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OQ Chemicals Corporation *and* International Union of Operating Engineers (IOUE), LOCAL 564. Case 16–RC–354942

October 30, 2026

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

OQ Chemicals Corp. (the Employer) operates a chemical plant in Bay City, Texas. On November 15, 2024, International Union of Operating Engineers (IOUE), Local 564 (the Petitioner) filed a petition seeking to represent a unit of the Employer's work group leads. The Employer argued that the petition must be dismissed because the work group leads are statutory supervisors under Section 2(11) of the Act.

On December 9, 2024, the Regional Director issued a Decision and Direction of Election, concluding that the Employer's work group leads are not statutory supervisors. A majority of voters cast ballots against representation in the subsequent eleWction, and, on January 2, 2025, the Regional Director issued a Certification of Results. The Employer thereafter filed a timely request for review of the Regional Director's Decision and Direction of Election pursuant to Section 102.67(c) of the Board's Rules and Regulations.[1] The Petitioner filed a brief in opposition.

On April 27, 2026, the Board granted the Employer's request for review, but only with respect to whether the work group leads are statutory supervisors on the basis of responsible direction; the Board denied review in all other respects. The Employer and Petitioner filed briefs on review.

Having carefully considered the entire record, including the briefs on review, we affirm the Regional Director's finding that the work group leads are not statutory supervisors. In this regard, we conclude that, even assuming the work group leads possess the authority to responsibly direct employees, the Employer has not met its burden to establish that the work group leads use independent judgment when doing so.

I. FACTS

The Employer's chemical plant operates 24 hours per day, 7 days a week. The facility is physically split into two separate sections—Area 1 and Area 2—which produce different chemical products. Both areas have four shift teams, each overseen by a single work group lead. The four work group leads, in turn, report to the operations manufacturing supervisor for that area. Steven Garcia is the manufacturing supervisor for Area 1, and Jeremiah Tipps is the manufacturing supervisor for Area 2. Garcia and Tipps work on a 4–10 schedule: 4 days a week,10 hours a day. In contrast, the work leads work on 12-hour rotating shifts, so that there is always a work group lead covering the shift for each area, including on nights and weekends when the manufacturing supervisors are not present at the plant.

Kristina Zalman, the operations director for the Employer's Bay City plant, testified that the primary function of the work group leads is "to supervise and manage the personnel on shift to ensure the safe, efficient operation of the processes in their assigned area." Zalman explained that the work performed at the Bay City plant can be very dangerous, and that the work group leads "are the ultimate authority responsible on shift to ensure the safe operation of the facility, and they are to guide and direct our workforce as needed to ensure compliance for that." Thus, the work group leads are expected to try to correct and mitigate abnormal or atypical situations on shifts, such as outages, that might prevent them from reaching their production targets. In this regard, Zalman testified that the work group leads "have to be able to use their discretion, judgment, training experience to direct the workforce in order to address these issues. That could be anything from a process leak to a shutdown of a unit to bringing up a unit, or even if it requires ERT or other outside resources to respond to the site to support." Zalman did not, however, provide further details about how a work group lead might respond to such incidents, or the factors they consider when doing so.

Zalman also stated that "if there is something atypical that's going on where they need Maintenance support or ERT or Safety or Environmental, they engage those resources as they need to get the additional support, outside of their capability." There is always a member of the leadership team "on call" for the work group leads to contact if a problem arises, and work group leads are expected to

[1] Notwithstanding the results of the election, the Employer's request for review was not mooted by the election results because the Employer filed timely objections in another case, Case 16–RC–354943, one of which (Objection 1) alleged that the Employer's work group leads engaged in objectionable prounion supervisory conduct that warranted setting aside the election in that case. The Regional Director relied solely on his supervisor status determination in this case to overrule the Employer's Objection 1 in Case 16–RC–354943. Accordingly, the Employer properly filed a request for review in this case to preserve the issue of whether the work group leads are statutory supervisors, and the Board must resolve that issue before ruling on the Employer's currently pending requests for review in Case 16–RC–354943.

contact certain leadership individuals if there is a problem they cannot resolve. For example, the record contains a copy of the "Daily Orders" given to the work group leads, which state that "[Manufacturing Lead] Dan is on call - Contact for all outages/production interruptions, and before entering OIS for reportable leaks or HSE events."

