

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

Indianapolis, IN

BOEGLIN GROUP, INC.,  
PRAIRIE DOG CORP., XJD CORP.,  
BLANX ETC., INC., AND MANTICORE, INC.,  
A SINGLE EMPLOYER<sup>1</sup>

Employer

and

Case 25-RC-9964

UNITED STEELWORKERS OF  
AMERICA, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held August 31 and September 1, 2000, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

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

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

1. The hearing officer's rulings made at the hearing are free from 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.
3. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup> Administrative notice is taken of the public records of the office of the Indiana Secretary of State, which reveal *inter alia*, the correct legal name of each corporation.

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.

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:

All full-time and regular part-time production and maintenance employees, office clerical employees, plant clerical employees, and technical employees, including the Systems Administrator (also known as the Information Technology Manager), Customer Service Representatives and Sales Representatives employed by the Employer at its Bloomington, Indiana facility; BUT excluding the Copy Writer, all professional employees, guards and supervisors under the Act.

## I. STATEMENT OF FACTS

The Boeglin Group, Inc. was incorporated on June 26, 2000, and is engaged in leasing employees and providing other support services to its four sister companies: Prairie Dog Corp., XJD Corp., Blanx Etc., Inc., and Manticore, Inc. Prairie Dog Corp. (herein Prairie Dog) manufactures mouse pads, wrist rests, and other accessories for personal computers. XJD Corp. (herein XJD), Blanx Etc., Inc., (herein Blanx) and Manticore, Inc., (herein Manticore) are engaged solely in selling the accessories manufactured by Prairie Dog. Each company targets a different niche market for the products. All five corporations are owned by Timothy J. Boeglin and his wife Cynthia Reichard. Boeglin occupies the position of Chief Executive Officer of Boeglin Group, Inc., (herein Boeglin Group), while his wife occupies both the positions of General Counsel and Copy Writer for the Boeglin Group. In May of this year the five companies began a reorganization. As part of this restructuring, all persons employed by Prairie Dog, XJD, Blanx and Manticore were transferred to the Boeglin Group payroll effective July 1, 2000. Consequently, since this date these four companies have employed no one; instead, the companies lease their entire workforces from the Boeglin Group. Included among employees leased by the Boeglin Group to the other companies are production and maintenance employees leased to Prairie Dog, as well as Sales Representatives and Customer Service Representatives leased to XJD, Blanx and Manticore. In addition to the lease of these employees, Boeglin Group also provides support services to the four companies in such areas as human resources, information technology, marketing and accounting.

The Petitioner seeks an election within a wall-to-wall unit of employees comprised of all production and maintenance employees, office clerical employees, plant clerical employees and technical employees, but excluding all professional employees, supervisors and guards. The parties are in agreement that the unit found appropriate herein should include all production and maintenance employees, Sales Representatives and Customer Service Representatives. They are also in agreement that all professional employees, guards and supervisors should be excluded from the unit.<sup>2</sup> In dispute are the unit placement of 11 positions, 5 of which are currently

existing positions, and 6 of which are prospective positions. It is the Employer's position that these 11 positions should be excluded from any unit found appropriate. The disputed existing positions include: Systems Administrator (a position which is also referred to as Information Technology Manager), the Copy Writer position, Purchasing Manager, Accounts Payable Manager, and Credit and Collections Manager. The following 6 positions do not now and have never existed, although CEO Boeglin testified that it is his intention to create them at various future points in time: Information Technology Support person, Graphic Assistant, Advertising Placement and Trade Show Coordinator; Web Master, Accounts Receivable Manager, and Inventory Control Manager. The Petitioner seeks the inclusion of all 11 positions within its petitioned unit

The unit found appropriate herein consists of approximately 106 employees for whom no history of collective bargaining exists.

The five companies occupy approximately 60,000 square feet of space in a building shared with other tenants in Bloomington, Indiana. Prairie Dog's production and warehouse areas are separated by a partition from a two-story office area which houses its sister companies. Prairie Dog utilizes the services of 65 to 70 leased employees who perform production, maintenance and warehouse functions. Prairie Dog manufactures primarily mouse pads, some of which are sold blank, without any image printed on them, while others are printed with graphics specified by the customer. Art work for the images is either provided by the customer or digitally developed by Boeglin Group staff. After a film of the desired image is developed, a proof is sent to the customer for approval, and following its approval, a plate is made for printing. Two offset presses print the images onto paper, and images are then transferred to the mouse pads through a heat sublimation process. The pads are ultimately shipped to customers by Prairie Dog.

