

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Houston, Texas

QUIETFLEX MANUFACTURING COMPANY, L.P.

Employer

and

Case No. 16-RC-10185

SHEET METAL WORKERS LOCAL UNION
NO. 54, AFL-CIO, a/w SMWIA, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:1/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.2/
3. The labor organization involved claims to represent certain employees of the Employer.3/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 4/
5. 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:

INCLUDED: All full-time production and maintenance employees, shipping employees, duct floater employees, quality control employees, project maintenance employees, and parts coordinator employees employed by the Employer at its Houston, Texas Plant.

EXCLUDED: All other employees, leadmen, contract employees, managerial employees, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION^{5/}

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike

who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Sheet Metal Workers, Local Union No. 54, AFL-CIO, a/w SMWIA, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the full names and addresses of all eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 16 Resident Office, Mickey Leland Federal Building, Suite 1545, 1919 Smith Street, Houston, Texas 77002, on or before April 11, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by April 18, 2000.

DATED April 4, 2000, at Fort Worth, Texas.

/s/ Claude L. Witherspoon
Claude L. Witherspoon, Acting Regional Director
NLRB Region 16

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1. The Employer and the Petitioner filed briefs which were duly considered.
 2. The parties stipulated, and I find, the Employer is a general partner in a limited partnership licensed to do business in the State of Texas. The Employer has an office and place of business located in Houston, Texas where it engages in the business of manufacturing ducts for the air conditioning industry. During the past 12 months, a representative period, the Employer has purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Texas.
 3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
 4. The Petitioner seeks to represent all regular, full-time production and maintenance, shipping, and duct floater employees employed by the Employer at its Houston, Texas facility. The Petitioner takes the position, however, that quality control, project maintenance, parts coordinator, leadmen, and contract employees should be excluded from the petitioned-for unit of production and maintenance employees. The Petitioner asserts that all of these employee classifications lack a community of interest with the employees in the petitioned-for unit and further asserts that project maintenance and parts coordinator employees are managers as defined by the Act.

The Employer contends that the unit sought by the Petitioner is inappropriate and urges that the unit must also include contract employees, project maintenance, and parts coordinator employees and further takes the position that shipping employees should be excluded from the petitioned-for unit. Although the Employer initially took the position at the hearing that leadmen should be included in the unit and duct floaters should be excluded from the unit, it revised its position in its brief and now takes the position, in agreement with the Petitioner, that duct floaters should be included and leadmen should be excluded from the unit petitioned-for by the Petitioner. There are approximately 238 employees in the unit proposed by the Petitioner and approximately 257 employees in the unit urged by the Employer.

The facility involved in this proceeding is located in Houston, Texas. The Employer's administrative offices and two sets of loading docks are located in front of the plant. Directly behind the administrative offices are the Slitter and Film Departments and a large product storage area that stretches out to the center of the plant. Behind the storage area is the Duct Department. Adjacent to the Duct Department are the Shipping and Welding Departments, additional storage area, and additional loading docks. The record reflects the Duct Department and the general area associated with it are known as the Production Department. To the immediate right of the large storage area located in the center of the plant are the Core and Jacket Departments. To the right of the Core and Jacket Departments are the lunchroom and the Human Resources area. On the other side of the building and to the left of the large storage area are the Fiberglass, Prep, Maintenance, and Quality Control Departments. The Lamination Department is located on the right hand corner of the plant, adjacent to the Duct Department and the Core and Jacket Departments.

Dan Daniel is the Employer's Chief Executive Officer and President. The following report directly to Daniel: Vice President of Manufacturing Peter Crane, Vice President of Engineering Mike Moore, Personnel Director Steve Conoway, Customer Service Representative Shirley Dias, Purchasing Representative Charlie Bapst, Computers Representative Markus Pens, Confidential Secretary Betsy Keterson, and a Contract Secretary named Gabriela. Reporting to Crane are Duct Department Supervisors Robert Daniels (1st Shift), Jamie Salinas (2nd Shift), and Paulino Ancelmo (3rd Shift), Core and Jacket Department Supervisor Can Le, Shipping Department Supervisor Mike Stoek, and Glass Department Supervisors Duc Nguyen and Dune Nguyen. Reporting to Moore are Maintenance Supervisor Duc La and Process Engineer An Ha. The parties have stipulated, and I find, that Robert Daniels, Jamie Salinas, Paulino Ancelmo, Can Le, Mike Stoek, Duc Nguyen, Dune Nguyen, and Duc La are all statutory supervisors within the meaning of Section 2(11) of the Act.

