

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

WAYNE R. NOFTZ, KENNETH J. NOFTZ AND  
JOHN A. NOFTZ, A PARTNERSHIP, D/B/A  
NOFTZ SHEET METAL<sup>1</sup>

Employer

**Case 6-RC-11782**

and

SHEET METAL WORKERS' INTERNATIONAL  
ASSOCIATION, LOCAL UNION # 12, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Janice A. Sauchin, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.<sup>2</sup>

Upon the entire record<sup>3</sup> in this case, the Regional Director finds:

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.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by April 20, 2000.

<sup>3</sup> The Employer timely filed a brief in this matter which has been duly considered by the undersigned.

3. The labor organization involved claims to represent certain employees of the Employer.

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

The Petitioner seeks to represent a unit consisting of all full-time and regular part-time sheet metal fabricators<sup>4</sup> employed by the Employer at its 2737 Penn Avenue (Main Plant) and 2642 Penn Avenue (Building # 2) Pittsburgh, Pennsylvania, facilities; excluding all dispatchers, estimators, purchasing agents, office clerical employees<sup>5</sup> and guards, professional employees and supervisors as defined in the Act. Although the parties are basically in accord as to both the scope and composition of the unit,<sup>6</sup> the Employer, contrary to the Petitioner, would exclude Douglas Franks, Jeffrey Kuskik, Joseph Pace and Patrick Price from the unit on the ground that these employees lack a community of interest with the petitioned-for employees. The Petitioner would include these employees on the ground that they are dual-function employees who spend a sufficient amount of work time engaged in work tasks performed by other unit employees to warrant their inclusion in the unit. The Petitioner, contrary to the Employer, would exclude Jesse Hibbard and Jeffrey Corcoran Sr. from the unit on the ground that these employees do not share a sufficient community of interest with the unit employees. The Employer contends that Hibbard, as a dual function employee, and Corcoran Sr., as a regular part-time employee, share a sufficient community of interest with the unit employees to be included in the unit. In

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<sup>4</sup> The Petitioner defined fabricators as those employees who perform various mechanical operations to sheet metal to produce finished products for the HVAC industry.

<sup>5</sup> The parties have stipulated that the following employees are excluded from the petitioned-for unit in that they are office clerical employees: Carole Bouch, Raymond Holzer, Mark Licnerski and Lori Noftz.

<sup>6</sup> The parties have stipulated that the following employees are properly included in the petitioned-for unit: William Baker, David Bateman, Ronald Beasley, Timothy Blystone, Thomas Bohr, John Cybulski, David Ferriavolo, Robert Fewell, Nicolae Marin, Jeffrey Mason, Doug Nepereny, Patrick Popinski, Petar Pranjic and Edward Weigand. The parties have further stipulated that Steven Bedford and Jeffrey Corcoran, Jr. should be excluded from the petitioned-for unit in that they are students employed on an irregular basis and therefore lack a community of interest with the petitioned-for unit.

addition, the Petitioner, contrary to the Employer, would exclude Joseph Bouch and David Filipowski on the ground that these employees are relatives of management and/or with respect to Bouch, on the ground that Bouch does not share a community of interest with the unit employees. The Petitioner further contends, contrary to the Employer, that Filipowski, together with Kevin Corcoran and John Lewellen, should be excluded from the unit as supervisors within the meaning of the Act. As noted, the parties are in agreement that approximately 14 employees are properly included in the petitioned-for unit and, as set forth above, in disagreement as to the inclusion and/or eligibility of approximately ten other employees. There is no history of collective bargaining for any of the employees involved herein.

The Employer is engaged in the manufacture and distribution of HVAC products for residential, commercial and light industrial uses. The Employer fabricates custom and stock sheet metal items and also purchases other items for resale. Its manufactured products account for about half of its business and its purchased products account for the remaining half. Most of the Employer's operations are housed in a three-story building, which is called the Main Building. The ground floor of the Main Building consists of a shop with the machines used to fabricate ductwork and related items, a welding area, a front office serving customers (referred to as the counter area), and a back clerical office. The upper floors of the Main Building are used to store inventory. A separate building, known as Building # 2, has only one machine, which makes spiral pipe.

