UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI **Employer/Petitioner** **and** **INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (IBEW) LOCAL UNION 1439** **Union**	**Case 14-RM-394835**

DECISION AND ORDER DISMISSING PETITION

Union Electric Company d/b/a Ameren Missouri (the Employer) is an electric and gas utility headquartered in St. Louis, Missouri. On August 31, 2026,[1] the International Brotherhood of Electrical Workers Local Union 1439 (the Union) claimed to represent a majority of the employees in a unit appropriate for collective bargaining and demanded that the Employer recognize it as the representative of such employees; however, the Employer refused to do so.

After receiving the demand for recognition, on September 14, the Employer filed the Petition in this matter. In the Petition, the Employer asserts that initially, the Union made a demand for recognition to represent all Distribution System Operating Supervisors (DSOS) employed by the Employer at its headquarters. This would include the positions of DSOS 1, DSOS II, and Senior DSOS. After the initial demand for recognition, the Union modified its demand to include only the DSOS I and DSOS II positions.

Pursuant to the Rules and Regulations of the National Labor Relations Board, a Notice of Representation Hearing issued. On September 25, a Hearing Officer of the Board held a hearing in this matter.[2] During the hearing, the Employer contended that the bargaining unit sought by the Union is inappropriate because the DSOS I and II positions are statutory supervisors as defined by Section 2(11) of the Act and/or managerial employees. The Employer contended the DSOS I and II positions are supervisors because they assign, responsibly direct, and discipline employees. The Employer contended the DSOS I and II positions are managerial because they formulate and effectuate management policies through the exercise of substantial independent discretion in resource allocation, operational strategy, safety compliance, and emergency response and that their interests are aligned with management, rather than rank-and-file employees. Although the Union contended that the DSOS I and II are statutory employees, I directed the Hearing Officer to preclude the Union from litigating the issue of the DSOS I and II supervisory and/or managerial

[1] All dates hereinafter are in the year 2026 unless otherwise noted.
[2] The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

status because the Union failed to timely serve its Statement of Position on the Employer. After this ruling was made, the Union refused to participate any further in the hearing.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. As explained below, based on the record and relevant Board law, I find that the Employer has met its burden to establish that the DSOS II are supervisors within the meaning of Section 2(11) of the National Labor Relations Act based on their authority to assign employees using independent judgment. Because the Employer does not currently employ anyone in the DSOS I classification, I find it unnecessary to decide the supervisory status of the DSOS I position. I further find that the Employer has not met its burden to establish that the DSOS are managerial employees.

I. PROCEDURAL MATTERS

The Union was required to file a Statement of Position by noon on September 24 and serve both the Regional Office and the Employer by that deadline. Although the Union filed a Statement of Position with the Region prior to that deadline, it did not serve its Statement of Position on the Employer prior to that deadline. Section 102.66(d) of the Board's Rules, "Preclusion," states:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election….

Because the Union failed to serve its Statement of Position on the Employer by the deadline, the Hearing Officer, at my direction, precluded the Union from litigating the supervisory and/or managerial status of the DSOS I and II positions, which is in accord with the Board's Rules and Regulations and case law. *See, e.g.*, *Ikea Distribution Servs., Inc*., 370 NLRB No. 109 (2021) (affirming Regional Director's decision to preclude litigation of issues raised in employer's statement of position because employer served it on the petitioner 1 hour and 41 minutes late and finding that Regional Director properly exercised her responsibility to determine unit appropriateness); *Williams-Sonoma Direct, Inc*., 365 NLRB 111 (2017) (affirming Regional Director's decision to preclude employer from litigating issues raised in the employer's statement of position because the employee failed to timely serve its statement of position on the petitioner).

However, even when a party is precluded from litigating certain issues, that does not alleviate a Regional Director's responsibility to determine the appropriateness of a proposed unit. *See Ikea Distribution Services, Inc*., *supra*. I therefore directed the Hearing Officer to allow presentation of evidence sufficient to determine the supervisory and/or managerial status of the DSOS I and II positions. That evidence will be described below.

II. RECORD EVIDENCE

A. The Employer's Operations

The Employer is an electric and gas utility headquartered in St. Louis, Missouri. The record suggests that there are two sides to the Employer's operations: a distribution side and a transmission side. The distribution side has jurisdiction over electric distribution systems under 100,000 volts while the transmission side has jurisdiction over electric distribution systems over 100,000 volts.

On the distribution side of its operations, the Employer has a Distribution Control Office in St. Louis, Missouri. The office operates 24 hours a day, 7 days a week. The office has jurisdiction over St. Louis, Jefferson County, and St. Charles County. The office is responsible for overseeing roughly 350 substations that are within its geographic jurisdiction. A substation is an electric facility that contains a power transformer and switch gears, and the switch gears have switches inside of them. A power transformer decreases voltage from a high voltage to a low voltage, and the switch gears distribute power to different circuits.