Manufacturing Supervisor Tipps testified that work group leads are responsible for ensuring that the Employer meets its production and maintenance schedules, and that they play a primary role in safety at the plant by doing rounds to make sure employees are complying with the Employer's procedures, providing coaching and feedback to new employees, and auditing maintenance permits. The work group leads conduct safety meetings for each shift, starting at 6:15 a.m. for the day shift and 6:15 p.m. for the night shift, where they review any potential safety problems in the prior or upcoming shifts and develop a plan to address those issues.

Like Zalman, Tipps testified that the work group leads are generally responsible for addressing safety issues on shift: for example, if the Employer's safety instrument systems have been bypassed, the work group leads "are responsible to make sure that the correct mitigations are in place while these—while these systems are bypassed." Or, "if there is a major outage that occurs, the expectation is that they get the units into a safe condition on like a shutdown, for example." But Tipps did not elaborate on the Employer's shutdown and safety procedures, or the factors work group leads must consider when responding to these types of problems.

Area 1 Work Group Lead Tyler McCarver testified that, on shift, he generally follows his Daily Orders, which set forth production targets and indicate whether McCarver should do anything outside of standard operating procedures, such as changing filters at a different interval than usual. In this regard, McCarver makes sure that the operators are performing the requisite tasks and following the Employer's standard operating procedures. If an operator is not following standard operating procedures, McCarver will correct the operator and issue an event report, if necessary. McCarver also conducts daily safety meetings with his team before his shift, to raise and address any safety issues.

McCarver testified that Manufacturing Supervisor Garcia is in his office during normal business hours if McCarver has questions. McCarver will also call or text Garcia outside of normal working hours, "[e]specially if the unit's not running right, if there is any question outside of any policy." He also stated that he has "called on nights and weekends, especially weekends when they haven't been there for—since Thursday." According to McCarver, there is always an Environmental and Maintenance department person "on call" if McCarver has questions. McCarver also explained that, if there were to be a "serious safety breach," he would shut down work immediately and then contact his supervisor.[2]

The job description for the work group lead position states that the work group leads "[c]oordinate[] and supervise[] efforts of shift team members for a safe and reliable operation of the unit during routine as well as unusual or upset unit conditions. During abnormal conditions, [they] assume[] control and direct[] the actions of personnel and deploys resources as appropriate." Work group leads also "[e]nsure compliance with applicable HSE procedures, policies, standards, objectives and regulations."

After completing a rigorous training program, the Employer's operators can become "Step-Ups," who are expected to fill in for the work group lead if the work group lead is not available during a shift.[3] Step-ups may also apply for work group lead positions, if one becomes available. GOP-317 sets forth the policy and training checklist for the step-up role, and it contains similar language to the work group lead job description, stating that step-ups are "accountable for the operations of the unit" and that their responsibilities include making sure the Daily Orders are carried out, troubleshooting operations as necessary, and ensuring that the Employer's standard operating procedures are followed. McCarver testified that, in order to become a step-p, he had to demonstrate that that he could assist operators in addressing abnormal activity, lead troubleshooting activities, and, in the case of an emergency, safely shut down production and "wait and see what else [he] need[ed] to do." According to McCarver, those are the same functions he performs as a work group lead.

II. ANALYSIS

Section 2(11) of the Act defines a supervisor as any individual with the authority to engage in several supervisory functions, which include the authority "to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action . . . ." "[I]ndividuals are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 supervisory functions (e.g., 'assign' and 're-

[2] "If I—if I, or any Operator, sees any serious safety breach, we stop work immediately. It doesn't matter if it's all the way down to a guy that just hired in a day ago . . . And then, yes, I would go get with my supervisor, a hundred percent sure if there is a serious safety breach."

[3] The Employer has not argued that the step-ups are statutory supervisors, but rather contends that, because the step-ups are expected fill in for work group leads during shifts, the step-up position sheds light on the duties and responsibilities of the work group leads.

sponsibly to direct') listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment; and (3) their authority is held in the interest of the employer." *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006) (some internal quotations omitted).