XJD, Blanx and Manticore perform solely marketing and sales functions for Prairie Dog products. They employ no outside sales representatives. All sales occur via mail, telephone, the internet, or facsimile transmissions. Sales Representatives and Customer Service Representatives are leased from the Boeglin Group to each of the three companies. No written job descriptions exist for any of the disputed or undisputed positions. Record evidence concerning the characteristics of the various job classifications discussed herein consists primarily of the testimony of CEO Boeglin. Only in the case of the Systems Administrator did a person who occupies (or occupied) a disputed position, testify at the hearing. The Customer Service Representatives perform sales functions; answer customer inquiries; respond to customer concerns; and prepare and send out invoices to customers. Each of the three sales companies generates its own customer invoices, and Prairie Dog invoices each of the companies for products it has provided them. The Customer Service Representatives who perform services for XJD report to its Customer Service Manager. While the record suggests that Customer Service

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<sup>2</sup> At hearing the parties stipulated that the following positions should be excluded from the unit: the Division President of XJD, the XJD Sales Manager and Customer Service Manager; the Blanx Division Sales Manager; the Manticore Division Sales Manager; the Prairie Dog Division Plant Manager, Sales Manager, First and Second Shift Production Managers, Pre-Press Manager and Warehouse Manager; the Boeglin Group's Chief Executive Officer, President, General Counsel, Senior Vice President of Sales and Product Development, Senior Vice President of Finance and Administration, Human Resource Director, Human Resource Generalist, Marketing Director, and Account Manager.

Representatives also work for Blanx and Manticore, no Customer Service Manager exists in these companies, and the record does not reflect to whom these Customer Service Representatives report. According to the testimony of CEO Boeglin, one of the functions he visualizes for the position of Accounts Receivable Manager of the Boeglin Group, when the position is created, is to coordinate the billing functions of the Customer Service Representatives to insure that they are generated on a timely basis. The Accounts Receivable Manager will also perform billing functions for Prairie Dog.

According to the testimony of CEO Boeglin, the Accounts Payable Manager performs all accounts payable functions for all companies. He reports to the Boeglin Group's Accounting Manager, who reports to its Senior Vice President of Finance and Administration. The Accounts Payable Manager is responsible for organizing the procedures by which invoices received by the companies are validated, processed, prioritized and paid. When cash flow is insufficient to pay all outstanding bills at one time, for example, he determines which bills shall be paid first. There is no evidence that the Accounts Payable Manager supervises or oversees the work of anyone.

The Credit and Collection Manager, who is also directly employed by the Boeglin Group, researches the credit worthiness of prospective customers and establishes customer credit limits. He also decides when to refer overdue bills to collection agencies, and he handles collection matters involving such agencies. The record does not indicate that the Credit Manager supervises anyone. According to the former President of Blanx, the Credit Manager assisted him in determining the credit-worthiness of customers, and helped him collect overdue accounts. The President, however, made the ultimate decisions on all such matters.

It is not entirely clear from the record whether the position of Purchasing Manager reports to the Accounting Manager or someone else. Although the position is currently vacant, it was previously occupied. The duties of the position prior to reorganization are not entirely known, but CEO Boeglin envisions the duties of the position as it now exists to include the development of policies and procedures governing the purchase of raw materials and other goods for the five companies. It is intended that the Purchasing Manager will negotiate prices and purchasing terms with vendors. According to CEO Boeglin, it is also planned that at some future date the position of Inventory Control Assistant will be created, and s/he will report to the Purchasing Manager. Included among the duties of the Assistant will be the management and maintenance of an inventory system for all of the goods and materials purchased by the companies. An employee with shipping and customer service/sales experience testified that in March and April of this year, he trained the current Purchasing Manager how to establish par levels for inventory and how to use the Employer's accounting programs.

