

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1**

I.N.S.A., INC.

Employer

and

Case 01-RC-288998

**UNITED FOOD AND COMMERCIAL WORKERS
UNION LOCAL 1445**

Petitioner

DECISION AND DIRECTION OF ELECTION¹

I.N.S.A., Inc. (the Employer) is engaged in the business of operating a cannabis dispensary. United Food and Commercial Workers Union, Local 1445 (the Petitioner) seeks to represent a bargaining unit of all full-time and regular part-time retail associates, retail leads, inventory associates, and inventory leads employed at the Employer’s Salem, Massachusetts location, but excluding asset protection employees, managerial employees, professional employees, guards, and supervisors as defined by the Act.

The Employer takes the position that the Retail Inventory Specialists do not share a community of interest with the other petitioned-for employees. Furthermore, the Employer asserts that the Retail Leads and the Inventory Lead are statutory supervisors.²

As explained below, based on the record and relevant Board law, I find that the unit sought by Petitioner is appropriate, and I am directing an election in the petitioned-for unit. I further find that the Employer has not met its burden of demonstrating the supervisory status of the Retail Leads and Inventory Leads, and I find they should be included in the unit.

¹ The petition in this case was filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held via videoconference before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide these matters on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer’s rulings are free from prejudicial error and are affirmed; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer. Parties were given the opportunity to file post-hearing briefs, and both parties did so.

² The parties stipulated that some job titles are referred to with multiple terms used interchangeably: Inventory Lead is also referred to as Retail Inventory Lead and Vault Lead, the Retail Leads are also referred to as Sales Leads, and the Retail Inventory Specialists are also referred to as Inventory Associates. Likewise, the term “retail” is used in two ways. First, it is used to refer to employees who work on the sales floor (Retail Associates and Retail Leads). Second, it is used to distinguish the Employer’s retail stores—including the Salem facility—from its production facilities.

FACTS

I. EMPLOYER'S OPERATIONS

The Employer sells cannabis products out for four retail locations in Massachusetts. [REDACTED] is the District Manager for all of Massachusetts. [REDACTED] [REDACTED] is the Head of Retail Operations. The Salem facility—the location involved in this petition—employs about thirty individuals. The Store Manager, [REDACTED] [REDACTED], is responsible for all operations at the facility.

The Employer's organizational chart shows that it intends to have four Assistant Managers; however, the Employer only presently employs two Assistant Managers.³ The Assistant Managers are not in the petitioned-for unit, and the parties stipulated to their being excluded.⁴ First, the Employer currently employs an Inventory Assistant Manager who is also referred to as the Inventory Coordinator, [REDACTED] [REDACTED]. There is an Inventory Lead and four Retail Inventory Specialists as well on the Inventory Team. Second, the Employer currently employs an Asset Protection Assistant Manager. There is an Asset Protection Lead and six to eight Asset Protection employees on the Asset Protection Team to screen customers and perform other security functions. Third, the Employer intends to employ a Talent Assistant Manager who would assist with hiring, scheduling, onboarding. Four Retail Leads (only two currently employed) and eighteen Retail Associates are also on the Retail Team. Fourth, the Employer intends to employ an Operations Assistant Manager who would order supplies, oversee the delivery process, and perform general duties. There are no employees directly below this position on the organizational chart. Store Manager [REDACTED] testified that the Operations, Talent, and Asset Protection Assistant Managers are also collectively responsible for overseeing the retail staff.

In the Salem facility, there is a sales floor where customers make their orders and purchases. On the sales floor, there is a row of several cash registers with a couple of shelves and displays behind the registers. The vault—where the cannabis product is kept—is down a hallway from the sales floor in a secure area. It is about a five to six second walk from the sales floor to the vault. There is also a window between the vault and sales floor behind the register. For the most part, the Retail Leads and the Retail Associates spend the day on the sales floor consulting with and ringing up customers. For the most part, the Inventory Lead and the Retail Inventory Specialists spend the day in the vault.

Currently, the Employer performs in-vault fulfillment, which means that the orders are filled in the vault by the Inventory Team instead of being filled on the sales floor. To fill an order, the vault area receives the order slip from a receipt printer in the vault, takes the order slip, fills

³ An Assistant Manager resigned six to eight weeks before the hearing, and the Employer terminated a second Assistant Manager a few weeks before the hearing. [REDACTED] testified that the company made adjustments in light of not having two Assistant Manager positions filled, but it plans to fill the positions and then revert to normal operations. In addition to the turnover, the Employer also faced recent staffing shortages because of the latest surge in COVID-19 cases beginning in December of 2021. The surge in COVID-19 cases directly affected [REDACTED] and some of the Assistant Managers.

⁴ There was no stipulation regarding supervisory status of the Assistant Managers.

the order, puts the product in the basket, scans the product in, and then puts the basket in the rack, which is next to the sales floor. Since January 2022, online customer orders are also filled in the vault.

II. INVENTORY COORDINATOR⁵

Inventory Coordinator, Kathleen [REDACTED], is the Assistant Manager overseeing the Inventory Team and the entire vault area. Both the Union and Employer agree that the Inventory Coordinator should be excluded from the petitioned-for unit. [REDACTED] spends her time in the vault working on the computer to get things set up in the system. [REDACTED] instructs Retail Inventory Specialists what to do by leaving a list on the vault door of tasks to be completed each day, so that the employees can decide amongst themselves how to complete the tasks. [REDACTED] also makes the schedule and posts it on the door of the vault.

The job description for the Inventory Coordinator states that she is responsible for managing the cannabis product in the vault, supervising the Inventory Team, and working closely with the Retail Team. The “Responsibilities & Duties” states that she manages the secure and compliant receipt and transfer of cannabis in the vault, and manages the Inventory Team by scheduling, training, coaching, performance management, and issuing corrective action with support of the Store Manager.

III. INVENTORY LEAD

The Employer employs one Inventory Lead.⁶ The Employer takes the position that the Inventory Lead should be excluded from the unit as a statutory supervisor based on the purported authority to reward pre-roll cards to employees, assign tasks to Retail Inventory Associates, and responsibly direct employees. A former Retail Inventory Specialist, who left the company within a week before the hearing, [REDACTED], testified that the Inventory Lead’s job responsibilities include adjusting discrepancies in the system with the product, turning damaged product into staff product, and other tasks that are performed by Retail Inventory Specialists. Store Manager [REDACTED] admitted that he and the Retail Inventory Specialists equally share the responsibilities of the Inventory Team in the vault.

[REDACTED] testified that the Inventory Lead does not assign Retail Inventory Specialists tasks to complete, and the Inventory Lead does not give feedback on their job performance. Instead, [REDACTED] testified that the Inventory Coordinator posts a list of tasks on the door of the vault and the Retail Inventory Specialists just take it upon themselves to divide up the tasks. However, [REDACTED] testified that the Inventory Lead works with the Assistant Manager to decide which Retail Inventory Specialist helps with a delivery, and the Inventory Lead assigns roles to Retail Inventory Specialists from time to time such as having certain employees complete the orders.

⁵ The Inventory Coordinator is not in the petitioned-for unit. This classification is also referred to as Inventory Assistant Manager.

⁶ The Inventory Lead did not testify at the hearing.

As discussed below, the Employer has a pre-roll card reward program for employees, which rewards employees with the ability to purchase a \$5 cannabis product for only \$1. Store Manager [REDACTED] testified that the Inventory Lead has the authority to reward pre-roll cards, however, [REDACTED] did not know if the Inventory Lead ever rewarded such a card. The Employer's document tracking pre-roll cards does not list Cahill in the "Manager" column for any card issued.