It is not enough for the putative supervisor to have the authority to engage in a supervisory function: the putative supervisor must exercise such authority with independent judgment. See id. at 693. As the Board explained in *Oakwood Healthcare*, even if a putative supervisor acts "free of the control of others" and "form[s] an opinion or evaluation by discerning and comparing data," that is not sufficient to establish independent judgment for purposes of the Act; rather, the party asserting supervisor status must *also* demonstrate that the judgment "rise[s] above the merely routine or clerical." Id. The burden of establishing that a given employee is a supervisor lies with the party asserting supervisor status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711–712 (2001). Thus, lack of evidence (or otherwise inconclusive evidence) is construed against the party asserting supervisor status. See *Dean & Deluca New York, Inc*., 338 NLRB 1046, 1048 (2003); *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

Here, we find that, even assuming the work group leads possess the authority to responsibly direct employes, the Employer has not met its evidentiary burden to establish that the work group leads do so using independent judgment. The Employer argues that the work group leads necessarily use independent judgment because "Work Group Leads are responsible for addressing unexpected issues and incidents when directing the Operators," and "by definition Work Group Leads cannot follow rote instructions when dealing with unexpected issues and incidents." The Employer also argues that work group leads use independent judgment because they conduct daily safety meetings, where they instruct operators about what needs to happen on shift; conduct rounds and provide coaching to employees, including issuing event reports; and "address issues such as processing a leak, or shutting down a unit, or bringing up a unit." The Employer further contends that although the Daily Orders set forth production targets, they do not specify "what to do and how to do it."

Although the witnesses at the hearing summarily testified that work group leads and step-ups are expected to handle atypical situations and troubleshoot problems on shift, there is little to no evidence about how work group leads actually address emergent issues and/or the factors they might consider when doing so, or even the factors work group leads consider when directing operators during normal operations. The testimony also establishes that there are always environmental and maintenance personnel on call for when a work group lead faces an emergent situation on shift, and that the work group leads are expected to call a higher-level manager (such as a Manufacturing Lead) in the event of an outage or interruption. Indeed, Work Group Lead McCarver testified that he will contact his own supervisor, Manufacturing Supervisor Steven Garcia, "if the unit's not running right" or "if there is any question outside of any policy," including on nights and weekends when Garcia is not otherwise working.

Moreover, there is significant evidence suggesting that the work group leads' direction of employees is primarily dictated by the Employer's standard operating procedures and the Employer's Daily Orders. Work Group Lead McCarver testified that his Daily Orders are not limited solely to articulating production targets; they also indicate whether the work group lead is expected to perform any actions that fall outside the Employer's standard operating procedures during the shift. And as a general matter, both Tipps and McCarver testified that the work group leads and step-ups are responsible for ensuring that operators are working in accordance with the Employer's standard operating procedures (even if those procedures were not introduced into the record). Their testimony is corroborated by both the position description for the work group lead classification and GOP-317, which both emphasize that the work group leads are primarily responsible for directing work in accordance with the Employer's standard operating procedures.

Board precedent holds that independent judgment is not established where, as here, the putative supervisors and their subordinates generally follow standard operating procedures; the putative supervisors have the means to contact higher-level managers when they are not on site; and the record contains no evidence about the factors the putative supervisors consider when directing employees. For example, in *Croft Metals, Inc.*, the Board found that the employer had not met its burden to establish independent judgment because the lead persons generally followed a pre-established delivery schedule with a standard loading pattern; employees generally performed the same job or repetitive tasks on a regular basis, and therefore required minimal guidance; the employer's own witnesses described the direction as "routine"; and "[t]he [e]mployer adduced almost no evidence regarding the factors weighed or balanced by the lead persons in making production decisions and directing employees." 348 NLRB 717, 722 (2006). Similarly, in *Shaw, Inc.*, the Board declined to find independent judgment where direction was given "in accordance with the [employer's] prior instructions"; "much of the work performed by the crewmembers is

routine and repetitive"; and the direction was "subject to close scrutiny by higher management" because "field supervisors or other members of the [employer's] management generally visit every jobsite at least once a day, checking on progress and providing guidance as needed," and "foremen have the means to contact and communicate with supervisors when they are not on site." 350 NLRB 354, 356 (2007).

