

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 17**

Wichita, Kansas

**DEAN E. NORRIS, INC., PROFESSIONAL
MECHANICAL CONTRACTORS, INC., and
DEN MANAGEMENT COMPANY, INC., as a Single Employer¹**

EMPLOYER

and

Case 17-RC-071485

**SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, LOCAL No. 29, affiliated with
SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION, 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 on January 9 and 10, 2012, before a hearing officer of the National Labor Relations Board (herein called the Board) to determine whether Dean E. Norris, Inc (herein called Dean E. Norris), Professional Mechanical Contractors, Inc. (herein called PMC) and DEN Management Company, Inc. (herein called DEN, or collectively, the Employers) constitute a single employer under the Act so that is appropriate to conduct an election in the petitioned for unit consisting of employees employed by the three named entities who perform fabrication and installation of sheet metal, HVAC, and associated work. Additional issues include whether the classifications of shop and field foreman, employed by Dean E. Norris and PMC, are supervisors

¹ The name of the DEN Management Company, Inc. appears as stipulated by the parties.

under Section 2(11) of the Act. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.²

I. ISSUES

The Petitioner contends that Dean E. Morris, PMC and DEN are a single employer. As such, the Petitioner seeks a unit of all employees employed by Dean E. Norris, PMC and DEN Management who perform fabrication and installation of sheet metal, HVAC and associated work, at the Employers' facilities located at 4053 Navajo Lane and 626 East Douglas in Wichita, Kansas, the only facilities involved herein. The Employers, contrary to the Petitioner, take the position that such a unit would be inappropriate because the entities in question are not a single employer in that they constitute separate, independent entities for the purpose of the operation of their respective companies.

The Employers also maintain that individuals employed in the classifications of shop and field foreman employed by Dean E. Morris and PMC, should be excluded from any unit found appropriate because they are supervisors under Section 2(11) of the Act. The Petitioner asserts that

² Upon review of the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. Dean E. Norris, PMC, and DEN are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. Dean E. Norris is a State of Kansas corporation engaged in the construction industry as a mechanical contractor from its facility located at 4053 Navajo Lane, Wichita, Kansas. During the past twelve months, a representative period, Dean E. Norris, in the course and conduct of its business operations, purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Kansas. PMC is a State of Kansas corporation engaged in the construction industry as a mechanical contractor from its facilities located at 4053 Navajo Lane, and 626 East Douglas, Wichita, Kansas. During the past twelve months, a representative period, PMC, in the course and conduct of its business operations, purchased and received at its Wichita, Kansas facilities goods valued in excess of \$50,000 from Johnson Controls, Inc., an enterprise located within the State of Kansas and that directly meets the Board's jurisdictional standards. DEN Management is a State of Kansas corporation engaged in the management of mechanical contractors from its facility located at 4053 E. Navajo Lane, Wichita, Kansas. During the past twelve months, a representative period, DEN, in the course and conduct of its business operations, purchased and received at its facility goods valued in excess of \$50,000 from Nissan Motor Company Ltd. an enterprise located within the State of Kansas that directly meets the Board's jurisdictional standards.
- c. The Petitioner is a labor organization which claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of Dean E. Norris, PMC and DEN within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

the foremen do not possess supervisory authority under the Act and should be included within the unit. The parties stipulated at hearing that in the event that the three employer entities were found to be a single employer, their employees in the petitioned for bargaining unit shared a community of interest and constituted an appropriate bargaining unit.

II. DECISION

Based upon a review of the record as a whole, the parties' briefs, and the application of relevant case law, I find that Dean E. Norris, PMC and DEN constitute a single employer. I further find that the evidence is insufficient to establish that shop and field foremen are supervisors within the meaning of the Act. Accordingly, the following employees constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

All employees performing fabrication and installation of sheet metal, HVAC and associated work, including shop and field foremen, employed by Dean E. Norris, Inc., Professional Mechanical, Inc., and DEN Management, Inc., a single employer, from its facilities located at 4053 Navajo Lane and 626 East Douglas, Wichita, Kansas, but EXCLUDING all service division employees, plumbing and piping division employees, service technicians, project managers, estimators, engineers, logistics/drivers, office clerical employees, managerial employees, supervisors and guards as defined in the Act, as amended, and all other employees.³

