

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

J.R. SIMPLOT COMPANY

Employer

and

Case 19-RC-14533

TEAMSTERS UNION LOCAL 839, affiliated
with the INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record¹ in this proceeding, the undersigned makes the following findings and conclusions.²

SUMMARY

The Employer is engaged in the business of operating a food processing plant at its facility in Pasco, Washington ("Facility"). Petitioner filed the instant petition seeking a unit of all full-time and regular part-time employees including but not limited to warehouse employees, seasonal employees, lead operators, scale house attendants, corn field scouts, field scouts, and production operation leads, employed at the Employer's Facility. The Employer argues that all lead men or lead persons are statutory supervisors within the meaning of Section 2(11) of the Act and, thus, should be excluded from the unit. Based on the following facts and legal analysis, I find that Boiler/Refrigeration Leads, Rebuild Leads, and Quality Leads are supervisors and should be excluded from the appropriate unit. However, I reject the Employer's contention that Production Leads, Maintenance Leads, Sanitation Leads, and Microbiology Technician Leads³ are statutory supervisors and thus, I shall include them in the unit.

Below, I have set forth the evidence, as revealed by the record in this matter, relating to background information on the Employer's operations and relating to the duties and responsibilities of the Production Leads, Sanitation Leads, Maintenance Leads,

¹ Both parties timely submitted briefs, which were duly considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ This position is also referred to in the record as Bacteriology Lead.

Boiler/Refrigeration Leads, Rebuild Leads, Quality Leads, and Microbiology Technician Leads.⁴ Following the evidence section is my legal analysis of the evidence, my conclusion and direction of election.

I. EVIDENCE

A. Background

The Employer is engaged in the operation of a vegetable processing plant, including potato products, roasted products (roasted potatoes & roasted vegetables), mashed potatoes, white carrots, cobbled corn, canned corn, and dehydrafrozen potatoes, throughout the state of Washington, including a plant located in Pasco, Washington, the only facility involved herein. The Facility is comprised of two buildings and is open year-round, seven days a week, twenty-four hours a day. During the peak (or corn) season, from July through October, the Employer hires up to 700 employees. During the non-peak season, the Employer has about 200-300 employees at its Facility. At the time of the representation hearing in this matter, the Employer had about 150 employees at the Facility but predicted an increase during the month of July 2004. Many of the employees during the peak season are temporary employees, some of whom are provided by a company called BBSI.⁵

The Employer runs seven lines at its Facility for both the peak and non-peak seasons. During the non-peak season, it does not run the corn line as that line is shared with the mash (mash potato) line, which replaces corn. Some lines run three eight-hour shifts (6:00 to 2:00, 2:00 to 10:00 and 10:00 to 6:00) while other lines run two ten-hour shifts (6:00 a.m. to 4:30 p.m. and 6:30 p.m. to 4:00 or 4:30 a.m.).

The Employer has the following departments at its Pasco Facility: Production, Engineering, Maintenance, Quality,⁶ Human Resources (“HR”), Financial, and Agricultural.⁷ The

⁴ During its opening statement in the representation hearing in this matter, the Employer contested the inclusion of Electrical Leads and the “Lead Seven” on the basis that they are 2(11) supervisors. However, the Employer has not presented any evidence in support of its position with regard to these two positions. Three individuals listed in Employer’s Exhibit 2 are identified as “Electrical” in addition to their other positions as Maintenance and Boiler/Refrigeration Leads. As such, it is unclear whether the Employer is maintaining its position that Electrical Leads are statutory supervisors. To the extent there are any employees holding this position, I shall permit employees in this position to vote subject to challenge as I cannot determine from the record whether it is appropriate to include or exclude these leads. In addition, only one individual is listed as a “Lead Seven” employee but the record is silent regarding the individual’s “Lead Seven” duties and responsibilities. However, this individual is also listed as a Production/Sanitation Lead. Regardless, I shall also permit the “Lead Seven” to vote subject to challenge as the record does not provide sufficient information as to whether it is appropriate to include or exclude the Lead Seven.

⁵ During the representation hearing in this matter, the parties stipulated that workers supplied by BBSI to the Employer are excluded from the instant petition for election and will not be eligible to vote in the election. However, the Union reserved its right to file a petition and to represent workers supplied by BBSI to the Employer or employees of BBSI in an appropriate unit in the future. The Employer reserves its right to argue that the workers supplied by BBSI to the Employer or employees of BBSI are not employees of the Employer or that any proposed unit is not appropriate and/or to present any other arguments or position relating to workers supplied by BBSI to the ER or employees of BBSI in the future. It is also understood that neither the Employer nor the Union has the authority to waive any rights on behalf of BBSI. All parties, including BBSI, have stipulated to the above agreement.

⁶ This department is also referred to in the record as Technical Service.

⁷ The organizational chart in Employer’s Exhibit 1 indicates there are other areas within the Facility, including Raw Product Procurement and Purchasing. However, it is unclear from the record whether these additional areas constitute actual “departments.” In addition, it appears the Process Manager and

Maintenance Department includes Mechanical,⁸ Electrical, Rebuild, and Boiler/Refrigeration groups. All the department managers, whose positions are highlighted in Employer's Exhibit 1, appear to report to Pasco Plant Manager, Larry Ring. There are a total of about twenty-five to twenty-eight leads during the peak season and a few less during the non-peak season. Currently, the breakdown of leads per department is as follows: Production (13), Sanitation (3), Maintenance (3), Boiler/Refrigeration (1), Rebuild (1), Quality (3), and Microbiology Technician (1).

Like all employees, leads punch a time clock, are paid hourly, and share in overtime opportunities. The parties stipulated that leads are eligible for benefits that are contained and described in the Employer's Handbook (p. 3) to the same extent as other hourly employees with a couple exceptions. Thus, the "J.R. Simplot Pasco Plant Seniority Plan" does not apply to lead employees. In addition, at 11:00 every morning, there is a "production meeting" which includes representatives from Quality Control, Maintenance, HR, Accounting, and possibly Electrical. Also present are Larry Ring, Michael Karstadt (Production Manager) or Eilidh Wilson (Process Manager), and the Team Advisor ("TA")⁹ from the Production Department.¹⁰ If the TA is unavailable, he or she will send a representative, who is usually a lead. Employees do not attend this meeting.

B. Disputed Supervisory Positions

1. Production Department Leads

The Production Department includes the largest number of employees. Karstadt heads this department, along with seven TAs.¹¹ Leads report to both Karstadt and the TAs. Among the seven TAs are a Production Scheduler, a new TA who has yet not started, and an open slot, which has not been filled for about a year. All TAs are paid a salary averaging about \$50,000 and are not entitled to overtime. TAs spend approximately 70-80% of their time in the control room and 20-30% on the production line. There is usually one TA per shift in the Production Department, but there can be more than one per shift during the peak season. When a TA is unavailable due to sickness or annual leave, a lead will step in as TA Relief ("TAR"), meaning he or she is the sole person in charge of the shift.¹² Leads are never the highest authority.

During peak season, there are five or six leads per shift; during non-peak, there are two or three. There have been occasions where there is no TA at night, in which case one of the leads would act as TAR. Production Leads at Level 6¹³ and above are eligible to act as TARs.

the Plant Engineer report directly to Plant Manager Larry Ring similar to the managers of the other identified departments.

⁸ This subset of the Maintenance Department is referred throughout the record as simply "Maintenance."

⁹ Production Manager Karstadt also referred to Team Advisors as Shift Managers.

¹⁰ The parties stipulated to exclude the positions of Team Advisor and Production Manager on the basis that the individuals holding these positions have the authority to hire, fire, and to discipline employees, and, therefore, are supervisors as that term is defined in Section 2(11) of the Act. In view of the parties' stipulation and the record in this case, I shall exclude the Team Advisor and Production Manager positions from the unit.

¹¹ During the weekends, TAs act as the plant manager or production manager--they essentially run the whole Facility.

¹² When deciding upon who becomes a TAR, the Employer's witness stated that it looks for someone with initiative, someone who can make decisions and is not afraid to accept the consequences of those decisions, someone who can be prepared to act in the case of an emergency, and who has the Pasco Facility in his or her best interest.

¹³ Production Leads have various numerical designations to their positions, which signify the number of years with the Employer and their wage category. According to Employer's Exhibit 5, there are

Unlike TAs, Production Leads receive an hourly wage averaging between \$13.63 to \$16.14 an hour in accordance with the Employer's Production Full-time/Seasonal Job List in Employer's Exhibit 5.

Production Leads ensure operators on the lines are producing the product to specifications that are laid out for that particular product. In so doing, they oversee about eight to twelve operators for their respective lines. Because there are typically three to six leads working per shift, they sometimes oversee two lines. Leads ensure that operators are running their pieces of equipment to the right specifications, temperature, time and speed. If a product does not meet specifications, the Production Lead makes any necessary changes to get the product back in grade. The process in which changes are made is described in detail below. Throughout the course of a day, the Production Lead reports to the TA on shift on average ten to twelve times regarding such things as specifications of the products, "material in the plane", and availability of certain chemicals. They also report to Production Manager Karstadt about three to five times a day for similar reasons. Overall, they have more direct contact with operators working the lines than the TAs.

On average, Production Leads spend between 50-80% of their time on the lines and other 20-50% doing clerical work in the Employer's control room.¹⁴ However, Graviel Maldonado, a Production Lead, testified that he only runs a piece of equipment on the line when he is missing an operator.

a. Hiring / Firing / Transferring

The Production Leads do not have a primary role in hiring, firing, or transferring employees. Those involved in the hire of employees outside of the Employer include the TA and a representative of HR.¹⁵ However, there have been times on one or more occasions, where a senior lead stood in for a TA during interviews. According to Karstadt, there has been no instance of a production lead interviewing an applicant alone.

There is no evidence of Production Leads discharging or effectively recommending the discharge of an employee. The record reveals once instance when Production Lead Maldonado had a discussion with an employee training a bagger operator. During that discussion, the trainer supposedly informed Maldonado that the bagger operator's performance was not up to par. According to TA Mary Chamberlain, who was the TA during the shift in which the issue arose, Maldonado recommended that Chamberlain replace the bagger operator. While Chamberlain testified that she followed Maldonado's recommendation in this regard, Maldonado testified that he did not recall ever having such a discussion with anyone regarding replacing the bagger operator. Notwithstanding this conflict in testimony, the record reveals that the Employer did not act actually replace the bagger operator until five weeks after the issue arose.

a total of seventeen levels at the Facility. The Production Department Leads who are at Level 6 and above, and who act as TARs, include the following: Jose Curiel, Marivel Guerra, Elio Carballo, Graviel Maldonado, David Marquez, Jorge Trigo, Javier Verduzco, and Maria Toscano. Graviel Maldonado is the only Production Lead who testified at the hearing in this matter.

¹⁴ At the end of a shift, a lead will prepare a "Shift Recap," where he or she writes whether there were any major problems, accidents, break downs, pounds produced, etc. The lead may also give the information to the TA during the shift to prepare the Shift Recap. The lead or TA will then enter the Recap into the Employer's computer system and e-mail it to other TAs, the Production Manager, Quality Department, Accounting, Operations, and other departments.

¹⁵ HR is also referred to in the record as "personnel" representative.

With regard to the transfer of employees within the Facility to the Production Department, Production Leads take part in the interview process but do not make any final decisions in that regard. Others present at the interview of candidates include a TA and an HR representative. Together, they ask questions prepared in advance by HR concerning safety and other issues. The interviewers then score each candidate and the Production Lead or HR representative will then forward the list of candidates and scores to the HR Department. At that point, there is no discussion about who should be hired. The candidate with the highest score will typically get the job. However, there is no evidence of what happens in the application process once the list and scores are passed on to HR.

There is conflicting testimony in the record regarding the role that Maldonado played in the transfer of one employee to the mash line. According to Process Manager Eilidh Wilson, Maldonado recommended that James Valle be given an opportunity to run the mash line for a season, as Maldonado felt Valle was a hard worker and should be allowed to demonstrate his ability. On the other hand, Maldonado stated that Wilson approached Maldonado and asked him whom he thought would be good to work the mash line. Maldonado stated that he suggested two candidates but that he did not say anything in support of either candidate. Notwithstanding the nature of the conversation between Maldonado and Wilson, Wilson testified that she spoke with Production Manager Karstadt and other TAs to discuss Valle's qualifications to run the mash line. Wilson made the final decision to transfer Maldonado, after receiving Karstadt's approval. She did not consult any further with Maldonado before making this decision.

b. Discipline

The Employer has a progressive disciplinary policy, which begins with the issuance of a first warning that is documented by a Discipline Notice in the employee's file. This is followed by a second warning which includes another written warning and possibly suspension. Following the two warnings, an employee may be terminated depending on the severity of the infraction. Prior to triggering the disciplinary process, the Production Leads and/or TAs often discuss issues informally with employees to gather facts and allow employees to respond. Such discussion is documented in an "Incident Report," which serves to memorialize that a conversation with an employee took place. Production Lead Graviel Maldonado testified he did not know whether these Incident Reports had any effect on the employee. Regardless, the record is clear that if the employee continues to do something wrong, such could trigger the disciplinary process and lead to the first Discipline Notice described above. The Employer also has in place a strict policy for absences and tardies.¹⁶

Production Leads are involved in initial discussions with employees regarding any issues relating to the preparation of an Incident Report. In so doing, they have the ability to coach or counsel employees regarding the incident at issue and investigate any potential disciplinary issue. Once the lead discusses the matter with an employee, he or she completes the Incident

¹⁶ For temporary hourly employees, the Employer allows for four occurrences within a 12-month period before the employee would be discharged from employment; regular hourly employees are allowed up to six occurrences before termination. An occurrence is defined as any scheduled time missed away from work without the consent or approval by the Employer. For all hourly employees, any scheduled day missed completely without any contact made to the personnel office within the first hour from the beginning of the employee's scheduled shift (herein "no call-no show"), will lead to a written warning and suspension. Upon the second no call-no show, he/she is released from employment. Petitioner's Exhibit 3 and Exhibit 4.

