lead Organizer explained the situation and identified one of the employees as the aggressor to the Store Manager and recommended disciplining both employees. The Store Manager did not separately investigate the situation; instead, the Store Manager determined they would discipline one employee and give the other employee a last and final warning because the Employee Lead Organizer identified that employee as the aggressor and already had a history of discipline, while the other employee simply defended herself and had no prior discipline.

An example involving discipline issued by another Customer Care Lead was issuing a documented verbal discipline to an employee. In the discipline, the Customer Care Lead described the employee's behavior towards security in front of a customer. A customer arrived at the store and did not receive a ticket number at reception and was confused on the sales floor. A security guard noticed the customers' confusion and approached the employee and asked him to assist the customer. The employee told the security guard that she was not the boss and became frustrated. The Customer Care Lead issued this written verbal warning independently, without consulting anyone else.

In another example, a Customer Care Lead disciplined an employee by issuing a second written warning/termination for a failure to complete a compliance check of a customer.

Customer Care Leads also complete Records of Employee Conversations wherein they report to the Employer issues such as employees being non-compliant with the dress code, using their mobile phones on the sales floor, employees being dismissive with customers, and employees providing the incorrect products to customers.

The Employee Lead Organizer testified that Customer Care Leads and managers use Slack to communicate with each other on a channel that is only accessible to the Customer Care Leads and managers. He explained that, when employees call out or are late for work, Customer Care Leads are supposed to note it in the Slack messaging board on the Customer Care Lead and manager channel. The Customer Care Lead testified that employees call him if they are running late, or he sees them come in late to the store because he usually did the huddle meetings in the break room in the mornings and observed if any employees were late. As stated above, employees can receive points for being late, which factors in the Employer's progressive disciplinary policy and employees have been discharged for accumulating points over a 12-month period.

C. Customer Care Leads' Secondary Indicia

Beyond the primary indicia discussed above, the Customer Care Leads also have numerous secondary indicia of Section 2(11) status. Customer Care Leads are the highest-ranking employees at the Employer's facility from when the Store Manager leaves work at approximately 7:00 p.m. until 2:00 a.m. and are paid approximately $2 per hour more than employees. Customer Care Leads also attend management meetings where procedure changes and updates about new rules and products were discussed and the Customer Care Leads report back to the employees what was discussed at the meetings during their daily huddle meetings.

Customer Care Leads have alarm access and are responsible for opening and closing the store. They are issued pin numbers that allow them to adjust prices and offer customer discounts at their discretion and have the authority to log into the backend of the online platform and POS systems. They are granted access to highly secured areas such as the cash room and inventory vault. A Customer Care Lead testified that employees would come to him for price adjustments if something was incorrectly priced or if a product is incorrectly labeled. When that happened, he would go on the store's website and change the price or label. He could also adjust the price on the POS system.

The investigation also revealed that the Customer Care Leads inform the Employer about the following:

- The number of employees that did not participate in training sessions;
- How employees need to be trained in proper etiquette;
- How the Employer needs to instill in its employees how to interact with customers in a professional manner;
- How employees need to be trained in verifying customer identification;
- Issues employees are having with accessing the computer systems;

- Maintenance that needs to be performed on tools and equipment; and
- That the time clock was not operational and how it affected the time clock reports of several employees.

Customer Care Leads also enforce the Employer's store security standards, including by making problem customers leave the store, banning problem customers from the store, and reporting problem customers that pose a security threat to the Employer, security staff, and the police.

Further, Customer Care Leads also assist management with performance evaluations of employees and sign off on the performance evaluation forms. The investigation also disclosed that Customer Care Leads have participated in interviews of candidates for hire and have directed candidates to complete essay applications.

Additionally, Customer Care Leads also have employees complete the following forms:

- Incident Reports and Denial of Medical Treatment if employees refuse medical treatment after it has been offered;
- Final Paycheck Receipts;
- Acknowledgement of Defensive Driving Presentation Completion;
- Non-Disclosure Agreements;
- Non-Compete Agreements;
- Acknowledgement of Receipt of Employee Manual; and
- Acknowledgement of Dispensary Staff Certification Course.