There are three quality control employees in the Quality Control Department and all three report to Crane. There is one project maintenance employee in the Maintenance Department and this employee reports to Maintenance Supervisor Duc La. There is one parts coordinator in the Glass Maintenance Department and this employee reports to Glass Department Supervisors Duc Nguyen and Dune Nguyen. There are four shipping

employees in the Shipping Department and all four of these employees report to Shipping Department Supervisor Mike Stoek.

The Employer's duct production begins with the Employer receiving raw materials and products such as steel wire, polyester film, glue, fire retardant, fiberglass, polyethylene resin, anti-block, color, fiberglass, raw fiberglass fiber, resin and other miscellaneous supplies from outside vendors. When these raw materials are received at the plant, employees in the Duct Department unload it. The Employer uses polyester film, spring steel wire and glue to manufacture core products. Jackets are made from polyester film, glue, and a fiberglass mesh product called scrim. The Employer also makes fiberglass from scrap fiber and resin and purchases some finished fiberglass from outside vendors. The core, jacket and insulation are then assembled in the Duct Department and packaged in a bag for shipment. The bag is placed in a rack and sent to storage to be shipped out. The Lamination Department receives insulation from outside vendors. Some of the insulation received by the Lamination Department is laminated with a tinfoil coating and is processed through a die cut operation, which is a die press, and bundled for sale. Shipping department employees pick up the finished product from the racks and load the finished product onto trucks.

The record reflects that employees use two time clocks in two different locations at the plant. One is located in the middle of the plant by the Maintenance wall and next to a storage area. Employees in the Maintenance, Lamination, Prep, Glass and Quality Control Departments use this time clock. A second time clock is located near the cafeteria and this time clock is used by all other employees. All employees use the same lunchroom and wear the same type of name tags. All regular, full-time employees of the Employer are eligible to receive the Employer's benefits package that includes a medical plan, term life insurance and group insurance.

Shipping Employees

Shipping employees load trucks, drive forklifts, and pick up finished products. When not performing these duties, shipping employees are responsible for cleaning their work area. Shipping employees do not move goods or racks of goods except when they are cleaning their work area. Each day, shipping employees spend thirty minutes to an hour filling out manifests with shipping information. Shipping employees use the time clock located in the lunchroom and are paid on a piece rate basis, i.e., they are paid by the number of pieces they load onto the trucks. Shipping employees work only one shift from 7:00 a.m. or 8:00 a.m. to 3:00 p.m. or 4:00 p.m. and are paid approximately \$11.50 per hour under a piece rate basis. Regarding employee transfers, the record reflects that a former shipping employee worked for the Employer in the Duct Department before he transferred to the Shipping Department.

The Board has long relied on "community of interest" factors in determining whether separate groups of employees should be included in an appropriate unit for purposes of representation by a labor organization. *Swift & Co.*, 129 NLRB 1391 (1961); *See also, United States Steel Corp.*, 192 NLRB 58 (1971). Such factors include common

supervision, nature of employee skills and functions, interchange of employees and contact among employees, work situs, general working conditions and fringe benefits. Also considered is the extent of the employer's organizational structure. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962); *International Paper Co.*, 96 NLRB 295, 298, fn. 7 (1951). None of these factors, individually, is determinative; all are weighed in deciding whether a sufficient community of interest exists so as to include separate, identifiable groups of employees in an appropriate unit.

Upon consideration of all of these factors and the entire record, I find that shipping employees share a community of interest with production and maintenance employees at the plant so as to require their inclusion in the unit found appropriate herein. Regarding general working conditions and necessary skills and functions, the record evidence demonstrates that shipping employees are functionally integrated with the Employer's production process. Specifically, the evidence shows that shipping employees pick up and load finished product from the production line that is stored on racks by other production employees. Likewise, the skills and functions performed by shipping employees are similar to the unloading of raw materials performed by Duct Department employees in the production area.