Report, including a section called, "Outline of Problem and Action." The lead then passes it on to the TA, who has the ability to accept or reject the Incident Report. The TA (not the lead) then presents the report to the employee for a response and/or to sign the Report. The TA can choose to have the lead present during the meeting with the employee to help gather facts.¹⁷ Once the lead and TA both sign the Incident Report, HR then reviews the report and must decide whether to conduct an independent investigation. At all times, the TA involved also possesses such discretion to further investigate the matter beyond any investigation that may have been conducted by the lead. The record does not say whether the TA returns the Incident Report to the lead to pass on to HR.

When an employee has continued to violate policy sufficient to trigger the discipline process, the Production Lead plays a more limited role. In this regard, it is "standard operating procedure" for Production Leads to investigate and take part in discussions with the employee at issue, along with a TA (or TAR) and an HR representative.¹⁸ Participants in these discussions usually go over the facts and circumstances with the employee and allow the employee to respond. The record does not provide further details about the content of these discussions or about who has authority to say what. By the end of the discussion, the HR representative and/or a TA will complete a Discipline Notice, including an explanation of events and corrective action. In some instances, the Production Lead will then fill out the Disciplinary Notice.

In addition to the record testimony described above, Maldonado testified that no one has ever asked him whether an employee should be disciplined but he may make a recommendation regarding the level of discipline to impose on an employee for attendance violations. TA Chamberlain testified that she has followed recommendations from leads for discipline but did not provide details about any such instances. She also testified that upon receiving a recommendation for discipline, the TA and/or the HR representative will conduct an investigation even after the lead has completed his or her own investigation. In the end, it is the TA (or TAR) and the HR representative who make the decision whether to give the person a verbal or written warning, depending on the severity of the offense. The Production Lead, alone, generally cannot issue a first or second warning. When a warning or notice is provided to an employee during a meeting, all those present then sign the notice or warning and the HR person files the document. With the exception of one instance presented in the record, there is always a TA or TAR who signs the Discipline Notice.¹⁹ The process of issuing Discipline

¹⁷ TA Chamberlain testified that if the employee at issue only speaks Spanish, she usually asks the leads to be present to help with translating. All leads, except for one, speak Spanish. However, she also stated that she does not need to be present when the Spanish-speaking lead discusses the issue(s) with the employee--she can always review the document later. Even if Chamberlain is present, she stated she is there more as a witness in case there are later accusations, and will let the leads lead the discussion with the employee.

¹⁸ Chamberlain testified that all leads have the ability and authority to investigate potential violations of certain rules of conduct, such as clothing checks, theft, absences, tardiness, etc. With regard to attendance issues, typically, if an employee is absent without an excuse, the lead contacts HR, which checks the employee's attendance record and handles the "occurrence issuance" for the absence in accordance with the Employer's employee handbook. HR also keeps tabs on the amount of employee absences. The lead has no ability to intervene or deviate from the Employer's attendance policy. After contacting HR regarding the attendance issue, the HR representative, in the presence of the lead, will inform the employee of the attendance violation.

¹⁹ The Employer presented a copy of a Discipline Notice, which concerned an attendance issue and which was signed by David Marquez, a Production Lead, a HR Representative and by the employee with the attendance issue. It is unclear from the record whether Marquez signed this notice in his capacity as

Notices by the TA, HR and with some involvement of the lead, is carried through with the subsequent issuance of a second warning. Eventually, Production Manager Karstadt learns of the issuance of Discipline Notices but does not review the notices before they are issued. After the second warning, the HR Department, Karstadt and/or management at the corporate level essentially take over the lead on any subsequent disciplinary process.

Contrary to the disciplinary process described above, the record reveals either exceptions to the process or conflicting evidence. In particular, TA Chamberlain stated she was aware of Maldonado and Javier Verduzco, the Sanitation Lead, issuing a Disciplinary Notice to a mixer operator due to performance issues and the slapping of another employee. It appears that Maldonado was acting in his capacity as a lead when the slapping issue arose, as Chamberlain was the TA on shift that day. It is unclear, however, whether Verduzco was acting as a TAR.²⁰ Notwithstanding either of these leads' roles when they issued the Disciplinary Notice, it appears that the HR Department conducted a separate investigation regarding the slapping issue and that the HR Manager at the time, Ricardo Goradavo, spoke to both leads and probably the employee. It is unclear from the record exactly who made the decision to issue the Disciplinary Notice to this employee because Chamberlain based her conclusion about it being Maldonado based on nothing more than her review of an Employer document or documents that were not identified in the record. With regard to the performance issue, Chamberlain testified that she issued the final write-up to that employee upon Goradavo's instruction. She was unsure, however, whether it was Goradavo or Maldonado who made the decision to issue that discipline.

On another occasion, a Production Lead discovered an employee on an unauthorized break due to her falling asleep in her car. The lead called Production Manager Karstadt, who told the lead to call personnel (HR). It is unclear what resulted from the lead's call to HR, if anything. Maldonado stated that in his capacity as TAR, he has the ability to send people home without consulting with anyone, if he felt it was critical to do so. For example, there was one occasion when Maldonado believed an employee had left work for two hours, without permission. Despite the employee's claim that he was not absent from work but had only gone outside for a short period of time, Maldonado instructed the employee to go home until further notice. After being sent home, the employee did not show up again for work so Maldonado assumed that he was terminated. It was Maldonado's decision, as TAR, to send that employee home; the lead during that shift did not make any recommendation with regard to discipline for that employee. There is nothing in the record about what happened to the employee after Maldonado sent him home and whether there was any separate investigation.

The record establishes that all employees, including Production Leads, can report any conduct or behavior that goes against the Employer's policies. Such conduct would include drug use or violation of the Employer's lock-out/tag-out policy.²¹ The Employer's Substance Abuse Policy provides that if there is suspicious conduct that would indicate drug use, the employee should be tested. At least two leads, including Maldonado, have recommended drug testing for employees. According to Chamberlain, Maldonado volunteered to take the

a TAR or as a lead. Further, there is no consistency in the Employer's exhibits regarding whether a lead signs on the line marked "Direct Supervisor" or "Team Leader." Marquez did not testify at hearing in this matter.

²⁰ Although the record establishes that Verduzco was the TAR for the last four months, there is no time reference in connection with this particular disciplinary issue in the record evidence.

²¹ Employees are notified and trained concerning these policies.

employees to get drug tested. The record is silent regarding the results of the drug test and whether any discipline resulted.

c. Evaluating / Promoting

In the Production Department, there is no regular evaluation system for individual employees.²² Production Manager Karstadt stated that he has not communicated to leads about their part in the evaluation process. He testified, “the evaluation of the hourly employees is not something that we do that well.” To the extent there are performance evaluations, these take place annually for key positions. Key positions include Bag Operator, Tegra Operator, and Blancher/Dryer Operator.²³ There is ample evidence in the documentary record that Production Leads have completed and co-signed performance evaluations, along with an HR representative and sometimes a TA. Maldonado stated that he has prepared performance reviews for Production employees by himself and sometimes with another lead, in which case they will come to an agreement on the ratings. Once completed and signed by him, Maldonado passes it on to the TA. The evaluations eventually reach HR where the HR Manager has rejected ten to twenty evaluations out of about forty to fifty evaluations that Maldonado has prepared. There is no evidence about whether these evaluations have any impact on an evaluated employee’s wages or job status. The record reveals that the evaluations are kept with HR.²⁴

d. Responsibly Directing and Assigning Work

Production Leads have the ability to move people along the production line based on the need for more people in one particular area, the need for more volume to be produced, a variation in a product or quality of the product, and the demands of a piece of equipment. Before moving people, leads consult with TAs more often than not. The record reveals that those who are moved are essentially performing the same function. For example, the lead would not take an operator and move the operator to a palletfax. The only example of the leads using any discretion other than moving people around, is selecting someone who can lift a particular weight, in which case the lead would move a particular employee who was strong enough for that position.

During the non-peak (or non-corn) season, the lead can move people over to the rework line. Reworking means resending a product through the production line usually because either the product failed to meet the specifications or a metal detector was not working when the product first ran through the production line. Maldonado testified that when a product requires rework, he usually lets the operator on a line know it is out of grade and instructs the operator to make any necessary adjustments. The operator will make any corrections as per the production guidelines for that product. The TA on the shift, in consultation with the Lead, decides on the specifics for rework, such as how to get the rework done, and when to get it done while other products are being run on the bulk line. The TA might delegate that responsibility to the lead. However, the record does not reveal the frequency of TAs delegating this responsibility to

²² Production Manager Karstadt testified that team leaders are evaluated “as a group.” However, the record is silent with regard to the details of these group evaluations.

²³ These individuals are considered skilled employees and start at Level 3 on the Employer’s pay scale (\$9.73 and up). Key employees have the ability to read, write and understand settings on equipment. There are approximately three to five key positions in each production line.

²⁴ It is also noteworthy that the Production Department Leads do not have access to employees’ personnel records or files.

Production Leads or the types of situations which would warrant such shifting of responsibility or what that responsibility entails. Nonetheless, Production Manager Karstadt is confident that Production Leads can assume this responsibility. He testified, "Most of the leads at our plant started as operators or in a lower level position and they worked their way up. So they have very intimate knowledge of the line and the equipment and know the employees . . ."

When a problem causes a production line to shut down, the Production Lead on the line immediately notifies the Maintenance Department and the TA or other superiors. It is not clear from the record whom the Production Lead contacts first. When contacting the Maintenance Department, a maintenance employee would likely address how long the repair would take. The lead never provides possible solutions. When contacting the TA, the Production Department Lead informs the TA of how long the line will be down and whether the product can be saved or whether it will be wasted. The lead also usually discusses with the TA whether the lead should restart the line in spite of the problem.

When it appears the line will be down for a little while, it is routine for the leads to suggest clean up of the equipment during the breakdown. However, Maldonado stated that the TAs do not always follow his recommendation for clean up. If it is apparent that the line is going to remain down for a significant period and the Maintenance employees are unable to complete the repair any time soon, the TA typically makes the decision to do rework on the line or send employees home. Once the TA makes this decision, he or she will give the lead instructions on what to do, who in turn, informs the rest of the department about how to proceed. If it appears to be a major breakdown, Chamberlain stated she would call Production Manager Karstadt, who could send some people home. The record reveals that there is nothing standard about a breakdown. Further, there is nothing standard about whether and what Production Leads tell the TAs when a breakdown occurs. Chamberlain stated that she is sometimes informed about a breakdown after the fact, but that it depends on the lead.

e. Team Advisor Relief

TARs perform the same duties as TAs when the need arises. The need for TARs only arises when a TA is on vacation or has taken ill. Maldonado considers himself "vacation and sick relief." Process Manager Eilidh Wilson stated that since January of this year, there has been an open TA slot during about 4 shifts a week. This open slot would be assigned among the available TARs. Wilson admits that the Employer has been unusually short of TAs since January as the Production Department is short one TA, has not yet filled the open position, and many TAs have taken all their accrued leave within the last few months due to a change in the Employer's vacation policy. During corn season (from July through October), there usually are no TARs. According to TA Chamberlain, TAs do not miss the corn season unless it is absolutely necessary due to sickness.

f. Secondary Indicia

Production Leads do not have authority to grant time off, such as vacation or sick leave. The TAs historically handled scheduling of work. However, beginning in June 2004, the HR Department has taken over all scheduling duties. Thus, if a production employee plans to take time off or will be late, he or she will go directly to HR, not to the lead. When an employee is ill, Production Leads usually inform the TA on shift or send the employee directly to the HR

Department.²⁵ The lead or TA would then make the call to either move people or request additional help.

With regard to granting overtime, Production Manager Karstadt testified that absolutely no employee (including TAs and leads) is allowed to hold anyone over for overtime without discussing it first with Karstadt. This testimony is in stark contrast to TA Chamberlain's testimony that employees all know that they are to stay at their posts until someone fills in for them and in stark contrast to other record evidence that leads have held over employees when the need arises. The Employer recognizes, however, that it cannot force someone to stay if the employee decides he or she has to leave. The leads may also recommend employee overtime to a TA or TAR on a shift, who will then call Karstadt to request overtime for an employee.

About once a month, Production Leads meet with supervisors and TAs to discuss certain production functions, problems, issues regarding motivation and goals, new developments, operation improvements, programming, activities, etc. There are separate meetings for department heads only, to which neither TAs nor leads are invited.²⁶ Every Wednesday, there is also a TA meeting with the Production Manager. The Production Leads attend this TA meeting but Production employees do not. Leads also have separate crew meetings to communicate with the employees about what is going on the line.

Like TAs, leads have access to Employer computers and its email system. Five computers along with a number of desks are located in a portion of the Production Department's control room. In the Production Department, only TAs, Karstadt, and leads have e-mail addresses. The TAs, leads, scheduler, and operations lead,²⁷ all share use of these computers. In the other section of the control room there are two computers that all electricians use, and another computer is located outside of the control room.²⁸ TA Chamberlain stated she has her own desk.

The leads share the same break room/lunchroom, and restrooms with other hourly employees. However, TAs and other statutory supervisors also use the same break room. Unlike TAs, leads do not have cell phones. Instead, leads carry radios, which allow them to communicate throughout the plant. Leads do not wear anything to identify him or her as a lead. TAs do not punch in the time clock.

Finally, Maldonado stated that he does not consider himself a supervisor. Moreover, he does not have any authority to purchase goods or services on behalf of the Employer in either his capacity as lead or TAR.

²⁵ If a person in a key position is sick, the lead will first address it with a TA, who will then make the decision to send the employee home or call someone (likely HR) to see if he or she can release the employee. HR will then choose the replacing employee from those persons who were not working, off of a list.

²⁶ While there have been times where a lead or TA can come and present a particular issue, they are not subject to a standing weekly invitation to that meeting.