The job description states that the Inventory Lead is responsible for providing supervisory support to the Assistant Inventory Manager, including assigning daily division of duties and resolving issues. The actual list of responsibilities and duties do not explicitly set out any supervisory responsibilities. [REDACTED] testified that the description accurately reflects the roles and responsibilities of the Inventory Lead.

IV. RETAIL INVENTORY SPECIALISTS

The Employer takes the position that the Retail Inventory Specialists do not share a sufficient community of interest with the petitioned-for unit. Retail Inventory Specialists primarily work in the vault. Their main job responsibilities include filling orders, keeping the vault organized and fully stocked, intaking deliveries to the store, counting the product, making sure there are no discrepancies in the system, ensuring compliance with state law, making labels, and stickering product.

Retail Inventory Specialists interact with Retail Leads and Retail Associates on every shift. Retail Inventory Specialists communicate with Retail Associates on the radio, and Retail Associates walk back to the vault to speak to Retail Inventory Specialists throughout the day.⁷ Even when working in the vault, there are times when Retail Inventory Specialists take product to the sales floor if a customer is in a hurry, or it is busy. Otherwise, product usually comes from the vault through the open window to the Retail Associates on the sales floor. Likewise, Retail Associates often walk back to the vault and take the product when ready or ask for orders at the vault door—an occurrence that a current Retail Lead, [REDACTED], estimated to happen more than half the time. Retail Associates also walk back to the vault to request products if a customer changes their mind while an order is being fulfilled—an occurrence that [REDACTED] estimated to happen several times a day.

The Retail Associates spend part of their workday in the vault. For example, former Retail Inventory Specialist [REDACTED] testified that a Retail Associate recently spent an entire shift in the vault about a month ago. Similarly, Retail Inventory Specialists spend part of their day on the sales floor, particularly when the sales floor is understaffed. For example, [REDACTED] testified that he was on the sales floor about twice a month while working as a Retail Inventory Specialist.

Within a little over two years that the location has been opened, [REDACTED] testified that he was aware of at least seven employees who have transferred from Retail Associates to Retail Inventory Specialists. When [REDACTED] started working as a Retail Inventory Specialist, he started in a hybrid

⁷ Before they switched to in-vault fulfillment, the radio was used to communicate when product on the floor was low, if they needed a cash drop at the register, or other things.

position where he spent time on the sales floor and time in the vault as needed to get product in the vault, activate the new product, and then bring it back to the sales floor. Prior to becoming a Retail Inventory Specialist, [REDACTED] spent time in the vault helping coworkers and learning basic tasks, including matching metric tags (barcodes with the identifying number of the product).

The compensation and benefits are the same for Retail Associates and Retail Inventory Specialists except for a \$1 an hour starting wage increase for Retail Inventory Specialists.⁸ Health and retirement benefits are the same for all employees. There is one employee handbook applicable to all employees.

There is no specific license to work on the Inventory Team as compared to the Retail Team because they all share the same type of Massachusetts Cannabis Control Commission badge. [REDACTED] testified that he received no formal training when he changed to a Retail Inventory Specialist, and he used his knowledge from speaking with customers about the product while working as a Retail Associate in his new role as a Retail Inventory Specialist. However, Store Manager [REDACTED] testified that the Retail Inventory Specialists have different training than the Retail Associates. For example, they need to focus on the accuracy of the product in the building instead of learning how to run a cash register. The Employer provided several store policies that apply only to employees working on the Inventory Team, such as policies that direct them how to begin a new batch of product, accept deliveries of cannabis, and restock cannabis.

V. RETAIL ASSOCIATES

Both parties agree that Retail Associates should be included in any unit found appropriate. Retail Associates work on the sales floor taking orders from customers, receiving orders from inventory, checking IDs, making sure that everything is compliant with state law, ringing up customers at the registers, cleaning, and performing general store tasks. Retail Associates might also cover for security or help in the vault.

When taking orders, Retail Associates use an iPad to take an order from customers on the sales floor. The order is sent to the vault where the ticket is printed and filled. Retail Associates take the basket through the window between the vault and the sales floor or walk back to get the order from the vault. Then, the Retail Associate shows the product from the basket to the customer, checks the ID one more time, and rings up the transaction.

VI. RETAIL LEADS

There are currently two Retail Leads. The Employer takes the position that the Retail Leads should be excluded from the unit as statutory supervisors based on their purported authority to reward pre-roll cards to employees, assign tasks to Retail Associates, and responsibly direct employees. Retail Leads are responsible for supporting Retail Associates, ranging from helping them with a customer to resolving register issues. Retail Leads handle returns if the Manager or

⁸ Wage rates are set by corporate management that is above control of the store level management.

Assistant Managers are too busy. Retail Leads do cash drops—when there is \$2,000 in a register, they take cash out and put it in the TCR machine in the cash room.⁹ Retail Leads ring up transactions involving an employee discount.¹⁰ Retail Leads do not have their own office and spend most of the day on the sales floor.

At the end of the evening shift, Retail Leads are responsible for doing the closing banking procedures, which is to ensure that all the money is taken from the shop floor and deposited in the money machine, and they reset the tills at the registers. Meanwhile, the Retail Associates clean, the Manager does the closing report, and all the employees check to make sure that there is no product on the floor. A Retail Lead, [REDACTED] testified that 99.9% of the time there is a Manager or Assistant Manager present for closing. [REDACTED] testified it was about five to six times a year where there was no Manager present. With a recent COVID-19 surge, [REDACTED] testified that it happened three times in a week in December of 2021 and once in the month of February of 2022. Other than that period, [REDACTED] testified that there were only one or two occasions where a manager was not present, including a day where Managers were all at a special meeting. In contrast, Store Manager [REDACTED] testified that there were numerous occasions where the highest-ranking individual present at closing was a Retail Lead—as many as three to four times a week during the staffing shortage due to the COVID-19 surge. [REDACTED] vaguely testified that it more recently occurred about once a week.

For the rare occasion where no Manager is present, there is an Assistant Manager on-call, and they leave the closing report and other things for the following day, as Retail Leads do not have the authority to complete the closing report. According to [REDACTED] and [REDACTED], there is a closing checklist that includes making sure bathrooms are clean, trash is emptied, and floors are mopped. [REDACTED] testified that the Retail Associates simply rotate through the tasks each evening. However, [REDACTED] testified that if no other Manager is present, then the Retail Leads are responsible to ensure that store standards are met so everything is clean, everything gets put away, and there is no product outside of the vault. [REDACTED] testified that Retail Leads assign the tasks, such as closing a few registers and starting the closing process, based on discretion depending on how busy it is as closing time approaches. [REDACTED] testified that some people are better at doing certain tasks, and they try to spread roles evenly, so a particular Retail Associate is not always doing the same thing.

There is a dispute in the record as to whether the Retail Leads regularly determine the breaktimes and assignments for Retail Associates. The Employer maintains a whiteboard that specifies the daily breaktimes and work assignments for Retail Associates. When no Managers complete the breaks on the whiteboard—which has happened in the last two months with more frequency [REDACTED] testified that the Retail Leads or Retail Associates have written in the breaks for a particular day. Prior to the last three months, an Assistant Manager completed the whiteboard; however, she is no longer employed. If [REDACTED] writes the breaks and assignments as a Retail Lead, he testified that he goes to a manager to check and make sure it is acceptable because it is not “his call.” When writing in the breaks, [REDACTED] testified that he just rotates people through break times.

⁹ Retail Associates do not have access to the cash room.

¹⁰ Assistant Managers and Managers also ring up employee discounted transactions; however, Retail Associates do not.

