UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 03

TOGETHER FOR YOUTH
Employer

and

Case 03-RC-391296

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)
Petitioner

DECISION AND ORDER

Together for Youth (Employer) is a New York corporation engaged in providing specialized secure detention services to youths housed at the Capital District Juvenile Detention facility located at 838 Albany Shaker Road, Albany, New York (the facility). International Union, Security, Police and Fire Professionals of America (SPFPA) (Petitioner) petitioned for a unit of Administrators on Duty and Supervising Detention Counselors at the facility.[1] The Employer contends that both the Administrators on Duty (AODs) and Supervising Detention Counselors (Supervisors) are statutory supervisors as defined in Section 2(11) of the Act.

A hearing officer for the Board conducted a hearing on August 4, 2026. Both parties submitted briefs which I have carefully considered. I find that the Employer has met its burden of showing the petitioned-for Administrators on Duty and Supervising Detention Counselors are supervisors under Section 2(11) of the Act. Accordingly, I dismiss the petition.

[1] The parties agree that Administrators on Duty and Supervising Detention Counselors are guards under Section 9(b)(3) of the Act and that Petitioner is qualified to represent guard units within the meaning of Section 9(b)(3) of the Act.

I. Summary of Record Evidence

a. Overview of Employer Operations

The Employer operates a 39-bed secure facility that houses juvenile delinquents, juvenile offenders, and adolescent offenders. The facility is run by Director Raymond Wilcox. Wilcox has oversight of all facility operations and directly supervises the Employer's two Assistant Directors, the nursing department, the educational administrator, and the administrative assistant. The Assistant Directors supervise the Employer's 12 Administrators on Duty (AODs). The AODs have oversight of eight Supervising Detention Counselors (Supervisors), who themselves oversee the Employer's approximately 105 Secure Detention Counselors (SDCs). There are three classes of SDC: SDC I, SDC II, and SDC III. The SDC I position provides direct care for the youth housed at the facility; SDC II provides direct care as well as security services at the facility; SDC III does the same work as the SDC I and SDC II and may fill in for a Supervisor on a shift where necessary. The SDCs count toward state-mandated staffing ratios.

b. Administrators on Duty

The AOD on shift has facility-wide authority, though an Assistant Director or the Director is either present or on call. AODs are salaried exempt employees. They attend monthly management meetings and receive training on topics such as proper documentation, how to train employees, and union and collective-bargaining agreement related responsibilities as the SDCs are represented by a union. AODs complete performance evaluations and have authority to mandate SDCs to remain at work past the end of their scheduled shift.

AODs participate in hiring SDC I employees.[2] A recruiter screens initial applicants. Applicants for an SDC I position who pass initial screening are interviewed by an AOD. This is

[2] The Employer currently employs approximately 80 SDC Is, 16 SDC IIs, and nine SDC IIIs.

the only interview conducted. During the interview the AOD asks the candidate predetermined questions and may ask additional questions if they choose. The AOD makes a hiring recommendation to the Employer based on the interview. If the AOD recommends against hiring the applicant, the Employer communicates to the applicant that they have not been selected for the position. Even if a candidate answers all interview questions adequately, an AOD still may recommend against hiring and that recommendation will be followed. If the AOD recommends the applicant be hired, a conditional offer of employment is made. The only reason an applicant who is made a conditional offer of employment is not ultimately hired is if they fail the background check conducted by the Employer after the interview. If a candidate interviewed and recommended by an AOD passes the background check, they are hired. There is no review of the AOD's decision to hire or not hire a given applicant.

AODs have authority to adjust employee grievances. The collective bargaining agreement between the Employer and the union representing the SDCs provides that certain first level grievances be brought to the Supervisor. Vice President of Human Resources Newcomer testified that on at least two occasions, the SDC union brought grievances directly to an AOD instead, and that AOD participated in the grievance process and ultimately resolved the grievances on behalf of the Employer without management review or intervention.

AODs may assign tasks to SDCs and Supervisors, and failure to obey the AODs instruction is viewed as insubordination. AODs have authority to remove an employee from the floor, conduct a one-on-one 'supervision' conversation with them, and recommend further discipline be applied, though the record does not reflect evidence establishing the effectiveness of such recommendation. They can then write up a discipline if directed to do so by higher management. Any disciplinary action must be approved by higher management. The record does not reflect whether the ‘supervision’ conversations constitute discipline. Director Wilcox testified that AODs are held responsible for Supervisor performance but did not provide specific examples.