Here, the record evidence establishes that the work group leads primarily direct their operators in accordance with the Employer's standard procedures and the Daily Orders, and that they can contact environmental and maintenance personnel, as well as their supervisors, if an emergent or atypical situation occurs. We acknowledge that the Employer's standard operating procedures cannot cover every eventuality, such as emergency circumstances, and that "the mere existence of company policies does not eliminate independent judgment from decision-making if the policies allow for discretionary choices." *Oakwood Healthcare*, *Inc.*, 348 NLRB at 693. Thus, "if [a] hospital has a policy that details how a charge nurse should respond in an emergency, but the charge nurse has the discretion to determine when an emergency exists or the authority to deviate from that policy based on the charge nurse's assessment of the particular circumstances, those deviations, if material, would involve the exercise of independent judgment." Id. at 693–694. The problem here, however, is that the evidence does not clearly establish when and how work group leads respond to emergent situations on shift, or the extent to which those responses are (or are not) constricted by the Employer's standard operating procedures and the Daily Orders.

Thus, although the work group leads may exercise some discretion in responding to emergencies, we cannot, on this record, ascertain whether that use of discretion "rise[s] above the merely routine or clerical," as *Oakwood Healthcare* requires. Id. at 693. As then-Member Miscimarra explained in *Community Education Centers*, 360 NLRB 85 (2014), "[t]he burden of proof rests with the [e]mployer as the party seeking to demonstrate Section 2(11) status, and the [e]mployer has not adduced any evidence to show that the Supervisors' direction of the Counselors was other than routine and narrowly circumscribed by the [e]mployer's policies and procedures." Id. at 86 (Member Miscimarra, concurring in part). See also *G4S Government Solutions, Inc.*, 363 NLRB 977, 978 (2016) (declining to find independent judgment because "[a]lthough there was testimony about some variables a lieutenant might consider in giving direction, it is vague and lacks even general examples of choices lieutenants make in tactical situations").

The same rationale applies here: the Employer cannot establish independent judgment based solely on vague and limited testimony that the work group leads play some role in responding to emergent or atypical situations, without providing at least some details about how the work group leads actually assess and respond to such circumstances, especially where the record establishes that the work group leads primarily direct work in accordance with the Employer's standard operating procedures and the Daily Orders.[4] The record is simply too thin to meet the Employer's evidentiary burden, and accordingly, the Employer cannot establish supervisor status on the basis of responsible direction.

Because the Employer has failed to establish that the work group leads possess any primary indicia of supervisor status, the secondary indicia relied upon by the Employer—such as the work group leads' role as the highest-ranking individuals on site on nights and weekends—are insufficient to establish supervisor status. See *Golden Crest Healthcare Center*, 348 NLRB 727, 730 n. 10 (2006); *Ken-Crest Services*, 335 NLRB 777, 779 (2001).[5] We therefore affirm the Regional Director's conclusion that the work group leads are not statutory supervisors on the basis of responsible direction.[6]

ORDER

The Regional Director's determination that the Employer did not meet its burden of proving that the work group leads are statutory supervisors is affirmed.

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[4] Compare *STP Nuclear Operating Corp. v. NLRB*, 975 F.3d 507, 517 (5th Cir. 2020) (finding independent judgment where various witnesses testified to the factors the unit supervisors considered when directing employees and prioritizing work, including plant conditions, the stress levels and capabilities of the employees, and the unit supervisors' training, experience, and personal judgment, and there was "no evidence in the record support[ing] the Board's claim that maintenance supervisors merely follow pre-planned procedures when delegating tasks").

[5] For similar reasons, there is no merit to the Employer's contention that the work group leads perform "other supervisory functions," such as preparing operators' weekly schedules and assigning operators to their respective work location, time, and overall duties; issuing Level 1 discipline under the Employer's progressive discipline policy; and sending employees home if they are unable to complete their work safely. The Regional Director found, in his Decision and Direction of Election, that the work group leads' role in performing these functions was insufficient to establish supervisor status under established Board precedent, and we denied review of the Regional Director's determination in that regard.