Retail Associates can trade break times amongst themselves or request a particular break if they must do an errand. In addition to break times, [REDACTED] also completes assignments for Retail Associates to work on registers, or do baskets, on the whiteboard if it is not completed. The whiteboard has a prewritten column with the seven different register numbers and a prewritten column with the breaktimes. There is also a section on the whiteboard designating the option to have Retail Associates be assigned to the “floor” to take orders from customers, instead of being assigned to a register. To complete the whiteboard, [REDACTED] writes the name of a specific Retail Associate next to each of the registers and breaktimes. [REDACTED] explained he rotates through the assignments on the white board or assigns certain employees a particular assignment if they are having a hard day and might not want to be working with customers all day. [REDACTED] testified that he seeks the input of a manager on who did what the day before and rotates it to be fair. [REDACTED] also gets input on who had a hard day, and he makes the decision to let them go clean. [REDACTED] testified that Retail Associates have filled out whiteboard themselves a handful of times in the last month. Retail Associates also switch from working registers to taking orders from customers with each other alone.

In contrast, Store Manager [REDACTED] testified that the Retail Leads typically fill out the whiteboard, but that Retail Associates do not fill out the white board. [REDACTED] testified that the Retail Leads use their experience in the building, the talent of the people, certain people’s efficiency at specific tasks, how busy the store is, and whether an employee is having a stressful day when making assignments for Retail Associates. [REDACTED] further testified that Retail Leads have discretion to give direction to Retail Associates and they have discretion to assign them roles. Retail Leads are responsible for making sure that the daily store requirements are being met, including cleaning and similar things. Retail Leads assign Retail Associates to their role for the day, which could be assignments to particular registers, consulting with customers, or building baskets.¹¹ Retail Leads decide how many registers to have open based on how busy operations are during a particular shift.

According to former employee [REDACTED], the Retail Leads did not assign work to Retail Associates. While [REDACTED] was still a Retail Associate, the Retail Leads would guide them to make sure they were doing the right things but they would not directly tell them what to do. The Retail Leads rarely assigned things [REDACTED] estimated only “once in a blue moon” if they were very understaffed.

Retail Associates cover for the Asset Protection Team, particularly during their lunch breaks. [REDACTED] testified that he does not typically have to choose a Retail Associate because there is a volunteer who welcomes the opportunity to sit rather than stand; however, he admitted that there is not a volunteer about ten percent of the time. [REDACTED] testified that he is only involved in finding coverage for a lunch break, and it is a manager that is responsible for deciding on coverage for an entire shift. [REDACTED] testified that such assignments are made about 15-25 times a month and the Retail Lead uses judgment to decide who will cover the assignment. Likewise, [REDACTED] testified that Retail Leads send Retail Associates to the vault to assist, using their judgment about who is most efficient or skillful at doing the work.

¹¹ Up until a month before the hearing, Retail Leads assigned Retail Associates to build baskets, which consisted of filling online preorder items. Now, the baskets are built in the vault.

The Retail Leads do not set the weekly schedule, nor do they approve Retail Associates time off requests. Furthermore, Retail Lead [REDACTED] testified that he does not have the authority to ask people to stay late because he is only able to relay a message from a manager. In contrast, Store Manager [REDACTED] testified that Retail Leads ask employees to stay late about once or twice a week. [REDACTED] estimated that this has occurred about ten to twenty times in the last six months. [REDACTED] testified that in most cases the Retail Leads do not ask anyone permission to do so, and just decide at their discretion based on the schedule of who to ask to stay late. [REDACTED] testified that leads can approve overtime, and they have continued to do so, even since his November 2021 email to all staff stating that no one can approve overtime unless he was aware of it. The Employer admits that overtime is never mandatory no matter who requests a Retail Associate to work overtime.

There is a factual dispute over the involvement of Retail Leads in other responsibilities relating to the Retail Associates. [REDACTED] testified that he does not have the authority to discipline Retail Associates. There were two times he spoke to someone about their work ethic, and these were not formal, or documented. [REDACTED] maintains he spoke to the Store Manager before speaking with these associates, because he testified that he could not take it upon himself to do that. [REDACTED] testified that he has never been told he was responsible for counseling or giving feedback to Retail Associates or otherwise improving their performance. [REDACTED] testified that he needs permission because everything must be documented and written down if Retail Associates are doing a good or bad job. [REDACTED] testified that he has never been told he would be held responsible for something inappropriate that Retail Associates did. [REDACTED] testified that he has never been told by a Manager or Assistant Manager that he was responsible for the number of sales or the volume of sales; however, [REDACTED] testified that he has been directed to push promotions if there are deals.

On the other hand, Store Manager [REDACTED] testified that there were six occasions where a Retail Lead was responsible for closing and were occasions that Retail Leads had to be coached for poor performance. However, there was no documentary evidence of these coachings, or of any discipline presented in the record that was issued to Retail Associates by Retail Leads. The Employer produced a performance evaluation from December of 2020 for a Retail Lead. Under the "Leadership" section, it states that they moved into the lead role because she possesses great leadership skills, and she now needs to focus on being able to delegate and hold employees accountable when they are not keeping up to the expected standards.

The Employer also relies on the Retail Lead job description, which states that the Retail Lead "performs the same customer service duties as a Retail Associate, but also provides support to management, including assigning daily division of duties and resolving issues." The actual list of responsibilities and duties do not explicitly set out any supervisory responsibilities. The description states that they will play a role in the "daily division of duties" and in "allocating labor during high-volume periods." [REDACTED] testified that the description accurately reflects the job duties of the Retail Lead. [REDACTED] testified that he could not recall if he sat down and spoke to Retail Leads about their expectations after he became the Store Manager.

In comparison, the job description for the Retail Assistant Manager¹² specifically sets out several functions, including coaching employees on company policies and procedures and holding them accountable for key performance indicators, ensuring new hires receive training, and managing daily operations of the storefront.

Pre-roll cards are a reward that employees receive as a sort of replacement to tips.¹³ A \$1 pre-roll card is a reward that essentially gives an employee \$4 off a pre-roll cannabis product that an employee would otherwise purchase for \$5. For example, recently, employees helped build shelving and they all got a \$1 pre-roll card. [REDACTED] explained that it is not comparable to the monetary amount that employees could otherwise receive in tips, however, they are not allowed to accept tips. The pre-roll cards are stored in the safe in the cash room, which can only be accessed by employees at the level of Retail Lead or above.

[REDACTED] testified that he has never given out a pre-roll card on his own, and he is unaware of other Retail Leads giving out pre-roll cards. As a Retail Lead, [REDACTED] testified that he asks a Manager for Retail Associates to get them because he was never told he can give out discounted items. When [REDACTED] was a Retail Associate, his Retail Lead at the time, Sara Dukeshire, would ask for him to receive a pre-roll card.¹⁴ [REDACTED] testified that Retail Leads advocate for people and ask the Managers if they can give a Retail Associate a pre-roll card for doing a good job. [REDACTED] has made recommendations to Managers for Retail Associates to receive pre-roll cards. The evidence indicates that the recommendations are not always followed. [REDACTED] also testified that he had been told by a previous Retail Lead that he must get permission to distribute pre-roll cards.

Store Manager [REDACTED] testified that an Manager, Assistant Manager, or Retail Lead has the authority to provide the pre-roll cards. [REDACTED] admitted he has never given the Retail Leads “direction” in terms of criteria for awarding the cards. There are no set guidelines dictating when Retail Leads may or may not issue pre-roll cards. [REDACTED] testified that he has never turned down a Retail Lead—including [REDACTED] who has come to him with a recommendation to award a pre-roll card. [REDACTED] testified that he is aware of Retail Leads awarding pre-roll cards without seeking approval from anybody else but admitted that he always signs for the pre-roll cards. [REDACTED] has not counseled Retail Leads to make sure they are giving out the benefit. Retail Leads have awarded pre-roll cards to Retail Associates for a variety of reasons, including giving extra effort on a shift, winning contests relating to sales, having a cash drawer be perfectly balanced at the end of shift, receiving a five-star Google review, wearing a good Halloween costume, and having a birthday.