²⁷ There is no description in the record on the position of Operations Lead. The Employer has not specifically objected to the inclusion of this position in the unit. Based on the foregoing and the record as a whole, I shall include position of Operations Lead in the unit.

²⁸ The record does not disclose which employees use the computer outside the control room.

2. Sanitation Leads

There are three Sanitation Leads at the Facility (one per shift) who oversee about twenty employees in the Sanitation Department.²⁹ Leads report to the Sanitation TA. The Sanitation Department has been without a TA for the last four months prior to the hearing in this matter. During that time, Sanitation Lead Javier Verduzco has been filling the position as TAR.

The record was not clear on this point but it appears that the Sanitation TA focuses on cleaning blocked (clogged) production lines and keeping notes,³⁰ while the Sanitation Leads carry out the directions from the TAs. In so doing, leads are responsible for ensuring the entire Facility³¹ is cleaned and that employees carry out their duties to clean the lines. They also ensure chemicals and the right protective equipment are in place and that employees are cleaning the right areas and in the right time frame. Leads have no role in training people for use of personal protective equipment or chemical supplies. The vendor supplying chemicals will conduct actual training.

There are about ten to fifteen employees during the non-peak season. During the non-peak season, Sanitation employees become part of the Production crew. In this instance, Sanitation Leads continue to provide instruction and guidance to Production employees with regard to cleaning work, particularly for any new employees. When a clean up takes place during their respective shifts, Production employees are required to clean their lines. During the non-peak period, clean ups do not always happen on every shift. As a result, Production employees can work several shifts without ever having to clean. Recently, everyone on the Sanitation crew and Production crew has been trained to clean lines.³² Additionally, there are specific instructions for each line, as lines may require particular cleaning instructions and chemicals. All employees understand that when necessary, they must clean their respective lines and put on their protective gear.

The Employer will inform a Sanitation Lead when there is a need to prioritize work due to a limited time frame for cleaning.³³ For example, when the lead must complete a 4-hour clean up in 2 hours, the lead must prioritize and figure out what to clean-up in a reduced period of time. In such instances, the lead may move someone to another area to help get that area cleaned quicker. However, the record also reveals that when faced with more time-sensitive cleaning problems, the Sanitation Manager³⁴ decides what work to assign to people. For example, when pipes plug up, and the pipes need to be unblocked (or unplugged), the product may spill to the floor and require cleaning. In this situation, the Sanitation Manager would take over the assignment of work.

When lines are down during peak season, the Sanitation Manager (not Sanitation Lead) decides what work to assign people. Certain equipment requires continuous cleaning even

²⁹ There are a total of five Sanitation Lead positions. Karstadt stated that in addition to the three positions currently filled, the Sanitation Department also has a seasonal person and is looking for another person to fill the fifth position.

³⁰ The Employer did not elaborate on the nature and extent of the Sanitation TAs keeping of notes.

³¹ The Facility covers roughly 160,000 square feet.

³² The record is unclear whether the Sanitation crew is trained to clean all lines versus any particular line(s), and whether production employees' training is limited to their respective lines.

³³ The record does not state exactly who informs the Sanitation Lead about the need to prioritize work due to shortened time.

³⁴ There is no description of duties in the record or any reference in the documentary evidence to this position.

during peak season. During non-peak times, there is a routine cleaning of the lines and equipment, with direction from the Employer's corporate office as to number of times a line must be cleaned and what to look for when cleaning (i.e., wisteria). However, the corporate office will not provide detailed instructions regarding actual procedure for cleaning. Rather, the lead on the line or plant personnel³⁵ provides those instructions.

With regard to hiring employees, a Sanitation Lead is generally part of the interview team, along with the TA and HR representative. However, leads are not required to attend the interview. To the extent they do attend and ask questions, the questions asked are prepared in advance by HR and are assigned scores. Leads will then discuss their impressions of the candidates with the other interviewers and make recommendations accordingly. There is no evidence in the record of an instance where leads have ever recommended the hiring of someone for the Sanitation crew.

According to Production Manager Karstadt, if someone is not wearing personal protective clothing, Sanitation Leads can give employees a verbal warning and levy discipline in this regard. This statement is not supported by any details of what this "discipline" entails and whether others are also involved in the process. However, when it comes to complying with personal protective equipment and gear policies, any employee can report a violation thereof. Production Manager Karstadt also testified that Sanitation Lead Verduzco, in his role as a TAR, has authority to discipline people for performance issues. For example, he and Production Lead Maldonado disciplined an employee for performance issues. Karstadt also stated that as a TAR, Verduzco has had the responsibility to see whether people were doing their jobs properly.

3. Maintenance Department Leads

The Maintenance Department is divided into four areas: Electrical,³⁶ Maintenance (or Mechanical), Boiler/Refrigeration, and Rebuild. The disputed supervisory positions are the Maintenance (Mechanical) Leads, the Boiler/Refrigeration Lead, and the Rebuild Lead.

The record reveals that there are a total of about 45 mechanics at the Facility, with 4 to 16 mechanics working on any given day. Maintenance mechanics repair equipment and keep equipment in good order. Many of the mechanics in the Maintenance and Boiler/Refrigeration departments are in the Employer's Apprenticeship Program for which the Employer follows the guidelines in the Standards of Apprenticeship for the Industrial Refrigeration Technician and Industrial Maintenance Mechanic. These standards are approved by the Washington State Apprenticeship and Training Council.³⁷ Kirk Johnson is the Maintenance Manager and Chairperson of the Employer's Committee for the Industrial Maintenance Mechanics.³⁸

³⁵ There is no explanation in the record of "plant personnel."

³⁶ See footnote 4.

³⁷ It is unclear who actually prepared these standards.

³⁸ Johnson's main role is to keep the plant running by overseeing equipment, boiler/refrigeration systems, ammonia systems, and the processing lines in the Facility. Johnson consults with Larry Rings, Plant Manager, about "strong personnel issues" such as termination, and with Maggie Covarrublas, the HR Manager, regarding similar personnel issues. The parties stipulated to exclude the position of Maintenance Manager, on the basis that he has the authority to hire, fire, and to discipline employees, and therefore is a supervisor as that term is defined in Section 2(11) of the Act. In view of the parties' stipulation and the record in this case, I shall exclude the Maintenance Manager from the unit.

a.) Maintenance (Mechanical) Leads

There are a total of three Maintenance Leads at the Facility, all of whom are journeymen in the Employer's Apprenticeship Program. They each oversee anywhere from three to six mechanics. They report to Dale Scott, Maintenance Supervisor.³⁹ When neither Scott nor Johnson is around, the leads "run the show." As in the Production Department, scheduling is handled by HR, not by the leads.

According to the record, the Maintenance Lead assigned to the day shift performs more "office work" than the other two leads who work during the swing and graveyard shifts. Maintenance Leads all have similar responsibilities with respect to employee issues and overseeing employees on their respective shifts. Specifically, leads communicate with each other before and after shifts to find out what the plant needs are for that day, and they delegate work to mechanics based on their knowledge of mechanics' strengths and weaknesses. The leads then walk through the plant to look over the work of the mechanics. They do not fill out Inspection Reports like some of their counterparts in the Production Department. Rather, if work is not done properly, leads will request that mechanics redo the work and, if a severe problem arises in this regard, the lead will report the matter to Johnson or Scott.

As part of the routine maintenance work, mechanics generate and receive work orders, which contain directions on how to repair and clean up equipment, equipment numbers, equipment descriptions, a description of the work to be performed, duration of time to perform the work, parts information, sanitation information, signature sections, comment sections, and a safety section. The Maintenance Department also receives work directly from other departments. When a call comes in requesting maintenance work, any mechanic may answer the call and attend to the request.⁴⁰ If a Maintenance Lead answers the call, he can take care of the request himself or pass the request onto a different mechanic, depending on the severity of the problem. It appears that a mechanic working on a repair may also call others to assist with the repair. Periodically during routine maintenance, breakdowns will occur elsewhere in the Facility and, in these situations, Maintenance Leads attempt to respond to these breakdowns while overseeing routine maintenance. If the breakdown requires additional mechanics, the lead decides which employees working in some other area might be needed to help fix the problem. In this situation, leads sometimes consult with Maintenance Supervisor Scott.

Maintenance Leads take part in interviewing potential mechanics for hire. Maintenance Manager Johnson and Scott will first review and screen applications for employment and narrow down the list of candidates to about six for interviews. During the interviews, the Maintenance

³⁹ This position is also referred to in the record as Maintenance Department Chair. According to Employer's Exhibit 6, Scott does not oversee Rebuild, Electrical, or Boiler/Refrigeration. Those areas are headed by their respective leads and supervisors, as described in detail below. Scott schedules tasks and asks mechanics to work on certain items when he is at the Facility. The parties stipulated to exclude the position of Maintenance Department Chair, on the basis that he has the authority to hire, fire, and to discipline employees, and therefore is a supervisor as that term is defined in Section 2(11) of the Act. In view of the parties' stipulation and the record in this case, I shall exclude the Maintenance Department Chair from the unit.

⁴⁰ It is unclear from the record who is actually placing these calls to the Maintenance Department. However, in light of the foregoing evidence that Production Leads call the Maintenance Department when a breakdown on the line occurs, it is likely that at least some of these calls are made by Production Leads.

Leads equally take part in asking prepared questions.⁴¹ Following the interview, the panel of interviewers then discusses their impressions of the candidates.

Johnson stated that he once considered two particular candidates for hire, including one whom all three Maintenance Leads had recommended for hire. However, Johnson conducted his own independent review of the two candidates' experiences, including experience dealing with other departments and the ways in which they solved problems. Johnson also reviewed the applicants' respective resumes, on line applications, if any, and certifications or diplomas, if any. Johnson then consulted with the three leads and eventually made the phone call to offer the job to the applicant whom the three leads had recommended.

With regard to discipline, Maintenance Lead Joe Hernandez sent a mechanic home when she fell asleep in a freeze tunnel, which was a very dangerous situation. After sending the employee home, Hernandez telephoned Johnson and reported the incident. Later, the Employer suspended the employee/mechanic for three days and issued a final warning to her for falling asleep in the freeze tunnel. Because there was no one superior to Hernandez during the shift, Johnson thought that Hernandez was acting in some sort of supervisory capacity that day. However, Johnson further testified that he did not know whether Hernandez consulted with anyone else before calling him about sending the employee home. Additionally, about three months ago, Assistant Lead Mechanic, Paul Martinez,⁴² received a one-day suspension for not getting around to a conveyor that needed attention. Martinez stated that Dale Scott and Kirk Johnson were involved in this discipline of Martinez. Thus, no lead was involved in Martinez' discipline; however, Johnson testified that he did not know whether a lead reported the incident to anyone.

With regard to evaluations, Maintenance Leads have an instrumental role in preparing a skills assessment for mechanics in the Apprenticeship Program. While there is no formal procedure to follow in this regard, typically, a lead and another journeyman will get together twice a year to do an assessment of a mechanic. The skills assessment would indicate whether the employee has met the skills requirements, in addition to whether he or she has met the hours requirement under the Apprenticeship Program. The results of the assessment help determine whether a mechanic will advance in the program. If there is a disagreement over whether a mechanic should advance, the evaluators have in the past brought the matter to Dale Scott. Next, the assessment is passed on to the Apprenticeship Program Committee headed by Johnson.⁴³ The Committee discusses areas beyond what is covered in the assessment, such as the mechanic's experience, how much work he or she is doing, whether the Committee has had any bad experiences with the individual, and the type of work the mechanic has done. Following this discussion, occasionally, the Committee will go back to the lead and the journeyman to further discuss their assessment of the mechanic. While Johnson testified that he has never individually overturned an assessment that reaches his desk, the record reveals that the Committee has overturned about four assessments over the past two years. The record does not explain why the Committee overturned those four assessments.

⁴¹ Johnson did not know who prepared the list of questions to ask during the interview.

⁴² Martinez's position is not currently in dispute. In light of the record evidence, I find there is no evidence of supervisory indicia regarding this position. Thus I shall include the Assistant Lead Mechanic position in the unit.

⁴³ The Apprenticeship Committee is made up of Dale Scott, Bob Steele (Electrical Supervisor), Leonard Ruff (Boiler/Refrigeration Lead), Leroy Mertens (electrician), Robert Wade (mechanic), Scott Campbell (Engineering Manager), and Kirk Johnson.

With regard to the separate Employer Performance Review, there is evidence that Maintenance Lead Martin Chavez signs the review along with another journeyman. Martinez testified that he has filled out reviews for Chavez's signature. However, if Chavez is unavailable, Martinez signs the form himself. Martinez stated he did not know whether any performance reviews filled out by a lead have ever been rejected. Additionally, there is no record evidence about whether these reviews have had any impact on employees' job status.

There is no evidence that Maintenance Leads have authority to grant time off, other than permitting employees to leave work for family emergencies or illness. Martinez stated that when he needs to take a vacation, he would mention the request to the Maintenance Lead, but that he knew he would have to go to Scott or Johnson for approval. Maintenance Leads, including the Assistant Lead Mechanic, have approved overtime work. Martinez testified that he has held a mechanic back when he needed help to get a line running as a result of an equipment breakdown. However, he also stated that he typically would first seek consultation from either Johnson or Scott either in person or over the phone. If both were unavailable, he would then make the call to hold someone back. He testified that the Employer views equipment breakdowns as high priority and, thus, "we have to keep the line running so we don't lose money on the down time." Martinez will typically fill out an overtime sheet explaining why overtime was necessary, sign it, and forward it on to Johnson or Scott. Martinez stated that Maintenance Lead Chavez has also approved overtime for employees, but did not elaborate on this point.