[6] We emphasize that the Employer, who bears the burden of proving alleged Sec. 2(11) supervisory status, has failed to adduce sufficient evidence to demonstrate that the work group leads utilize independent judgment when directing operators. We note that Member Mayer's dissenting view fundamentally rests on a different test of supervisory authority advocated in dissenting opinions by former Member Miscimarra. That test does not represent extant law, and our grant of review in this matter did not include reconsideration of that precedent. Accordingly, we express no opinion with respect to whether the Board should adopt that test, much less apply it here.

Dated, Washington, D.C. October 30, 2026

James R. Murphy, Chairman

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MAYER, dissenting.

My colleagues assume, as the record compels, that the work group leads possess the authority to responsibly direct employee operators yet deny these individuals supervisory status on the grounds that the Employer has not proven that direction is carried out with independent judgment. I disagree. The work group leads play a critical supervisory role in the operations department at the Employer's chemical plant: they are the front-line supervisors on their shifts and the highest-ranking operations department supervisors or managers in the *entire facility* on nights and weekends; they are responsible for the safe operation of the plant in the ordinary course of operations and for directing the actions of employees when abnormal situations arise. The upshot of the majority's position is untenable—the Employer's chemical plant operates for the vast majority of the time with no one supervising its workforce to keep it safe and productive. That is neither the law nor the commonsense reality of this workplace. For the reasons discussed below, I respectfully dissent.[1]

I. BACKGROUND

The Employer operates a chemical manufacturing facility, producing chemicals such as oxo/hydroformylation reactions (an ingredient in paints and solvents) and silica acid (an ingredient in aircraft lubrication or herbicides). As to be expected with a chemical plant producing such chemicals, the nature of the work is very dangerous and safety is critical. Operations Director Kristina Zalman testified that the Employer depends on "competent, capable people in the right positions to use their discretion and judgment to exercise and intervene when necessary to ensure the safe operation of the facility."

The facility operates 24 hours a day, 7 days a week. The operations department is split into two areas that produce different chemicals, each with four shift teams overseen by a single work group lead and between 7 to 9 operators working 12-hour shifts. Work group leads report to one of two operations manufacturing supervisors who work four 10-hour weekday shifts but are absent on nights and weekends. A work group lead always covers an area, including when a manufacturing supervisor is not present, and thus are the highest-ranking individuals at the chemical plant during those times.

Operators run the chemical manufacturing equipment by either monitoring the process through instrument readouts or physically manipulating the equipment. Each employee holds different qualifications and certifications that limit the tasks they may perform, and positions have different levels that generally correspond to an employee's seniority, experience, and qualifications.

Generally, work group leads are responsible for monitoring operations and maintaining safety standards within their area, and for addressing unexpected issues and incidents. Their job description states that work group leads "[c]oordinate[] and supervise[] efforts of shift team members for a safe and reliable operation of the unit during routine as well as unusual or upset conditions[,]" and "[d]uring abnormal conditions," they "assume[] control and direct[] the actions of personnel and deploy[] resources as appropriate." In addition, the description explains that work group leads are "[a]ccountable for the operations of the unit(s) within the Area[,]" "[m]ake decisions concerning unit operations and lead troubleshooting activities when unit issues arise[,]" and "[c]onduct daily toolbox safety meetings[,]" and perform other tasks.[2]

Witness testimony further elaborated on the supervisory role played by work group leads. Operations Director Zalman testified that their primary function is to supervise and manage the personnel on shift to ensure the safe, efficient operation of the chemical processes in their assigned area, and that they are the ultimate authority on their shifts

[1] The Board granted review with respect to whether the work group leads are statutory supervisors on the basis of responsible direction and invited briefing on that function, as well as secondary indicia. The Regional Director found that the evidence failed to show that work group leads are held accountable for the operators' performance on their shifts and did not reach independent judgment. The majority, by contrast, finds that even assuming the work group leads responsibly direct employees, the Employer has not established that the work group leads use independent judgment when doing so. I disagree with both the Regional Director and my colleagues.