¹² The Retail Assistant Manager is not included in the petitioned-for unit.

¹³ Most employees also take advantage of the employee discount program, which allows employees to purchase cannabis at a thirty to fifty percent discount. Each month, employees are allowed to purchase up to \$2,000 at a discounted value. [REDACTED] testified that every employee takes advantage of this benefit. Moreover, returned items are available to be purchased by employees at a seventy-five percent discount.

¹⁴ Similarly, a former Assistant Manager, [REDACTED], asked for permission to provide a Retail Associate with a discounted t-shirt, and [REDACTED] has also sought permission as a Retail Lead to provide discounted t-shirts to Retail Associates.

The Employer maintains a document in the safe that tracks employees' pre-roll cards. The "Manager" column on the document is for the person presenting or giving the card. That person signs their name in the column. There are several Retail Leads listed in the "Manager" column, seeming to show they issued the pre-roll card. [REDACTED] testified that he recalled a Retail Lead had signed off on the document as giving out pre-roll cards on September 29, 2021, but his recollection was the Assistant Manager and Lead had given out pre-roll cards to the entire shift, and it was the Assistant Manager who made the decision because as Retail Lead you always had to get permission. [REDACTED] also recalled an instance in September of 2021 when another Retail Lead told him they were going to advocate for pre-roll cards for the employees because all the managers were gone to a meeting and were not present for the closing. For that instance, there is a note in the margin that says check with "S," and Sarah Dukeshire was an Assistant Manager at the time.

ANALYSIS

I. THE RETAIL INVENTORY SPECIALISTS SHARE A COMMUNITY OF INTEREST WITH THE REST OF THE PETITIONED-FOR EMPLOYEES

In *PCC Structurals, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017), the Board reinstated the traditional community-of-interest test as articulated in *United Operations, Inc.*, 338 NLRB 123, 123 (2002). Under that test, the Board is required in each case to determine:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work; including inquiring into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id. (quoting *United Operations*, 338 NLRB at 123).

In *Boeing Company*, 368 NLRB No. 67 (Sept. 9, 2019), the Board elaborated that *PCC Structurals* requires "a three-step process for determining an appropriate bargaining unit under our traditional community-of-interest test." First, the proposed unit must share an internal community of interest. *Id.* at *3. Next, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. *Id.* at *4.¹⁵ Finally, consideration must be given to the Board's decisions on appropriate units in the particular industry involved. *Id.*

After weighing the factors of the community-of-interest test, I find that the Retail Inventory Specialists share a sufficient community of interest with the other petitioned-for employees.

¹⁵ Here, the only statutory employees not in the petitioned-for unit are employees who work on the Asset Protection Team, which involves security or guard type responsibilities. Neither party seeks to include employees on the Asset Protection Team in the petitioned-for unit. Thus, the Petitioner seeks a facility-wide bargaining unit in this Petition, and the Board recognizes that plant-wide or facility-wide units are presumptively appropriate under the Act.

First, the record shows that the Retail Inventory Specialists are in a separate department from the Retail Associates. Although this distinction is minimized by the amount of interchange discussed below, this factor still weighs in favor of the Employer.

Second, the record shows that there is frequent interchange and contact among the petitioned-for employees. Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange “may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Res. Assocs.*, 301 NLRB 400, 401 (1991). Also relevant is the amount of work-related contact among employees, including whether they work beside one another. Thus, it is important to compare the amount of contact employees in the unit sought by a union have with one another. *See Casino Aztar*, 349 NLRB 603, 605-06 (2007).

In this case, the record reveals evidence of significant employee interchange between the employees. Retail Inventory Specialists and the Inventory Lead interact with Retail Leads and Retail Associates on every shift. They communicate on the radio and face-to-face throughout the day. The Retail Associates walk back to the vault to interact with the Inventory Team, and the Retail Inventory Specialists walk out to the sales floor to interact with the Retail Team. Furthermore, Retail Associates work in the vault performing inventory tasks, and the Inventory Team spends time working on the sales floor doing retail tasks. They even have contact when working in their designated areas because the vault has a window connecting to the area behind the registers on the sales floor. Furthermore, the vault and sales floor are within the same facility and separated by only a short hallway. Also relevant for consideration regarding interchangeability is whether there are permanent transfers among employees in the unit sought by a union. In this matter, the record reveals evidence of seven permanent transfers from Retail Associates to Retail Inventory Specialists. Indeed, three of the current five Retail Inventory Specialists were previously employed as Retail Associates. Seven total transfers is a particularly high number when considering the store location has only been open for a little over two years, and it only employs about thirty individuals.

Third, there is common supervision of the employees in dispute. In examining supervision, most important is the identity of employees’ supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Res. Assocs.*, 301 NLRB at 402; *NCR Corp.*, 236 NLRB 215, 215 (1978). In this case the record reveals that the employees in the petitioned-for unit are all supervised by the same Store Manager—[REDACTED] [REDACTED] [REDACTED] is responsible for issuing discipline to the employees at the Salem location. Moreover, the wages for the Inventory Team and Retail Team are set above [REDACTED]’s level—at the corporate level. Although there are supposed to be separate Assistant Managers, the Employer currently only employs two Assistant Managers for the four positions—and there is no Assistant Manager currently employed

to oversee the Retail Team. Furthermore, the Employer's job description states that the Inventory Coordinator is responsible for working closely with the Retail Team.

Fourth, the nature of the petitioned-for employees' skills and functions are somewhat similar. This factor examines whether disputed employees can be distinguished from one another based on job functions, duties, or skills. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same employer training programs; or that they use similar equipment supports a finding of similarity of skills. See *Casino Aztar*, 349 NLRB at 605-06; *J. C. Penney Co.*, 328 NLRB 766, 767 (1999); *Brand Precision Servs.*, 313 NLRB 657, 657-58 (1994); *Phoenician*, 308 NLRB 826, 827 (1992). Here, the essential job duty of all employees is to contribute to the process of the retail sale of cannabis products. They all work with and handle the same product—cannabis. They all share the same goal of providing a positive customer experience and ensuring the process is done in compliance with laws and regulations. Still, the record shows that the specific skills and job duties of the Retail Team and Inventory Team do differ. For example, the Inventory Team generally fills orders in the vault and makes sure the product is accurate and compliant with law, whereas the Retail Associates are involved in the more direct customer service aspects of the process. Thus, Retail Associates need more knowledge of the cash registers, whereas the Inventory Team needs to focus on the accuracy of the product, including making labels and stickering product. Moreover, the Employer produced several policies that only apply to Inventory employees working in the vault, such as policies that direct them how to begin a new batch of product, accept deliveries of cannabis, and restock cannabis. Although the Employer presented evidence of specific policies that apply to the Inventory Team, there is no evidence of any formalized training program based on employees' work on the Inventory Team versus the Retail Team. Also, there is no specific license that employees need to work on the Inventory Team as compared to the Retail Team because they all share the same type of Massachusetts Cannabis Control Commission badge. Moreover, the testimony shows that employees on both the Retail Team and the Inventory Team need to have a high degree of knowledge about the cannabis product. Indeed, [REDACTED] testified that he used his knowledge of the product that he gained as a Retail Associate in his new role as a Retail Inventory Specialist. Although this factor is somewhat split, it certainly does not weigh heavily enough in favor of the Employer to outweigh the remainder of the analysis.