The parties stipulated that the position of Marketing Director of the Boeglin Group should be excluded from the petitioned unit. The position is currently vacant. One person reports to the Director, and that is the Copy Writer. The Copy Writer writes advertising material and provides other copy writing support for the marketing department. As previously mentioned, the duties of the position are currently performed by CEO Boeglin's spouse, who also performs the dual function of serving as the companies' General Counsel (and part owner). CEO Boeglin's restructuring plans call for the creation of three additional positions which will also report to the Marketing Director: Graphic Assistant, Advertising Placement and Trade Show

Coordinator, and Web Master. The functions of these positions may change to some extent after persons are hired and begin performing work in each position, since the functions associated with newly created positions are evolutionary in nature. At present, however, CEO Boeglin perceives that the duties of the Graphic Assistant will be to provide graphic materials to the marketing department. These could include designs for advertising, business cards, and post cards for customers. As the name connotes, the duties of the Advertising Placement and Trade Show Coordinator will include coordinating the placement of advertisements in trade journals as well as coordinating the companies' participation in trade shows. The third prospective position, Web Master, will create and maintain the companies' computer web sites. In the distant future, the companies might offer web site services to outside customers.

Considerable time was spent at hearing litigating the unit placement of the Systems Administrator position, which is referred to interchangeably by the parties as the Information Technology Manager. It is the Employer's contention that the position is managerial and/or confidential and/or supervisory and consequently, should be excluded from the unit found appropriate herein. The Petitioner asserts to the contrary, that the position is none of the above and shares a community of interest with unit members, warranting its inclusion within the unit. The Systems Administrator maintains, repairs, services, and updates the companies' personal computers, their computer network system, their three web sites, and their telephone system. The Boeglin Group employs a total of about 125 people, and 70 personal computers are scattered throughout the production and warehouse areas of the manufacturing plant, as well as the office areas occupied by the companies. In addition, the companies have three web sites, two of which can be accessed by customers for the purpose of placing orders and conducting related business. The companies also have two telephone lines referred to as "T-1" lines which are more sophisticated versions of a telephone line and which permit large transmissions of data across the Internet. One line is used for e-mail and for art work which is often contained in large files. The companies also recently installed a sophisticated telephone and voice mail system. The Systems Administrator evaluated competing phone systems and made recommendations to CEO Boeglin who decided which system to purchase. Since its purchase, the Systems Administrator has been responsible for its implementation, maintenance and repair. According to the person who occupied the Systems Administrator position until late July of this year, when he was hired into the position in September of 1999, CEO Boeglin described his job as being responsible "for everything that plugged into the wall." No performance evaluations or other personnel records were offered into evidence in order to identify the duties and responsibilities of the position. The sole substantive document offered into evidence was a memorandum written by the former Systems Administrator in May of this year, in response to a request from the Senior Vice President of Finance, that he describe his job. The memorandum provides some further insight into the functions of the position, and states in pertinent part:

Currently my job consists of complete crisis management, trying to immediately "fix" problems that arise throughout the company. Examples range from putting toner in the numerous printers and fax machines in the building, moving users from one place to another (computer and phone), cleaning out users mice that "no longer work," to coordinating customers who need to get large art files here and can't use email; the list goes on and on. The phone system is a huge project I have been working on almost since the day I started...

According to CEO Boeglin, the Systems Administrator reports to him because the Systems Administrator is the most knowledgeable person about the companies' electronic hardware and software. According to the former Systems Administrator, a large segment of his work was crises management, responding to problems with the electronic systems as they occurred. He reported to the President of Manticore, who had been previously occupied the Systems Administrator position, until he left Boeglin's employ in January of 2000, and after that he reported directly to Boeglin. Contrary to the implied testimony of CEO Boeglin that the Systems Administrator participated in meetings held among members of management in order to "formulate" and effectuate company policies and procedures, the former Systems Administrator testified that he attended management meetings in his capacity as a technical expert, responding to questions and inquiries. The Employer offered into evidence an e-mail from the President of the Boeglin Group in which the former Systems Administrator was invited to participate along with other representatives of management in a corporate retreat scheduled for August 22 and 29, 2000. The purpose of the retreat was to development "vision" and "mission" statements for the companies. The Systems Administrator did not attend the retreat because he was terminated in July. Of particular note is the fact, however, that no testimonial or other evidence was offered by the Employer to establish whether in fact a retreat occurred as planned; if so, whether the Systems Administrator's successor was invited to participate; and if so, the nature of his/her role at the retreat.

According to the former Systems Administrator, at no time was he told that he was a supervisor or a part of management. Nor was any announcement made upon his hire, introducing him to staff as a member of the management team. According to the former President of Manticore who had initially been hired as Systems Administrator, when he occupied the Systems Administrator position no one told him he was a part of management, nor did he consider himself such. The former President of Blanx testified that he never considered the Systems Administrator a supervisory position.