[2] Some operators are also qualified as "Step-Up" work group leads. This qualification allows an operator to fill in for a work group lead and assume all associated duties and responsibilities. Operators may qualify for this role after extensive training tracked on a qualification form. The governing Employer document, GOP-317, contains similar language to the work group lead job description and, like that description, states that step-ups are accountable for the operations of the unit.

for ensuring safe operations. Each work group lead is responsible for supervising the operators on their shift, ensuring both that the Employer's production metrics are met and that any abnormal or atypical situation is addressed. To meet those responsibilities, Zalman testified that work group leads have to be able to use their discretion, judgment, and training experience to direct the workforce on matters ranging from a process leak to a shutdown of a unit and whether to engage outside resources if they need to get additional support outside their capability.

Manufacturing Supervisor Jeremiah Tipps confirmed that the work group leads are responsible for ensuring the Employer meets its production and maintenance schedules and that they play a primary safety role, conducting rounds to confirm compliance with procedures, providing coaching and feedback, and auditing maintenance permits.

At the start of each shift, the Employer provides the work group leads with "Daily Orders," which set the plant production targets, indicate whether work group leads should do anything outside of standard operating procedures, and who to contact for additional support if there is an atypical issue outside their capability. The work group leads neither create nor may alter those targets but communicate them to operators and ensure that they are met.

Work Group Lead Tyler McCarver testified regarding his duties. He stated that during each shift, he conducts daily safety meetings and generally follows the Daily Orders. He ensures that operators perform required tasks and comply with standard operating procedures, correcting any deviations and issuing Event Reports when warranted. McCarver testified that his Manufacturing Supervisor is available in their office during normal business hours for questions, and reachable by phone or text after hours. He also noted an Environmental and Maintenance Department individual is "on call" for additional support.

The Employer maintains a "Corrective Action" policy, which outlines four levels of progressive disciplinary actions, including a Level 2 Correction Action. Work group leads may also issue Event Reports regarding incidents involving operators. The record shows that work group leads have been disciplined under this policy. As described below in greater detail, the Employer issued Level 2 Corrective Actions to Work Group Leads Michael Rozner and Tony Gonzales in relation to a safety incident in which more than one operator caused a major chemical spill.

II. ANALYSIS

Section 2(11) of the Act defines the term supervisor as any individual with the authority to engage in one of several enumerated functions, which include the authority "to responsibly to direct" other employees.

The burden of establishing that a given employee is a statutory supervisor rests with the party asserting supervisor status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711–712 (2001); *Oakwood Healthcare, Inc*., 348 NLRB 686, 687 (2006). To establish statutory supervisor status, a party must show that the individuals in dispute (1) possess the authority to perform at least one of the 12 supervisory functions listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) their authority is held in the interest of the employer.[3] See, e.g., *Oakwood Healthcare*, 348 NLRB at 687.

Here, the only issue on review is whether the Employer established that work group leads are statutory supervisors based on the function of responsible direction. A putative supervisor "directs" when that individual "has men under him" and decides "what job shall be undertaken next or who shall do it." *Oakwood Healthcare*, 348 NLRB at 691–692 (internal quotations omitted). This includes giving an employee an "ad hoc instruction [to] perform a discrete task." Id. at 689. But under Section 2(11), direction must be "responsible," meaning that "the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other." Id. At 691–692. To establish such accountability, it must be shown that the employer delegated authority both to direct the work and to take corrective action, if necessary, and that the putative supervisor faces adverse consequences if they do not. Id. at 692. Accountability may be shown by either positive or negative consequences for the putative supervisor's terms and conditions of employment as a result of the putative supervisor's performance in the direction of others. See, e.g., *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). At bottom, this means that to demonstrate accountability, the putative supervisor must be held accountable for the performance of others, not their own performance.

A. The Work Group Leads Responsibly Direct the Operators

Although my colleagues assume that the work group leads responsibly direct the operators, I would find it established. Under *Oakwood*, direction is "responsible" when the Employer has delegated authority to direct the work and to take corrective action, and there is a prospect of adverse consequences to the work group lead if the tasks are not performed properly.

[3] There is no dispute that the third element has been established.