Fifth, there is a high degree of functional integration, which refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's workflow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Sys., Inc.*, 311 NLRB 766, 766 (1993). Here, there is functional integration between the Retail Team and the Inventory Team. With in-vault fulfillment, the Retail Associates are involved in the initial steps of checking IDs and taking orders, then the Retail

Inventory Specialists receive order slips in the vault and fill the order, then the Retail Associates receive the orders and complete the transactions at the register. Even with online orders, there is functional integration because the Retail Inventory Specialists fill the orders and then the Retail Associates complete the transactions at the register. Both the Inventory Team and the Retail Team are a part of all customers' purchases of the cannabis product at the facility. Thus, the work of each Team is heavily dependent on the other Team.

Sixth, the employees in the petitioned-for unit share the same terms and conditions of employment. Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example, hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. *See United Rentals, Inc.*, 341 NLRB 540, 541 (2004). Here, the employees have the same healthcare and retirement benefits. They are all hourly employees that share similar wage rates—except the Retail Inventory Specialists earn a starting wage that is \$1 more an hour than the Retail Associates. The employees are all subject to the same policies and rules set out in the same employee handbook.

Thus, I have carefully evaluated the community-of-interest factors and conclude that the Retail Inventory Specialists share a sufficient community of interest with the petitioned-for employees, particularly because there is significant interchange and frequent contact among the employees, there is some common supervision, there is a high degree of functional integration, and they have essentially the same terms and conditions of employment.

II. THE SUPERVISORY STATUS OF THE INVENTORY LEAD AND RETAIL LEADS

Section 2(11) of the Act defines a supervisor as any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all the powers specified in Section 2(11) of the Act because possession of any one of them is sufficient to confer supervisory status. *See Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985).

The burden of proving supervisory status rests on the party alleging that such status exists. *NLRB v. Ky. River Cmty. Care, Inc.*, 532 U.S. 706, 706 (2001). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *See id.* The Board refrains from construing supervisory status too broadly because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. *See Quadrex Env'tl. Co.*, 308 NLRB 101, 102 (1992). Thus, a lack of evidence in the record is construed against the party asserting supervisory status. *See Wackenhut Corp.*, 345 NLRB 850, 854 (2005), *Dean & Deluca N.Y., Inc.*, 338 NLRB 1046, 1048 (2003); *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB

535, 536 n.8 (1999). Purely conclusory evidence does not satisfy that burden. *Lynwood Manor*, 350 NLRB 489, 490 (2007).

In *Oakwood Healthcare, Inc.*, the Board held that to establish that an individual possesses supervisory authority with respect to any of the statutory functions, the individual must also exercise independent judgment in exercising that authority, which depends on the degree of discretion with which the function is exercised. 348 NLRB 686, 693 (2006). “[T]o exercise independent judgment, an individual must at a minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Id.* The Board explained that a “judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Id.* The Board also stated that the degree of discretion exercised must rise above the “routine or clerical.” *Id.*

A. The Employer did not provide sufficient evidence to establish Retail Leads are Statutory Supervisors

The Employer argues that the Retail Leads are statutory supervisors based on the purported authority to award pre-roll cards to employees, assign tasks to Retail Associates, and responsibly direct employees.

Authority to Reward

First, a putative supervisor’s authority to reward satisfies the supervisory requirement if it is “more than isolated, infrequent, or sporadic” and if the putative supervisor exercises “independent judgment” in issuing the reward. *See Veolia Transp.*, 363 NLRB 1879, 1887 (2016). The Employer argues that Retail Leads have the discretion to provide Retail Associates with a \$1 pre-roll card, which is a \$4 benefit. The Employer argues that Retail Leads regularly issue pre-roll cards to employees, with Retail Leads signing off on pre-roll cards about thirty-four times between June 2021 and January 2022. The Employer argues that Retail Leads use their independent judgment when rewarding the cards because they decide on their own whether an employee is worthy of the reward. The Employer’s examples include giving extra effort on a shift when there is a staff shortage, winning contests relating to sales, having a cash drawer perfectly balanced, receiving a five-star Google review, wearing a good Halloween costume, or having a birthday. The Employer asserts that there are no set criteria for issuing a pre-roll card, and it particularly points to the examples of giving effort on a shift or wearing a good Halloween costume.

Here, I find that Retail Leads do not have the discretion to grant pre-roll cards. The mere fact that Retail Leads have signed the Employer’s tracking sheet is not sufficient to prove that Retail Leads have the authority to issue cards on their own. The record includes no written policies to specify who has the authority to issue the pre-roll cards, and [REDACTED] admitted that he has not communicated with the Retail Leads about his expectations of their role in issuing pre-roll cards. [REDACTED] testified about some of the instances where Retail Leads had signed under the “manager” column as the person giving out the card. For each instance, [REDACTED] testified that the Retail Leads had sought approval from a manager before giving out the card. For example, when a Retail Lead

gave out cards, he told [REDACTED] that he was going to speak with the Assistant Manager first. The document corroborates this claim because there is a notation in the margin that appears to refer to checking with the Assistant Manager. [REDACTED] also testified that a different Retail Lead signed for cards after getting approval from the Assistant Manager. Moreover, [REDACTED] repeatedly testified that the practice has always been that Retail Leads need to seek approval for issuing the cards. [REDACTED] testified in detail about the way that he observed the former Retail Lead, Dukeshire, request approval and the way that he currently seeks approval.

I find that there is insufficient evidence to show that any recommendations made by Retail Leads for the issuance of pre-roll cards are regularly followed such that any recommendation is effective. Although [REDACTED] testified that he never turned down a Retail Lead's recommendation to award a pre-roll card, [REDACTED] maintained that there were instances when he advocated for a pre-roll card for a Retail Associate and it was not granted. In the context of a re-election decision, there is no reason to grant [REDACTED]'s testimony greater significance than [REDACTED]'s testimony. The Board finds that the party asserting supervisory status has not met its burden where the evidence is in conflict. *See Veolia Transp.*, 363 NLRB at 1884, 1887 (finding that the evidence was “too vague, limited, and conflicting”). If a purported supervisor merely requests managers to issue pre-roll cards to other employees, that is not sufficient to meet the burden to show that the individual effectively recommends the issuance of the cards. *See Custom Mattress Mfg.*, 327 NLRB 111, 111 (1998) (explaining that volunteering one's opinion from time to time is not sufficient to constitute supervisory status). Without instruction or encouragement from managers to make the suggestion, [REDACTED] is essentially making them on his own volition.

Moreover, the record shows that even most purported instances where Retail Leads signed for pre-roll cards do not involve independent discretion. The established criteria of a five-star Google review or a challenge that is set by a manager do not involve any independent judgment. As a result, there are very limited examples where a Retail Lead signed off on a pre-roll card and the reason includes something that may be constitute independent judgment. As the Petitioner argues, such “sporadic and infrequent” exercise of authority is insufficient to establish supervisory authority when the employer never apprised the putative supervisor of this authority. *See Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004). Thus, even assuming *arguendo*, that signing off on giving a card is sufficient, those instances of rewards are too isolated to constitute supervisory status. *See Veolia Transp.*, 363 NLRB at 1887 (finding there was no indication recording favorable observation resulted in positive consequence for employee, evidence did not establish the reward of a gift card was more than sporadic or involved independent judgment).