The positions at issue in this matter, the Distribution System Operating Supervisors or DSOS, work in the Distribution Control Office. The DSOS are supervised by Superintendents, who oversee the daily operations of the Distribution Control Office. There are three Superintendents. The Superintendents report to the Manager of Distribution Control. The Manager of Distribution Control reports to the Director of Distribution Operating, who in turn reports to the Senior Director of Operations and Engineering Support Jaime Sobotka.

The Employer also has field employees who repair and maintain the electrical system, including Linemen, Apprentice Linemen, Overhead Repairmen, Service Line Drivers, General Foremen, Line Troublemen, TRW Troublemen, and Traveling Operators.

The Line Troublemen and Traveling Operators receive work assignments from the DSOS, as will be described in further detail later in this decision. The record is unclear as to who has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, and reward the Line Troublemen and Traveling Operators, and the Employer does not contend that the DSOS possess those authorities. The Employer does, however, contend that the DSOS have the authority to assign, responsibly direct, and discipline the Line Troublemen and Traveling Operators, each of which is addressed below.

Line Troublemen and Traveling Operators are scheduled to provide 24/7 coverage through rotating weekday, weeknight, and weekend shift. They are non-exempt employees that are paid an hourly wage between $54 to $58 per hour. They are represented by the Union.

The Line Troublemen are Journeymen Linemen that typically work as a one-man crew. They repair and restore electrical service for residential, commercial, and industrial customers. They are the first responders for any emergency or outage situation. Their job duties can involve: responding to customer calls that power is out, locating the issue, and restoring electrical service;

clearing and putting up fallen electrical wires; clearing tree limbs; testing circuits and equipment; replacing blown lines, transformers, or substation fuses; patrolling and repairing street lighting, alley circuits, or feeders; inspecting, reporting, and clearing emergency substation issues; and performing routine or emergency switching on overhead and underground circuits as directed. There are currently 35 Line Troublemen.

The Traveling Operators are "switchmen" and they perform substation inspections and switching operations. They do not perform linemen work, such as repairing downed power lines. The Traveling Operators' job duties can involve opening and closing circuit breakers; disconnecting switches; controlling, loading, and unloading motor generators and converters; controlling voltage in substations; recording operating data; clearing equipment to be worked on; inspecting substation equipment; and assisting in cable fault locating. There are currently 23 Traveling Operators.

The Linemen, Apprentice Linemen, Overhear Repairmen, Service Line Drivers, and General Foremen report to an Electric Operations Supervisor, who in turn reports to one of three division Directors, and the Directors report to Senior Director Landy Wince. Approximately 150 employees hold these job classifications. They generally work in crews during normal business hours, Monday through Friday 7:00 a.m. to 3:00 p.m.

B. Distribution System Operating Supervisors (DSOS) Position

1. Overview

The DSOS are responsible for directing the operation of the Employer's distribution and sub-transmission electrical systems. They continuously monitor the electrical systems to ensure safe and reliable operation and respond to outages, system disturbances, and emergencies by developing and executing restoration strategies.

At the time of the hearing, there were 29 DSOS. There are three different DSOS job positions: DSOS I, DSOS II, and DSOS Senior. There are currently 5 DSOS Senior, 24 DSOS II, and no DSOS I. There is limited evidence in the record concerning any differences between each DSOS position. During the hearing, the DSOS I position was described by the Employer's counsel as a training position; however, the Employer's counsel stated the Employer did not currently employ anyone in the DSOS I position. When asked by the Hearing Officer if it was possible there could be employees in the DSOS I position in the future, the Employer's counsel stated it is possible. However, the record contains no further detail or evidence concerning any Employer plans to employ anyone in the DSOS I position.

The qualifications for the DSOS I position include a high school diploma or equivalent and two or more years' experience in distribution systems, dispatch, electric operations or construction, or as a journeyman level electrician. The qualifications for the DSOS II position include a high school diploma or equivalent and 3-5 years of relevant experience depending on whether the applicant has a Bachelor of Science Degree. The qualifications for the DSOS Senior position are the same as the DSOS II, except either 5 or 7 years of experience are required depending on whether the applicant has a Bachelor of Science Degree.

After a DSOS is hired, they undergo 7-9 months of training. The training covers topics such as the electric distribution system; the overhead distribution systems; the underground distribution systems; the downtown area network and radial distribution systems; system mapping and schematics; substation operations and switching; switching and worker protection assurance; the advanced data management system; outage management; distribution device operations; call-out management; the outage analysis system; and human performance improvement. The training includes 3-4 months of on-the-job training and various assessments, quizzes, written examinations, and scenario-based training exercises.