Lastly, two-thirds of employees that testified stated that they view the Customer Care Leads as their supervisors.

II. ANALYSIS

A. Legal Standard

The Act excludes from the definition of "employee" any "individual employed as a 'supervisor[.]'" Section 2(11) of the Act defines a "supervisor" as:

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

The traditional test for determining supervisory status is: (1) whether the individual has the authority to engage in, or effectively recommend, any one of the twelve criteria listed in Section 2(11); (2) whether the exercise of such authority requires the use of independent judgment; and (3) whether the individual holds the authority in the interest of the employer. *NLRB v. Health Care & Ret. Corp. of Am.*, 511 U.S. 571, 573–74 (1994).

The burden of proving supervisory status under Section 2(11) rests with the party asserting it. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2001); *see also NLRB v. Kentucky River Cmty. Care*, 532 U.S. 706, 711 (2001). That party must establish supervisory status by a preponderance of the evidence. *Oakwood Healthcare*, 348 NLRB at 687. The Act "requires … evidence of actual supervisory authority visibly translated into tangible examples demonstrating the existence of such authority." *G4S Regulated Sec. Sols.*, 362 NLRB 1073 (2015) (quoting *Oil Chem. & Atomic Workers v. NLRB*, 445 F.2d 237, 243 (DC Cir. 1971), cert. denied 404 U.S. 1039 (1972)). "Purely conclusory evidence does not satisfy that burden. Lack of evidence is construed against the party asserting supervisory status." *Veolia Trans.*, 363 NLRB 1879, 1883–1884 (2016) (*Veolia II*) (citing *Lynwood Manor*, 350 NLRB 489, 490 (2007)); *see also Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003)). Job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper absent independent evidence of the possession of the described authority. *Golden Crest*, 348 NLRB at 731 (citing *Training School at Vineland*, 332 NLRB 1412, 1416 (2000)).

For an individual to be a supervisor under the Act, they must exercise "independent judgment" and "the judgment must involve a degree of discretion that rises above the 'routine or clerical.'" *Oakwood Healthcare*, 348 NLRB at 693. For independent judgment, "an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data." *Oakwood Healthcare*, 348 NLRB at 693. But "a judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement." *Id.* Furthermore, a judgment is not independent if "there is only one obvious and self-evident choice" or "if the assignment is made solely on the basis of equalizing workloads[.]" *Id.*

B. Application of Board Law to this Case

1. Assignment and Responsible Direction of Work

In *Oakwood Healthcare*, the Board construed "the term 'assign' to refer to 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 overtime period), or giving significant overall duties, i.e., tasks to an employee." 348 NLRB at 689. However, the Board clarified that "choosing the order in which the employee will perform discrete tasks within those assignments (e.g., restocking toasters before coffeemakers) would not be indicative of assignment authority." *Id.*; *see also WSI Savannah River Site*, 363 NLRB 977 (2016).

As with all Section 2(11) indicia, the alleged supervisor's assignments must still involve "independent judgment." Independent judgment will not exist if "there is only one obvious and self-evident choice," or "if the assignment is made solely on the basis of equalizing workloads[.]" *Oakwood Healthcare*, 348 NLRB at 693. Assignments based merely on employee availability do not involve independent judgment. *Springfield Terrace LTD*, 355 NLRB 937, 943 (2010). Likewise, assignments based on a rotational basis or based on detailed instructions do not involve independent judgment. *Shaw, Inc.*, 350 NLRB 354, 355–56 (2007). Assignments based on employees' expressed preferences or reached by consensus of the employees on a shift also do not involve independent judgment. *Children's Farm Home*, 324 NLRB 61, 64 (1997).

Additionally, assignments based on employees' well-known skills are not made with independent judgment. *See, e.g., CNN America, Inc.* 367 NLRB 439 (2014); *see also S.D.I. Operating Partners, L.P.*, 321 NLRB 111 (1996); *KGW-TV*, 329 NLRB 378 (1999) ("Assignments based on assessment of employees' skills when the differences in skills are well known have been found routine."). When a decision is based solely on whether an employee can perform the job in question, it does not involve independent judgment. *WSI Savannah River Site*, 363 NLRB at 979. When it comes to scheduling, the authority to require overtime or to have off-duty employees come into work may establish assignment authority within the meaning of Section 2(11) if the evidence shows the putative supervisor can require employees to work overtime or come in when off-duty. *See Entergy Miss., Inc.*, 357 NLRB 2150 (2011).