³ The parties' stipulated that Dean E. Norris and PMC are mechanical contractors engaged in the construction industry. I find that the parties' stipulation is supported by the record. Applying the appropriate construction industry eligibility formula, the employees eligible to vote in this matter are all unit employees employed in the bargaining unit on the payroll cutoff date and those employees that have been employed by Dean E. Norris, PMC and DEN for a total of 30 working days or more within the period of 12 months, or who have had some employment in that period and who have been employed 45 working days or more within the 24 months immediately preceding the date of this Decision and Direction of Election, and who have not been terminated for cause or quit voluntarily prior to completion of the last job for which they were hired.

III. STATEMENT OF FACTS

A. Background

In 1971, Dean Norris and his son David Norris founded mechanical contractor Dean E. Norris in Wichita, Kansas. On approximately September 23, 1971, Dean E. Norris entered into an agreement to be bound to the collective-bargaining agreement between the Petitioner and the Association of Mechanical and Sheet Metal Contractors of Kansas. Dean E. Norris agreed to be bound to all such future agreements unless timely notice was given. As an employer engaged in the construction industry, Dean E. Norris granted recognition to the Petitioner as the exclusive collective bargaining representative of all of its employees engaged in sheet metal work including journeyman and apprentices, without regard to whether the majority status of the Petitioner had ever been established under Section 9(a) of the Act. Such recognition under Section 8(f) of the Act has been embodied in successive collective-bargaining agreements, the most recent of which is effective for the period of May 1, 2011 to April 30, 2016.⁴

Subsequent to the creation of Dean E. Norris, in 1977, David Norris formed PMC, also as a mechanical contractor. PMC initially differed from Dean E. Norris because its business was housed at a different facility; did not have a sheet metal shop; and focused more on residential service and light commercial mechanical contracting work as opposed to the heavy industrial work performed by Dean E. Norris. At no time has PMC established or maintained a collective bargaining relationship with the Petitioner or any other labor organization.

In 1984, David Norris created DEN, a corporation engaged in the business of managing mechanical contractors, to serve as owner and parent company over Dean E. Norris and PMC as wholly-owned subsidiaries.

⁴ The record evidence establishes that the labor agreement between Petitioner and Dean E. Norris is a Section 8(f) agreement and such an agreement does not constitute a bar to a representation petition filed pursuant to Section 9(c) or 9(e) of the Act.

At various times prior to 1991, each entity operated out of a separate physical address. In or around 1991, at the advice of a national peer group, David Norris moved all three businesses to one location at 4053 Navajo Lane, Wichita, Kansas. To date, all three entities conduct their business operations from that address. Recently, PMC has also utilized a facility located at 626 East Douglas, Wichita, Kansas to perform some of its sheet metal fabrication work. The facility at 626 East Douglas is owned by David Norris.

B. Ownership/Managerial Hierarchy

David Norris currently serves as Director, Chairman and Chief Executive Officer of DEN. Norris also owns 80% of DEN. Michael Porch currently serves as project manager of DEN and owns 10% of the company. Shane and Melissa Dick share the position of Chief Operating Officer of DEN and each own 5% of the company. The ownership structure set forth above has been in effect since January 2006. DEN also employs four Project Managers and/or Estimators – Michael Porch, Kevin Reece, Larry Oxendine, and Adam Elliott. The parties stipulated that these individuals should be excluded from any unit found appropriate because they are managerial employees. Based on the parties' stipulation, Porch, Reece, Oxendine, and Elliott will be excluded from the unit. The Parties further stipulated that DEN Engineers Gregory Harris and Dahl Carmichael should be excluded from any unit found appropriate because they constitute professional employees. Based on the parties' stipulation, Harris and Charmichael will be excluded from the unit. Finally, DEN employs three employees in its logistics department as logistics/drivers – Dennis Rice, Ryan Carson and Joseph Looney. The parties stipulated that these DEN employees should not be included in any unit found appropriate. Based on the parties' stipulation, Rice, Carson and Looney will be excluded from the unit.