CEO Boeglin testified that he believed that the Systems Administrator could access anyone's e-mail, voice mail, and all other electronically maintained databases. The former Systems Administrator corrected this apparent misconception, however, by explaining that he had no access to any information maintained by the Human Resource Department; nor did he have any access to accounting or financial data. Thus, when the accounting system hardware/software required repairs, the former Systems Administrator had to telephone the Accounting Manager at his home and obtain the necessary password from him which would permit him to access the system in order to make repairs. Other than the Human Resource and Accounting departments, if the former Systems Administrator wanted to access an individual's e-mail, he would have to change the individual's password in order to be able to do so. But once having changed the password, the Systems Administrator could not revert the password back to the individual's original password, because the Systems Administrator did not possess individuals' passwords. Thus, there was no way the Systems Administrator could access private information from the CEO's or of anyone else's e-mail, without being discovered.

According to CEO Boeglin, the Systems Administrator is a salaried position with an income in the range of \$37,000 to \$45,000, which is the same as other mid-level management

personnel such as the Human Resource Director, the Marketing Director and the Accounting and Purchasing Managers. The press operators in the production plant, who are stipulated members of the unit herein, can also earn in excess of \$40,000 per year. The Systems Administrator participates in the same 401(k) plan as other unit members, and there is no evidence that other fringe benefits available to unit members differ from those available to the Systems Administrator.

The Systems Administrator has regular contact with unit members, both those who work in the production areas and those, like the Customer Service Representatives and Sales Representatives, who work in the office areas. The Systems Administrator services the 5 to 10 computers which exist in the shipping and production areas. All employees are free to use the Employer's lunch room, and informal contact among employees also occurs there.

According to the former Systems Administrator, on various occasions during his tenure with the Employer, he unsuccessfully requested that a position be created for an assistant to help him. In the organizational chart dated August 23, 2000, apparently prepared by the Employer for the hearing herein, it lists the prospective position of "Tech Support," which does not currently exist, under the direction of the Information Technology Manager. In a memorandum the former Systems Administrator was asked to write, describing the functions of an assistant as he envisioned them to be, he described the work of the support position to include:

...communicating daily with supervisors and prioritizing the days (sic) task list, general troubleshooting and helping people with problems encountered, loading software and configuring for individual users, helping with moving users around and getting them back into working condition. Also, the assistant could assist with basic maintenance of the network and acquire the training necessary to fill in for the systems admin when needed, identifying specific problems while working with others and communicating those with supervisors.

## II. DISCUSSION

The Petitioner requests an election to determine its representative status in a "wall-to-wall" unit of the Employer's employees. The parties do not dispute the appropriateness of a wall-to-wall unit, but disagree only upon the inclusion or exclusion of certain positions within such a unit. Under Section 9(b) of the Act, the Board has broad discretion to determine the unit appropriate for the purposes of collective-bargaining in each case in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act, See NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit, America Hospital Association v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988).

### A. The Single Employer Issue

The Board considers several nominally separate business entities to be a single employer where they comprise an integrated business enterprise, Radio & Television Broadcast Technicians Local Union 1264, International Brotherhood of Electrical Workers, AFL-CIO v. Broadcast Service of Mobile, Inc., 380 U.S. 255 (1965). Significant criteria in determining the relevant employer are interrelationship of operations, common management, centralized control of labor relations, and common ownership, South Prairie Construction Co. v. Local No 627, International Union of Operating Engineers, AFL-CIO, 425 U.S. 800 (1976). Record evidence clearly indicates that the Boeglin Group, Inc., Prairie Dog Corp., XJD Corp., Blanx Etc., Inc. and Manticore, Inc. are affiliated business enterprises with common ownership, officers, and management. They share common employees, common premises and facilities; they have formulated and administered a common labor policy; they provide services for and make sales to each other; they interchange personnel; and their business operations are highly integrated. Accordingly, it is concluded that the above-named affiliated enterprises constitute a single employer under the Act. Hereinafter, as well as in the unit description recited above, the five companies are jointly referred to as the "Employer."