The record evidence also demonstrates that shipping employees share a common work situs with other production employees. The record shows that shipping employees work adjacent to the Duct Department, punch the same lunchroom time clock as these production employees, and eat in the same lunchroom with all production and maintenance employees. Additionally, the record evidence shows that shipping employees receive the same benefits package as production and maintenance employees and are paid a comparable rate of pay with these employees. Further, regarding employee interchange between Shipping and Production departments, the record evidence shows that a former shipping employee was previously employed by the Employer in the Duct Department before he transferred to the Shipping Department. Accordingly, I find that shipping employees should be included in the unit found appropriate herein.

Quality Control Employees

Quality control employees spend sixty to seventy percent of their time walking up and down the production line ensuring that proper labels are affixed on core, jacket and fiberglass products, checking core and jacket manufacturing for glue application rate and machine speed, and ensuring that core, jacket and fiberglass products have common ends. In performing these duties, quality control employees ensure employees are using the right core, jacket and insulation materials and check the overall quality of products coming off the production and glass lines.

Quality control employees also conduct pressure, duct strength, and thermal tests. When conducting pressure tests, quality control employees take a portion of duct and attach each end to a machine that injects pressure into the duct. Quality control employees conduct duct strength tests by affixing a portion of duct to the ceiling and attaching a weight to the bottom. They also test the R-value or thermal strength of fiberglass

products and record the results of these tests on clipboards while they are on the production line.

At least one quality control employee works on each of three production shifts. Quality control employees test products in a two-story laboratory located in the center of the plant in the Maintenance Department. There is only one desk in the laboratory but all quality control employees have access to it. Although there is a voice mail extension for the laboratory, quality control employees do not have their own telephone extension. These employees spend a portion of their workday filling out other paperwork in the laboratory.

Quality control employees are not authorized to stop production, discipline employees, recommend discipline, purchase products or access confidential information and are not required to have any specialized training or education. All quality control employees voluntarily wear white coats. They use the time clock located in the middle of the plant along the maintenance wall and are paid \$9.50 per hour. They report to the Vice President of Manufacturing. The record reflects that one of the three quality control employees was transferred from the Employer's Film department.

Upon consideration of the entire record, I find that quality control employees share a community of interest with production and maintenance employees. More particularly, the record reflects that the work performed by quality control employees is functionally integrated with the overall production process. The record evidence shows that on a daily basis, quality control employees observe the production process, perform numerous tests on production line machines, and record the results of their observations and tests to ensure that production is of a uniform and high quality. Such job functions have been found to be an integral part of the overall manufacturing process. *Owens-Illinois, Inc.*, 211 NLRB 939, 941 (1974); *W. R. Grace & Co.*, 202 NLRB 788, 789 (1973).

The evidence reveals that quality control employees do not have specialized training or any disciplinary authority that would warrant placing them in a different class from the production and maintenance employees. Regarding fringe benefits and rates of pay, the record reflects that quality control employees are offered the same benefit plans as production and maintenance employees and earn a comparable rate of pay with these employees. In addition to the evidence that quality control employees work in a laboratory located in the maintenance work area, the evidence also demonstrates that quality control employees punch the same time clock is used by Glass, Prep, Lamination, and Maintenance Department employees.

Although it is not clear from the record how much interaction takes place between quality control employees and production employees, the record indicates that quality control employees spend sixty to seventy percent of their time on the production line observing machine performance, performing tests, and recording results. Given this setting and the record evidence that quality control employees use the same lunch room and work comparable shifts, it is reasonable to infer that quality control employees interact with production and maintenance employees. The record evidence shows that quality control

employees voluntarily wear white coats at work that other employees do not wear. The fact that quality control employees are the only employees to wear such uniforms on the work floor is not sufficient to exclude them from the unit. *W. R. Grace & Co.*, 202 NLRB at 789. Accordingly, based on the integration of working conditions, common work situs, and common fringe benefits, I find that quality control employees are properly included in the unit found appropriate herein. *Hogan Manufacturing*, 305 NLRB 806, 807-808 (1991); *W. R. Grace & Co.*, 202 NLRB 788, 789 (1973).

Parts Coordinator

The parts coordinator is responsible for keeping an inventory of repair parts that are routinely needed for the Glass Department lines at the plant. The parts coordinator determines if and when to purchase these repair parts and has authorization to spend several hundred dollars to accomplish this task. The parts coordinator keeps all repair parts for the Glass line within a fenced area and bulk parts outside the fenced area. Only the parts coordinator and the second shift supervisor have keys and access to this secured fenced area. When the parts coordinator needs assistance with his work, maintenance employees are called upon to help him.