In addition to his position as part owner and project manager for DEN, Michael Porch serves as the Director and President of Dean E. Norris. Dean E. Norris is divided into a Sheet Metal Division and a Piping Division. Dusty Meyer serves as the General Manager of Dean E. Norris' Sheet Metal Division. Paul Haury serves as General Manager of Dean E. Norris' Piping Division. Meyer and Haury report directly to Porch.

The Petitioner seeks to establish representative status under Section 9(a) of the Act for those employees employed in the Sheet Metal Division of Dean E. Norris who, as set forth above, are currently employed under a contract between the Petitioner and Dean E. Norris pursuant to Section 8(f) of the Act. There are approximately ten individuals currently employed in the Sheet Metal Division of Dean E. Norris. The parties stipulated at the hearing that General Manager Meyer, who serves as the General Manager over the Sheet Metal Division, is a supervisor within the meaning of Section 2(11) of the Act where he has the ability to hire, fire, discipline or effectively recommend the same, and as such, should be excluded from the appropriate bargaining unit. Based on the parties' stipulation, Meyer will be excluded from the unit

Under General Manager Haury in the Piping Division, Dean E. Norris employs approximately forty-three employees. The forty-three piping employees are currently governed by a collective bargaining agreement between Plumbers and Pipefitters Local Union No. 441 and the Association of Mechanical and Sheet Metal Contractors of Kansas dated June 1, 2003. The parties stipulated at hearing that Dean E. Smith employees employed within its Piping Division should be excluded from any unit found appropriate. Based on the parties' stipulation, the employees in the Piping Division will be excluded from the unit. The parties further stipulated that Dean E. Norris employs service technicians and that they should be excluded from any unit found appropriate. Based on the parties' stipulation, the service technicians will be excluded from the unit.

Part owner and co-Chief Operating Officer of DEN Shane Dick serves as the Director and President of PMC. PMC is divided into an HVAC/Sheet Metal Division, Services Division and Plumbing/Piping Division. Steve Luce serves as supervisor of the HVAC/Sheet Metal Division. Charles Kirkpatrick serves as General Manager over the Services Division. Patrick Seely serves over the Plumbing/Piping Division. Luce, Kirkpatrick and Seely each report directly to Shane Dick.

The Petitioner seeks to represent only the employees in the HVAC/Sheet Metal Division headed by General Manager Steve Luce. There are approximately thirteen individuals currently employed in the HVAC/Sheet Metal Division of PMC. The parties stipulated at the hearing that Luce is a supervisor within the meaning of Section 2(11) of the Act in that he has the ability to hire, fire, discipline or effectively recommend the same and, as such, should be excluded from the appropriate bargaining unit. Based on the parties' stipulation, Luce will be excluded from the unit.

The Petitioner does not seek to represent the service technicians in the Service Division of PMC headed by General Manager Patrick Seely, nor the plumbing and piping employees in PMC's Plumbing and Piping Division headed by General Manager Charles Kilpatrick. The parties stipulated that the PMC employees employed within its Services or Plumbing/Piping Divisions should be excluded from any unit found appropriate. Based on the parties' stipulation, the service technicians and the plumbing and piping employees will be excluded from the unit.

C. Overview of Operations

DEN, Dean E. Norris and PMC are each Kansas corporations. DEN is in the business of providing management services to mechanical contractors within the construction industry. As mechanical contractors, both Dean E. Norris and PMC perform plumbing, pipefitting, HVAC, and fabrication and installation of ductwork. PMC additionally maintains work groups tasked with energy services, building controls and electrical work. PMC employees within these work groups

do not perform fabrication and/or installation of sheet metal, HVAC and associated work. Dean E. Norris and PMC maintain separate Mechanical AC licenses with the City of Wichita. There is no evidence of interchange of employees between Dean E. Norris and PMC, nor is there evidence of common day to day supervision. However, PMC does subcontract work to Dean E. Norris. PMC subcontracts plumbing and piping work in addition to sheet metal (both fabrication shop work and field installation).