### B. The Copy Writer Position

Section 2(3) of the Act expressly excludes from the definition of "employee," "...any individual employed by his parent or spouse, or any individual having the status of an independent contractor." In the case at hand, the Copy Writer position is occupied by an owner of the Employer. This owner also performs the dual function of being the Employer's General Counsel. With court approval, the Board has excluded from bargaining units, close relatives of the owners of businesses, especially where the familial relationship is close, and the ownership interest of the family member is significant, NLRB v. Action Automotive, Inc., *Supra*. The rationale for this policy is that where the ownership interest is significant and the family relationship close, the family member's interests are more closely aligned with management than with members of a bargaining unit. Such a conclusion is especially appropriate here since the spouse of CEO Boeglin is herself an owner of the Employer. Accordingly, the position of Copy Writer as presently occupied, is excluded from the unit found appropriate herein.

### C. The Systems Administrator/Information Technology Manager Position

It is the Employer's position that the Systems Administrator/Information Technology Manager position should be excluded from the petitioned unit on grounds that it is a managerial position and/or a confidential position and/or a supervisory position. Upon remand from the Supreme Court in Bell Aerospace v. NLRB, 416 U.S. 267 (1974), the Board reaffirmed the legal standard for deciding the question of managerial status. Specifically, the Board, stated:

The Board long has defined managerial employees as those who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy (citation omitted). ... [M]anagerial status is not conferred upon rank-and-file workers, or upon those who perform routinely, but rather it

is reserved for those in executive-type positions, those who are closely aligned with management as true representatives of management, Bell Aerospace, 219 NLRB 384, 385 (1975).

Thus, managerial positions are reserved for those persons who actually create and execute employer policies, or those who have the authority to disregard company policy in carrying out the duties of their job. Further, the specific job title of an employee is not controlling. Rather, the question whether a particular employee is managerial must be answered in terms of the employee's actual job responsibilities, authority, and relationship to management, *Id* at 385. A close examination of the record at hand indicates that the Systems Administrator possesses neither characteristic of a managerial employee. Case law regularly describes a manager as someone who "formulates" and "effectuates" policy. When asked by his counsel to describe the function of the Systems Administrator, CEO Boeglin testified that it was to "formulate" policies and procedures. The record is devoid, however, of a single policy or procedure which was formulated by the Systems Administrator, or one to which s/he contributed. Nor does the record contain any evidence of a corporate policy that the Systems Administrator "effectuated". Lastly, the record is devoid of any instance in which the Systems Administrator deviated from policies established by others. Thus, while the former Systems Administrator recommended the installation of one telephone system over another, the ultimate decision on this issue was made by the CEO. The fact that the former Systems Administrator attended meetings with representatives of management fails to establish his management status since the only evidence of record which identifies the nature of his participation in these meetings, is testimony that he served only as a technological resource.

The mere exercise of discretion and independent judgment by the Systems Administrator in the execution of his/her duties, does not confer managerial status; for the performance of technical and skilled work necessarily involves the exercise of discretion and judgment. Rather, the status of "managerial" employee is reserved for those in executive-type positions whose interest are closely allied with corporate officers and shareholders, Case Corporation, 304 NLRB 939 (1991); The Bakersfield Californian, 316 NLRB 1211 (1995).

The record also fails to establish that the Systems Administrator is a confidential employee. The Board's long-standing test for determining whether an employee is a confidential employee is whether the employee "assist(s) and act(s) in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations," B.F. Goodrich Co., 115 NLRB 722, 724 (1956); or one who has access to an employer's future bargaining strategy, Pullman Standard Division of Pullman, Incorporated, 214 NLRB 762 (1974). This test, often referred to as the "labor nexus test" was approved by the Supreme Court in NLRB v. Hendricks County Rural Electric Membership Corp., 454 U.S. 170 (1981). In the case at hand, there is no evidence that the Systems Administrator acts in such a capacity. In fact, the record indicates that s/he is barred from access to records maintained by the Human Resource Department, the customary repository of confidential employee records. The record fails to identify any labor-related confidential records to which the Systems Administrator possesses access. Even if s/he were able to access such records, mere access to confidential information does not establish confidential status, The Bakersfield Californian, *Supra* at 1212.

Lastly, the record also fails to establish that the Systems Administrator is a statutory supervisor. In representation proceedings, the burden of proving that an individual is a statutory supervisor rests upon the party making the assertion, The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989); Tucson Gas & Electric Co., 241 NLRB 181 (1979). Here, there is no record evidence that the Systems Administrator possesses or has exercised any of the indicia of supervisory status enumerated in Section 2(11) of the Act.