The Employer's day-to-day operations are under the direction of Wayne and Ken Noftz.<sup>7</sup> Wayne Noftz primarily works in the front office overseeing customer service functions, while Ken Noftz primarily<sup>8</sup> works in the shop overseeing the production functions.<sup>9</sup>

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<sup>7</sup> Wayne and Ken Noftz are brothers. They are the sons of John Noftz, who is no longer involved in the day-to-day operations of the Employer.

<sup>8</sup> Ken Noftz spends 80 to 85 percent of his time in the shop, and spends the remaining time inputting information into the computer for the plasma cutter and working in Building # 2.

<sup>9</sup> The parties have stipulated, and I find, that Wayne, Ken and John Noftz are managerial employees and/or supervisors within the meaning of the Act, and therefore are excluded from the petitioned-for unit.

Because of the numerous eligibility issues raised herein, the duties of different employees are described below in connection with the specific issues. The basic workweek is Monday through Friday, from 7 a.m. to 4:30 p.m., and Saturday, from 7 a.m. to noon. The starting rate of pay is \$7 per hour, and the top five wage earners ranked from highest to lowest are Kevin Corcoran, Lewellen, Cybulski, Filipowski and Eric Galassi.

#### 1. Supervisory Issues

As noted, the Petitioner contends, contrary to the Employer, that Kevin Corcoran, Filipowski and Lewellen are supervisors within the meaning of the Act and therefore must be excluded from the petitioned-for unit.<sup>10</sup>

#### Kevin Corcoran

Kevin Corcoran has worked for the Employer for about 7 years. Corcoran estimates that he spends 85 to 90 percent of his time in the shop operating machines<sup>11</sup> and the remainder of his time repairing machines or inputting jobs into the computer of the plasma cutter machine.<sup>12</sup>

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<sup>10</sup> At the hearing, the Petitioner initially took the position that Eric Galassi was a supervisor within the meaning of the Act. By the close of the hearing, however, the Petitioner modified its position and stated it had no position on whether Galassi was a supervisor within the meaning of the Act. The record reveals that Galassi has worked for the Employer for six years and that he spends his workday in the shop operating machines, particularly the plasma cutter. The only evidence that Galassi possesses Section 2(11) authority was the testimony of former employee John Snipes, who testified that Galassi on one occasion sent an employee home for insubordination. Snipes conceded, however, that Galassi would have double-checked with Wayne Noftz before taking this action. Galassi was called as a witness and testified that he did not recall the incident in question. During Galassi's testimony, the Petitioner in an apparent effort to shorten the hearing, agreed that if Galassi testified further, his testimony would be consistent with that of other witnesses who testified that they did not have the authority to discipline employees.

The Board has held that a party who refused to take a position as to the exclusion or inclusion of alleged supervisors would not be permitted to litigate the status of those individuals. Bennett Industries, Inc., 313 NLRB 1363 (1994) Moreover, the evidence establishes that Galassi has no indicia of supervisory authority. Accordingly, I find that Galassi should be included in the unit found appropriate herein.

<sup>11</sup> Wayne Noftz estimated that Kenneth Corcoran spent 100 percent of his time in the shop operating machines. On the other hand, Snipes testified that Corcoran seldom came into the shop and primarily inputted jobs into the plasma cutter.

<sup>12</sup> The computer for the plasma cutter machine is located in a separate office, while the machine itself is located on the shop floor.

Former employee Snipes testified that Corcoran gave him orders or instructions. Employee Tom Bohr testified that when he was hired he was told to go to Corcoran if he had any questions or if he needed a day off. However, Bohr testified that if he asked Corcoran for a day off, Corcoran would check with Wayne Noftz. Wayne Noftz testified that he and his brother make job assignments.