Leads have filled in for Dale Scott more in 2004 than in prior years because Scott had close to seventy days of accrued vacation, which he apparently used at the beginning of the year in response to a change in the Employer's vacation policy.

b. Boiler/Refrigeration Lead

Currently, Leonard Ruff holds the position of Boiler/Refrigeration Lead.⁴⁴ He spends ten to fifteen percent of his time performing work on the equipment both during the prime and non-prime seasons, and the remainder of his time overseeing the work of the Boiler/Refrigeration Department to ensure the work is up to par with the Apprenticeship Program standards. Specifically, he prioritizes jobs, orders parts, maintains the structure of the department, acts as the "go-to" individual in that department, trains mechanics,⁴⁵ schedules a boiler/refrigeration mechanic at all times at the Facility, and plans predictive and preventative maintenance on the Boiler/Refrigeration and ammonia systems. He also has a partial role in requisitioning parts. Ruff reports to Maintenance Manager Kirk Johnson.

In the Boiler/Refrigeration Department, Kirk Johnson makes hiring decisions. Although Johnson testified that Ruff also has the authority to hire,⁴⁶ Ruff stated he does not have such

⁴⁴ Ruff has been the Boiler/Refrigeration Lead at the Facility for a year and a half. Prior to the lead position, he was a senior operator for a little over six years.

⁴⁵ Ruff is also responsible for training Boiler/Refrigeration mechanics through the RETA organization, which is made up of sixty to sixty-five members in the Tri-Cities chapter. The record did not provide the full name of RETA. Ruff has done about eighty percent of the training in that chapter. He trains the mechanics in operations, system checks, daily maintenance of support systems, and water treatment. He also provides written material as well as guidance on use of other resources, such as online resources.

⁴⁶ Johnson stated that comparatively, Ruff has a bigger role in the hiring of Boiler/Refrigeration mechanics because he is the only lead in that department, whereas the Maintenance Department has three leads.

authority. However, Ruff stated that he has occasionally made recommendations with regard to hiring and transferring employees. For example, Ruff testified that he recommended Antonio Saldana as a full-time Boiler/Refrigeration mechanic. The record reveals that the previous Boiler/Refrigeration Manager⁴⁷ had decided he needed one more Boiler/Refrigeration mechanic, and pulled Saldana out of a tunnel operator position in the Employer's operations to train him to be a Boiler/Refrigeration mechanic. By the time Johnson took over as Maintenance Manager, Ruff recommended Saldana to the Apprenticeship Committee. The Committee subsequently concluded that Saldana had sufficient training to warrant his transfer into the mechanic position. Eventually, the Employer transferred Saldana. However, the record does not explain whether the Committee undertook a separate review or investigation with regard to the transfer of Saldana.

Ruff also testified that he recommended the transferring or hiring of two journey level individuals since he took on the role of Boiler/Refrigeration Lead: Steve Cole and Don Salter. With respect to Cole's transfer or hiring, Ruff spoke with some of the people who worked with Cole at the other Employer facility where Cole worked and Ruff participated in Cole's interview along with the Plant Engineer at the time, Adam Biggs.⁴⁸ Ruff testified that Cole was the person he wanted and Cole was eventually hired. However, the record does not reveal what, if any, impact Biggs had on Cole's hiring as Ruff testified that Biggs could have also reviewed the standard personnel information, including Cole's resume and application. With respect to Salter's hire, Ruff went through a similar process as with Cole but Ruff had more initial communications with Salter, who had not worked for the Employer prior to his hire. In this regard, Ruff reviewed Salter's application along with other candidates' applications. Ruff then interviewed Salter asking in depth questions concerning Salter's skills, how they pertained to the Employer's facility, and how he might fit in with the Employer's operations. Salter was eventually hired. However, prior to the hiring of Cole and Salter, the Employer's HR Department conducted a skills assessment on both candidates, using guidelines established in the Apprenticeship Program.

Ruff testified that he has made recommendations to Kirk Johnson for employee discipline but Ruff does not actually discipline employees himself. Johnson, however, testified that Ruff has jointly disciplined employees with him but was unaware whether Ruff had disciplined employees on his own initiative. Ruff stated that there have been very few events that have required Ruff to even discuss discipline with Johnson as he has a "good group of people." The record does not reveal whether the Employer has informed Ruff about the extent and nature of any disciplinary authority that he may possess.

According to Johnson, Ruff is a relatively experienced mechanic and thus, has the ability to discern whether work is properly performed. However, the record is clear that, if upon inspection, Ruff concludes that work was improperly performed, Johnson would ask the person to redo the work. If it appeared the work would pose a safety problem, or cause failures, Ruff

⁴⁷ According to Employer's Exhibit 6, the position of Boiler/Refrigeration Manager does not exist. However, later in the transcript, it appears that it was Johnson who had "taken over" this position by the time Saldana was being considered for the Boiler/Refrigeration mechanic position.

⁴⁸ The position of Plant Engineer is not in dispute. Although the parties have stipulated to exclude the "plant engineering department employees," it is unclear whether the person holding the Plant Engineer position is a Section 2(11) supervisor as there are no individuals listed below him in the organization chart appearing in Employer's Exhibit 1. However, this individual appears to be at the same level in the hierarchical scheme as other stipulated supervisors. In view of the parties' stipulation and the record in this case, I shall exclude the position of Plant Engineer from the unit.

would possibly recommend another mechanic for the job. The record does not reveal the extent or frequency of these inspections or recommendations.

The record reveals that Ruff participates in the Apprenticeship Program assessment of the Boiler/Refrigeration mechanics along with another journeyman mechanic.⁴⁹ Ruff signs off on all the skills assessments and submits them to the Apprenticeship Committee. Next, the entire Committee reviews the assessments and votes on whether the mechanics will move to the next level.⁵⁰ Ruff is a voting member of the Committee and will provide clarification to any assessment he submits to the Committee.

In addition to the skills assessment, Ruff also completes the Employer's Performance Review, which is also considered in decisions for any upgrades in accordance with the pay schedule on Employer's Exhibit 7.⁵¹ In this regard, Ruff usually meets with the reviewed employee to discuss the content of the review and any recommendations for improvement. No one else is usually present during this discussion. Ruff then passes the review on to Maintenance Manager Johnson for review and discussion. The record shows that Johnson has never rejected any of these reviews nor has he made any changes. It appears that the performance review, by itself, has no impact on a mechanic's job status but rather is considered along with other matters in determining whether a mechanic is entitled to progress along the Employer's pay scale.

With regard to the generation of work for the mechanics under Ruff's lead, there is a list of tasks currently in place for equipment that need inspection and repair. Additionally, Ruff also generates work orders in consultation with the maintenance and electrical departments.⁵² When prioritizing these work orders, Ruff's primary emphasis is to keep the plant running while being mindful of safety issues. Ruff stated that he relies on his experience to help him prioritize work,⁵³ along with the skill level and experience of the journeymen⁵⁴ and his desire to create training opportunities for other mechanics. For more involved tasks, Ruff determines, for example, the need and timing for steam valve⁵⁵ replacements, which shift to assign, and who is going to do the steam valve replacement work.⁵⁶ When scheduling tasks, Ruff testified that he

⁴⁹ Boiler/Refrigeration mechanics are required to maintain informational records about the work they perform and the time taken to perform that work. With this information, Ruff and a journeyman make an assessment of the mechanic's strengths and weaknesses, and make recommendations to the assessed mechanics in this regard. They then meet with the mechanic to discuss the mechanic's work during the period of time since the last upgrade, and each part of the review. If there is a disagreement between the lead and journeyman mechanic regarding a mechanic's assessment, they must discuss the matter further and reach an agreement or bring the disagreement to their supervisor's attention.

⁵⁰ There are eight levels for mechanics in the Maintenance Department, which appear on Employer's Exhibit 7. For every 1,000 hours of work accrued, the mechanic is eligible to move up one level.

⁵¹ Ruff stated that he was not aware of anyone being able to go beyond the levels shown in Employer's Exhibit 7 based on "determination that the person deserved the reward."

⁵² Ruff stated that he generates work orders through the "CMS" system on a daily basis, the Employer's management software system, where work orders are kicked out on a regular basis.

⁵³ One example of prioritizing work entails deciding whether to fix a piece of equipment versus rebuilding the freeze tunnel and getting ready for the prime season.

⁵⁴ If a mechanic has not had any experience with hydraulics or pneumatics, Ruff would not assign that mechanic to perform that function.

⁵⁵ A steam valve is a high-pressure steam system that peels products.

⁵⁶ The replacement is considered a big job because the steam valve is very abrasive and involves very harsh conditions.

solicits input from the entire department on scheduling and sends it off to his supervisors. Johnson has the final say on the schedule.

When a mechanical matter unexpectedly arises, Ruff, Johnson, or Maintenance Supervisor Scott, will juggle work assignments. However, when a line is down, priority will be given to getting that line back up and running over any scheduled maintenance. Before getting the line back up, Johnson stated that each situation still should be looked at and examined. About once or twice a month, there has been a need for mechanics to work beyond their scheduled shifts. On these occasions, Ruff informs Johnson that he needs to work some mechanics overtime. Johnson sometimes requests the basis for the overtime but Johnson also testified that no one has ever rejected Ruff's request for such overtime. Ruff has also approved overtime and notified Johnson after the fact of the overtime and the basis for it. In these instances, Johnson has always been supportive of Ruff's decision. Similarly, when Boiler/Refrigeration mechanics request time off from work, Ruff has exercised the authority to grant the time.⁵⁷ Regarding vacation requests, if Ruff has no problem with the request, Johnson will grant the request.

With regard to other secondary indicia, Ruff has authority to use and has used the Employer's credit card for purchases of materials for his department and, on one occasion, he purchased a feed pump costing the Employer \$10,000 -- no other employee mechanic has such authority. On another occasion, Ruff called in an outside contractor to change something on a boiler -- this cost the Employer between \$1,000 to \$1,500. Ruff did not consult with Johnson or anyone else before making the call.⁵⁸ Ruff also attends weekly meetings with Johnson, Scott, and Bob Steel (Electrical Supervisor). Scott Campbell, the Plant Engineer, sometimes sits in on those meetings. In addition to these scheduled meetings, there are a number of unscheduled meetings, where apparently the same individuals discuss such things as departmental issues and employees.

c. Rebuild Lead

Janice Wilkie is the only lead in the Rebuild Department.⁵⁹ She works directly with the Rebuild crew about eighty percent of the time. The remaining twenty percent is spent performing her duties as CMMS Coordinator.⁶⁰ Wilkie reports to Maintenance Manager Kirk Johnson. For the last five or six years, Wilkie has unofficially performed Rebuild Lead functions. Record testimony reveals that in her role as Rebuild Lead, Wilkie trains and provides direction to the four journeymen mechanics in the Rebuild Department regarding which piece of

⁵⁷ Johnson stated that he did not believe Dale Scott was involved at all in time off requests, at least for the Boiler/Refrigeration Department.

⁵⁸ The record indicates, however, that the particular contractor Ruff called was one that the Employer has used before to do gas training and an inspection and certification of a boiler. It is unclear who exactly decided to hire that particular contractor in the first place.

⁵⁹ The Rebuild department works on the following pieces of equipment: welters, huskers, belt conveyors, semi-automatics, CCMs, blanchers, two blanchers, chillers, grille screens and the tote room. Nothing in the record defines CCMs. Out of a 24-hour day, the Rebuild Department spends about 4 hours cleaning and sometimes repairing equipment. The equipment is also scheduled for rebuild during nine months out of the year (during harvest). Not all pieces of equipment need to be rebuilt.

⁶⁰ As CMMS (Computerized Maintenance Management System) Coordinator, Wilkie inputs work order information and other information into a maintenance software system. Wilkie does not oversee any employees in her capacity as CMMS Coordinator.

equipment to work on or rebuild.⁶¹ During the non-peak season, Wilkie ensures the corn line is completely rebuilt and, in this regard and during this time of the year, she provides more direction to employees than at other times of the year. During the peak season, Wilkie considers herself the “corn specialist,” as she oversees and directs employees with respect to rebuilding and running the equipment on the corn line. She works more with her hands during the corn season. Wilkie testified that there are some employees who are assigned to certain sections of the corn line because of a particular skill or training. For example, Wilkie will direct rotators who work in specialty areas, to work either the husker deck or the C-Sam deck. Mechanics also report to Wilkie if they need to make adjustments to the scheduled maintenance, i.e., if they see errors or discrepancies, or if they feel they are doing too much work on a piece of equipment.

During her unofficial capacity as Rebuild Lead these last five or six years, the Rebuild Department hired one mechanic. Wilkie stated that she took part in the hiring of that mechanic but did not provide any details about her involvement. Other than this one hiring, there has been no other hiring due to lack of turnover in the Rebuild Department. As such, Wilkie could not state affirmatively whether she had the authority to hire. She stated however, that she thought she would have such authority, based on her other job duty as corn specialist during the corn season.⁶² As it relates to the Rebuild Department, Wilkie stated that she is part of the hiring process because “it’s my job to help or to be part of that choice of who is going to work under me and do they have the skills that are needed to do the job. That’s why I would say I would never have a doubt that I would not be a part of it.”

With regard to discharge, the record reveals that Wilkie has discharged employees as recently as last season while overseeing the corn line as the corn specialist. She did not ask for anyone’s permission prior to discharging employees on the corn line. Additionally, Wilkie has issued a first step “verbal written” when an employee returned late from a break. A verbal written is a document which memorializes the discussion with an employee concerning misconduct or performance and which includes names of others present during the discussion, a date, and other related information. On the second occasion, when that employee failed to show up for work on time and to report to her job station, Wilkie informed the employee that she was no longer needed. Wilkie did not consult with anyone during her discussions with this employee. She only contacted HR once she had made her decision for purposes of preparing the paperwork. Wilkie does not know whether HR spoke with that employee. Generally, after Wilkie has issued a “verbal written,” she sends Maintenance Manager Johnson an e-mail describing the event and her course of action. He once responded to the effect of, “I support you. You’re doing a good job.”

Wilkie takes part in the skills assessment of the mechanics under the Apprenticeship Program. She selects one other participating journeyman to help with the assessment. The assessment, along with other paperwork such as the Employer’s Performance Evaluation,⁶³ would be presented to the Apprenticeship Committee for further actions. If the skills

⁶¹ However, according to the organizational chart in Employer’s Exhibit 6, there are eight mechanics under Wilkie in the Rebuild Department.