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

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

As shown above, the Customer Care Leads assign new employees to their overall tasks by having the new employees shadow them or other experienced employees. Additionally, they assign employees to clean the facility and the restrooms and are held accountable for the performance of the employees if the tasks are not performed to the Employer's standards.

The Customer Care Leads also have the authority to assign work by optimizing the delivery drivers' routes and can even cancel delivery orders if the store is too busy, thus impacting the delivery drivers' job duties.

Furthermore, the Customer Care Leads also responsibly direct employees by consistently enforcing the Employer's rules, policies and procedures, and its standards for job performance. As shown above, the Customer Care Leads are responsible for ensuring that employees are on time for work and if not, that they call out properly, otherwise the Customer Care Leads will be held accountable. Additionally, the evidence shows that the Customer Care Leads reassign employees to other positions when employees are absent or when there are schedule changes.

As required by *Oakwood*, the evidence described above establishes that the Employer delegates to the Customer Care Leads the authority to direct the work of employees and the authority to take corrective action, if necessary, and that there is a prospect of adverse consequences for the Customer Care Leads if employees do not perform the work as directed.

2. Effectively Recommending and Disciplining Employees

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

Where the evidence is in conflict as to whether a particular type of corrective action constitutes discipline, the Board will find that the party asserting supervisory status has not met its burden. *Veolia Transportation Services*, 363 NLRB 902, 908-909 (2016). The authority to issue verbal reprimands, without more, does not establish the authority to discipline. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999); *Washington Nursing Home*, 321 NLRB 366, 371 (1996); *Ohio Masonic Home*, 295 NLRB 390, 394 (1989); *Passavant Health Center*, 284 NLRB 887, 889 (1987); *Beverly Manor Convalescent Centers*, 275 NLRB 943, 945 (1985). "[T]he mere factual reporting of oral reprimands and the issuance of written warnings that do not alone affect job status or tenure do not constitute supervisory authority." *Passavant Health Center*, 284 NLRB 887, 889 (1987) (citing *Heritage Manor Center*, 269 NLRB 408, 413 (1984); see also *Republican Co.*, 361 NLRB 93, 99-100 (2014); *Hausner Hard-Chrome of KY., Inc.*, 326 NLRB 426, 427 (1998); *Azusa Ranch Market*, 321 NLRB 811, 812–813 (1996); *Ten Broeck Commons*, 320 NLRB 806, 812 (1996).

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

As noted above, the evidence established that Customer Care Leads have the authority to effectively recommend discipline, attend disciplinary meetings, and issue discipline to employees. Specifically, the evidence demonstrated that when Customer Care Leads reported items related to employee misconduct, the Employer's management team did not further investigate the report and acted solely based on the report and investigation by the Customer Care Leads. The evidence gathered through the investigation reflected that these actions were regularly taken during both prior to the organizing campaign and during the organizing campaign.

The authority possessed by the Customer Care Leads to effectively recommend discipline is strikingly similar to that of the putative supervisor in *Starwood Hotels & Resorts Worldwide, Inc.,* 350 NLRB 1114 (2007), where the Board found that a putative supervisor possessed supervisory authority to effectively recommend discipline, discussing how the putative supervisor initiated disciplinary action through coach-and-counsel sessions and made a recommendation that an employee be harshly disciplined after the putative supervisor had repeatedly coached the employee about treating hotel guests rudely. Management followed the putative supervisor's recommendation without any independent investigation.

The facts here are also akin to the putative supervisor's authority to effectively recommend discipline in *Progressive Transportations Services, Inc.,* 340 NLRB 1044 (2003), where the putative supervisor was found by the Board to be a statutory supervisor because she effectively recommended discipline to an employee when she brought rule infractions and misconduct to the employer's attention, thereby initiating the discipline process. The Board noted that when she decided to bring a disciplinary issue to the employer, the employer did not conduct an independent investigation of the incident. Instead, the employer decided the level of discipline and advised the putative supervisor on the wording of the discipline notice based on the incident as the putative supervisor described it and then discipline ensued. The Board noted that discipline of the employees therefore begins with the putative supervisor's recommendation to the Employer. Accordingly, although the putative supervisor did not unilaterally impose discipline without consulting the employer first, the putative supervisor effectively recommended discipline, as has been shown that the Customer Care Leads do here.