The job descriptions for each position suggest that the DSOS II and DSOS Senior positions perform more complex work and provide more mentoring to newer DSOS; for example, resolving complex anomalies that occur on the electric distribution system, writing complex switching orders, and providing coaching and training development to other DSOS. The DSOS Senior job description includes additional job responsibilities that are not present in the DSOS I and II descriptions such as providing day-to-day operational leadership for DSOS floor activities, coordinating workload, monitoring schedule and shift execution, identifying emerging system or staffing concerns, and ensuring total quality management through monitoring DSOS activities.

2. Schedule and Pay

The Distribution Control Office operates on a 24/7 schedule. The DSOS have a rotating schedule that includes day shifts, night shifts, overnight shifts, and weekend shifts. The weekday shifts consist of a mix of 8- and 10-hour shifts while weekend shifts are 12 hours in length. Upper management, including the Superintendents, work in the office Monday through Friday from 6:00 a.m. to 4:00 p.m. Outside of those hours, the DSOS are the highest-ranking individuals at the office. It is unclear from the record how many DSOS are scheduled for each shift or if there is a particular ratio of DSOS I, II, and Senior scheduled per shift.

The DSOS are classified as exempt employees and are salaried. The salary range for the DSOS II position ranges from $120,000 to $140,000; however, there is an example in the record of a DSOS II that has a salary of $150,300. There is no evidence in the record concerning the salary range for the DSOS I or DSOS Senior positions; however, there is an example in the record of a DSOS Senior that has a salary of $154,300.

The DSOS receive an annual bonus, called a short-term incentive bonus, which has a target of 10% of the DSOS salary. When they work additional hours during an emergency, they receive continuous operating pay in addition to their salary. The continuous operating pay is $92 per hour worked. The Employer does not consider this overtime, and in many cases the rate is less than what an overtime rate would be. All first-line supervisors are eligible for this continuous operating pay. The Line Troublemen, Traveling Operators, and crew employees do not receive a short-term incentive bonus or continuous operating pay.

3. Job Duties

When on shift, the DSOS primarily monitor the electric distribution system, coordinate and prioritize work on the system, and write switching orders.

The DSOS utilize the Supervisory Control and Data Acquisition system, or SCADA, to monitor the health of the electric distribution system. SCADA is a system that collects and displays information concerning voltages, loading amperages, and alarms. The DSOS also operate under

the Worker Practices Authority manual, or WPA. The WPA gives the Distribution Control Office the authority to operate the electric grid, perform switching activities, and issue clearances, among other things, and it vests the DSOS with the authority to order field employees to manipulate devices like switches and circuit breakers and to hang and remove tags. When the DSOS order tags to be hung, they are guaranteeing that the area within which the tags are hung is a zone of protection, and the area is de-energized and safe for the field employees to work in.

The DSOS review work order tickets. Every call that comes in creates a work order ticket. There are call takers who take these calls and enter in the information that makes up the ticket. A ticket could be about a range of issues such as an outage, voltage problem, an electric pole down, or a tree branch touching a wire. Each issue has a different priority. Some issues do not need to be addressed for several days or weeks, while other issues need to be addressed immediately. The priority level varies depending on the type of issue, the number of customers affected, safety concerns, etc. For example, if a work order ticket comes in saying that a line into a substation is out, that would take priority over any scheduled maintenance. During their shifts, the DSOS will look at the work order tickets and prioritize the tickets utilizing their training and experience. When making decisions on prioritization, they do not need to consult with anyone else.

The DSOS write switching orders in order for repair and maintenance work to be performed on the electric system. A "switch" is any isolating device on the electric distribution system that starts and stops the flow of electricity. The switches are used to isolate an area from all energy sources so that field employees can safely perform work on the electric distribution system. The DSOS will provide step-by-step switching orders to a Line Troubleman or Traveling Operator. They utilize three-way communication to do this. The DSOS will give the order, and the receiver of the order repeats it back to the DSOS. If the DSOS is satisfied the order has been repeated back correctly, the DSOS will say yes that is correct. The next step is for the receiver of the order to execute the order. The field employees may then safely perform work on the system once the area is de-energized.

When a DSOS first arrives at work, they will log onto their computer. They will review the current health of the electric distribution system. They will look at any alarms indicated in the SCADA system and any outage tickets. There may also be work scheduled to occur that day, such as scheduled maintenance. They will determine if they have any questions based on the information and data they have reviewed. They will then do a shift turnover with the prior shift.

After shift turnover, the DSOS will continue to monitor the system. They will look at the information in SCADA concerning the substations, including information regarding alarms and voltages. They will make sure the system operates within predefined parameters. If scheduled maintenance is occurring, they will issue the switching orders to the field employees in the performance of that maintenance work. They will also monitor and review the work order tickets that come in during their shift and prioritize the work and assign work to Line Troublemen and Traveling Operators.