There is also a question as to whether the pre-roll cards constitute a “reward” for purposes of Section 2(11) of the Act. The Employer argues that the pre-roll cards are a “reward.” *See Veolia Transp.*, 363 NLRB at 1887 (assuming without expressly deciding that a gift card constitutes a “reward”). The Petitioner argues that the pre-roll cards are too insubstantial to form the basis for finding that an individual rewards employees. The Petitioner characterizes the Board in *Veolia Transportation* as expressing skepticism as to whether the benefit of a \$25 gift card rises to the level of authority to reward. *See id.* (“[E]ven if the distribution of \$25 gift cards is sufficient to constitute a ‘reward’ within the meaning of Section 2(11)—an issue we need not decide here”). Each individual card only carries a value of \$4 for an employee, which is much lower in value

than \$25. The limited frequency with which the cards are issued means that, on average, employees only receive a total average benefit of \$28 each year.¹⁶ The average benefit is even lower when only focusing on the cards that Retail Leads “signed off” on—with the added caveat that even signing off on a card does not show that the individual was the person who made the decision to issue the card. Likewise, the benefit is further lowered when accounting for all the instances that are clearly not discretionary, such as a five-star Google review. Moreover, the Employer does not require or even encourage Retail Leads to issue the cards regularly, and there is no evidence in the record to show that Retail Leads are evaluated on whether they grant the pre-roll cards or how they “reward” employees.

Assignment of Work

Second, to “assign” an employee is to commit “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood Healthcare*, 348 NLRB at 689. The Employer argues that Retail Leads decide which roles to assign Retail Associates, including whether they will work on registers or as bud tenders, and then continue to assign roles based on their assessment of the store’s and Retail Associates’ needs. [REDACTED] testified that Retail Leads do these things based on their independent discretion, based on considerations of rotation, employee preference, employee skills, and employee morale. In *Oakwood Healthcare*, the Board gave the example of an individual who assigns employees “to a certain department . . . or to certain significant overall tasks (e.g., restocking shelves).” 348 NLRB at 689. Thus, the Employer argues that Retail Leads assign Retail Associates to overall tasks (e.g., acting as a cashier or budtender) every shift, and often assign them to certain departments (e.g., the vault or asset protection) as needed.¹⁷

Here, I find that the Employer failed to prove that the Retail Leads have the authority to assign tasks to Retail Associates. *See Phelps Cmty. Med. Ctr.*, 295 NLRB at 490 (explaining that supervisory status is not proven where the record evidence “is in conflict or otherwise inconclusive”). The testimony from [REDACTED] is contradicted by the testimony from [REDACTED] and [REDACTED]. [REDACTED] testified that the Assistant Managers completed the assignments and breaktimes on the whiteboard when those positions were filled. [REDACTED] testified that a former Assistant Manager told him that it was the responsibility of managers. [REDACTED] corroborated [REDACTED]’s testimony by stating that it was only Assistant Managers who would assign him to perform certain duties when he worked as a Retail Associate. [REDACTED] testified that he only completed the whiteboard during the

¹⁶ The Petitioner points out that the Employer’s document shows that it has issued about 196 cards in the last year, which is a total value of \$784.

¹⁷ In the retail store setting, the Board has held that an employer failed to prove individuals were statutory supervisors because of their limited authority to assign employees and direct employees to change their duties. *See Azusa Ranch Mkt.*, 321 NLRB 811, 812 (1996). The Board found the assignment authority was of a routine nature even though the individuals had the authority to tell employees to work at a cash register or perform a different task such as stocking the shelves. *See id.* at 811. The individuals also had the authority to send employees home early, and one had the authority to decide when to give employees their breaks. *See id.* Although it is a pre-*Oakwood Healthcare* decision, the specific facts of the decision are analogous to the type of assignment of work that the Employer claims the Retail Leads perform.

last two months after the former Assistant Manager was no longer employed. This time also coincided with a recent COVID-19 surge that resulted in several Managers missing work. During this time, [REDACTED] testified that he completed the whiteboard because someone had to do it. The Board has found that such temporary supervisory duties that are taken on under circumstances that are not likely to recur do not prove supervisory status. *See St. Francis Med. Ctr.-W.*, 323 NLRB 1046, 1046 (1997). As [REDACTED] admitted, the Employer intends to fill the vacant Assistant Manager positions, so there is reason to believe those positions will resume completing the whiteboard in the same manner as it was previously done. Moreover, Retail Associates themselves have been completing the whiteboard during this recent period, or trading duties on their own, which shows that the Retail leads do not have the authority to mandate that Retail Associates perform certain tasks. *See KGTV*, 329 NLRB 454, 456 (1999) (finding no supervisory authority to assign when employees “were joined in a collaborative effort”); *see also N. Montana Health Care Ctr.*, 324 NLRB 752, 754 (1997) (explaining that the assignment of tasks does not constitute supervisory authority if employees “can switch assignments among themselves without first checking”). Moreover, the record shows that the Retail Associates generally understand their tasks and when to do them, so even completing the whiteboard is not exercising the necessary degree of independent judgment.

Regarding security coverage, [REDACTED] testified that a Retail Associate volunteers to cover a lunch break for the Asset Protection Team about ninety percent of the time. It appears to be quite infrequent and isolated for a Retail Associate to assign a Retail Associate to cover a lunch break. Moreover, [REDACTED] specifically testified that it is a manager’s responsibility, rather than a Retail Lead’s responsibility, to assign an employee to a full day of security coverage.

Regarding the closing of the store the record fails to show that Retail Leads regularly close the store and assign tasks. Instead, [REDACTED] testified that he closed the store about six times—one evening because management were all present at a particular meeting and most of the remaining instances because management were out of work because of the surge in COVID-19 cases. This shows that having a Retail Lead close the store without a manager present happens infrequently and is nothing more than isolated or sporadic. Moreover, it is unlikely to recur outside of the COVID-19 surge and when the Employer fills the vacant Assistant Manager positions. Therefore, [REDACTED] is typically handling his own tasks for the store closing, which include handling the financial matters. For the isolated incidents when a manager is not present, [REDACTED] always has a manager on-call during closing.¹⁸

The record fails to show that Retail Leads assign tasks with the use of independent judgment. [REDACTED] repeatedly testified that he usually rotates the tasks amongst the Retail Associates if he completes the whiteboard, and the break times and cash register numbers are preset on the whiteboard. The preset columns and grids are further evidence that the Retail Leads are not using independent judgment even when completing the whiteboard. [REDACTED] further testified that they simply rotate through the closing tasks, which both [REDACTED] and [REDACTED] testified are set forth in a

¹⁸ Even when a Retail Leads closes the store without a manager present, the fact that an individual is “in charge” during a period of time will not establish supervisory authority in the absence of evidence that the putative supervisor’s actions involve independent judgment. *Dean & Deluca N.Y.*, 338 NLRB at 1047.

closing checklist. Assignments that are made on a rotational basis or are otherwise controlled by detailed instructions also do not involve independent judgment. *Shaw, Inc.*, 350 NLRB 354, 355-56 (2007) (no independent judgment where assigned tasks were recurrent and predictable and involved rotating unskilled and routine duties among available crew to vary work and equalize burdens); *see also Lynwood Manor*, 350 NLRB 489-490 (2007) (equalizing workloads does not involve independent judgment). Otherwise, [REDACTED] testified that he considers employees' preferences for a certain break time or a certain task, including providing coverage to the Asset Protection Team during their lunch breaks. The assignment of tasks based on the "expressed preferences of the employees involved does not reflect the use of independent judgment." *Springfield Terrace LTD*, 355 NLRB 937, 942 (2010); *Children's Farm Home*, 324 NLRB 61, 64 (1997). Additionally, the Board has found that assignment of breaks and lunch periods are routine and do not require the use of independent judgment. *Springfield Terrace LTD*, 355 NLRB No. 168, slip op. at 6 (2010); *Regal Health & Rehab Center*, 354 NLRB 466 at 471 (2009) reaffirmed by *Regal Health & Rehab Center* 355 NLRB 352 (2010); *Los Angeles Water & Power Employees Assn.*, 340 NLRB 1232, 1234 (2003).