The record evidence reflects that the proximity of the fenced area is in the center of the Employer's plant, close to the Maintenance Department. The parts coordinator has a desk located in the Quality Control laboratory. The parts coordinator is paid \$10.00 per hour. The record reflects that the Employer utilizes a pre-recorded message allowing callers to select whom they wish to talk to at the employer's plant. The record further reflects that the parts coordinator has a separate telephone and voice mail extension as do certain management representatives listed in the calling system.

Upon consideration of the entire record, I find that the parts coordinator shares a community of interest with production and maintenance employees. The record evidence demonstrates that the duties performed by the parts coordinator are functionally integrated with the Employer's fiberglass production process. The record evidence shows that the parts coordinator is responsible for ensuring that the Glass Department has all necessary repair parts for the machines utilized by this department for producing fiberglass products. Further, regarding employee interaction, the evidence reveals that maintenance employees work directly with the parts coordinator when the parts coordinator requires assistance performing his job duties.

The record evidence shows that the parts coordinator reports to the same supervisors as the Glass Department employees and is an hourly paid employee like the other production and maintenance employees. The record reflects that the parts coordinator and production and maintenance employees are all eligible to receive the same employee benefit plans and are paid a comparable rate of pay. Regarding work situs, the evidence reveals that the parts coordinator desk is located in the same laboratory used by the quality control employees, located in the Maintenance Department work area. Accordingly, based on the record evidence of the part coordinator's integral role in the

fiberglass production, common work situs, and common fringe benefits, I find that the parts coordinator should be included in the unit found appropriate herein.

The Petitioner contends that the parts coordinator is a managerial employee and thus should be excluded from its petitioned-for unit. Managerial employees are defined as those employees who “formulate and effectuate management policies by expressing and making operative decisions of their employer.” *NLRB v. Yeshiva University*, 100 U.S. 672, 682-683 (1980). Managerial employees must be aligned with management and must exercise discretion within, or independently of, established employer policy. *NLRB v. Yeshiva University*, 100 U.S. at 682-683.

At the hearing and in its brief, the Petitioner argued that the parts coordinator’s separate voice mail extension establishes that the parts coordinator is aligned with management and is a managerial employee. Even assuming *arguendo* that the parts coordinator has a voice mail extension along with other managerial employees, this evidence, without more, does not establish that the parts coordinator exercises any managerial authority. The existence of the voice mail system itself does not establish that the parts coordinator uses the system to formulate Employer policy or effectuate already established Employer policy or that it is a nexus for such activity. Accordingly, I do not find the existence of a voice mail by the parts coordinator establishes managerial authority upon this employee classification.

Although the record reflects that the parts coordinator has the authority to spend several hundred dollars to purchase repair parts for the Glass Department on an as needed basis, there is no evidence that the parts coordinator has the authority or the discretion to spend this money for any other purpose. Specifically, the record is devoid of any other discretion being exercised by the parts coordinator or any other evidence of the parts coordinator making operative decisions other than those required by purchasing small repair parts on a routine basis. More importantly, the limited spending authority granted to the parts coordinator is not sufficient to confer managerial status upon this employee classification. *NLRB v. Yeshiva University*, 100 U.S. at 682-683. Accordingly, I find that the parts coordinator does not meet the definition of a “managerial employee” under the Act.

Project Maintenance

The project maintenance employee builds machines for the production process and performs regular machine maintenance for the Employer. The record reflects that the project maintenance employee goes off site from time to time to get parts necessary for machine construction. His duties also include measuring parts and entering information regarding those parts into the Employer’s computer using Computer Automated Drawing (CAD). The record reflects that the other two persons in the Project Maintenance area, Vice President of Engineering Moore and one contract engineer, also use the CAD. The project maintenance employee is paid between \$10.00 to \$11.00 an hour. The other employees in the Maintenance Department earn approximately \$10.00 to \$15.00 per hour.

Upon consideration of the entire record, I find that the project maintenance employee shares a community of interest with production and maintenance employees. The record evidence demonstrates that the duties performed by the project maintenance employee are functionally integrated with the work performed by production and maintenance employees. The record evidence shows that production employees use the machines that are built by the project maintenance employee. Moreover, the record evidence reveals that the project maintenance employee exercises the same type skills and performs the same type of traditional maintenance work as other maintenance employees in the Maintenance Department.