⁶² Wilkie testified that she has hired operators to run machinery, such as the CTM machines for work orders; directed them throughout the three months of corn season; assisted HR with scheduling; wrote them up when necessary; and let them go when necessary.

⁶³ There is nothing in the record about the process of conducting the Employer’s Performance Review for the Rebuild mechanics. As such, there is insufficient evidence about Wilkie’s role in this respect.

assessment proves that the employee's performance is up to par, and he or she has a good performance evaluation, Wilkie would make a recommendation to upgrade the employee. The Apprenticeship Committee would then meet to decide upon her recommendation. Wilkie stated that she has in the past recommended people for upgrade, and those people have been promoted. There is no further detail in the record about who else might participate in the decision whether to promote a mechanic and what else might be reviewed or investigated by the Committee. However, if that employee has not met the skills requirement, Wilkie stated that she would hold off in turning the assessment in to the Committee.

Wilkie provides more direction to the Rebuild mechanics during the 9-month, non-corn period.⁶⁴ During this time, she decides which employees are going to rebuild what pieces of equipment. She does not seek approval from anyone in making these work assignments. However, Wilkie testified that there is already an order in place for determining which rebuild work needs to be accomplished, as well as general guidelines for rebuilding the lines.⁶⁵ However, there is nothing in the record regarding the degree to which Wilkie may deviate from this order and the guidelines. Regardless, Wilkie uses a program called Microsoft Projects to create a master schedule based on people's schedules, equipment availability, and job functions. Further, Wilkie decides who is going to work on what pieces of equipment based on skill level, training, and availability. Johnson testified that Wilkie's role in assigning and prioritizing work is apparently less critical as rebuild work generally requires more time than other mechanical maintenance.

In the event an employee does not look like he or she is doing an adequate job, Wilkie is authorized to make a reassignment, or help him or her complete the job. When mechanics complete a job or work order, they input information on the work order to that effect. Wilkie inspects every piece of paper to see if there are any errors. If there are errors, she will talk to the mechanic and correct the error.

With regard to granting overtime or leave, Wilkie has the same authority as the Maintenance Leads discussed above. If anyone in Wilkie's work group needs to leave work or needs to be held over, Wilkie insures the position is covered.

Wilkie is the highest authority in the Rebuild Department. Wilkie reports to Johnson, the Maintenance Manager. She has consulted with him regarding prioritizing work, equipment repair, costs for repair, and whether the Employer should risk going without repair for a longer period of time. They have also discussed lead times, specifically, the impact on work when there is a certain piece of equipment that is on order which is delaying rebuild work.⁶⁶

Wilkie testified that she has an office space in the "maintenance office," with a nameplate on her door. Leonard Ruff, Dale Scott, and the day shift Maintenance Lead also use the same office. While the others all share a computer in this office, Wilkie has a computer and desk of her own. No one else besides Wilkie has access to her computer. The office also contains a library where other mechanics can peruse the manuals on different pieces of equipment.

⁶⁴ During the corn season, Wilkie works more with her hands.

⁶⁵ For example, mechanics will start with a husker (takes husk off corn) to prepare for the corn season because it is made of the most intricate and expensive pieces of equipment.

⁶⁶ Apparently, a number of the parts ordered for rebuild purposes come from sources or locations that are not local to the Employer's facility.

4. Quality Department Leads

The Quality Department is a service department with three different functions: performing evaluations on products as they are being processed; evaluating all the products for microbiological activity; and serving miscellaneous functions, such as ensuring conformance to customer audit standards, issuing reports to customers, shipping samples to customers, and providing customers information, etc. There are between fifteen to twenty employees in the Quality Department, ten to sixteen of whom are graders. There are a few more graders during the corn season to staff the corn line. Three quality leads provide coverage for the 24-hour operation. The graders report to their respective Quality Department Lead on any given shift. In addition to the leads and graders in this department, there are the Quality Auditor, Quality Manager Craig Bolt, the Microbiology Technician Lead, and the technicians.⁶⁷

a. Quality Leads

The three Quality Leads are responsible for the performance of the ten to sixteen graders in that department.⁶⁸ The leads work different shifts and oversee two to four graders in their respective shifts. Leads are responsible for the performance of the graders. They provide an annual two-day training for graders,⁶⁹ oversee the execution of the procedures that the graders have been trained in, monitor the graders' performance, both interactively and by a document review, and assign and adjust work assignments throughout the day based upon circumstances and need. Leads provide all training for graders except for the HACCP (Hazardous Analysis Critical Control Point), which Craig Bolt conducts due to the importance of this training to the Employer's operations.⁷⁰ On a broader scale, leads evaluate the performance of the graders through various methods, such as an audit, performance audits, proficiency testing,⁷¹ and a formal performance review.

In the lab, Quality Leads oversee the execution of procedures. Specifically, they oversee the graders' grading of the attributes of the products, ensure all procedures are being followed properly and that all the reports are being completed and issued properly in a timely manner. Leads also participate in preparing and monitoring samples, assembling or

⁶⁷ Bolt oversees the quality systems and verifies that the Employer conforms to customers' specifications and expectations, oversees employees, and directs activities to carry out quality functions. The parties stipulated to exclude the positions of Quality Auditor and Quality Manager, on the basis that they have the authority to hire, fire, and to discipline employees, and therefore are supervisors as that term is defined in Section 2(11) of the Act. In view of the parties' stipulation and the record in this case, I shall exclude the Quality Auditor and Quality Manager from the unit.

⁶⁸ During the peak season, the number of graders increases to the high end of the range, i.e., 16.

⁶⁹ With regard to training, leads provide formal training for the evaluation of all products. They have developed training manuals, which include the specifications and definitions of various reports that the lab prepares. Graders go through this training annually, over a two-day period (including new hires). Leads then provide hands on mock-up samples for new employees to demonstrate and to allow participation in the evaluation process and completion of documents. Graders then take an exam and must score at least 80% in order to be assigned to the position of grader. If the examinee does not pass, the lead will work with him or her to provide additional training to achieve a passing score.

⁷⁰ Bolt testified that by doing the training himself, he somehow is able to emphasize the importance of that topic.

⁷¹ The proficiency testing entails setting up samples, in which graders have determined the correct attribute values for the defectives in that sampling. Each product has attributes that are evaluated such as color, length, blemish, etc. Graders grade sub-samples. If the results vary more than the accepted level, then that is cause for corrective action on the part of the grader. However, it is unclear in the record exactly what is meant by "correction action" in this context.

summarizing data that a customer may be requesting, identifying which products need to be rechecked,⁷² making arrangements with the warehouse to have samples taken, and organizing recheck of quality. The leads also respond to any questions or clarifications that the graders present. On a daily basis, leads monitor the graders' entry of data, initial the entries made by the graders, and release graded product to the Employer's inventory.

The Quality Leads have a role in hiring. Bolt stated that while he has hiring authority, he has delegated that authority to the leads. Bolt testified that he would in the past review applications, but the leads "have gotten so good at it that I don't need to do that." The leads screen applications of candidates to assess qualifications and prioritize applicants based upon degree of education, experience, and suitability for an interview. Other than the leads, the HR Department may also review the applications. However, there is nothing in the record about HR's role, if any, at the screening stage. Next, leads schedule interviews for applicants and assemble an interview panel which usually consists of the day shift Quality Lead, the Quality Auditor, an HR representative and/or a Production Department representative. Those on the panel ask questions prepared by the Quality Leads. At the end of the interview, the panel evaluates the responses. Each interviewer ranks or scores the candidate based on the responses, which are tallied at the end. The Quality Lead will then, as a courtesy, inform Bolt who they have selected as the most suitable candidate based on the highest score and ask for his blessing to extend an offer to that candidate -- as noted above, that blessing is granted without further review by Bolt. The lead then proceeds with the hiring decision to the HR Department to finalize the hiring process.⁷³ Bolt stated that while he could enter into a discussion regarding the selected candidate, he has never done so. Nor has he asked questions or conducted a separate review of a selected candidate. At the same time, however, Bolt testified that over the last eight years, there have been a half a dozen times that either he or HR rejected a recommendation for a candidate.⁷⁴ In so doing, Bolt reviewed the application and/or resume but did not know what HR might have reviewed.

The record reveals that Quality Leads are always involved in any disciplinary notice or action, as they are the "nucleus" of the disciplinary process in the Quality Department. Bolt stated that the Quality Leads are in the best position to monitor graders because the leads started out as graders themselves and were selected as leads because of their proficiency in their work. If a grader does something improperly (e.g., fails to follow procedures or has problems with his or her performance), the lead will verbally counsel the grader. If the grader has received repeated verbal counseling on the same issue, the lead would then initiate the formal disciplinary process. In addition to counseling an employee, leads have the authority to write up infractions, wherein they warn the employee of what the likely consequences would be should another violation occur. Depending on the infraction, the lead may initiate corrective action without consulting with anyone.⁷⁵ According to Bolt, this has occurred on several occasions. For instance, when a grader has a lapse in performance, the lead can initiate corrective action because he or she is ultimately responsible for the grader's performance.

⁷² If a product fails specification, the Employer puts the product on wait status, meaning the product cannot yet be released to the customer until the Quality Department has had a chance to schedule the disposition of the hold items and possibly be retested. This can take anywhere from one day to one month.

⁷³ Bolt did not know whether HR looked at the candidate's resume after the highest tallied candidate was selected, but assumed that HR would have at least reviewed the resume prior to the interview.

⁷⁴ Over the last two years, the Quality Department hired between eight to ten graders, including seasonal employees. As of the date of this hearing, Bolt expected three additional graders to work this coming prime season.

⁷⁵ The record is silent regarding what correction action entails in this context.

Quality Leads might consult with Bolt or HR (or both) if they need help interpreting Employer policy in relation to potential discipline.⁷⁶

There are several mechanisms in place for assessing graders. Once a quarter, Quality Leads perform audits on the graders' performances to assess the completeness and accuracy of their paperwork. They do not consult with anyone in performing these audits. The leads developed the concept and format, and execute these audits on their own. Leads also perform an annual performance evaluation of those graders who fall under their respective leads. They then submit the evaluations to Craig Bolt who reviews the evaluations to see if one lead is being harsher than another lead or whether the lead's comments support the ratings. Bolt then approves the review, and gives it back to the lead that prepared it, who then reviews the evaluation with the grader. Both the lead and the grader sign off and return it to Bolt. Bolt initials and gives it to HR. Several years ago, Bolt changed the performance review submitted by one of the leads. However, he stated that over the years, he has developed a level of consistency with the graders in the evaluations, such that they conduct performance reviews appropriately and in accordance with his expectations. However, the record does not elaborate on the nature and extent of Bolt's expectations in this regard.

Prior to June 2004, the Quality Leads scheduled graders. However, since June 1 of this year, the scheduling function, as with other departments, has been turned over to the Employer's HR Department. The schedule, among other things, will assign a grader to a particular line and shift. Previously, when an employee called in sick, the leads would move graders around to accommodate a schedule change but this function has now fallen within the HR Department's domain, according to Bolt.

When unscheduled work arises during a shift,⁷⁷ Quality Leads will assign or reassign work based on the demands of a line (in terms of both time and complexity) and the availability of graders.⁷⁸ Bolt testified that there is grading variation from one line to another, as well as variations in skills and abilities between graders. In responding to unscheduled work that may arise during a shift, the lead will consider the skills of the graders in light of the nature and extent of the unscheduled work.⁷⁹ If there is a problem on a line, such as a product defect or problems with the performance of a metal detector, the grader is responsible for continually rechecking or retesting that product or piece of equipment to insure conformance with the Employer's specifications. In responding to this unscheduled work, the Quality Leads make the necessary adjustments without the requirement of consulting with Employer supervision and/or management. However, the Employer's practice is to prioritize certain work in the Quality Department, e.g., the highest priority deals with a customer visit, followed by a request for information to release inventory product.

⁷⁶ However, if an infraction is more administrative, such as an attendance problem, the lead will normally go to the HR office to see what level of disciplinary notice to issue and then prepare and present a disciplinary notice to the employee without consulting with anyone. The record reveals that the Employer's attendance policy essentially dictates the level of progressive discipline, up to and including discharge, for varying levels of attendance violations. Bolt characterized it as an "administrative termination."

⁷⁷ The record is silent regarding the frequency with which unscheduled work arises.

⁷⁸ When assigning work, leads take into account the demands for grading each of the lines and therefore have a baseline understanding of which grader would potentially have the most available time.

⁷⁹ For example, if there is a customer in the office to view a demonstration of the cutting of the products, the lead might reassign a grader to cook potatoes and prepare cutting trays for the demonstration. Leads may also ask a grader to help take the next sample for another grader who is busy doing something else on his or her line.

In the past, the Quality Leads have had the authority to request that graders stay past their scheduled shifts until a lead is able to insure that the following shift of graders is adequately covered. In exercising this authority, the Quality Leads have not had to consult with anyone. However, Bolt had communicated to all Quality Leads the standing rule or procedure that the leads must ensure, during a shift changeover, that the following shift is adequately staffed with graders to insure that product, which must get out, is not held up by a lack of graders. Presently, the Quality Leads' authority in this regard may now be restricted by or in the hands of the HR Department following the recent transfer of the scheduling function to that Department.

Quality Leads also have the authority to allow employees to leave early or arrive late based on their discretion. If an employee wishes to leave work early or arrive late, he or she would fill out a form for the lead's signature. The lead then passes the form on to HR and asks HR for a replacement employee. However, Bolt was unsure whether HR must also review the request. Bolt has on two or three occasions in the last eight years, sent this form back to the lead. He did not state the reasons for sending these forms back. However, the record establishes that once Bolt saw there was "acceptable coverage," he would then approve the request for leave. When an employee makes a vacation request that conflicts with another employee, the lead had resolved such conflicts by renegotiating the scheduled time off or by revising the schedule to make it work. However, the record does not disclose whether the recent transfer of scheduling to HR impacts who is now responsible for dealing with conflicts in vacation requests.