Accordingly, it is concluded that the Systems Administrator is not a managerial, confidential or supervisory position. A further examination of record evidence indicates that the position possesses a sufficient community of interest with other office clerical, production, and maintenance employees to warrant its inclusion within the petitioned unit. As mentioned previously, the Systems Administrator has regular contact with unit members because s/he roams throughout the Employer's facility, working on its personal computers, fax machines, telephone systems, and other electronic equipment. S/he works substantially the same hours as unit members, although s/he may also work during times the workforce is not present, in order to service or repair computers when they are not in use. A centralized administration of labor policy governs all employees. The Systems Administrator earns an annual income comparable to press operators, and shares in the same 401(k) plan.<sup>3</sup> In addition, there is no evidence that other fringe benefits differ between the Systems Administrator and unit members. All employees use the same lunch room. The fact that the Systems Administrator earns a salary when other unit members may earn an hourly wage does not diminish the community of interest with unit members in light of the other factors they share in common. The fact that the immediate supervisor of the Systems Administrator is different from other unit members is also not relevant in the circumstances herein, since the parties have stipulated to include positions within the unit whose immediate superiors differ. Moreover, in light of other common employment conditions, different immediate supervisors does not diminish the employees' community of interest when they share the same ultimate superior, Boston After Dark, Inc., 210 NLRB 38, 39 (1974); Saddleback Community Hospital, 223 NLRB 147, 149 (1976). Lastly, a community of interest exists between the Systems Administrator and other unit members because their individual job functions, although different, are all integrally related to the manufacture and sale of the same products.

Moreover, to exclude this position from the petitioned unit where no other unit exists in which the position could appropriately be placed, would create a residual classification without the potential of representation, which the Board seeks to avoid, Huckleberry Youth Programs, 326 NLRB No. 127, Sl. Op. at 3 (September 30, 1998); Gateway Equipment Co., 303 NLRB 340, 342 (1991).

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<sup>3</sup> The record does not permit a comparison to the incomes of other classifications within the unit found appropriate herein.

D. The Positions of Information Technology Support, Graphic Assistant, Advertising Placement and Trade Show Coordinator, Web Master, Accounts Receivable Manager and Inventory Control Manager.

The Employer urges the exclusion of the above positions from the unit found appropriate herein, while the Petitioner urges their inclusion. None of these positions presently exist. There is uncertainty concerning whether these positions shall be created in the future; and if so, at what point in time persons shall be hired to fill the positions. In addition, there is uncertainty concerning the functions each position shall perform; as CEO Boeglin acknowledged, when a new position is created, the duties of the position evolve over the course of time. In addition, the record contains no evidence identifying what the terms and conditions of employment of these positions might be. Consequently, it is premature to make a determination concerning the unit placement of these six positions. If the Petitioner should prevail in the election ordered herein, and if any of these positions should be created in the future; and should a dispute arise between the parties concerning their proper unit placement, a unit clarification petition can be filed with the Board, and a determination of their appropriate unit placement will be made following a hearing thereon. Accordingly, it is premature to make a determination concerning the unit placement of the Information Technology Support position, Graphic Assistant, Advertising Placement and Trade Show Coordinator, Web Master, Accounts Receivable Manager and Inventory Control Manager.

E. The Positions of Purchasing Manager, Accounts Payable Manager and Credit and Collections Manager.

It is the Employer's positions that the positions of Purchasing Manager, Accounts Payable Manager and Credit and Collections Manager should be excluded from the unit, while the Petitioner asserts they should be included. As mentioned previously, the primary source of evidence in the hearing herein was the testimony of CEO Boeglin. Minimal documents were offered into evidence to identify the duties performed by these positions or the terms and conditions of employment of the persons who occupy these jobs. Consequently, the record does not permit a comparison of the characteristics of these positions with those of unit members. The record is therefore insufficient from which to make reasoned findings of fact and conclusions concerning the proper placement of the positions. Since the number of employees in these classifications constitutes less than 3% of the number of employees in the unit found appropriate herein, in order to effectuate the purposes of the Act through expeditiously providing for a representation election, the Credit and Collections Manager, Purchasing Manager and Accounts Payable Manager shall be permitted to vote subject to challenge and their eligibility to vote shall be determined, if necessary, in post-election proceedings.

### III. DIRECTION OF ELECTION

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

### IV. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses 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). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **September 21, 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. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by September 28, 2000.

DATED AT Indianapolis, Indiana, this 14th day of September, 2000.

/S/ Rik Lineback  
Rik Lineback  
Acting Regional Director  
National Labor Relations Board  
Region 25  
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