4. Prioritizing and Assigning Work

When prioritizing work order tickets, in addition to considering the priority level of the ticket as described above, the DSOS will also consider what makes sense logically. For example, if there is a field crew already on-site ready to perform repair or maintenance work on the electric system, the DSOS will pull a Traveling Operator to do the switching work and de-energize that

area so that the field crew is not delayed in starting their work. Or, if there is work that needs to be performed in the same geographic area, the DSOS will have the Line Troubleman or Traveling Operator perform all that work at once.

If an alarm comes in at a substation during a shift, the DSOS will acknowledge the alarm, decipher the information that is coming in about the alarm, and determine what the issue is. The DSOS will then call a Traveling Operator and direct the Traveling Operator to go to the substation to handle the situation. The DSOS may need to write a switching order, which the Traveling Operator would then execute at the substation.

If there is a voltage problem in the system during a shift, the DSOS can send a Traveling Operator to the substation to diagnose the issue. The Traveling Operator will then report back to the DSOS, and the DSOS will determine the next steps. If there is a fault in the system during a shift, which is some sort of abnormal electric current, the DSOS can send out a Line Troubleman to investigate the issue, and then the DSOS will determine the next steps based on what the Line Troubleman reports back. If there is an outage during shift, the DSOS will call a Line Troubleman and send them to investigate the issue.

The DSOS have the discretion to determine whom they are going to call to perform work, and they do not need approval or authorization from anyone else when deciding which employee to assign the work. When making these decisions, the DSOS will consider various factors. If there is a DSOS employee in training, the DSOS may assign that employee to a particular job so that they can gain experience doing something new. Or, if there is an emergency, and the DSOS needs to pull a Line Troubleman or a Traveling Operator to work on the emergency, the DSOS will look at which employees are in the geographic area, what they are working on, and the priority level of what they are working on. If an employee is already working on something that is considered emergent, the DSOS will not pull that employee to do the work and instead will consider other employees and their geographic proximity and the priority level of what they are working on. If an employee is working on resolving an outage that only affects five people, while the new outage affects over 500 people, the DSOS will tell the employee to stop working on the current outage and go work on the larger outage. It is a daily occurrence that a DSOS will have to pull a Line Troubleman or Traveling Operator from one job to perform work on another more emergent job. If high-priority emergent work comes in, and the DSOS feels they need additional resources, the DSOS can ask another DSOS if they can use their Line Troublemen or Traveling Operators to perform the work.

While the DSOS work on the distribution side of the Employer's operations, there are occasions where a Transmission Dispatcher, who works on the transmission side of the Employer's operations, will contact a DSOS and ask the DSOS to assign a Traveling Operator to perform work on a substation the transmission side has jurisdiction over. The Transmission Dispatchers do not have the authority to direct the Line Troublemen or the Traveling Operators to perform work; they must contact the DSOS when they need a Line Troubleman or Traveling Operator to perform work. The DSOS then determines whether there is a Line Troubleman or Traveling Operator that is available to perform the work requested by the Transmission Dispatcher. If, for example, the DSOS is using the Traveling Operator for a switching job, and the Transmission Dispatcher's work is not emergent, then the DSOS would tell the Transmission Dispatcher that the Traveling Operator will not be available until after the switching job is finished.

The DSOS have the authority to keep a Line Troubleman working past the end of their shift. If a Line Troubleman is near the end of their shift, and an emergency call comes in, the DSOS can send the Line Troubleman to perform the emergency work causing the Line Troubleman to work past the end of their shift, thus incurring overtime.

If a Line Troubleman calls out sick for their shift, the DSOS have the authority to decide whether to call in another Line Troubleman to fill their shift or to have a Line Troubleman from another area fill in for the absent Line Troubleman. The DSOS do not need to consult with anyone else prior to making this decision. If they determine the shift needs to be filled, the DSOS will initiate a call-out in the ARCOS system, which will be described below. If, during a shift, a Line Troubleman or a Traveling Operator asks to go home early due to sickness or a family issue, the DSOS has the authority to approve the request without consulting with anyone else. The DSOS will then shuffle their resources around, the Line Troublemen and Traveling Operators, to cover the areas. The DSOS can also talk to the other DSOS and pull a person from their area if necessary.

If there is work that needs to be performed that is going to be more than what a Line Troubleman can handle, because the Line Troublemen work as one-man crews, the DSOS will perform what is called a "call-out" to call in an Overhead Line crew to perform the work. The DSOS does not have to consult with upper management before performing the call-out. The DSOS utilize their training to determine when it is necessary to do a call-out and to determine the size and composition of the crew that is needed. The DSOS will input certain information into the Employer's ARCOS software system regarding the call-out: the type of employees needed for the crew, the size of the crew, the work that needs to be done, and the location of the work.