David Filipowski

David Filipowski has worked for the Employer for about 9 years, since graduating from high school.<sup>13</sup> He estimates that he spends about 80 percent of his time in the shop.<sup>14</sup> When working in the shop, he principally operates the forklift, unloading the steel trucks, stacking the steel in piles and moving the piles of metal closer to the work areas.<sup>15</sup> Filipowski estimates that of the 80 percent of his time that he spends in the shop, about 35 percent of the time, or 28 percent of his time overall, is spent operating machines. Filipowski is also responsible for insuring that the Employer maintains certain levels of stock items. When not in the shop, Filipowski works behind the counter, along with Wayne Noftz and Hibbard. At the counter, Filipowski waits on customers and enters jobs into the computer.<sup>16</sup> While Filipowski is a nephew of the owners, there is no evidence that he enjoys any special benefits as a result of that familial relationship.

Kuskik, one of the Employer's warehouse employees whose status is in dispute as discussed infra, testified that he was told by Wayne Noftz that in Wayne's absence, Kuskik

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<sup>13</sup> While in school, Filipowski worked for the Employer on a part-time basis.

<sup>14</sup> Snipes estimated that Filipowski spent 20 percent of his time in the shop. Similarly, Kuskik estimated that Filipowski spends 75 percent of his time at the counter. Wayne Noftz estimates that Filipowski spends a minimum of 40 percent of his time in the shop.

<sup>15</sup> If Filipowski is unavailable to operate the forklift, Blystone operates it. The forklift has also been operated by, at times, Kevin Corcoran and Lewellen.

<sup>16</sup> Several employees use "walkie-talkies" to communicate with each other on the premises. Thus, Wayne Noftz, Blystone, Fewell, Filipowski, Franks, Hibbard, Kuskik and Lewellen each has a walkie-talkie, and Pace and Price share a walkie-talkie.

should report to Filipowski. Also, Filipowski gives warehouse employees their assignments when they work in the shop. There is no evidence in the record to establish that the directions given to these employees are other than routine in nature.

John Lewellen

John Lewellen has worked for the Employer for about 14 years. He spends all of his time in the shop operating machines and is the most senior employee performing fabrication work.<sup>17</sup> In addition to performing his own work, Lewellen answers questions from other employees, corrects other employees if they are performing a task wrong, and informs them of tasks they are to perform. At times, Lewellen relays assignments from Ken Noftz to shop employees.

When employees ask Lewellen for time off, Lewellen tells them to check with Wayne or Ken Noftz. When thus approached, Wayne has told employees that if the request was okay with Lewellen, the request was okay with Noftz.<sup>18</sup> Wayne Noftz explained that he told this to employees because Lewellen, as the most senior employee, had first preference on days off.

Snipes testified that on one occasion a couple of years ago, Lewellen told him to go home after they had argued. Snipes said that he and Lewellen talked the matter over, and reached an agreement and that Snipes did not leave. Lewellen testified that he did not recall the incident. Wayne Noftz testified that all discipline was handled by him or his brother and that no other individual had the authority to discipline employees.

Snipes also testified that Lewellen required the employees to work overtime and that Wayne Noftz would ask Lewellen if he was requiring the employees to work overtime. However, Wayne Noftz testified that overtime decisions were handled by him or his brother.

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<sup>17</sup> Lewellen, like Blystone, Bouch and perhaps Hibbard, has keys to the Main Building.

<sup>18</sup> At times, Lewellen would check with Wayne or Ken Noftz himself and report back to the employee who made the request.

### Policy Manual

The Employer has a “Company Policy Manual” which is provided to employees. This manual lists “Our Management Team” and describes the authority of “Supervisors/Foremen”. Under the heading of Management Team is John Lewellen, Production Foreman;<sup>19</sup> David Filipowski, Shipping & Receiving Supervisor, Customer Service; Douglas Franks, Warehouse Supervisor, Inventory Control; Kevin Corcoran, Fabrication/Welding Foreman; Timothy Blystone, Assistant Production Foreman; Jesse Hibbard, Customer Sales Supervisor, Customer Service. The manual describes the foremen and supervisors as in complete charge of the department, and having the authority to assign work and to maintain discipline.