The record evidence shows that the project maintenance employee reports to the same supervisors as the Maintenance Department employees and is paid on a hourly basis as are the other maintenance employees. As with all employees of the Employer, the record reveals that the project maintenance employee receives the same employee benefit plans and a comparable pay rate to other production and maintenance employees. The record also demonstrates that the project maintenance employee shares the same work location as other maintenance employees and uses the same lunchroom and time clock as these employees. Accordingly, based on evidence of interaction between the project maintenance employee and other production and maintenance employees, similar wages, common work situs, and common fringe benefits, I find that the project maintenance employee should be included in the unit found appropriate herein.

The Petitioner contends that the project maintenance employee is a managerial employee who should be excluded from its petitioned-for unit because this employee utilizes a voice mail extension not available to other production and maintenance employees. The record does not reflect any evidence that the project maintenance employee has a separate voice mail extension. More importantly, the record is bereft of any evidence demonstrating that the project maintenance employee effectuates management policies, makes operative decisions, or exercises any discretion within or independently of established Employer policies in performing project maintenance job duties. Accordingly, I do not find that the unsubstantiated existence of a voice mail extension by the project maintenance employee, without more, to be sufficient to establish the project maintenance employee is a manager as defined by the Act. *NLRB v. Yeshiva University*, 100 U.S. at 682-683

Leadmen and Duct Floaters

At the hearing, the Petitioner took the position that the three duct floater employees in the Duct Department should be included in the proposed unit and the seven leadmen in assorted production departments should be excluded from the unit. In its brief, the Employer revised its earlier position and agreed that the duct floaters should be included and the leadmen excluded from any proposed unit. The record indicates that duct floater duties involve taking production off the bagging lines and placing the product on racks. Based on the evidence that duct floaters are functionally integrated with the production process, report to the same supervisor as other Duct Department employees, and are

eligible to receive the same benefits as other employees, I find that duct floaters should be included in the unit found appropriate herein. Regarding leadmen, the record evidence shows these seven employees coordinate the work activities of the employees in their respective areas, contact the supervisor when there is work performance problems, and receive a ten percent premium in pay. Based on the foregoing and the agreement of the parties regarding the exclusion of this job classification, I find that leadmen should be excluded from the unit found appropriate herein.

Contract Employees

The Employer utilizes the services of PeopleSource to supplement its own workforce depending on the Employer's workload requirements. PeopleSource is a staffing agency that identifies, hires and provides temporary contract employees to the Employer. The PeopleSource employees perform these contract services for the Employer on a "temp to perm" basis wherein a contract employee who works for a period of time and has his performance evaluated may be eligible for permanent hire. There are eleven PeopleSource employees who currently work in the Duct Department. These employees are not promised regular employment and work from two weeks to two months. Their tenure with the Employer is dependent not only on the Employer's workload but also on how well the employee performs his or her assigned job.

PeopleSource pays their employees' wages, their Social Security contribution, and Workers' Compensation. PeopleSource performs background checks, drug screening tests and conducts interviews of their employees. It handles any situation involving the discharge of their employees but the Employer has the authority to effectively recommend such discharges. The Employer sets the work rules, provides work assignments, and communicates work expectations to the PeopleSource employees. The PeopleSource employees work shoulder to shoulder with the Employer's employees, use the same tools as the Employer's employees, take the same breaks as the Employer's employees, go to lunch at the same time and use the same lunchroom as the Employer's employees. PeopleSource employees do not receive any of the benefits offered to the Employer's employees. PeopleSource employees are subject to the same personnel policies as the Employer's employees and may be disciplined by the Employer's supervisors. Within the last year and a half, the Employer has permanently hired less than twenty employees from PeopleSource.

At the hearing and in its brief, the Employer takes the position that it and PeopleSource are joint employers and that as a result of this relationship, contract employees should be included in any unit found appropriate herein based on the community of interest these employees share with the production and maintenance employees. As a general rule, the Board does not include employees in the same unit if they do not have the same employer, absent employer consent. *Hexacomb Corp.*, 313 NLRB 983 (1994); *International Transfer of Florida, Inc.*, 305 NLRB150 (1991); *Greenhoot, Inc.*, 205 NLRB 250 (1973). In *Greenhoot, Inc.*, the Board held "there was no legal basis for establishing a multi-employer unit absent a showing that the [several] employers have expressly conferred on a joint bargaining agent the power to bind them in negotiations or

that they have by an established course of conduct unequivocally manifested a desire to be bound in future collective bargaining by group rather than individual action.” 205 NLRB at 250. In the instant case, there is no evidence of such consent in the record.