The record demonstrates that AODs do not have independent authority to fire, lay off, recall, transfer, or reward employees. AODs can recommend promotion in that they can tell an Assistant Director they believe an employee is ready for promotion, but the Assistant Director or Director makes the determination. The record does not reflect how effective the AODs recommendations are.

c. Supervising Detention Counselors

The Director and Assistant Directors schedule employees based on State-mandated staffing ratios. Supervisors are then responsible for staffing within those ratios. They assign SDCs to positions in the facility on a given shift. For example, the Supervisor assigns SDCs to the rapid response team, to transportation duties, and to each area, dorm, or pod of the building. In making assignments, Supervisors consider ratios, how many of each classification of SDC are present, safety plans in place, the dynamics of the youth, requirements for one-to-one staffing (for example if a youth is on suicide watch and requires one-to-one observation), employee conflicts, specific gender needs, and any special programming. Supervisors make assignments and may move staff to different positions within the facility as necessary, without seeking approval from an AOD or management. Supervisors are held responsible for proper staffing. Director Wilcox testified to an instance where a Supervisor was disciplined after their failure to properly staff a dorm exacerbated a crisis. As with AODs, instruction from a Supervisor must be obeyed. An SDC’s failure to obey a Supervisor can constitute insubordination.

Supervisors, like AODs, can pull an SDC off the floor if necessary and may conduct one-on-one supervision meetings with SDCs and recommend further discipline, and can write up discipline only at the direction of higher management. Supervisors cannot mandate an SDC to stay past the end of their shift. If necessary, they can call other SDCs and ask them to come in for coverage reasons.

The collective bargaining agreement between the Employer and the union representing the SDCs calls for grievances to be adjusted by Supervisors at the first step. Wilcox testified that a Supervisor, like an AOD, can participate in a grievance meeting and are trained to be knowledgeable of the union contract. However, Supervisors are not responsible for the Employer's response to a grievance.

Supervisors attend the same management meetings as AODs, including those on how to properly engage with the union and the union contract. Supervisors complete performance evaluations for SDCs which are then signed off on by upper management or human resources. The record does not reflect whether these evaluations play a role in determining wage increases. Vice President of Human Resources Newcomer testified that they could potentially be used in the progressive discipline process. Supervisors approve SDC timesheets. Like AODs, they are salaried and exempt from overtime, although they are paid time and a half for hours worked over 40 hours a week in the form of a stipend from the Employer.

The record evidence shows that Supervisors have no independent authority to hire, fire, lay off, recall, transfer, reward, or promote employees, or to effectively recommend such actions.

II. Supervisory Status

a. Legal Standard

Supervisors are specifically excluded from the Act's coverage under Section 2(11). That Section defines a supervisor as any individual with the authority to hire, transfer, suspend, layoff, 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 burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Cmty. Care, Inc.*, 532 U.S. 706, 711 (2001); *Shaw Inc.*, 350 NLRB 354, 355 (2007); *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Croft Metals*, 348 NLRB at 721; *Oakwood Healthcare, Inc.,* 348 NLRB 686, 694 (2006). To establish that individuals are supervisors, the asserting party must show: (1) that the purported supervisors have the authority to engage in any one of the twelve enumerated supervisory functions; (2) that their "exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment"; and (3) that their authority is exercised "in the interest of the employer." *Kentucky River*, 532 U.S. at 710-13. A lack of evidence in the record is construed against the party asserting supervisory status. *Elmhurst Extended Care Facs.,* 329 NLRB 535, 536 fn.8 (1999). Purely conclusory evidence is insufficient to establish supervisory status. *Cmty. Eds. Ctrs., Inc.*, 360 NLRB No. 17, slip op. at 11 (2014); *Volair Contractors,* 341 NLRB 673, 675 (2004).

b. Administrators on Duty

Section 2(11) includes both authority to hire and authority to effectively recommend hiring. Proof of either function is sufficient to render supervisory status. *Oakwood*, 248 NLRB at 687. AODs conduct interviews of SDC I candidates and determine whether a conditional offer of employment should be made. If the AOD decides against hiring, a candidate is not hired. If an AOD recommends a candidate be hired, a conditional offer of employment is made. There is no further review of the AOD's hiring decision. Any candidate who is recommended by an AOD and who passes the background check is hired.