The ARCOS system will then send a call-out to all eligible employees and ask them to come in and do the work. The record is unclear as to the process that is utilized to determine which specific employees will be selected to come in and do the work, and who makes that decision. There are references in the record to the Union filing grievances regarding DSOS allowing an employee to work overtime when they should not have, or that an employee was not given the opportunity to work overtime when they should have been. This suggests that the collective bargaining agreement between the Union and the Employer details who should be offered overtime and how it should be assigned.[3]

Once a crew has been called in for a particular job, if another work order ticket comes in that requires a crew, the DSOS will then need to decide if the crew can accomplish the work from both tickets, or if a second crew needs to be called in, which would result in two crews working simultaneously. When making this decision, the DSOS considers the nature of the job, the size of the job, the number of people affected by the outage, and the equipment involved. If the DSOS decides not to call in a second crew, they can ask the original crew they called in to work on the second job after the first one, which would increase the crew's overtime hours.

Finally, there was some limited evidence in the record concerning the DSOS role during storms. During a storm, the DSOS will call in crews. The DSOS will tell the crews what to do until they hit "minor storm guidance" and then the DSOS will pass off some of their responsibilities to

[3] There is also some record evidence that the DSOS can assign work to a contractor, and that the Union has filed grievances about the assignment of overtime work to contractors rather than bargaining unit employees.

the Forestry and Overhead Crew Leads so that the DSOS can then focus on writing switching orders, directing the Troublemen, and monitoring the system.

5. Disciplinary Process

There was some limited testimony that if a Line Troubleman or Traveling Operator resists an assignment from a DSOS, the DSOS would typically ask them if they are refusing work or refusing an order. The DSOS could then decide to either send the employee home or ask another employee to perform the work. However, no further detail was provided regarding this nor were any examples provided of this occurring.

If a DSOS issues a switching order to another employee, and the employee executes the order improperly, that is considered a human performance error or a switching error. The DSOS are responsible for reporting switching errors by completing a switching error form.[4] In the form, the DSOS provide the details of the work that was taking place, the actions of the DSOS, and the actions of the employee executing the order. The DSOS then submit the form for managerial review. The submission of the switching error form initiates a fact-finding. A switching event review meeting is held. The meeting is attended by Superintendents and the Director. During the meeting, the facts are evaluated and it is determined whether there is a need for discipline. The meeting can result in the issuance of discipline. The record does not reflect that the DSOS recommend whether discipline should issue or the level of discipline imposed.

The record contains one example of a DSOS being issued a Performance Improvement Plan by a Superintendent. It was issued because the DSOS was making errors in the directions he was giving to field employees. For example, the DSOS had ordered a Traveling Operator to place grounds without having a proper zone of protection for the Traveling Operator which could have resulted in injury to the Traveling Operator. The record does not indicate whether the Traveling Operator was issued any discipline because of this incident.

III. THE APPLICABLE LEGAL STANDARD

A. Principles Regarding Section 2(11) Supervisory Status

Section 2(3) of the Act excludes any individual employed as a supervisor from the definition of "employee." 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 merely of a routine or clerical nature, but requires the use of independent judgment.

[4] Superintendent David Huff provided some conflicting testimony in this regard. Superintendent Huff first testified that whenever a human performance error, or switching error, occurs the DSOS is responsible for reporting the error via the switching error form. Later in his testimony, Superintendent Huff testified, in response to a series of leading questions, that DSOS have the authority to determine whether a report needs to be written based on the facts of the incident. He further speculated in his testimony that if the DSOS were to be represented by the same Union as the field employees, the DSOS may be less likely to write up the field employees when a switching error occurs.

Accordingly, applying Section 2(11), individuals are deemed to be supervisors if they have the authority to engage in any one of the above Section 2(11) indicia; their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and their authority is held in the interest of the employer. *NLRB v. Kentucky River Community Care, Inc*., 532 U.S. 706, 712–13 (2001). Supervisory status may also be established if the individual in question has the authority to effectively recommend one of indicia. *Children's Farm Hom*e, 324 NLRB 61, 65 (1997). The Board has held that an effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Id.*

The burden of proving supervisory status rests on the party asserting that status. *Oakwood Healthcare, Inc*., 348 NLRB 686, 687 (2006). Since supervisors are excluded from the Act's protection, the Board has been careful to avoid construing statutory language too broadly. *Avante at Wilson, Inc*., 348 NLRB 1056, 1058 (2006) (citing *Oakwood Healthcare, Inc.*, 348 NLRB at 686). The Board requires supervisory status be established by a preponderance of the evidence. *Dean and DeLuca New York, Inc*., 338 NLRB 1046, 1047 (2003). Lack of evidence is construed against the party asserting supervisory status. *Id.* at 1048. To meet this standard, the party bearing the burden must establish that an individual "actually possesses" a supervisory power; mere inferences or conclusory statements of such power are insufficient. *See Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). The Act "requires … evidence of actual supervisory authority visibly translated into tangible examples demonstrating the existence of such authority." *G4S Regulated Security Solutions,* 362 NLRB 1073 (2015). 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. *Id.*