In the instant case, the record evidence demonstrates and the Employer acknowledges that PeopleSource has not consented to be bound with the Employer as its bargaining agent. Furthermore, the record evidence does not demonstrate that the Employer and PeopleSource have by an established course of conduct unequivocally manifested a desire to be bound in future collective bargaining agreements. The record does not reflect that PeopleSource has expressed its consent to multiemployer bargaining for any employee unit that is found appropriate in the instant matter and there is no record evidence demonstrating the Employer and PeopleSource have established an agreement that each will share or codetermine matters governing the essential terms and conditions of employment of the employees herein.

Although the Employer asserts that it has a joint employer relationship with PeopleSource, I do not make a finding regarding this relationship. Even if such a relationship was found, absent any consent by PeopleSource to be bound by future collective bargaining by a group rather than individual action, the Board would not find the proposed unit appropriate. *Hexacomb Corp.*, 313 NLRB at 983; *Hughes Aircraft Co.*, 308 NLRB 82 (1992); *International Transfer of Florida*, 305 NLRB 150 (1991). Accordingly, I find that the PeopleSource employees are not properly included in the unit found appropriate herein. *Hexacomb Corp.*, 313 NLRB 983 (1994); *The Brookdale Hospital Medical Center*, 313 NLRB 592 (1993); *Greenhoot, Inc.*, 205 NLRB at 250

Employer’s Request to Reopen the Hearing

The Employer acknowledges that the record is silent with regard to PeopleSource’s consent to a multiemployer arrangement. In its brief, the Employer requests that the evidentiary hearing be reconvened in order to allow PeopleSource the opportunity to present evidence on the issue of consent. Such a request, however, is untimely. It is the Employer who is asserting that the PeopleSource employees be included in any proposed unit and it is the Employer’s burden to present the evidence necessary to establish that these employees be included in any proposed unit. The Petitioner contends that PeopleSource employees should not be included in any unit found appropriate herein. More importantly, the Petitioner did not include PeopleSource as a party to its Petition. The Employer had ample time to notify PeopleSource to allow them the opportunity to participate in the hearing. The Employer presented evidence and arguments at the hearing regarding the inclusion of the PeopleSource contract employees but made no motion to include them in the proceeding. Accordingly, I deny the Employer’s request to reopen the hearing for the purpose of including PeopleSource in the proceedings.

Based on the above and the record as a whole, I find there is a sufficient community of interest to warrant the inclusion of shipping employees, quality control employees, parts coordinator employees, project maintenance employees, and duct floaters with the production and maintenance employees in the petitioned-for unit and find that temporary

contract employees of PeopleSource should be excluded from this unit. When contesting the appropriateness of a petitioned-for unit, the Employer has the burden to establish that such a unit is inappropriate. *Executive Resources Associates, Inc.*, 301 NLRB 400, 402 (1991); *Omni-Dunfey Hotels, Inc.*, 283 NLRB 475 (1987). The Act, however, allows a union to petition for an appropriate unit, and does not require it seek the most appropriate unit, even when a different than petitioned-for unit might be more appropriate. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); *Omni-Dunfey Hotels, Inc.*, 283 NLRB at 475; *Federal Electric Corp.*, 157 NLRB 1130, 1132 (1966).

Record evidence shows that the PeopleSource employees are not promised full time employment and only typically work for the Employer from two weeks to two months. Despite the Employer's asserted "temp to perm" program, Board precedent is clear that, under these circumstances, temporary employees should not be included in a bargaining unit. *See, Pen Mar Packaging Corp.*, 261 NLRB 874 (1982). Moreover, the PeopleSource employees do not share in the same fringe benefits and are not paid by the Employer as are the production and maintenance employees. Accordingly, the exclusion of the PeopleSource employees does not render the unit found herein an inappropriate unit.

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

440-1760-1500
460-5033-7500-0100
460-5033-7500-6000
460-5067-9101