Lori Noftz is the wife of Wayne Noftz and works for the Employer in its clerical office. She testified that she created the Policy Manual at the suggestion of the insurance carrier and merely copied the information contained therein from a computer software program, filling in the blanks for the management team with the names of the most experienced and senior employees in each area. Similarly, Lori Noftz testified that she just copied the supervisory authority section from the computer program. Significantly, other than as set forth above, there is no evidence that the employees named therein actually exercise supervisory authority.

### Analysis

It is well-established that the possession of any one of the indicia of supervisory authority specified in Section 2(11) of the Act is sufficient to confer supervisory status upon an individual, provided that such authority is exercised with independent judgment on behalf of management. Hydro Conduit Corporation, 254 NLRB 433, 437 (1981). However, the exercise of this authority in a merely routine, clerical, perfunctory or sporadic manner does not confer supervisory status. Chicago Metallic Corporation, 273 NLRB 1677 (1985). Further, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, Inc., 280 NLRB 1222, 1224 (1986).

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<sup>19</sup> Bohr testified that he was told that Lewellen was shop foreman.

In enacting Section 2(11) of the Act, Congress stressed that only persons vested with “genuine management prerogatives” should be considered supervisors, as opposed to “straw bosses, leadmen . . . and other minor supervisory employees.” Chicago Metallic Corporation, supra, at 1688.

The burden of proving supervisory status rests on the party alleging that such status exists. E.g., North Jersey Newspapers Company, 322 NLRB 394 (1996); Tucson Gas & Electric Company, 241 NLRB 181 (1979). In this case, therefore, that burden rests with the Petitioner. For the reasons which follow, I find that the Petitioner has not met its burden with respect to the individuals at issue herein.

As noted, the Petitioner contends that Kevin Corcoran, Filipowski and Lewellen are supervisors in that they direct and assign other employees in the performance of their duties, grant time off, send employees home, and assign overtime. There is no contention on the part of the Petitioner, nor would the evidence support such an argument, that the asserted supervisors hire, transfer, suspend, lay off, recall, promote, discharge or reward employees, or adjust their grievances, or effectively recommend such actions.

Initially, it is noted that while there are variations in the estimates of the amount of time Kevin Corcoran and Filipowski operated machines in the shop, there can be no question that Kevin Corcoran and Filipowski themselves were in the best position to provide accurate estimates, and accordingly I am relying on their estimates. Moreover, with respect to Kevin Corcoran, it appears that the inputting of jobs into the plasma cutter computer, while it is not actually the operation of a machine on the shop floor, is an integral part of the fabrication process, and the time Corcoran spends inputting such jobs can be considered fabrication work. Thus, the record indicates that Lewellen spends his entire workday performing hands-on fabrication work, and Kevin Corcoran and Filipowski each spend a substantial part of their workdays performing hands-on fabrication work.

The record indicates that to the extent that Kevin Corcoran, Filipowski and Lewellen assign and direct work, this assignment and direction is based upon their technical expertise

and experience, rather than upon a true exercise of supervisory authority. See PECO Energy Company, 322 NLRB 1074, 1082 (1997); S.D.I. Operating Partners, L.P., 321 NLRB 111 (1996); Chevron Shipping Co., 317 NLRB 379, 381-382 (1995); Brown & Root, Inc., 314 NLRB 19, 20 (1994); Hexacomb Corporation, 313 NLRB 983, 984 (1994). That is, these individuals provide direction and guidance to the other employees based upon their greater experience and craft skills. The fact that these individuals may relay directions given them by Wayne and/or Ken Noftz to other employees does not make them supervisors. The responsibilities of Corcoran, Filipowski and Lewellen involve no real managerial discretion that would require the exercise of independent judgment.