The Board's decisions emphasize the evidence must be detailed and specific, particularly with respect to the factors weighed or balanced in exercising putative supervisory authority, in order to establish independent judgment. *See WSI Savannah River Site*, 363 NLRB 977 (2016); *Pacific Coast M.S. Industrie*s, 355 NLRB 1422 (2010); *Network Dynamics Cabling, Inc*., 351 NLRB 1423, 1425, 1436 (2007); *Lynwood Manor*, 350 NLRB at 490; *Austal USA, L.L.C.,* 349 NLRB 561, 561 fn. 6 (2007); *Avante at Wilson, Inc*., 348 NLRB at 1057; *Golden Crest*, 348 NLRB at 731; *Croft Metals, Inc*., 348 NLRB 717, 722 (2006). Where evidence is in conflict or otherwise inconclusive for a particular Section 2(11) indicia, the Board will decline to find supervisory status for that indicium. *See Dole Fresh Vegetables, Inc.,* 339 NLRB 785, 793 (2003). Furthermore, sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Oakwood*, 348 NLRB at 693.

Indicia other than those enumerated in Section 2(11) of the Act are secondary indicia. Although secondary indicia may be considered in determining supervisory issues, they are not dispositive. In the absence of one of the enumerated primary indicia, secondary indicia, standing alone, are insufficient to establish supervisory status. *St. Francis Medical Center-West*, 323 NLRB 1046 (1997).

B. Principles Regarding Managerial Status

The Act makes no provision for "managerial employees," this category of employees has been excluded from the protection of the Act by Board policy. See *NLRB v. Yeshiva University,* 444 U.S. 672, 682 (1980). Managerial employees are defined as those "who formulate and effectuate high-level employer policies or who have discretion in the performance of their jobs independent of their employer's established policy." *Constellis, LLC d/b/a Academic Training Center, LLC*, 372 NLRB No. 81 (2023). Managerial status is "reserved for those in executive-type positions, those who are closely aligned with management as true representatives of management." *General Dynamics,* 213 NLRB 851, 857 (1974). The party seeking to establish that an employee is a manager has the burden of proving managerial status. *Id.*

In *NLRB v. Yeshiva University*, 444 U.S. at 682–683, the Supreme Court described managerial employees as follows:

> Managerial employees are defined as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." . . . These employees are "much higher in the managerial structure" than those explicitly mentioned by Congress which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was found necessary." . . . Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. . . .Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy.

IV. APPLICATION OF LEGAL STANDARD

A. Supervisory Status of Distribution System Operating Supervisors (DSOS)

The Employer asserts that the DSOS I and II possess the authority to assign, responsibly direct, and discipline employees. As explained below, I find the Employer has established the DSOS possess the authority to assign employees, utilizing independent judgment, and that such authority is held in the interest of the Employer. Although this indicium, standing alone, is sufficient to establish supervisory status, I have also analyzed whether the DSOS possess the authority to responsibly direct or discipline employees. I find the Employer has failed to establish the DSOS possess the authority to responsibly direct or discipline employees.

1. Assignment Authority

In *Oakwood Healthcare, Inc*., 348 NLRB 686 (2006), the Board set forth the definition of "assign" as "the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee." However, every instruction in the workplace is not assignment; "significant overall duties" do not include "ad hoc instructions to perform discrete tasks;" these instructions are considered "direction" of a nonsupervisory nature. *Id*. Furthermore, choosing the order in which an employee performs discrete tasks within an already-established assignment would not be indicative of assignment authority. *Id* at 689.

In explaining the definition of independent judgment in relation to the authority to assign, the Board has stated that the authority to effect an assignment must be independent, *i.e.,* free of the control of others, and it must involve a judgment., i.e., forming an opinion or evaluation by discussing and comparing data, and the judgment must involve a degree of discretion that rises above the "routine or clerical." *Croft Metals, Inc*., 348 NLRB at 721.

The Board has previously applied the definition of "assign" from *Oakwood* to dispatchers and controllers in the utility industry. In *Entergy Mississippi, Inc.*, 367 NLRB No. 109 (2019), the Board, on remand, considered whether dispatchers possessed the authority to assign field employees to places using independent judgment within the meaning of *Oakwood.* The Board concluded the dispatchers in that case were supervisors and utilized independent judgment in assigning employees to places by prioritizing outages, determining how many employees should be sent to address a given outage, and deciding to reassign field employees or hold them over from their regular shift or to summon additional on-call employees to work. *Id*., slip op. at 4. Furthermore, in the cases of multiple "trouble spots," the dispatchers decided whether issues could be dealt with sequentially or if they needed to be dealt with simultaneously, and in making such decisions, the dispatchers could decide to divert a field crew from one trouble spot to another or to postpone any response. The dispatchers in that case also considered a range of factors when prioritizing outages and they relied on their training and knowledge to best respond to outages as they occurred. The Board considered the union's argument that a finding of supervisory status based on assignment was precluded because the dispatchers do not assess the skills of individual field employees and match them to specific repair jobs. *Id*., slip op. at 5. However, the Board found that argument meritless based on the terms of the remand. The Board stated that the court's remand clearly contemplated supervisory status for the dispatchers, even absent individual skill assessment, based on the dispatcher's utilization of a high level of independent judgment in assigning field employees to a place to perform repairs, and that the on-call lists used to determine which employees will be available to perform unplanned repairs did not tell the dispatchers when or how many people to dispatch or when to hold field employees over from their regular shift. *Id*.