[REDACTED] testified that Retail Leads consider the skills of employees when making assignments; however, he did not explain how a Retail Lead assesses the skills of one Retail Associate versus the other when they perform the same tasks and interact with customers. The Board has held that evidence limited to vague or hypothetical testimony that putative supervisors play to employees' strengths does not establish independent judgment. *See Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1153 (2015); *see also CNN Am., Inc.*, 361 NLRB 439, 460 (2014) (explaining how assignments that are based on well-known employee skills also do not involve independent judgment).

Finally, the record fails to show that Retail Leads appoint Retail Associates to particular shifts or require overtime. There is no evidence that Retail Leads have ever had the authority to or actually scheduled Retail Associates for overtime. Furthermore, [REDACTED] testified that he has not asked an employee to stay late, and he understood that he did not have the authority to do so. Although [REDACTED] testified that Retail Leads could ask employees if they could stay late, he provided no specific examples in his testimony. [REDACTED]'s email prohibiting anyone from authorizing overtime without notifying him appears to contradict his own testimony. Regardless, [REDACTED] admitted that nobody has the ability to mandate or require an employee to work overtime. The Board has found that merely requesting employees to remain after their shift does not constitute supervisory authority without the power to mandate. *See Golden Crest Healthcare Ctr.*, 348 NLRB 727, 729 (2006). Thus, even the authority to request an employee stay late is not sufficient because it must be the authority to require an employee to stay late.

Responsible Direction

Third, an individual will be found "responsibly to direct" an employee when "the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly." *Oakwood Healthcare*, 348 NLRB at 691-92. In other words, "it must be shown that the employer delegated

to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” *Id.* at 692. The Employer argues that Retail Leads are ultimately responsible if the tasks they assign to employees are not completed. The Employer argues that [REDACTED] has had to coach Retail Leads six times over the last half year. The record shows the “coaching” would be for minor things like a cash shortage at a drawer or an area that had not been cleaned. The Employer argues that the performance evaluation of a Retail Lead further show they are held responsible for their ability to supervise Retail Associates.

The record is not sufficient to show that the Retail Leads “responsibly direct” Retail Associates. *See Lynwood Manor*, 350 NLRB at 490 (explaining that purely conclusory evidence does not satisfy that burden). The Employer relies on a single appraisal to argue that Retail Leads are held accountable for the conduct of Retail Associates; however, the appraisal is vague. It does not provide that the Retail Lead would be punished or rewarded for the work of other employees, and it does not mention any authority of the Retail Lead to take corrective action toward the employees. Moreover, the evidence must show actual accountability. This does not mean “that there must be evidence that an asserted supervisor’s terms and conditions of employment have been actually affected by her performance in directing subordinates But there must be a more-than-merely-paper showing that such a prospect exists.” *Golden Crest Healthcare*, 348 NLRB at 731 (explaining that there was no evidence of material consequence, or that putative supervisors were informed such consequences might result, from subordinates’ performance, and although putative supervisors were evaluated based on direction, evidence did not show what action might be taken because of this rating).

[REDACTED] affirmatively testified that he does not have the authority to issue corrective action to Retail Associates. On the two occasions where [REDACTED] did talk to an employee [REDACTED] first went to [REDACTED] because it was not something he could take upon himself to do. [REDACTED] testified that he has never been told he was responsible for counseling or giving feedback to Retail Associates or otherwise improving their performance. Similarly, [REDACTED] testified that he has never been held responsible for something inappropriate that Retail Associates did. The Employer’s job descriptions corroborate [REDACTED] testimony because the description for the Retail Assistant Manager specifically grants the responsibility to coach employees and hold employees accountable, whereas the description for the Retail Lead makes no mention of such authority. Also, the Employer does not claim that Retail Leads have the authority to take corrective action toward Retail Associates if they failed to properly perform tasks.

The Employer also relies on the Retail Lead job description, which states that the Retail Lead “performs the same customer service duties as a Retail Associate, but also provides support to management, including assigning daily division of duties and resolving issues.” To the extent that the Employer relies on this part of the job description, it is well-settled that job descriptions, job titles, employee handbooks, and similar items that constitute “paper authority” do not, without more, demonstrate actual supervisory authority. *See Golden Crest Healthcare Ctr.*, 348 NLRB 727, 731 (2006); *Chi Lakewood Health*, 365 NLRB No. 10, slip op. at 1 n.1 (Dec. 28, 2016); *Peacock Prods. of NBC Universal Media*, 364 NLRB No. 104, slip op. at 2-3 & n.6 (Aug. 26, 2016).

Therefore, the Employer did not meet its burden of proving the Retail Leads are statutory supervisors.

B. The Employer did not provide sufficient evidence to establish Inventory Leads are Statutory Supervisors

The Employer argues that the Inventory Lead is a statutory supervisor based on the purported authority to reward pre-roll cards to employees, assign tasks to Retail Inventory Specialists, and responsibly direct employees.

First, the Employer has not proven that the Inventory Lead has the supervisory authority to reward employees. Much of the analysis set forth above for the Retail Leads and the pre-roll program also applies to this analysis of the Inventory Lead. In addition, the record reveals no evidence to show that the Inventory Lead has ever given an employee a pre-roll card. The Employer's document tracking the reward program confirms that Inventory Lead never even signed as the "Manager" issuing a card. [REDACTED] could not testify whether the Inventory Lead ever granted a pre-roll card. The Employer's job description for the Inventory Lead does not mention this responsibility, and [REDACTED] denied ever speaking to the Inventory Lead about his job responsibilities. There is no evidence to indicate the purported authority to grant the reward occurs with any frequency by the Inventory Lead—particularly given that it appears the Inventory Lead never issued the reward. There is no evidence in the record to determine whether the Inventory Lead would use independent judgment when issuing the reward because he never issued the reward, [REDACTED] denies speaking to the Inventory Lead about the issuance of the reward, and there are no written policies or guidelines relating to the pre-roll program. A lack of evidence in the record is construed against the party asserting supervisory status. *See Dean & Deluca N. Y.*, 338 NLRB at 1048.

Second, the Employer argues that the Inventory Lead assigns tasks to Retail Inventory Specialists including preparing orders and intaking deliveries. The Employer relies on testimony from [REDACTED] that the Inventory Lead works with the Assistant Manager to decide which Retail Inventory Specialist helps with a delivery, and the Inventory Lead assigns roles to Retail Inventory Specialists from time to time such as having certain employees make baskets or complete orders. In contrast, [REDACTED] testified that the Inventory Lead does not assign Retail Inventory Specialists tasks to complete. Instead, [REDACTED] testified that the Inventory Coordinator posts a list of tasks on the door of the vault and the Retail Inventory Specialists just take it upon themselves to divide up the tasks. Thus, there is a factual dispute about who is involved in the assignment of tasks. In the context of a pre-election decision, there is no reason to grant [REDACTED]'s testimony greater weight than [REDACTED]'s testimony—particularly when the burden of proof rests with the Employer who is asserting supervisory status. *See Phelps Cmty. Med. Ctr.*, 295 NLRB at 490 (explaining that supervisory status is not proven where the record evidence "is in conflict or otherwise inconclusive"). Regardless, the record evidence does not establish that any assignment of tasks happens with sufficient frequency. Instead, [REDACTED]'s estimation of "from time to time" implies that any such assignment is not frequent. Furthermore, there is no evidence an assignment of tasks is done with the independent judgment of the Inventory Lead. Instead, [REDACTED] testified that the

Inventory Lead works with the Assistant Manager, which implies that the Inventory Lead is not exercising independent judgment.