1. DEN's Management Services

DEN does not employ sheet metal workers or other construction industry craft workers. Rather, since 1984 DEN has provided a myriad of management services for Dean E. Norris and PMC pursuant to management agreements DEN entered into with each of its subsidiaries. The agreements are identical in language, except for the name of the subsidiary and the agent who signed the agreement on behalf of their respective company. The most recent management agreements were effective January 1, 2011, for a period of one year, at which time the agreements were automatically renewed for another year. David Norris signed both agreements on behalf of DEN as CEO. Michael Porch signed on behalf of Dean E. Norris as President and Shane Dick signed on behalf of PMC as President. Each agreement dictates the terms of the management relationship between DEN and its subsidiaries. While the management agreements set forth that each subsidiary will remit to DEN fees equal to DEN's costs incurred during a calendar year time period, Co-Chief Operating Officer Melissa Dick testified that some years DEN invoices Dean E. Norris and PMC for DEN's management services, but in other years it does not. In those years DEN did not invoice its subsidiaries, DEN's accounting department allocated its fees into the financial statements of each subsidiary. Financial statements are provided to the respective managers for each company on a monthly basis.

Pursuant to its management agreements, DEN provides the following management services to Dean E. Norris and PMC:

- Estimating and bidding, including proposals;
- Project management;
- Accounting services, including payroll, billing and receiving, payables and financial results;
- Human Resources, not including hiring and termination of subsidiary employees;
- Delivery services;
- Tools and procurement;
- Inventory management;
- Shipping and receiving;
- IT support;
- Engineering services;
- 3-D modeling services;
- Safety training and oversight;
- Fleet management and maintenance;
- Storage of records and plans;
- Bid and performance Bond coverage;
- Health and long term disability insurance for subsidiary employees;
- All related insurance needs, including but not limited to, general liability, workman's compensation and auto;
- Banking and cash flow management;
- Dispatching;
- Business development and marketing;
- All tax preparation;
- Office and secretarial support.

a. *Accounting/Cash Flow Management*

As provided in the management agreement, DEN maintains bank accounts for all of the financial transactions of Dean E. Norris and PMC, including accounts receivable, accounts payable, and payroll. DEN utilizes a single software program to track and account for the financial transactions of Dean E. Norris, PMC, and DEN itself. The program allows for DEN to maintain a separate set of books for each entity. In accounting for both accounts payable and accounts receivable, DEN is the initial recipient and distributor of all funds going into and out of its subsidiaries' bank ledgers. As DEN's co-Chief Operating Officer Melissa Dick testified, DEN acts

as a bank for its subsidiaries. While DEN maintains more than one bank account with Citizens Bank of Oklahoma, a single bank account at that institution is utilized by all three entities for all of their financial transactions. Within DEN's accounting system, it maintains three separate ledgers to distinguish each company's monetary transactions. Payment to Dean E. Norris and PMC are received in two ways, either directly to Citizens Bank or to each company directly. If a check is sent directly to Citizens Bank, the bank will deposit the amount into the single account and provide DEN with a deposit slip. Depending on which company the payment was for, Dean E. Norris or PMC, DEN will make the appropriate adjustment on that company's ledger. A similar process occurs if payment is made directly to one of the companies. Ultimately, DEN makes the appropriate adjustment through its accounting system to adjust the inflow and outflow for each company. Similarly, if Dean E. Norris or PMC owes a supplier or vendor for materials or services rendered, it is DEN who pays that amount out of its single bank account on behalf of the subsidiary, and then accounts for that payment from the subsidiary's balance. For cost purposes, DEN holds the single line of credit that is utilized by Dean E. Norris and PMC. A second bank account does exist for Dean E. Norris at Sunflower Bank. The only reason Dean E. Norris maintains this separate account is because Dean E. Norris employees receive paper payroll checks. Because Sunflower Bank is a Kansas banking institution, it is less problematic for Dean E. Norris employees to cash or deposit an in-state check. Each company maintains a separate tax account with the Kansas Department of Revenue and a separate employer identification number. DEN files separate tax returns on behalf of each company annually.