3. Secondary Indicia

Alongside the statutory indicia listed in Section 2(11), the Board considers several non-statutory secondary indicia as additional evidence of supervisory status. However, "it is well settled that secondary indicia are not dispositive in the absence of evidence indicating the existence of any one of the primary indicia of such status." *Chrome Deposit Corp.*, 323 NLRB 961, 963 fn. 9 (1997).

Several secondary indicia are present in this case. First, the Employer pays Customer Care Leads higher than other employees. See *Starwood Hotels & Resorts Worldwide, Inc.,* at 1118 (Board considered that the putative supervisor was paid more than other employees, as is the same here, when deciding that she was a statutory supervisor). Second, the Customer Care Leads attended management meetings with the Store Managers and upper management. See, *Dean & Deluca*, 338 NLRB at 1048 (The fact that an individual may attend management meetings is a secondary indicator of supervisory authority but does not itself establish such authority). Third, as stated above, employees view the Customer Care Leads as their supervisors and the Employer holds them out as supervisors and the Board has given weight to those circumstances when deciding Section 2(11) status. See *Bama Co.,* 145 NLRB 1141, 1143 (1964).

C. Conclusion

Pursuant to Board precedent, the presence of any one of the Section 2(11) statutory indicia suffices to show supervisory status under the Act. Based on the foregoing and the investigatory record as a whole, I have determined that Customer Care Leads exercise Section 2(11) supervisor indicia by effectively recommending and issuing discipline, and by assigning and responsibly directing the work of employees.

The Board has held that a supervisor collecting authorizations cards is inherently coercive. See *Ideal Electric* 134 NLRB 1275 (1961). When assessing supervisory authority in the context of supervisory taint, the Board considers the supervisor's level of authority, their level of impact on an employee's employment, and the nature of their participation. See *Turner's Express, Inc.,* 189 NLRB 106 (1971). In *Madison Square Garden*, 350 NLRB 117 (2007), the Board held that when a supervisor has the authority to effectively recommend discipline, it would lead employees to act according to the supervisor's suggestion to sign an authorization card. The Board applies a bright-line rule that requires that the authorization cards tainted by a supervisor be removed from the showing of interest, even if the petitioning union is unaware of the card collector's supervisory status. If the Petitioner's showing of interest falls below the required 30%, the petition is dismissed. See *Dejana Industries, Inc.*, 336 NLRB 1202 (2001); *National Gypsum Co*., 215 NLRB 74 (1974); *Southeastern Newspapers, Inc.*, 129 NLRB 311 (1960); and *The Toledo Stamping & Maturing. Co.*, 55 NLRB 865, 867 (1944).

Relying upon *Boston Pet Supply, Inc.,* 227 NLRB 1891 (1977), the Petitioner asserts that the Board applies a two-prong analysis to determine whether supervisor involvement in collecting the showing of interest is tainted. However, in *Dejana Industries, Inc.*, 336 NLRB 1202 (2001), the Board developed a bright-line rule of excluding all cards directly solicited by a supervisor. Based on the foregoing and the investigatory record as a whole, I have determined that the Employee Lead Organizer directly solicited filed authorization cards that I must administratively exclude, rendering the Petitioner's showing of interest insufficient to support the filing of the instant petition.

ORDER

Accordingly,

IT IS ORDERED that, pursuant to the National Labor Relations Board's Casehandling Manual, Representation Proceedings, Section 11028.2 (July 2026), the instant petition is dismissed based upon sufficient evidence to establish supervisory taint of the showing of interest.

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.nlrb.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 p.m. Eastern Time) on September 15, 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 September 15, 2026.**

Filing a request for review electronically may be accomplished 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. 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 offline 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 Phoenix, Arizona, this 1st day of September 2026.

/s/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

cc: Office of the Executive Secretary (by e-file)

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