The DSOS in this case are similar to the dispatchers in *Entergy Mississippi, Inc* becausewhen there are multiple outages, the DSOS determine which outages to prioritize first. The DSOS also prioritize work requested in work order tickets. The DSOS will determine which Line Troubleman or Traveling Operator to assign the work to, and the person who is assigned the work will then have to travel to the substation or other location to perform the work. When emergency work comes in, and the Line Troublemen and Traveling Operators are already performing other work, the DSOS will decide which Line Troubleman or Traveling Operator to assign the new work to, and this decision will be based on various factors. If there is work that comes in that is more than the Line Troubleman or Traveling Operator can handle, such as work that requires more than one person, the DSOS will decide whether it is necessary to call in additional field employees. If it is necessary, the DSOS will determine the number and composition of crew that should be called in. While the evidence does not establish that it is the DSOS who decide which specific employees responding to a call-in will perform the work, that factor is not dispositive of their assignment authority under *Entergy Mississippi, Inc*. If additional work comes in after a crew has been called in, the DSOS will determine whether that crew should perform the new work or whether it is necessary to call in a second crew to perform the work. The DSOS rely on their training and knowledge, and evaluate various factors, when making these decisions. Accordingly, the DSOS in this case are similar to the dispatchers at issue in *Entergy Mississippi, Inc*., and I conclude the

Employer has met its burden to establish that the DSOS assign employees within the meaning of *Oakwood.*

2. Responsible Direction

In *Oakwood Healthcare, Inc*., the Board clarified and defined the term "responsibly direct." 348 NLRB at 69l. The Board explained that if an individual has employees "under him" and if the individual decides "what job shall be undertaken next or who shall do it," that individual is a supervisor, provided that the direction is both "responsible" and carried out with independent judgment. Under the Board's definition, "for direction to be 'responsible,' the person directing and performing the oversight of the employee 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." *Id.* at 691–692. The Board held that to establish accountability, "it 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 also must 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. This prospect of adverse consequences "must be a more-than-merely-paper showing that such a prospect exists." *Golden Crest*, 348 NLRB at 731. The Board will not find accountability where the evidence shows that the putative supervisors "are accountable for their *own* performance or lack thereof, not the performance of *others*." *Oakwood Healthcare*, 348 NLRB at 695. Moreover, simply stating the putative supervisor is held accountable for the errors of subordinates does not establish accountability in the absence of evidence showing how or for what they are held accountable. *See Buchanan Marine, L.P.*, 363 NLRB 523 (2015). In *Oakwood Healthcar*e itself, the Board found that accountability had not been shown because there was no evidence that the asserted supervisors had to take corrective action if their subordinates failed to properly perform their tasks, nor was there any indication the asserted supervisors were subject to discipline (or lower evaluations) if their subordinates failed to adequately perform the tasks in which they were directed. 348 NLRB at 694–695; *see also Buchanan Marine, L.P.*, 363 NLRB 523 (2015) (simply stating putative supervisor is held accountable for errors of subordinates does not establish accountability in absence of evidence showing how or for what they are held accountable).Similarly, in *Entergy Mississippi, Inc.*, the Board found the dispatchers lacked authority to responsibly direct when the record failed to show that dispatchers were held accountable for "work deficiencies" of the field employees they purportedly supervised. 357 NLRB 2150, 2154-2155 (2011), affd in relevant part 810 F.3d 287, 295–96 (5th Cir. 2015).

In this case, the record evidence establishes that the DSOS give day-to-day directions to the Line Troublemen and the Traveling Operators and direct these employees to perform various tasks, such as completing the steps in a switching order. However, the evidence fails to establish that the DSOS are held accountable for the performance of these tasks by the Troublemen and Traveling Operators. There is no evidence that the DSOS could be disciplined, or face any adverse consequence, for a Troublemen or Traveling Operator's performance, or lack thereof, of a task assigned to them. Nor is there any evidence that a DSOS has ever been disciplined for a Troublemen or Traveling Operator's deficient performance in a task assigned to them. Superintendent David Huff's testimony regarding the issuance of a Performance Improvement Plan to a DSOS, and his testimony concerning field employee's complaining about a DSOS including incorrect information in a call-out, establishes only that DSOS are held accountable for their own performance, it does not speak to DSOS accountability for the performance of others.