b. Human Resources

As authorized by the management agreements, DEN handles all human resources functions for both Dean E. Norris and PMC, excluding the hiring and firing of the

subsidiaries' employees. Personnel records are maintained by DEN in a single office. However, DEN codes and stores the records of each company separately within that office. Company employee policies are initiated by DEN for both Dean E. Norris and PMC. Many of the policies initiated by DEN for its subsidiaries are identical, including its safety manual and its policies on EEO, harassment, FMLA, and substance abuse. DEN provides employee handbooks to each subsidiary and has distributed safety manuals to both as well. Dean E. Norris and PMC employees both participate in toolbox safety meetings. The materials DEN provides to its subsidiaries to utilize during these meetings are obtained from different vendors for each subsidiary. With respect to business insurance, in order to reduce costs, DEN purchases single policies covering itself and both of its subsidiaries. For accounting purposes, DEN then allocates shares of the premium costs to Dean E. Norris and PMC. The insurance policies obtained by DEN on behalf of the companies include general liability, business auto, workers' compensation, umbrella, professional/pollution, directors and officers, inland marine, and property/crime/computers. DEN also locates and provides health insurance for its employees and PMC employees. Dean E. Norris provides health insurance coverage for its employees through welfare and benefit plans set forth in the collective bargaining agreement with the Petitioner. Hiring, firing and other levels of discipline are left to Dean E. Norris and PMC management.

c. Delivery Service/Tools and Procurement

DEN owns the tools, equipment and vehicles utilized by its subsidiaries. The record establishes that the fleet of vehicles and corresponding equipment (e.g. ladders) used by the companies possess a combination of logos for DEN, Dean E. Norris, and PMC. However, the DEN

logo is always present on the vehicle. In fact, some of DEN's vehicles read "DEN Mechanical Contractor" rather than the legal name DEN Mechanical Management, as does the front door to the facility at 4053 Navajo Lane. DEN, through its logistics group, assigns or "checks out" tools, equipment and vehicles to employees of each company, and appear to do so without regard to which logo is affixed. Both Dean E. Norris and PMC utilize DEN's tool crib, storage yard and bonded warehouse at the 4053 Navajo Lane location. As part of its management services, DEN employs a driver who is tasked with making deliveries to both Dean E. Norris and PMC job sites. Deliveries are made through use of the vehicles described above.

d. Information/Technology/Office Support

Part of the information/technology support provided by DEN for Dean E. Norris and PMC includes the use of a single network domain – "denmgmt.com". As such, all employees of DEN, Dean E. Norris, and PMC have the same email domain that is accessed through a centralized email system. DEN, Dean E. Norris and PMC utilize a fax to email or fax over internet feature where all facsimiles sent to the companies come to a single phone line through an online faxing service. Once received, a DEN office clerical employee distributes the facsimile to the appropriate entity. As part of the management agreements, DEN provides all clerical support on behalf of both of its subsidiaries. Although each company maintains separate phone numbers, pursuant to the management agreements, DEN's office support handles those calls accordingly.

e. Project Management

The best way to describe the project management services provided by DEN to its subsidiaries is through the duties of its project managers. Michael Porch serves as one of four project managers for DEN, in addition to his role as President/Director of Dean E. Norris. Porch testified to the following duties as project manager:

“The role of the project manager is to set up projects from an accounting standpoint, as far as the cost codes are concerned so that they use the estimate to set up the project so that the cost can be tracked. Purchasing of major equipment and at least some of the materials; attending meetings with the owner and/or the general contractor; setting up schedules with the same people; estimating change orders for the project, if necessary; and generally, just tracking the project and making sure that it’s profitable and it’s proceeding as it’s supposed to.”