With respect to the other instances upon which the Petitioner bases its claims of supervisory authority, it is clear that Kevin Corcoran and Lewellen do not independently grant time off. As to Lewellen sending Snipes home, Lewellen did not recall the incident and thus, he was unable to state whether Wayne or Ken Noftz had any involvement in the incident. Moreover, Wayne Noftz testified that all discipline was handled by him or his brother. Given these circumstances, as well as the isolated nature of the incident, I find that it is insufficient to serve as a basis for finding Lewellen to be a supervisor. See Blue Star Ready-Mix Concrete Corporation, 305 NLRB 429, 430 (1991). As to Lewellen assigning overtime, the Board has long held that an assignment of overtime which is perfunctory in nature, and does not evidence the exercise of any appreciable degree of independent judgment, does not make the individual a supervisor. Illinois Veterans Home at Anna L.P., 323 NLRB 890, 891 (1997); Chevron Shipping Co., *supra*, at 381 (1995). Moreover, it appears that Lewellen informed Wayne Noftz if overtime was required and, based upon Wayne Noftz' testimony, Noftz could approve or override Lewellen's decision. In these circumstances, I do not find that Lewellen exercised true supervisory authority.

With respect to the designation of these individuals as supervisors in the Employer's Policy Manual, it is well-established that the grant of authority which is in practice illusory because it is never exercised is not sufficient to make an individual a supervisor. Eventide

South, 239 NLRB 287 fn. 3 (1978); Pine Manor, Inc. d/b/a Pine Manor Nursing Home, 238 NLRB 1654, 1655 (1978); Sunset Nursing Homes, Inc., d/b/a North Miami Convalescent Home, 224 NLRB 1271, 1272 ( 1976). In this case, the sole authority exercised by the disputed individuals is as set forth above. There is no evidence that these individuals exercise any greater authority as set forth in the Policy Manual. In fact, the parties have stipulated that Blystone, who is identified in the Policy Manual as a supervisor, is appropriately included in the petitioned-for unit, and further, the Petitioner has taken the position that Franks, who is also identified in the Policy Manual as a supervisor, is also appropriately included in the unit. In these circumstances, I find that the purported grant of authority in the Policy Manual does not confer supervisory status.

Accordingly, based upon the evidence and the record as a whole, I shall include Kevin Corcoran and John Lewellen in the unit herein found to be appropriate. With respect to David Filipowski, his unit inclusion/exclusion is more fully discussed below in view of the alternative positions taken by the Petitioner concerning his unit placement as set forth previously.

## 2. Community of Interest Issues

As noted, the Petitioner contends, contrary to the Employer, that Jeffrey Corcoran Sr., Bouch and Hibbard should be excluded from the unit on the ground that they do not share a community of interest with the petitioned-for unit. In addition, the Petitioner contends that Franks, Kuskik, Pace and Price must be included in the petitioned-for unit as dual function employees. Finally, the Petitioner contends, contrary to the Employer, that Bouch and Filipowski must be excluded from the petitioned-for unit in that they are relatives of management.

In response to these contentions, the Employer contends that Bouch stands in the same position as Franks, Kuskik, Pace and Price, and if the latter four employees are included in the unit, then Bouch must also be included in the unit, and conversely, if the four employees are excluded from the unit, then Bouch must be excluded. Finally, the Employer contends that Filipowski and Hibbard must be included in the unit as dual function employees.

Jeffrey Corcoran Sr.

Jeffrey Corcoran Sr. has worked for the Employer since November 6, 1999. Since that time, he has generally worked half days on Saturdays, occasionally missing a Saturday and occasionally working during the week.<sup>20</sup> He has performed various duties for the Employer, including assembling the plasma machine, knocking holes in walls, repairing machines and operating machines. While Snipes and Kuskik testified that they had not observed Jeffrey Corcoran Sr. perform fabrication work, Wayne Noftz testified that Jeffrey Corcoran Sr. spends the majority of his time performing fabrication work. Jeffrey Corcoran Sr. did not testify at the hearing.