The record reflects that the Employer always follows the AOD's hiring recommendation, whether positive or negative, unless a candidate fails the background check. The only reason a candidate would not be hired after the AOD approved them would be if they fail the background check. There is no further review of an AOD's determination whether positive or negative, and no other interviews are conducted for SDC I candidates. While AODs are required to ask certain questions during an interview, they may ask additional questions if they choose to. AODs have hiring authority, or at least effectively recommend hiring, use independent judgment in the hiring process, and do so on behalf of the Employer. Therefore, the AODs are supervisors under Section 2(11) of the Act.[3]

c. Supervising Detention Counselors

Supervisors do not have the same authority to hire or effectively recommend hiring as AODs, nor does the record demonstrate that they independently adjust grievances. The evidence as to their ability to discipline is insufficient to prove that supervisory indicia. They cannot fire, lay off, recall, transfer, reward, or promote employees, or effectively recommend such actions.

I do not find that the Employer has met its burden of showing that Supervisors responsibly direct staff. Director Wilcox testified that if an SDC leaves a post, the Supervisor is expected to address or contact the SDC immediately, but no testimony was elicited to explain what that means

[3] Because the Section 2(11) indicia are considered disjunctively, hiring authority alone is sufficient to render the AODs statutory supervisors. However, the AODs authority to adjust grievances would also render them statutory supervisors. Unlike Supervisors, AODs can and have adjusted actual, contractual grievances of unionized SDCs via the grievance process to resolution on behalf of the Employer without the input of upper levels of management. This satisfies the 'adjust grievances' supervisory indicia. See *Oracle Elevator Holdco, Inc.*, 2020 WL 5844620, Slip op. at *4 (2020).

or what the consequence would be for the SDC. As in *Oakwood*, here I do not find that the Employer has demonstrated that Supervisors have accountability for SDC's success or failure to complete assigned tasks or are disciplined for poor SDC performance. 348 NLRB at 694-695. The example provided of a Supervisor being disciplined for inadequately staffing an area and the inadequate staffing resulting in a crisis shows that the Supervisor was disciplined for their own poor performance, not that of the SDCs.

Supervisors do, however, have authority to assign employees. The record evidence shows that Supervisors work within the framework of the master schedule and assign SDCs to positions in the facility to meet staffing ratios and one-to-one requirements, determine the rapid response team, provide transportation, cover breaks and unexpected absences, and fulfill programming needs. In *Oakwood*, the Board found that even though the employer failed to show responsible direction, certain charge nurses were statutory supervisors because they used independent judgment to assign nurses to certain patients or roles. 348 NLRB at 697-698. Similarly, the Supervisors here must use independent judgment to determine what role an SDC should fill on a particular shift. They must account for considerations such as safety plans, employee conflict, specific gender-related concerns, the dynamic between certain SDCs and facility residents, youth dynamics, and coverage needs. This assignment has repercussions not only for the SDCs daily working conditions but for the youth housed at the facility as well. The decisions of the Supervisors about where to assign SDCs are not controlled by detailed instructions, only the master schedule and any existing safety plans. They are not dictated by AODs or other higher authority. Nor is there evidence that the SDCs' collective bargaining agreement dictates their daily assignments. *Id*. at 693. For the foregoing reasons, Supervisors have statutory supervisory authority under Section 2(11) of the Act.

III. Conclusion

Under Section 3(b) of the Act, I have authority to hear and decide this matter on behalf of the Board. Based on the foregoing and the record as a whole I conclude 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[4] within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

4. No question affecting commerce exists concerning the representation of the Employer's Administrators on Duty or Supervising Detention Counselors.

IV. Order

IT IS HEREBY ORDERED that the petition in this matter is dismissed.

V. 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

[4] The parties stipulated to the following facts regarding commerce:

> Together for Youth is a New York corporation with its principal offices located at 13640 State Rt. 22, Canaan, New York, is engaged in providing specialized secure detention services to youths housed at the Capital District Juvenile Detention facility located at 838 Albany Shaker Rd., Albany, New York, the only facility involved. During the past twelve months, a representative period, the Employer derived gross revenues in excess of $250,000 and purchased and received at its Albany, New York, facility goods and materials valued in excess of$5,000 directly from points located outside the State of New York.

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 2, 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 2, 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: August 19, 2026

/s/ Linda M. Leslie

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