Finally, Quality Leads meet with Bolt every Wednesday morning at 8:00 a.m. in the Quality Department. Graders and technicians do not participate in this weekly meeting. Leads participate in the Employer's Leadership Skills Assessment Program, which is a program limited to leads, TAs and TARs.

b. Microbiology Technician Lead

The Microbiology Technician Lead, Jill Robson, works in a micro-lab, with two full-time technicians and a helper.⁸⁰ There are no other employees in the lab other than these employees. Maintenance Manager Bolt testified that the micro-lab is very technical and repetitive--so there is relatively little need to react to daily changes in the micro-lab's processes. All employees in this department work during fixed daytime hours. Unlike other departments at the Facility, HR does not schedule employees in the micro-lab. The record reveals that Robson coordinates the schedules and job assignments in the lab but the Employer did not elaborate on how she accomplishes this task especially in light of record evidence that the work hours of the lab appear relatively fixed.

The evidence regarding the assigning and directing of work in the lab is also scant. However, the record illustrates a situation where the lab gets a call or e-mail from logistics or production planning people who are anxious to get a product released, and who request an "early release" so they can ship products. According to Robson, this happens frequently. In

⁸⁰ In the microbiology lab, the products processed are required to be tested for microbiological activity. Samples are taken every two hours on some products and every four hours on others. The products are held in frozen storage until the lab prepares the sample for testing. Technicians weigh out a portion of the sample, homogenize it with water to a specific dilution, pass those dilutions onto a medium, incubate it, and after a specified period of incubation, enumerate the colonies that grow on the medium.

deciding how that work is going to be done or who is going to do that work, Robson assesses workload and availability, and either does the work herself or delegates it to one of the technicians. There is nothing more in the record detailing the exercise of any authority to direct and assign work.

II. ANALYSIS

As noted above, the Employer contends that certain leads possess indicia of supervisory authority as that term is defined by Section 2(11) of the Act while the Petitioner maintains that the Employer has not met its burden of establishing that those leads possess supervisory authority. For the reasons set forth below, upon a careful review of the record and analysis of applicable precedent, I find that Boiler/Refrigeration Leads, Rebuild Leads, and Quality Leads are supervisors within the meaning of Section 2(11), but that Production Leads, Maintenance Leads, Sanitation Leads, and Microbiology Technician Leads are not supervisors.

The term “supervisor” is defined in Section 2(11) of the Act as follows:

[A]uthority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment. 29 U.S.C. §152(11).

It is well settled that Section 2(11) of the Act is to be read in the disjunctive and that possession of any one of the enumerated indicia establishes supervisory status as long as the performance of the function is not routine or clerical in nature but rather requires a significant degree of independent judgment. *Stephens Produce Co., Inc.*, 214 NLRB 131 (1974); *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001). Independent judgment occurs when a supervisor makes decisions independent of consultation with higher management. *Phillips Industries, Inc.*, 295 NLRB 717, 735 (1989). However, “[T]he Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights, which the Act is intended to protect.” *Hydro Conduit Corp.*, 254 NLRB 433 (1981). “A worker is presumed to be a statutory employee and the burden of providing a worker is a supervisor within the meaning of Section 2(11) of the Act falls on the party who would remove the worker from the class of workers protected by the Act.” *Hicks Oil & Hickgas, Inc.*, 293 NLRB 84 (1989); *Kentucky River*, supra. Here, that burden falls on the Employer.

A. Production Department Leads

The Employer contends that these leads possess the authority to hire, fire, transfer, promote, or to effectively recommend such actions. The Employer further contends that the Production Leads possess authority to assign and to direct employees.

1. Effective Recommendation of Employees for Hire, Fire, Transfer and Promotion

Individuals having the authority to effectively recommend any of the actions listed in Section 2(11) are supervisors. *Detroit College of Business*, 296 NLRB 318 (1989). Thus, where the evidence shows that the recommended action was taken without independent investigation by higher authorities, the recommending individual is a supervisor. *Elliot-Williams*

Co., 143 NLRB 811 (1963). Here, the Employer provided insufficient evidence to establish that Production Department Leads effectively recommend the hire, transfer, firing or promotion of employees without an independent investigation by their superiors.

With respect to the contention that Production Leads have the authority to hire or to effectively recommend such action, the Employer provided evidence that the Production Leads occasionally sit in for a TA during interviews. Absent more, the Employer failed to demonstrate that these leads, in their capacity as leads rather than as a TAR, hire or effectively recommend the same. Rather, the occasional substitution by the leads for a TA on an interview committee does not rise to the level of supervisory authority. See *Latas de Alumino Reynolds*, 276 NLRB 1313 (1985). See also *Children's Farm Home*, 324 NLRB 61, 65 (1997) (holding that participating in interviews, scoring applicants during interviews and making recommendations for hire, through a hiring committee, did not cause the employee to be considered a statutory supervisor).

With respect to the Employer's submission of evidence surrounding the transfer of James Valle to the mash line, the Employer argues that Valle was the beneficiary of Maldonado's effective recommendation. However, the record fails to establish that Maldonado effectively recommended Valle's transfer. There is inconsistent evidence in the record with regard to exactly what Maldonado communicated to Process Manager Eilidh Wilson regarding Valle's candidacy for the position. Even assuming Maldonado recommended that Valle be transferred based on him being a hard worker, it appears that before transferring Valle, Wilson also inquired with Production Manager Karstadt and other TAs regarding Valle's qualifications. As such, the Employer failed to prove that Wilson solely relied on Maldonado's recommendation concerning Valle's skills. Presumably, had Karstadt or other TAs established that Valle's skills and attendance were sub par, Wilson might have very well rejected Maldonado's transfer request. Under these circumstances, the Employer provided insufficient evidence to establish that Production Leads effectively recommend the transfer of employees without independent investigation by their superiors.

With respect to promotions, the record fails to show how Production Leads' evaluations or performance reviews of employees establishes supervisory status. Thus, Production Manager Karstadt maintains that he has not delegated the authority to evaluate employees to the leads. To the extent leads have completed and co-signed Performance Reviews of employees, the record is silent with regard to how these reviews are used in promotion decisions. The authority to evaluate employees, without more, is insufficient to establish supervisory status. *Quadrex Environmental Co.*, 308 NLRB 101 (1992). Moreover, the record evidence reveals that the HR Department has rejected about one third of the reviews/evaluations prepared by Maldonado. As such, the Employer's reliance on *Virginia Manufacturing Co., Inc.*, 311 NLRB 992 (1993), is inapposite. Unlike the alleged supervisors in that case, the record here indicates that HR undertook some level of a separate review regarding employees' performances. Thus, because there is evidence that others conduct independent investigations of employees' performance, a thorough consideration of the evidence warrants the conclusion that the Production Leads do not possess the authority to effectively recommend promotions.

Additionally, there is no evidence of a direct correlation between reviews or evaluations performed by the leads and merit increases or bonuses awarded to employees. Evaluations conducted by alleged supervisors have been deemed unpersuasive in establishing Section 2(11) supervisory status in the absence of evidence that an employee's wages or job status was affected by such an evaluation. *Mount Sinai Hospital*, 325 NLRB 1136 (1998). In the instant case, I find the evidence relating to the Production Leads' input on employee evaluations insufficient to establish supervisory authority.

On the basis of the foregoing and the record as a whole, I find that the Production Department Leads do not possess the authority to hire, fire, transfer and/or promote and that they do not possess the authority to effectively recommend the same actions.

2. Discipline

The Employer also contends that Production Leads possess and exercise the authority to discipline employees. The Employer has proffered evidence that leads alone verbally counsel employees and prepare Incident Reports memorializing that an investigation and discussion with an employee took place. Incident Reports however are merely reportorial in nature and, alone, do not constitute discipline within the Employer's disciplinary process. Moreover, the Board has held that reporting incidents of employee misconduct is not tantamount to the exercise of disciplinary authority if the reports do not always lead to discipline or do not contain effective disciplinary recommendations. *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890 (1997). Here, the record evidence establishes that the leads' involvement in the reporting of misconduct or performance issues does not typically lead to discipline. The record further reveals that leads may initiate the disciplinary process with a report and may make a recommendation but the Employer's disciplinary process places the authority to actually determine and levy discipline in supervisors and/or managers who occupy higher positions than occupied by the leads.

I do note that it appears in the record that leads sometimes recommend the level of discipline to impose on an employee and that they co-sign and sometimes complete Discipline Notices. However, these functions, under all the circumstances herein, do not confer supervisory status. Thus, the record reveals that either a TA or HR department conducted a separate investigation surrounding the issuance of Discipline Notices and that both the TA (or TAR) and HR representative co-sign these notices. To the extent leads recommend discipline, such recommendations are not effective as the TA and/or HR conduct independent investigations for any Discipline Notice prepared by leads. Here, the leads' restricted role in the issuance of Discipline Notices does not establish that they possess the authority to discipline employees. See *Hawaiian Telephone Co.*, 186 NLRB 1 (1970).

The Employer further claims that leads alone can issue a Discipline Notice. In support of this contention, the Employer presented a copy of a Discipline Notice whereby Production Lead David Marquez signed it without the signature of a TA. However, it is unclear whether Marquez was acting in his capacity as a TAR at the time the notice was issued. Moreover, the reason for discipline in that instance was attendance violations, for which leads must strictly follow the Employer's clear and comprehensive attendance policies. Next, the placement of the signature on the form itself is of no help. There is evidence that TAs have signed on both the Team Leader and Direct Supervisor lines. I find this one vague and confusing example to be too unreliable to conclude that Production Leads have the authority to issue discipline independently.

With respect to the Employer's example about an employee being disciplined for performance issues and slapping another employee, the Employer argues that Maldonado became aware of the issues and independently issued a Disciplinary Notice to the employee for the performance issues. However, the record is unclear whether and to what extent the HR Department conducted a separate investigation in connection with that discipline. The other examples raised in the Employer's brief about leads sending employees home for sleeping in the bathroom or for insubordination were instances where it is unclear whether the leads were acting in their capacity as leads or as TARs. Moreover, even if the record supports the inference that leads have issued such discipline on very limited occasions, the Board has consistently held that sporadic and irregular exercise of supervisory functions does not make an

individual a supervisor within the meaning of Section 2(11) of the Act. *Latas de Alumino Reynolds*, supra (holding that exercise of supervisory authority when supervisor was on vacation or away for training not sufficient to find supervisory status). In the case at hand, the Production Leads only fill in as TARs when the TAs are ill or on vacation. That the TAR position has opened up more this past year because of a change in the Employer's vacation policy does not demonstrate that leads fill in on a substantial or regular basis. See *NLRB v. St. Francis Hospital of Lynnwood*, 601 F.2d 404, 421 (9th Cir. 1979). As such, the fact that leads may issue discipline when acting as TARs or rarely as leads still fails to establish supervisory status for the Production Department Lead positions.

Regarding Maldonado's recommendation relating to the disqualification of the bagger operator, the Employer again fails to establish that Maldonado effectively recommended her replacement. TA Chamberlain admitted that the issue of replacing the bagger operator was discussed over a significant period of time. Moreover, the effect of any alleged recommendation for her replacement is diluted by the 5-week lapse before management acted upon such a recommendation. As such, this evidence fails to prove that TA Chamberlain and/or others relied solely upon Maldonado's recommendation to replace the bagger operator.

In light of the above and the record as a whole, I find that Production Leads do not possess the authority to discipline employees or the authority to recommend such action.

3. Lack of Authority to Responsibly Direct and Assign

The Employer asserts that it has vested Production Leads with the authority to assign and responsibly direct Production employees. The Board has held that persons who have authority to assign work, move employees from one task to another, and grant leave requests, have been held to be supervisors under the Act. *Louisiana Gas Service Co.*, 303 NLRB 908 (1991); *Massachusetts Coastal Seafoods, Inc.*, 293 NLRB 496 (1989). See also *Sunnyside Home Care Project*, 308 NLRB 346 (1992). However, "the exercise of the authority to assign or direct work, when exercised in a merely routine, perfunctory, or sporadic manner does not confer supervisory status on an employee; and employees who are merely conduits for relaying management information to other employees are not true supervisors." *Delta Mills, Inc.*, 287 NLRB 367, 370-71 (1987).

Here, the record reveals that Production Leads do not responsibly direct or assign work to employees in overseeing the production lines. Rather, the TAs dictate much of what goes on with regard to work assignments, rework, and breakdowns. To the extent leads move employees around to meet production demands, it appears they base these decisions on equalizing the workload and ensuring that the employees are performing the same or similar functions unless there are certain physical demands that must be met. The Petitioner correctly argues that assignments made on the basis of equalizing workload are routine in nature, and do not confer supervisory status. See *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002). Additionally, when it comes to reworking products, the Employer's TAs are responsible for deciding on the specifics for rework in consultation with the leads. While the record indicates that leads may assume similar responsibility, the Employer's evidence in this regard does not elaborate on the nature and extent of that responsibility and whether it requires the use of independent judgment. Thus, the Employer has failed to meet its burden of establishing that the Leads' possession of the authority to assign or direct employees is anything more than merely routine or clerical in nature.

The Employer also asserts that Production Leads are supervisors because they grant overtime or send employees home in the event of a breakdown. However, the Employer's own witness, Production Manager Karstadt, testified that leads do not have authority to hold over employees. To the extent leads believe overtime might be required, they cannot compel

overtime work. *S.D.I. Operating Partners, L.P.*, 321 NLRB 111, 111 (1996) (holding no supervisory status because the employee could not compel overtime). Because Production Leads do not have the authority to hold employees over, they lack supervisory status in this regard.