It is also at the DEN project manager level that decisions are made regarding (1) what jobs the companies will seek out; (2) determining whether the job is appropriate for Dean E. Norris or PMC; and (3) ultimately the bidding on the project. There is no distinction between the project managers when they are assigned to estimate, bid, and track the projects of Dean E. Norris and PMC. While employed by DEN, Porch has routinely served as project manager on jobs for both Dean E. Norris and PMC. As DEN's project manager, Porch attends meetings with general contractors, sometimes with the division general managers of the subsidiaries. If instructions are provided by the client or general contractor, those instructions are passed along by the project manager to the division heads to then administer the instructions in the field. Using a Spirit project as an example, Porch testified that Spirit, its General Contractor Eby and he as project manager for Dean E. Norris meet to create work schedules for Dean E. Norris. Porch then communicates the work schedules to the Dean E. Norris General Managers Haury and Meyer. Haury and Meyer are then responsible for assuring that Dean E. Norris employees operate within that schedule. On the Spirit project, Porch testified that he visits the project site approximately once a week, but interacts with the Dean E. Norris general managers regarding the project on a daily basis.

In addition to serving as a project manager employed by DEN, as is set out above, Porch is also the President of Dean E. Norris. Porch testified that in that capacity, he conducts bi-weekly meetings between DEN project managers working on Dean E. Norris projects, DEN sales accounting employees, and Dean E. Norris General Managers Haury and Meyer regarding the status of pending projects, upcoming projects and manpower. As President, Porch also interacts daily with

Haury and Meyer about all of Dean E. Norris' current and future projects. Despite his frequent interaction with Haury and Meyer, Porch rarely interacts with other Dean E. Norris employees.

2. *Dean E. Norris and PMC “Day to Day” Operations*

Beyond the managerial services provided by DEN and the work performed by its project managers, the business that is ultimately captured by DEN is subsequently performed by its respective subsidiaries. As discussed above, both Dean E. Norris and PMC have a residing President: Michael Porch for Dean E. Norris and Shane Dick for PMC. As described previously, many of Porch’s duties are centered upon his role as DEN project manager. Through his bi-weekly meetings Porch, as President, is aware of the work Dean is performing and whether a job is bringing in money or not. However, Porch is not “hands on” with the day to day operation of the business. Those duties are left to his division heads, Dusty Meyer and Paul Haury. Neither Dean E. Norris President Porch or PMC President Shane Dick have significant interaction with rank and file employees. They are not involved in hiring or firing, the discipline process, staffing, establishing work requirements, or setting of employee compensation. Unlike Porch, PMC President Dick, who is not also a DEN project manager, only visits job sites once a month. As his background is in accounting, he relies heavily on his PMC division heads Dennis Seeley, Steve Luce, and Charles Kilpatrick. Dick meets with Seely, Luce, and Kilpatrick biweekly to obtain status updates and otherwise communicates with them anywhere from zero to three times a week. Dick’s duties appear to be primarily involved with his administrative duties as co-Chief Operating Officer of DEN.

D. Shop and Field Foreman⁵**1. Dean E. Norris**

As of the date of the hearing, Dean E. Norris employed ten workers within its Sheet Metal Division, excluding General Manager Dusty Meyer. Of the ten individuals that work within that division, Dean E. Norris employs four foremen – one shop foreman and three field foremen. Keith Wise works as shop foreman in Dean E. Norris' sheet metal fabrication shop located at 4053 Navajo Lane. Although the record testimony establishes that Wise currently works with two other Dean E. Norris employees and that the number of employees working in the shop fluctuates depending on the amount of fabrication work to be done, the record does not set forth Wise's duties as foreman within the shop.

Dean E. Norris also employs three individuals classified as field foreman: Bryan Daniels, Lawrence Tull and Michael Wolke. Each of the foremen, including Wise, work under the direction of Dusty Meyer as the General Manager of Dean E. Norris' Sheet Metal Division. Dean E. Norris' foremen are currently covered under the terms and conditions set forth in collective bargaining agreement Dean E. Norris is party to with the Petitioner. The contract calls for foremen to be paid 110% of the base journeyman wage rate. Foremen receive use of a company truck, company cell phone and tools. These are benefits that non-foremen do not receive from Dean E. Norris.