Third, it appears that the Employer argues the Inventory Lead responsibly directs employees because of a statement by [REDACTED] that the Inventory Lead is “directly responsible for the operational success” of the Inventory Team. This conclusory testimony certainly does not meet the Employer’s burden of proving that a putative supervisor directs employees.¹⁹ See *Lynwood Manor*, 350 NLRB at 490 (explaining that purely conclusory evidence does not satisfy that burden). The Employer provided no evidence to show that the Inventory Lead is held accountable nor that he has the authority to take corrective action. Moreover, [REDACTED] specifically testified that the Inventory Lead does not give the Retail Inventory Specialists feedback on their job performance.

Therefore, the Employer did not meet its burden of proving the Inventory Lead is a statutory supervisor.

CONCLUSION

I conclude that that the Retail Inventory Specialists share a sufficient community of interest with the other petitioned-for employees to warrant their inclusion in the unit.

I conclude that the Retail Leads and Inventory Lead are not statutory supervisors and should be included in the petitioned-for unit.

Accordingly, based upon the entire record in this matter and in accordance with the discussion above, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act and I shall direct an election among employees in the following unit:

All full-time and regular part-time retail associates, retail leads, retail inventory specialists, and inventory leads employed at the Employer’s Salem, Massachusetts location, but excluding asset protection employees, managerial employees, guards and professional employees and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 1445.

¹⁹ In a similar way, the Employer attempts to make an overall argument that the Inventory Lead has the same authority and responsibilities of the Retail Leads. This conclusory argument and conclusory testimony in the record does not meet the Employer’s burden. Furthermore, [REDACTED] admitted that much of his direct testimony about Leads only referred to the Retail Leads. Tr. 66, 68.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. On **Friday, April 15, 2022**, ballots will be mailed to voters by National Labor Relations Board, Region 1. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 1 office by close of business on Friday, May 6, 2022.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Friday, April 22, 2022**, should communicate immediately with the National Labor Relations Board by either calling the Region 1 Office at 617-565-6700 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

I further direct that the ballot count will take place virtually, on a platform (such as Zoom, Skype, WebEx, etc.) to be determined by the Regional Director, beginning at **1:00 p.m.** on **Monday, May 9, 2022**. Each party will be allowed to have observers attend the virtual ballot count.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

B. Voting Eligibility

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. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in an 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 that 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.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Friday, April 8, 2022**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. **The Employer must post copies of the Notice by 12:01 a.m. on Tuesday, April 12, 2022** and copies must remain posted until the end of the election. For purposes of posting, working

day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to

I.N.S.A., Inc
Case 01-RC-288998

file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: April 6, 2022



LAURA A. SACKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 01
Thomas P. O'Neill Jr. Federal Building
10 Causeway St, Room 601
Boston, MA 02222-1001



United States of America
National Labor Relations Board
NOTICE OF ELECTION



PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. In a mail ballot election, employees are eligible if they are in the VOTING UNIT during both the designated payroll period and on the date they mail in their ballots. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election, or, in a mail ballot election, before the date they mail in their ballots, are not eligible to vote.

CHALLENGE OF VOTERS: An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

METHOD AND DATE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 4:30p.m. on Friday, April 15, 2022, ballots will be mailed to voters from the National Labor Relations Board, Region 01, Thomas P. O'Neill Jr. Federal Building, 10 Causeway St, Room 601, Boston, MA 02222-1001. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Friday, April 22, 2022, should communicate immediately with the National Labor Relations Board by either calling the Region 01 Office at (617)565-6700 or our national toll-free line at 1-844- 762-NLRB (1-844- 762-6572).

All ballots will be commingled and counted at the Region 01 Office on Monday, May 9, 2022 at 1:00p.m. In order to be valid and counted, the returned ballots must be received in the Region 01 Office prior to the counting of the ballots.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.



**United States of America
National Labor Relations Board
NOTICE OF ELECTION**



VOTING UNIT

EMPLOYEES ELIGIBLE TO VOTE:

Those eligible to vote are: All full-time and regular part-time retail associates, retail leads, retail inventory specialists, and inventory leads employed at the Employer's Salem, Massachusetts location, who were employed by the Employer during the payroll period ending April 1, 2022.

EMPLOYEES NOT ELIGIBLE TO VOTE:

Those not eligible to vote are: asset protection employees, managerial employees, guards and professional employees and supervisors as defined by the Act.



**United States of America
National Labor Relations Board
NOTICE OF ELECTION**



**UNITED STATES OF AMERICA
National Labor Relations Board**

01-RC-288998

OFFICIAL SECRET BALLOT

For certain employees of
I.N.S.A., INC



Do you wish to be represented for purposes of collective bargaining by
**UNITED FOOD AND COMMERCIAL WORKERS UNION
LOCAL 1445?**

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES

NO

DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY. MARK AN "X" IN THE SQUARE OF YOUR CHOICE ONLY. If you make markings inside, or anywhere around, more than one square, you may request a new ballot by referring to the enclosed instructions. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.



United States of America
National Labor Relations Board
NOTICE OF ELECTION



RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (860)240-3522 or visit the NLRB website www.nlr.gov for assistance.

United States of America
National Labor Relations Board

**Instructions to Eligible Employees Voting
By United States Mail**



INSTRUCTIONS

1. MARK YOUR BALLOT IN SECRET BY PLACING AN X IN THE APPROPRIATE BOX. DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY.
2. IF YOU SUBMIT A BALLOT WITH MARKINGS INSIDE, OR ANYWHERE AROUND, MORE THAN ONE SQUARE, YOUR BALLOT WILL NOT BE COUNTED. YOU MAY REQUEST A NEW BALLOT BY CALLING THE REGIONAL OFFICE AT THE NUMBER BELOW.
3. IT IS IMPORTANT TO MAINTAIN THE SECRECY OF YOUR BALLOT. DO NOT SHOW YOUR BALLOT TO ANYONE AFTER YOU HAVE MARKED IT.
4. PUT YOUR BALLOT IN THE BLUE ENVELOPE AND SEAL THE ENVELOPE.
5. PUT THE BLUE ENVELOPE CONTAINING THE BALLOT INTO THE YELLOW ADDRESSED RETURN ENVELOPE.
6. SIGN THE BACK OF THE YELLOW RETURN ENVELOPE IN THE SPACE PROVIDED. TO BE COUNTED, THE YELLOW RETURN ENVELOPE MUST BE SIGNED.
7. DO NOT PERMIT ANY PARTY – THE EMPLOYER, THE UNION(S), OR THEIR REPRESENTATIVES, OR AN EMPLOYEE-PETITIONER – TO HANDLE, COLLECT, OR MAIL YOUR BALLOT.
8. MAIL THE BALLOT IMMEDIATELY. NO POSTAGE IS NECESSARY. For further information, call the Regional Office at: (617)565-6700 or by contacting Field Attorney Charlotte Davis at Charlotte.Davis@nrb.gov

TO BE COUNTED, YOUR BALLOT MUST REACH THE REGIONAL OFFICE

BY May 9, 2022

RIGHTS OF EMPLOYEES

Under the National Labor Relations Act, employees have the right:

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of their own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for non representational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

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If agents of either unions or employers interfere with your right to a free, fair, and honest election, the election can be set aside by the Board. Where appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

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- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes.

The National Labor Relations Board protects your right to a free choice

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law. The National Labor Relations Board as an agency of the United States Government does not endorse any choice in the election.



NATIONAL LABOR RELATIONS BOARD
an agency of the
UNITED STATES GOVERNMENT