In the event a production line breaks down, leads similarly lack discretion and independent judgment regarding how to direct their workforce. Rather, when a line goes down, leads follow standard operating procedure to clean up the lines. Although the leads have some level of discretion over whether to clean equipment on a line, it appears that TAs and the Production Manager are responsible for major decisions regarding breakdowns and conduct an independent investigation before deciding whether to send employees home. Thus, the record reveals that leads have little or no discretion in connection with breakdowns and such limited discretion does not confer supervisory status.

Moreover, Production Leads are not reviewed or evaluated individually based on the performance of the employees on their lines. Production Manager Karstadt stated that leads are evaluated “as a group,” but did not elaborate on what factors might be considered in such an evaluation. Nothing in the record reveals that the Employer measures the leads’ success based on the successful accomplishment of the production crew. As such, Production Leads are not ultimately responsible for the Production crew’s performance, which is indicative of a lack of supervisory authority. See *Post-Newsweek Stations*, 203 NLRB 522 (1973). Accordingly, the Employer has presented insufficient evidence that the leads responsibly direct the workforce.

4. Secondary Indicia

The Board has held that where “the possession of any one of the [12 listed supervisory characteristics] is not conclusively established or “in borderline cases,” the Board looks to well established secondary indicia, including the individual’s job title or designation as a supervisor, attendance at supervisory meetings, job responsibilities, authority to grant time off, etc., where the individual possesses a status separate and apart from that of rank-and-file employees.” *Property Markets Group, Inc.*, 339 NLRB No. 32, slip op. at 11 (2003). See also *Monotech v. NLRB*, 376 F.2d 514 (1989) and *Palagonia Bakery Co., Inc.* 339 NLRB No. 74 (2003). The Board has also held that secondary indicia alone will not support a finding of supervisory status. See *Property Markets Group*, 339 NLRB at 11.

Here, the Employer has failed to demonstrate the existence of secondary indicia regarding Production Leads that would establish supervisory status. First, the record establishes that Production Leads are never the highest authority on any shift—there is always, at the very least, either a TA or TAR present. Second, like Production employees, leads are subject to hourly pay and overtime, share in the same benefits and policies, and punch a time clock. Third, although Production Leads attend a monthly meeting with other TAs, TAs and other statutory supervisors meet apart from leads as well. Finally, it is significant to note that a Production Lead testified that he does not consider himself to be a supervisor based on having worked in a lead position for a significant period of time. On balance, I find that the secondary indicia do not favor a finding of supervisory status.

In view of the above and the record as a whole, I find that the Employer did not meet the burden of establishing that Production Leads are supervisors as that term is defined in the Act. I shall therefore, include them in the unit sought by the Petitioner.

B. Sanitation Leads

With regard to the Sanitation Leads, the Employer contends that Sanitation Leads are supervisors because they assign work to employees. However, the record reveals that the Sanitation Leads assign work and move employees around primarily to equalize the workload and to ensure that clean up is timely completed in the fashion dictated by the Employer. There is no evidence that leads assess individuals' experience or skills in connection with these assignments. Compare *Juniper Indus.*, 311 NLRB 109, 110-111 (1993) (finding independent judgment with respect to assignment of work established by evidence that foreman moved employees between jobs, established priorities in work assignments, determined the technical means by which jobs were to be accomplished, and made assignments on the basis of the employees' experience and skills).

During non-peak season, the record establishes that the leads have even less discretion with regard to the assignment of work. During this 9-month period, the Sanitation Manager decides what work to assign. In the event of an emergency or time-sensitive situation, such as when a product spills over due to the plugging of pipes, the Sanitation Manager takes over work assignments altogether. Karstadt testified that the Sanitation Leads essentially "carry out the directions from the TAs." The Board has held that an individual's role "as a mere conduit for management's directive is insufficient evidence of independent judgment." *Fleming Cos.*, 330 NLRB 277, 277 (1999). In view of the above, the Sanitation Leads appear to be mere conduits of the TAs or the Sanitation Manager because they carry out the directives of the TAs or otherwise, defer to the Sanitation Manager in crisis situations. Accordingly, I find insufficient evidence to establish that the Sanitation Leads possess the authority to assign work to employees.

The Employer further argues that the Sanitation Leads possess the authority to responsibly direct Sanitation Department employees and that the exercise of such authority requires the use of independent judgment. This assertion is not supported by the record which reveals the fact that the Employer's corporate office has directed routine cleaning of the lines, including the number of times a line must be cleaned and including instructions specifying what to look for when performing the cleaning work. Moreover, all production and sanitation employees have been trained in cleaning and have been provided cleaning instructions for each piece of equipment. See *Dynamic Sci., Inc.*, 334 NLRB 391, 391 (2001) (post-*Kentucky River* Board determined that test leaders did not responsibly direct other employees where their role was limited by detailed orders and regulations). Here, the record reveals that the authority of the Sanitation Leads in directing employees is circumscribed by Employer management directives regarding cleaning of the lines and by detailed instructions for cleaning each piece of equipment.⁸¹ In view of the above and the record as a whole, I find that the Sanitation Leads' duties and responsibilities do not require the use of independent judgment with regard to the direction of employees.

⁸¹ Moreover, I note that during the non-peak season (lasting about 9 months), Sanitation Department employees work on the production line while supposedly continuing to fall under the lead of the Sanitation Department Leads. However, the record does not elaborate on the nature and extent of this dual function served by the Sanitation Department employees, on the degree to which they are subsumed into the ranks of Production Department employees, and on the impact of the production line work on those charged with supervising the Sanitation Department employees during the non-peak season.

With regard to other supervisory indicia, such as the authority to hire, fire, transfer, discharge, promote, or to effectively recommend the same, I find there is insufficient evidence to establish such authority. The Employer argues that the Sanitation Leads' involvement in interviewing applicants confers supervisory status but the record clearly reveals that the leads involvement is relatively restricted in that they are required during the interview to ask questions prepared by someone else. Following the interview, the leads merely tally their point totals along with the point totals of other interviewers and those numbers are then forwarded onto Employer personnel for further processing; from that point, the leads have no further involvement. Thus, the record evidence fails to establish that the leads hire or effectively recommend such under the hiring process utilized by the Employer. See *Children's Farm Home*, 324 NLRB at 65.

The Employer further argues that Sanitation Leads are supervisors because they have authority to discipline employees. With regard to Javier Verduzco, the record establishes that Verduzco has issued a disciplinary notice to an employee for performance issues. However, it is unclear from the record whether Verduzco exercised such authority in his capacity as a lead or a TAR. Moreover, the Employer's contention that leads can verbally warn and discipline employees when someone is not wearing personal protective clothing is not persuasive. The Employer has a strict policy requiring all employees to wear personal protective clothing. This policy has been made clear to all employees. It appears the leads merely report violations of this policy. Indeed, all employees may report such violations as well as other violations of the Employer's policies. Such reporting functions do not confer supervisory status. *Passavant Health Center*, 284 NLRB 887, 889-91 (1987), *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995). As such, any enforcement of this practice does not require use of independent judgment. In view of the above, I find that the Employer has not sufficiently established the Sanitation Leads' authority to discipline.

Admittedly, there is evidence in the record that Sanitation Leads attend monthly meetings with TAs, which are not attended by production employees. Notwithstanding, the Board has held that secondary indicia alone will not support a finding of supervisory status. See *Property Markets Group*, 339 NLRB at 11.

In light of the above and the record as a whole, I find that the Employer has failed to meet its burden of proving supervisory status with regard to the Sanitation Leads. Accordingly, I shall include the Sanitation Department Leads in the unit sought by Petitioner.

C. Maintenance Leads

The Employer contends that these leads possess and exercise the authority to hire or effectively recommend the hire of employees. While the record establishes that leads equally take part in asking questions and sharing impressions of candidates, participation in the interview and evaluation of applicants is insufficient to confer supervisory status. *Children's Farm Home*, 324 NLRB at 65. Moreover, the Employer's evidence regarding one particular hiring decision lacks sufficient detail. In particular, the Employer presented evidence that the Maintenance Leads participated in a hiring interview, asked questions, and scored the candidates. The evidence reveals however that Maintenance Manager, Kirk Johnson, conducted an independent review of the candidates' experiences and application material. When the evidence shows that the recommended action was taken without independent investigation by higher authority, that recommending individual is a supervisor. *Elliot Williams Co.*, 143 NLRB 811. However, in this case, the Employer provided insufficient evidence to

establish that the leads effectively recommended the hire or transfer of any employees without independent investigation by others in supervision or management.

With regard to assessments or evaluations, the Employer argues that leads play a role in promotion decisions through their assessment of mechanics in the Employer's Apprenticeship Program. It is undisputed however that the results of the assessment are only one component among several considered by the Apprenticeship Committee in its promotion decisions. In addition to these assessments, both Maintenance Supervisor Scott and the Committee separately review the employees' performance, as evidenced by Scott's past rejection of a number of the leads' assessments; and the Committee's rejections of at least four assessments in the last two years. As such, the Employer has failed to establish that the leads' assessments or evaluations of employees constitute effective recommendations of promotion. *Id.* at 61.

The Employer further contends that leads possess and exercise the authority to discipline employees. In support of this contention, the Employer presented one instance where a lead sent a mechanic home for falling asleep in a freeze tunnel. The Employer's witness admitted that he was unsure whether the lead contacted anyone else before sending the employee home. In this circumstance, the evidence is not clear as to whether the employee exercised any independent judgment in this isolated incident. *Sears, Roebuck & Co.*, 304 NLRB 193 (1997). Moreover, the Employer failed to establish that the decision to send the employee home affected the employee's job status. See *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 392 (1989) ("mere authority to issue oral or written warnings that do not alone affect job status does not constitute supervisory authority"). In view of the scant evidence in this regard, I find that the Employer did not meet the burden of demonstrating that Maintenance Leads possess the authority to discipline employees as that term has been defined by the Board.

Next, the Employer argues that Maintenance Leads assign and responsibly direct employees and, in this regard, are not required to consult with anyone in exercising these tasks. The record establishes that the Maintenance Leads' assignment power is circumscribed by the Employer's mandate to repair a production line in the event of a break down. See *Tucson Gas & Electric Co.*, 241 NLRB 181, 182 (1979) (finding that construction coordinator was essentially a nonsupervisory leadman because his assignment of work to employees "comport[ed] with the general time frames mandated by the employer's established category and priority system"). In this case and in the event of a break down, leads generally consult with Maintenance Supervisor Scott. The evidence also demonstrates that mechanics' work orders contain detailed directions on work to be performed, how to repair and clean up equipment, equipment numbers and descriptions, the deadline by which the work must be performed, parts information, sanitation information, a comments section, and a safety section. *Dynamic Sci., Inc.*, 334 NLRB at 391. Further, the record demonstrates that all of the mechanics possess the skills necessary to complete all of the work orders without the need for any significant direction. When work orders come in to the Maintenance Department, whether it be through e-mails, phone calls or on a whiteboard in the maintenance shop, any mechanic may receive the work order and execute the task. Accordingly, the Employer has failed to show that the Maintenance Leads' assignment or direction of work requires the use of independent judgment.

In terms of secondary indicia, the Employer argues that Maintenance Leads possess and exercise the authority to grant time off to mechanics. However, the evidence in the record is inconsistent in this regard. Assistant Lead Mechanic, Paul Martinez, testified that he does not go to the leads for requests for time off. Rather, he stated that he knows he must present such requests to Scott or Johnson. Whether the alleged supervisor is perceived by co-workers as a

supervisor is considered “circumstantial evidence” or “secondary indicia.” See *Poly-Am., Inc. v. NLRB*, 260 F.3d 465, 479 (5th Cir. 2001). In light of Martinez’s testimony, whether the leads have been delegated the authority to grant time off is not established by the record in this case.

In light of the above and the record as a whole, I find that the Employer did not meet its burden of establishing that Maintenance Leads possess indicia of supervisory authority. Accordingly, I shall include them in the unit sought by Petitioner.

D. Boiler/Refrigeration Lead

As described below, I find that the record reveals sufficient evidence to establish that the sole Boiler/Refrigeration Lead, Leonard Ruff, effectively recommends promotions by way of his evaluations and that he uses independent judgment in the assignment and direction of employees under his lead. With regard to evaluations, Ruff participates in the assessment of the Boiler/Refrigeration mechanics in the same fashion as the general Maintenance Leads above. In contrast to the Maintenance Leads, however, Ruff’s evaluations appear to have an impact on promotion determinations. Maintenance Manager Johnson stated that he has never rejected any of Ruff’s reviews and recommendations. The record further discloses that Johnson adopts Ruff’s reviews and recommendations without a separate investigation. Johnson regards Ruff as one with a significant number of years of experience in “this type of work,” which gives Ruff the necessary ability to discern whether the work is being done properly. Because the record presents evidence that Ruff’s recommendations are adopted without separate review, I find that he effectively recommends the promotion of employees.

With respect to assigning and responsibly directing work, the record shows that Ruff exercises significant discretion in both the day-to-day tasks and in the more involved tasks at the Facility. Petitioner nevertheless argues that Ruff does not exercise independent judgment in this regard because he is guided by the pre-established deadlines for preventative maintenance. In support of this argument, Petitioner cites to *Property Markets Group, Inc.*, 339 NLRB at 8, where in that case the Board found assignments for repair and maintenance work were of a routine nature. However, *Property Markets Group* is distinguishable from the case at hand because, here, Ruff’s assignments to mechanics at the Facility involve more complex work than the work assignments involved in *Property Markets Group*. According to Ruff, “Teaching industrial refrigeration with large ammonia systems is something that you can’t go to a trade school and find organized materials or recognized materials, and training methods that have been established tried and true.” Thus, Ruff is not following some Employer predetermined process for performing boiler/refrigeration maintenance work. Rather, the Employer is relying almost exclusively on Ruff’s independent judgment to determine the nature and extent of work to be performed by employees in this area. Some of the boiler/refrigeration employees also engage in the replacement of steam valves, which the record establishes as another complex task in the Employer’s operations. In sum, the record reveals that the tasks or work performed by boiler/refrigeration employees are not routine or perfunctory in nature but require significant skills, experience and training. Consequently, such requires Ruff to use independent judgment to assign and responsibly direct the employees in the performance of their work.