As for their job duties, Dean E. Norris field foremen obtain plans and specifications for projects, visit the project site to verify accuracy of the plans, coordinate with other subcontractors, order some of the equipment, materials and tools, and attend project meetings. When ordering parts, foremen generally go through Keith Wise in the fabrication shop or General Manager Dusty Meyer. Foremen have the authority to modify plans. For example, if ductwork cannot be installed as

⁵ DEN does not employ any employees classified as "foreman".

directed by the plans, the foremen can make modifications that would allow for the correct installation. Pursuant to a schedule created by the general contractor, the foreman completes a schedule setting forth the equipment and materials that are necessary to meet that schedule. Meyer meets with his foremen on a biweekly basis, which allows for him to be kept apprised of the status of Dean E. Norris' projects. As General Manager of the Sheet Metal Division, Meyer determines staffing levels. He chooses which employees will work on a project, with some input from the foremen. There is no evidence in the record as to what type of input foremen have given. Meyer decides which employees will be assigned to perform certain tasks or duties on the jobsite, but the foremen may move employees around the jobsite if needed. There is no evidence in the record concerning how a foreman would make decisions as to who and how to move employees on the job site.

Meyer makes hiring decisions within his division. With respect to discipline, Meyer is in charge of administering a three step progressive discipline process utilized by Dean E. Norris' Sheet Metal Division. The process starts with a verbal warning issued by Meyer; the second step involves a corrective action memo; the third step involves whatever consequence was set forth in the corrective action memo. The record does not establish that foremen are involved in the disciplinary process other than unspecific testimony from General Manager Meyer that he might involve the foremen in discipline.

2. PMC

As of the date of the hearing, PMC employed thirteen workers within its Sheet Metal Division. Of those thirteen, five employees are classified by PMC as foremen. Steve Ward works as shop foreman at PMC's fabrication shop located at 626 East Douglas, Wichita, Kansas. Although the record testimony establishes that Ward currently works with one other employee

within the shop and that the number of employees working in the shop fluctuates depending on the amount of work to be performed, the record does not set forth Ward's duties as shop foreman.

PMC also employs four individuals classified as field foremen – Wayne Bennett, Chris Thompson, Wes Russell, and Oscar Bustamante. Ward, Bennett, Thompson, Russell, and Bustamante report to Steve Luce, Supervisor of PMC's Sheet Metal Division. PMC foremen evaluate and monitor the status of project plans; coordinate with other trades; order tools, equipment and materials; and produce job schedules called "look-aheads". A two week "look-ahead" is created by the foreman and sets forth the activities to be performed over a two week period and estimates the number of employees needed each day. In creating this schedule, the foreman follows the overall job schedule that is produced by the general contractor in comparison to the amount of time that remains on a project in order to hit established time targets. PMC foremen have the authority to make minor changes to plans. All other changes must go through Steve Luce or a project manager. The foremen determine which employees on a project will perform a particular duty. There is no evidence as to how the foremen choose the duties an employee will perform. Field foremen sometimes attend weekly or bi-weekly job meetings put on by the general contractor. The foremen may attend the meeting alone on behalf of PMC; may attend the meeting with General Manager Luce; or Luce may attend alone on behalf of PMC.

If an employee calls in sick or needs to leave early for the day, they contact the foreman, who indicates the absence on the employee's time card. There is no evidence as to whether the foremen may deny an employee's request to leave due to illness or otherwise. If the foreman determines that a replacement is necessary for an employee's extended absence, the foreman will

notify General Manager Steve Luce. With respect to discipline, there was testimony that PMC foremen are authorized to issue employees a verbal warning, but there was no evidence presented that any PMC foreman have ever exercised such authority. General Manager Luce conducts employee evaluations twice a year, and testified without detail that he utilizes the input of his foremen. Overall staffing levels are determined by Luce, with input from his foremen. Given staffing needs, General Manager Luce determines whether to hire employees; whether advertising is necessary; determines how applicants will be chosen; conducts interviews of potential employees; makes hiring decisions; and determines the wage rates for PMC sheet metal employees. Non-foremen within PMC's Sheet Metal Division make anywhere between \$10-\$18 per hour. PMC foremen earn between \$20-\$27 per hour. Foremen receive a company truck and cell phone or cell phone allowance.