The adverse consequences suffered by the work group leads for the operators' poor performance is demonstrated by the Level 2 Corrective Action forms the Employer issued to Work Group Leads Rozner and Gonzales after operators on their shifts failed to notice a leak, causing the loss of approximately 3000 gallons of a chemical catalyst. Manufacturing Supervisor Tipps testified, without contradiction, that he disciplined Rozner because "he is ultimately accountable for the operations of that unit," and Gonzales "for the same reason"—because "their direct technicians" did something wrong during their shifts as work group leads. The Corrective Action forms confirm that testimony. Each form recites the job responsibilities drawn from GOP-317, that the work group leads are "accountable for the operations of the unit," must ensure that all "SOPs and company policies are followed," must make "at least two unit walk throughs per shift," and are "accountable for operating parameters being in range and ensuring the proper action is taken when not in range." The forms explain that the discipline was issued for not meeting the job description. In addition, two of the operators involved were discharged and two others disciplined before resigning. Discipline thus reached both the subordinates who caused the loss and the work group leads answerable for them, the very structure of accountability Section 2(11) contemplates.

The point is reinforced by the Employer's shift structure. As noted above, on nights and weekends the Manufacturing Supervisors are absent and a Manufacturing Supervisor testified that the work group leads are "the ones that are directly working and supervising those shifting [Operators]." It is because the work group leads bear that on-shift responsibility that the Employer held them answerable when the operators on their watch caused the chemical loss.

The Regional Director discounted this evidence on the basis that the discipline punished the work group leads for their own failure to coach and provide feedback, and faulted the roughly 2-month interval before the forms issued. But neither point withstands scrutiny. The discipline issued only because the operators' actions caused the spill; the coaching the work group leads purportedly failed to provide was coaching of the very operators whose actions caused the chemical spill, a failure which is inseparable from the work group leads' own accountability for the operators on their shifts. And the timing of the form is not relevant to the question of whether they were held accountable, but reflects only when the completed investigation resulted in discipline. See *Croft Metals, Inc.*, 348 NLRB 717, 722 (2006) (finding lead persons were held accountable for the job performance of employees assigned to them where the employer issued warnings to them "because of [] shortcomings of their crews"). In sum, I would reverse the Regional Director and find that the work group leads responsibly direct the operators under them.

B. The Work Group Leads Exercise Independent Judgment

The next question is whether the work group leads use independent judgment when responsibly directing operators. To exercise 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. 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. However, "the mere existence of company policies does not eliminate independent judgment from decision-making if the policies allow for discretionary choices." Id.

The Regional Director did not address this issue. My colleagues do address it, and they find no independent judgment on the basis that the record says little about how the work group leads address emergent issues or the factors they weigh in doing so. I disagree with my colleagues and find that the record sufficiently describes how the work group leads direct the operators both in the ordinary course and when abnormal situations arise.

Most significantly, witnesses testified that work group leads are expected to handle abnormal situations and problems that arise on their shifts. And in fact, during nights and weekends, they are the highest-ranking supervisors present who are available to address such unexpected events. Operations Director Zalman testified that when an operator reports a problem, "it is the responsibility of the Work Group Lead to try to manage that situation, mitigate it, and correct it," and that if they cannot, they must decide whether to "shut down, swap equipment, take a rate cut, [or call a] total plant outage." Those are discrete, consequential choices among alternatives, the antithesis of "routine or clerical." Although work group leads are expected to communicate with higher management in certain situations, Zalman was emphatic that the work group leads are "not just a communication vehicle," but in a major outage the expectation is that "they get the units into a safe condition on like a shutdown," directing the operators through it before reporting up. Zalman explained that such responses require work group leads to exercise discretion, judgment, and training experience to guide the operators in addressing atypical situations. Manufacturing Supervisor Tipps gave a concrete example: when the

plant's safety instrument systems are bypassed, the work group leads are "responsible to make sure that the correct mitigations are in place" while the systems are down. The written job description further confirms the discretion and judgment work group leads must use in such scenarios, stating that during abnormal conditions, work group leads "assume[] control and direct[] the actions of personnel and deploy[] resources as appropriate."