Based on the absence of any record evidence that DSOS are held accountable for the performance of the Troublemen and Traveling Operators, the Employer has not sustained its burden of demonstrating the DSOS responsibly direct employees within the meaning of *Oakwood.*

3. Disciplinary Authority

To establish the supervisory authority to discipline, asserted disciplinary authority "must lead to personnel action, without the independent investigation or review of other management personnel." *Transdev Servs., Inc.* 373 NLRB No. 122 (2024) (quoting *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002)). Warnings that simply bring substandard performance to the employer's attention without recommendations for future discipline serve nothing more than a reporting function and are not evidence of supervisory authority. See *Veolia Transportation Services*, 363 NLRB No. 98 (2016); *Williamette Industries, Inc.*, 336 NLRB 743, 744 (2001); *Loyalhanna Health Care Associates*, 332 NLRB 933, 934 (2000) (warning merely reportorial where it simply described incident, did not recommend disposition, and higher authority determined what, if any, discipline was warranted); *Ten Broeck Commons*, 320 NLRB 806, 812 (1996) (written warnings that are merely reportorial and not linked to disciplinary action affecting job status are not evidence of supervisory authority).

In this case, the evidence fails to establish that the DSOS either discipline employees or effectively recommend discipline. Nothing in the record shows that the DSOS have issued discipline or possess the authority to do so. When a switching error occurs, the DSOS is responsible for reporting the incident by completing a switching error form that factually describes what happened, including the details of the work that was taking place at the time and the actions that occurred. After the form is submitted, upper management then conducts fact-finding and determines whether discipline is warranted. Although the record contains one example in which a switching error form completed by a DSOS preceded the discipline of a Line Troubleman, that example is consistent with the form's reportorial nature: the DSOS documented the incident, while upper management decided whether to impose discipline and at what level. The record contains no evidence concerning what weight upper management gives the information contained in the switching error form during this process, that the DSOS recommends discipline, participates in the fact-finding or disciplinary decision, or prepares any resulting discipline. Accordingly, the record evidence establishes the switching error forms are reportorial in nature and not evidence of supervisory authority. *See, e.g.*, *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890 (1997) (putative supervisors used forms to document incidents, but form did not prompt recommendation, there was no evidence putative supervisors otherwise recommended whether discipline should ensue, and employer did not follow progressive disciplinary system and there was no evidence a particular offense would lead to a particular form of discipline).

Given the above, the Employer has not sustained its burden of demonstrating the DSOS have the authority to discipline employees or effectively recommend discipline.

B. <u>Managerial Status Distribution System Operating Supervisors (DSOS)</u>

The Employer asserts that the DSOS are managerial employees because they formulate and effectuate management policies through the exercise of substantial independent discretion in resource allocation, operational strategy, safety compliance, and emergency response and that their interests are aligned with management, rather than rank-and-file employees.

The record evidence is insufficient to establish the DSOS are managerial employees. There is no evidence that the DSOS have any role in formulating Employer policies. The DSOS role in prioritizing work, assigning work to Line Troublemen and Traveling Operators, and performing callouts in the ARCOS system are not actions that rise to the level of formulating and effectuating "high level" employer policies. Managerial status is not conferred upon employees simply because the nature of their work requires the exercise of discretion and judgment in applying their technical skills. *See General Dynamics Corp.*, 213 NLRB 851, 857 (1974). Furthermore, the DSOS are supervised by Superintendents, who in turn report to a Manager. Thus, the DSOS are not high in the Employer's managerial or operational structure. They are simply a first-level supervisor, and I am only finding them to be supervisors based on their authority to exercise one of the supervisory indicia for employees in two job classifications. These are not the high-level executives the Board finds to be managerial employees. Accordingly, the Employer has failed to meet its burden to establish the DSOS are managerial employees.

V. CONCLUSION

Based on the record and relevant Board law, I find that the Employer has met its burden to establish that the DSOS II are supervisors within the meaning of Section 2(11) of the Act based on their authority to assign employees. Regarding the DSOS I position, the record evidence was not particularly clear on whether the DSOS I exercise the same authority as the DSOS II. However, the record evidence establishes the Employer does not currently employ anyone in the DSOS I position, and therefore it would be inappropriate to order an election for a bargaining unit that currently includes zero employees. *See, e.g.*, *Mount St. Joseph's Home for Girls*, 229 NLRB 251 (1977) (it is contrary to Board policy to certify a representative for unit consisting of only one employee).Finally, while the Employer asserted that if an election is ordered, the bargaining unit must include DSOS Senior, that issue is moot because I find DSOS II are supervisors in accordance with Section 2(11) of the Act.

Accordingly, **IT IS ORDERED** that the petition is dismissed.

RIGHT TO REQUEST REVIEW

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

Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.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 November 24, 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 November 24, 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: November 9, 2026



ANDREA J. WILKES
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 14
1222 SPRUCE ST, RM 8.302
SAINT LOUIS, MO 63103-2829