Jeffrey Kuskik, Douglas Franks, Joseph Pace and Patrick Price

Jeffrey Kuskik, Douglas Franks, Joseph Pace and Patrick Price are referred to herein as the warehouse employees. They unload trucks delivering items purchased by the Employer for resale and stock these items in the warehouse area; they fill customer orders by picking items from the warehouse area; they load customer trucks and they work in the shop operating machines to make stock items. To fill customer orders, Wayne Noftz, Filipowski or Hibbard provide these warehouse employees with the order; the employees then retrieve the stock items from the warehouse area on the second and third floors of the Main Building and bring the items down on the freight elevator.

As noted, when operating machines in the shop, the warehouse employees make stock items and do not make custom items. They work in the shop only when they are not busy with the warehouse-related tasks. Thus, they work in the shop on an irregular basis and may spend weeks or months without going into the shop.<sup>21</sup> Kuskik, who has worked for the Employer for about 1 and ½ years, estimated that he and Franks and Price each spend 10 percent of their

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<sup>20</sup> Jeffrey Corcoran Sr. works full-time for another employer.

<sup>21</sup> Bohr testified that he has seen them spend an entire day in the shop.

time in the shop.<sup>22</sup> On the other hand, Pace, who started working for the Employer on about February 17, 2000, about three weeks before the hearing in this matter, testified that he has never worked in the shop.

Joseph “Jerry” Bouch

Joseph “Jerry” Bouch has worked for the Employer for about 10 to 12 years. Although he had previously worked in the shop operating the machines on a full-time basis, in recent years he has not been in good health and has been unable to perform fabrication work on a full-time basis. Instead, Bouch drives the Employer’s truck making local deliveries, as well as working in the shop. Wayne Nofzt estimates that Bouch spends about 40 percent of his time making deliveries and about 60 percent of the time working in the shop. Wayne Nofzt estimates that of the 60 percent of time that Bouch spends in the shop, Bouch spends 30 percent of the time performing maintenance work. Wayne Nofzt further estimates that Bouch spends about 20 percent of his time overall performing fabrication work. While Bouch is the brother-in-law of Wayne and Ken Nofzt, there is no evidence that Bouch enjoys any special status as a result of this relationship. Bouch did not testify at the hearing. The Employer, at the hearing, took the position that Bouch’s unit placement should be treated in the same manner as Franks, Kuskik, Pace and Price.

Jesse Hibbard

Jesse Hibbard has worked for the Employer for about 5 and ½ years. Hibbard estimates that he spends 35 to 40 percent of his time in the shop operating machines.<sup>23</sup> The rest of the time, Hibbard performs customer service-related duties.

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<sup>22</sup> Snipes estimated that these employees spend 20 percent of their time in the shop. Wayne Nofzt estimated that they spend less than 10 percent of their time in the shop.

<sup>23</sup> Wayne Nofzt estimated that Hibbard spends 30 percent or more of his day in the shop. Snipes testified that Hibbard did not work in the shop. Kuskik testified that Hibbard was in the shop on an infrequent basis. Bohr estimated that Hibbard worked in the shop with less frequency than the warehouse employees.

### Analysis

It is well-established that employees who perform dual functions for the same employer may vote, even though they spend less than a majority of their time on unit work, if they regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in working conditions in the unit. Berea Publishing Company, 140 NLRB 516, 518-519 (1963). See also Genesis Health Ventures of West Virginia, L.P., d/b/a Ansted Center, 326 NLRB No. 116 (1998); Air Liquide America Corporation, 324 NLRB 661, 662 (1997). While the Board has held that 5 to 10 percent of an employee's time doing unit work was insufficient to include him in the unit, Pacific Lincoln-Mercury, Inc., 312 NLRB 901 fn. 4 (1993), it has also held that an employee who regularly performed unit work 25 percent of each working day was included in the unit. Oxford Chemicals, Inc., 286 NLRB 187 (1987).