Next, the record establishes that in executing his responsibility to keep the plant running and to plan for preventative maintenance, Ruff uses discretion in assigning work. In particular, Ruff coordinates with the Maintenance and Electrical departments to generate work orders; and assigns employees to rebuild certain equipment based on his own experience, the skill level and experience of the mechanics, and his desire to provide training opportunities to less experienced employees. Ruff also exercises discretion in developing and altering the schedule

and prioritizing work. This qualifies him as a statutory supervisor within the meaning of Section 2(11) of the Act. *Louisiana Gas Service Co.*, 303 NLRB 908.

Finally, the secondary indicia further support a finding of supervisory status. First, the Employer has established that Ruff has the authority to grant vacation requests. Although he passes along vacation requests to Johnson, Johnson testified that he has never refused any request for time off that was approved by Ruff. The same holds true for holding employees over. Ruff will usually run a request for overtime by Johnson, but Johnson has never rejected such a request for overtime. Aside from asking for a simple reason for the overtime request, Johnson does not separately assess the situation to decide whether to allow for overtime. As such, Ruff's recommendation for overtime work is effective. Next, Ruff is the only person in his department who has authority to use the Employer's credit card for purchases of materials up to \$10,000. Ruff also attends weekly meetings with statutory supervisors to discuss departmental issues, whereas other Boiler/Refrigeration mechanics are not invited. Finally, it is worthy to note that Ruff is the highest authority within the Boiler/Refrigeration Department.

With regard to Ruff's recommendation to transfer Antonia Saldana, there is evidence in the record that Ruff recommended Saldana as a full-time Boiler/Refrigeration mechanic to the Apprenticeship Committee. However, the Employer did not establish what occurred following Ruff's recommendation or whether the Apprenticeship Committee conducted its own separate review or investigation of Saldana. *Sears, Roebuck & Co.*, 304 NLRB at 193. As such, I am not convinced that Ruff's recommendation was necessarily effective. The same is true for the hiring and transferring of two journey level mechanics. Ruff's role in connection with those decisions is similarly unclear as the Employer did not elaborate whether and to what extent the Plant Engineer, a statutory supervisor who evidently took part in the hiring process, played a role in the hiring and transferring decisions of these two employees. *Id.* Accordingly, the Employer has not proffered sufficient evidence that Ruff effectively recommends the hiring and transferring of employees without independent investigation by his superiors.

In terms of discipline, the evidence in the record is both inconsistent and inconclusive. Johnson testified that Ruff has the authority to discipline employees. However, Ruff stated he did not have such authority. Whenever the evidence is in conflict on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). To the extent Ruff participates in the disciplinary process with Johnson, the Employer failed to provide further evidence on the impact, if any, of Ruff's recommendations on the employees' job status. *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890. Moreover, the record lacks any showing of whether Ruff issued discipline on his own. Because the Employer has not established sufficient evidence of authority to discipline or to effectively recommend discipline, I find that Ruff is not a supervisor based on this criteria.

Although the evidence regarding the Boiler/Refrigeration Lead's ability to hire, transfer, and discipline employees falls short of establishing supervisory status, there is clear evidence that Ruff effectively recommends promotions and that he assigns and responsibly directs work and it is upon these indicia that I base my finding that Ruff is a supervisor as that term is defined in Section 2(11) of the Act. Accordingly, I shall exclude Ruff's lead position from the unit sought by Petitioner.

E. Rebuild Leads

The Employer argues that the Rebuild Lead, Janice Wilkie, has the ability to hire, discharge, discipline or to effectively recommend the hire of employees. While the record is devoid of sufficient details establishing her authority to hire or effectively recommend hiring, the Employer presented sufficient evidence that Wilkie has the authority to discipline and discharge employees in the Rebuild Department without consulting any of her superiors. For example, Wilkie issued discipline to an employee for returning late from a break. After the second and related offense, she terminated that same employee and there was no independent investigation on the part of HR or Wilkie's superiors in connection with that termination. Wilkie further testified that she has also exercised the authority to suspend, without consulting anyone, operators for missing a number of days of work. Thus, the record clearly establishes that Wilkie possesses the authority to discipline or to effectively recommend the same.

The Employer also contends that Wilkie is a supervisor because she effectively recommends promotions. On the other hand, the Petitioner argues that any evaluations completed by Wilkie are independently reviewed by the Apprenticeship Committee. The evidence reveals that Wilkie participates in both the skills assessment of mechanics under the Apprenticeship Program as well as the separate Employer Performance Review, in the same fashion as her counterparts in the Maintenance Department. For the skills assessment portion, it appears that the Apprenticeship Committee conducts an independent review when considering Wilkie's recommendations for mechanics to advance. Nothing in the record clearly demonstrates what impact or weight, if any, Wilkie's recommendations have had on promotions decisions. As such, I find that the record evidence does not support the Employer's contention that Wilkie possesses the authority to effectively recommend the promotion of Rebuild mechanics.

Next, the Petitioner argues that Wilkie's discretion in assigning and directing employees is limited by the Employer's guidelines and deadlines for the corn line during the non-prime season. While it is undisputed that there are some guidelines in place for rebuilding the lines, Wilkie, like Ruff, is provided with considerable latitude by the Employer with regard to overseeing the rebuilding process and in determining which employees are going to rebuild what pieces of equipment. In making these determinations, Wilkie considers, among other things, the particular skills, abilities, or training of employees. In similar circumstances, the Board has found such authority to constitute supervisory authority. In *DST Industries*, 310 NLRB 957 (1993), the Board found a number of leaders and managers to be statutory supervisors based on their responsible direction and assignment of work in their respective departments using discretion and exercising independent judgment and authority. In coming to this conclusion, the Board found, *inter alia*, that they independently set job priorities of the employees, regularly gave them direct assignments about what work to perform, determined the number of employees needed at any one time, and determined which employees should be sent out to various locations. *Id.* at 958.

Here, the Rebuild Lead is similarly responsible for coordinating the activities of the Rebuild mechanics, putting together the master schedule based on job functions, and analyzing and working through problems. In its brief, the Petitioner attempts to negate Wilkie's discretion with regard to her responsible direction by virtue of her superior experience relative to the employees whom she leads. However, this is not a case of a lead merely assigning routine tasks to the less experienced. Rather, some of the mechanics have evidently developed expertise in certain areas, such as the husker deck or the C-Sam deck. Wilkie considers these

specialty areas when assigning work. The record further establishes that she makes these assignment decisions independently. Additionally, Wilkie visits with each mechanic about their work and inspects the work orders they complete after every task throughout the day. The record further reveals that Wilkie's responsibilities in assigning and directing work extends to the prime season in her role as the "corn specialist." In that capacity, she assigns employees specific tasks and creates the master schedule based on job functions, equipment availability, and people's schedules. In light of the above and the record as a whole, I find that the Employer has vested Wilkie with authority to assign and responsibly direct employees and that she exercises independent judgment and discretion in carrying out her duties in this regard.

In light of the above and the record as a whole, I find that Wilkie possesses indicia of supervisory authority as that term is defined in Section 2(11) of the Act. Accordingly, I shall exclude Wilkie from the unit.

F. Quality Leads

The Employer contends that Quality Leads are supervisors because they possess and exercise the authority to hire employees. Although Quality Manager Craig Bolt testified that he has "delegated [hiring] authority to the Leads," the evidence renders a different conclusion. It is undisputed that all three leads collectively review applications, interview applicants, and make a recommendation regarding hiring. However, in connection with any recommendation, either HR or Bolt will conduct a separate review. Between HR and Bolt, they have rejected at least half a dozen recommendations by the leads in the last eight years. In a department with only fifteen to twenty employees during the non-peak season and a few more during peak season, a half dozen rejections may be significant enough to render the leads' recommendations less than effective. As such, I find the supervisory indicia in this criteria to be inconclusive.

The Employer also argues that Quality Leads have the authority to discipline graders. The Petitioner, on the other hand, argues that leads merely report a performance problem to the Quality Manager, and that such reporting function does not confer supervisory status. The record evidence reveals that Quality Leads may issue infractions, which are different from the Discipline Notices described above. However, as stated above, reporting incidents of employee misconduct is not supervisory if the reports do not always lead to discipline, and do not contain disciplinary recommendations. *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890. Notwithstanding the Employer's assertion that the Quality Leads discipline employees, this assertion is unsupported by the record. The Employer has failed to provide sufficient detail with regard to anything beyond the reporting of mere infractions. Because the Employer has not met its burden of establishing supervisory indicia in this regard, I find that the leads have no authority to discipline Quality Department employees.

With regard to the Employer's contention that the Quality Leads promote employees by way of evaluations, there is no evidence in the record regarding the impact of these evaluations on graders' wages or job status. As noted above, the Board has held that when the evaluation does not, by itself, affect the wages or job status of the evaluated employee, the individual performing the evaluation is not a statutory supervisor. *Wal-Mart Stores, Inc.*, 335 NLRB 1310 (2001). Moreover, Bolt has the ability to change and overturn evaluations and has done so. As such, the record does not support a finding that the evaluations serve to effectively recommend promotions.

Contrary to the Employer, the Petitioner argues that Quality Leads do not exercise independent judgment in assigning work because they assign work to employees with no

particular skills or abilities that are distinguishable or significant in any material respect. *Palagonia Bakery Co., Inc.* 339 NLRB No. 74. However, the record evidence does not support Petitioner's argument. In particular, the record reveals that the Quality Leads have developed training manuals and provide formal training for the evaluations of all products. Graders must all achieve a passing score of at least 80% and the leads work closely with them to help them achieve this score. Moreover, the record reveals that there is variation from one line to another as well as variations in skills and abilities between graders. Consequently, the Quality Leads exercise independent judgment in making assignments for special projects, taking into consideration graders' skills and abilities as well as demands of the production lines. The discretion that the Quality Leads use in assigning work is in stark contrast to routine orders to "clean this, clean that." *Palagonia Bakery Co., Inc.* 339 NLRB No. 74, at 1 n.1, 20-21. Moreover, when there is a problem on the line, such as a defect or problems with the metal detector, leads will reassign work without consulting with anyone.

With regard to responsibly directing work, the record evidence further establishes that the Quality Leads are ultimately responsible for the graders' performance. To achieve this end, leads use discretion in overseeing the graders and their work, performing various audits and tests, ensuring all procedures are being followed properly, and that all reports are being completed and issued properly in a timely manner. Because leads have the power and responsibility to enforce the Employer's policies, procedures, and performance standards in connection with quality assurance, they responsibly direct such work. See *Darbar Indian Rest.*, 288 NLRB 545, 551 (1988) (holding that chief chef held to responsibly direct the work of kitchen employees where it was his responsibility to "make sure that anything that goes out of the kitchen goes according to his recipes and according to his tastes.")

Secondary indicia support my finding that Quality Leads are supervisors. In particular, these leads possess and exercise the authority to grant overtime work without consulting with anyone. There is evidence that they can also allow employees to leave early or arrive late. While they will sometimes run these requests by Bolt, Bolt testified that he merely ensures there is proper coverage--he does not inquire about the reasons for any of these requests. Finally, leads meet with Bolt every week without graders.

On the basis of the foregoing and the record as a whole, I find that the Quality Leads are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the appropriate unit.

G. Microbiology Technician Lead

The Employer asserts that Jill Robson, the Microbiology Technician Lead, is vested with the authority to assign and to responsibly direct technicians and helpers. In support of this assertion, the Employer attempted to draw a comparison between its Quality Lead and Microbiology Technician Lead positions but beyond this general comparison, the record lacks the detail to warrant a finding that such a comparison is valid.

The Employer also presented limited evidence indicating that Jill Robson coordinates job assignments and schedules the employees in the lab. However, the record indicates that the lab employees working under Robson's lead actually work a set schedule during weekdays. Thus, scheduling work for three individuals who all work the same shift does not require significant discretion supporting a finding of supervisory status. Moreover, the Employer did not elaborate upon the impact of the recent transfer of scheduling duties to HR as it applies to the Microbiology Technician Lead.

While the record discloses that Robson may consider workload and availability when assigning and directing employees, it does not appear that she must coordinate her work or the work of others with other departments or shifts at the Facility. Indeed, the record indicates that the employees under the lead of Robson are performing relatively standardized procedures or tests in connection with the Employer's products. In short, the scant evidence surrounding Robson's duties and responsibilities fails to support a finding that she assigns and/or responsibly directs employees in their work. See *Franklin Home Health Agency*, 337 NLRB at 830.

In view of the above and the record as a whole, I find that the Employer has failed to meet its burden of establishing that the Microbiology Technician Lead possesses indicia of supervisory authority. Therefore, I shall include that lead position in the unit.

III. CONCLUSION

In light of my findings above and the record as a whole, I shall direct an election in the following appropriate unit (hereinafter "Unit"):

All full-time and regular part-time employees including but not limited to warehouse employees, seasonal employees, lead operators, operations lead, scale house attendants, corn field scouts, field scouts, production operation leads, assistant lead mechanics, production department leads, maintenance leads, sanitation leads, and microbiology technician leads employed by the Employer at the Employer's facilities, located at 5815 Industrial Way, Pasco, Washington and 2405 East Ainesworth, Port of Pasco, Building 3, Pasco, Washington; excluding the boiler/refrigeration lead, rebuild lead, quality leads, team advisors, production manager, maintenance managers, maintenance department chair/maintenance supervisor, plant engineer, office clericals, field representatives, plant engineering department employees, trainers, production schedulers, quality auditors, quality manager, confidential employees, all other managerial employees, guards and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

Teamsters Union Local 839, affiliated with the International Brotherhood of Teamsters, AFL-CIO.

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 2948 Jackson Federal Building, Seattle, Washington 98174, on or before August 6, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by August 13, 2004.

DATED at Seattle, Washington, this 30th day of July 2004.

/s/ Richard L. Ahearn
Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174