As I see it, these are precisely the "factors" the majority says are absent: diagnosing whether an abnormal condition exists; determining whether that situation can be corrected in place or requires a shutdown; devising the correct mitigations when a safety system is bypassed; sequencing a safe shutdown with the operators; deciding when to take the unit down; stopping work on a safety breach; and judging whether an operator is fit to work a hazardous process. That the witnesses did not recite a still longer catalog of discretionary decisions does not preclude a finding that the work group leads exercise independent judgment in directing the operators. And there is no evidence that in exercising their discretion and directing operators, work group leads are compelled to read off of and follow a script, whether located in standard operating procedures or Daily Orders.

Contrary to my colleagues' assertion that the Employer-'s evidence is conclusory, however, the evidence described above sufficiently establishes that the work group leads act with independent judgment. To brush aside unrebutted testimony that the work group leads use "discretion, judgment, training experience" to bring a dangerous atypical situation to a safe state is to raise the burden above the preponderance the Act imposes. See *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1156 (2015) (Member Miscimarra, dissenting, observing the Board should not discount evidence of supervisory authority "merely because it could have been more detailed or supported by more specific examples"); see also *NLRB v. McCullough Environmental Services, Inc*., 5 F.3d 923 (5th Cir. 1993) (reversing the Board's finding that the respondent's lead operators at its sewage treatment plant were not statutory supervisors). And although the Employer has standard operating procedures and issues Daily Orders, the question is whether they leave room for discretionary choices. In fact, they do because there is nothing in those orders that could address the range of abnormal events that occur at the chemical facility or dictate how work group leads would be required to direct operators in response. Further, the fact that work group leads have the means to contact higher-level managers when they are not on site is hardly dispositive. As explained, work group leads operate in a very dangerous environment, and they are expected to be knowledgeable enough to first direct the operators in response to contingencies, and *then* to make the required contacts. The fact that a work group lead may contact a higher-ranking manager does not convert their front-line direction of a dangerous process into routine work.

My colleagues' reliance on *Croft Metals, Inc.*, 348 NLRB 717 (2006), and *Shaw, Inc*., 350 NLRB 354 (2007), is unpersuasive. In *Croft Metals*, the Board found no independent judgment because the lead persons followed a pre-established delivery schedule with a standard loading pattern, the subordinates performed repetitive tasks requiring minimal guidance, and the employer's own witnesses described the direction as routine. Nothing of the sort appears in the instant case. And in *Shaw*, the Board's finding relied on the fact that management visited every jobsite at least once a day to check on progress and provide guidance, so that the putative supervisors' direction, was subject to close scrutiny by higher management. Here the defining fact is the opposite: for most of the chemical plant's operating hours, no higher-level manager is present at all.

Lastly, I share former Member Miscimarra's concern that the Board's supervisory analysis too often drifts into abstraction, and I would decide this case with an eye to the three "common sense" considerations he identified: "(i) the nature of the employer's operations; (ii) the work performed by undisputed statutory employees; and (iii) whether it is plausible to conclude that all supervisory authority is vested in persons other than those whose supervisory status is in dispute." *Peacock Productions of NBC Universal Media*, *LLC*, 364 NLRB 1523, 1527 (2016) (Member Miscimarra, dissenting). Each confirms supervisory status. The Employer's operation is the around-the-clock manufacturing of dangerous chemicals where safe direction of the shift is essential. The operators' work plainly must be directed, and the work group leads are responsible for addressing unexpected and abnormal issues. It is implausible that all day-to-day supervisory authority over the operators rests on two manufacturing supervisors (one for each area) who are absent every night and every weekend. The latter point, which my colleagues concede but appear to downplay, yields precisely that implausibility: for most of the facility's operating hours, there is no one in the chemical plant who is responsibly directing the operators. The record demonstrates that the work group leads are the ones who must act, and act quickly, exercising independent judgment, when something goes wrong.

The work group leads responsibly direct the operators, are accountable for their operators' performance, and exercise independent judgment in directing the response to

the contingencies an operating chemical plant presents.[4] In sum, I would find that the work group leads are statutory supervisors within the meaning of Section 2(11), and I would dismiss the petition.

Dated, Washington, D.C. October 30, 2026

Scott A. Mayer, Member

NATIONAL LABOR RELATIONS BOARD

[4] The work group leads' status as the highest-ranking individual on site at night and on weekends is substantial secondary evidence of supervisory status. See, e.g., *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997). It supports a finding of supervisory status as well.