Considering first Jeffrey Corcoran Sr.'s part-time status, I find that Jeffrey Corcoran Sr. has worked with sufficient regularity, normally the half day on Saturday, to be a regular part-time employee. See Davison-Paxon Company, 185 NLRB 21 (1970). With respect to the estimates of the amount of time that Jeffrey Corcoran Sr. performs fabrication work, Wayne Noftz would have had a better opportunity to observe the amount of time that Jeffrey Corcoran Sr. performed fabrication work than would Kuskik, who spends a small amount of time in the shop area.<sup>24</sup> Wayne Noftz testified that Jeffrey Corcoran Sr. spends the majority of his time, when working for the Employer, performing fabrication work. On this basis, I find that Jeffrey Corcoran Sr. is appropriately included in the petitioned-for unit as a regular part-time employee who performs unit work on a regular basis and who shares a sufficient community of interest with the unit employees.

With respect to the warehouse employees, Franks testified that he, Kuskik and Price spend about 10 percent of their time in the shop operating machines, on an irregular basis, and

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<sup>24</sup> Jeffrey Corcoran Sr. did not testify at the hearing.

Pace testified that he has not yet worked in the shop operating machines. On this basis, I find that Franks, Kuskik, Pace and Price should be excluded from the petitioned-for unit. As noted, the Petitioner seeks to exclude Bouch and the Employer has taken the position that Bouch should be treated in the same manner as the warehouse employees. Inasmuch as the warehouse employees are excluded, I shall also exclude Bouch from the petitioned-for unit.

With respect to Filipowski, he testified to the effect that he spends about 28 percent of his time in the shop operating machines.<sup>25</sup> Finally, as to Hibbard, he testified that he spends 35 to 40 percent of his time in the shop operating machines. The amount of time Filipowski and Hibbard spend performing unit work as defined herein is sufficient to warrant their inclusion in the petitioned-for unit.

As to Petitioner's assertion that Bouch and Filipowski must be excluded as relatives of management,<sup>26</sup> inasmuch as neither Bouch nor Filipowski enjoy any special status as a result of being a relative of management, their relationship is an insufficient basis for excluding them from the petitioned-for unit. See Blue Star Ready-Mix Concrete Corporation, supra. However, as noted supra, I have excluded Bouch on other grounds.

In summary, based upon the above and the record as a whole, I shall include Jeffrey Corcoran Sr., Filipowski and Hibbard in the unit herein found to be appropriate on the ground that these employees share a sufficient community of interest with the unit employees as to warrant their inclusion in the unit. In addition, I shall exclude Franks, Kuskik, Pace, Price and Bouch from the unit herein found to be appropriate on the ground that these employees do not share a sufficient community of interest with the unit employees as to warrant their inclusion in the unit.

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<sup>25</sup> The time that Filipowski spends in the shop operating the forklift, while part of the overall production process, is not the fabrication of sheet metal as that term has been used in the unit description.

<sup>26</sup> In that I have excluded Bouch on other grounds, he is discussed herein solely for completeness.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time sheet metal fabricators employed by the Employer at its 2737 Penn Avenue (Main Plant) and 2642 Penn Avenue (Building # 2) Pittsburgh, Pennsylvania, facilities; excluding all dispatchers, estimators, purchasing agents, office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

### **DIRECTION OF ELECTION**

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>27</sup> Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, 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 their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and 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

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<sup>27</sup> Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

the election date and who have been permanently replaced.<sup>28</sup> Those eligible shall vote whether or not they desire to be represented for collective bargaining by Sheet Metal Workers International Association, Local Union # 12, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 6th day of April 2000.

/s/Gerald Kobell

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Gerald Kobell  
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD  
Room 1501, 1000 Liberty Avenue  
Pittsburgh, PA 15222

177-8560-1000  
177-8560-4000  
362-6790-2500  
362-6798-2500  
362-6798-5000

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<sup>28</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, 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 hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before April 13, 2000. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.