IV. ANALYSIS

A. Single Employer

A "single employer" relationship exists in situations where apparently separate entities operate as an integrated enterprise in such a way that "for all purposes, there is in fact only a single employer." *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117, 1122 (3d. Cir. 1982). The determination of whether two nominally distinct entities are a single integrated enterprise is made on a case by case basis. *Blumenfield Theaters Circuit*, 240 NLRB 206, 215 (1979). In making such a determination, the Board historically has considered four factors approved by the Supreme Court in *Radio Union v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255 (1965). Those factors are (1) functional integration of operations; (2) centralized control of labor relations; (3) common management; and (4) common ownership. See *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1283-1284 (2001). An analysis of these factors is designed to determine whether nominally "separate

corporations are not what they appear to be, that in truth they are but divisions or departments of a single enterprise.” *NLRB v. Deena Artware, Inc.*, 361 U.S. 398, 402 (1960); *NLRB v. Browning-Ferris Industries, supra* at 1122. Not all of the criteria need be shown to establish single-employer status. *Alexander Bistrizky*, 353 NLRB 524 (1997). The Board has also held that none of the four factors is controlling by itself, as single employer status depends on all the circumstances of the case. *Richmond Convalescent Hospital*, 313 NLRB 1247, 1249 (1994). However, the most critical of the factors has been deemed to be centralized control over labor relations. *Alabama Metal Products*, 280 NLRB 1090 n.1 (1986); *Mercy Hospital of Buffalo, supra* at 1284. “Single-employer’ status ultimately depends on all the circumstances of the case and is characterized as an absence of an ‘arm’s-length relationship found among unintegrated companies.” *Naperville Jeep/Dodge*, 357 NLRB No. 183, slip op. at 21 (January 3, 2012), quoting *NLRB v. Browning-Ferris Industries, supra*. For example, a single employer relationship exists where one entity provides significant services, transfers property or pays substantial bills of a second entity without receiving fair market value. *Thorton Heating Service*, 294 NLRB 304 (1989).

1. Common Ownership

Unquestionably, common ownership exists between the companies as DEN owns 100% of both Dean E. Norris and PMC. However, the inquiry does not stop there as common ownership by itself does not warrant a single employer finding. *Mercy Hospital of Buffalo, supra* at 1284. Nor is the existence of a common corporate parent sufficient evidence to establish a single employer finding. *Mercy General Health Partners*, 331 NLRB 783 (2000). “In *Dow Chemical*, the Board held that such common ownership, by virtue of a parent-subsidary relationship, by itself, indicates only potential control over the subsidiary by the parent entity. The Board concluded that a single employer

relationship will be found only if one of the companies exercises actual or active control over the day-to-day operations or labor relations of the other.” *Mercy General Health Partners id at 784* (2000), citing *Dow Chemical Co.*, 326 NLRB 288 (1998). The fundamental inquiry in assessing single employer status is whether there exists overall control of critical matters at the policy level. *Proctor Express Inc. of New Jersey*, 322 NLRB 281, 289-290 (1996), enfd. 135 F.3d 766 (3d Cir. 1997); *Pathology Institute, Inc.*, 320 NLRB 1050, 1063 (1996), enfd. 116 F.3d 482 (9th Cir. 1997), cert. denied 522 U.S. 1028 (1997).

2. *Common Management, Functional Integration of Operations, and Central Labor Relations*

The record testimony establishes that there is common management between the companies. Michael Porch serves as both Project Manager of DEN and Director/President of Dean E. Norris. Shane Dick serves as DEN’s co-Chief Operating Officer, along with his wife Melissa, while acting as Director/President of PMC. Under Michael Porch and Shane Dick, Dean E. Norris and PMC employ separate general managers. Although the day-to-day supervision and administration of labor policy at Dean E. Norris and PMC is largely separate, the Board has found single employer status despite the absence of centralized control over day-to-day activities. *Hotel and Restaurant Employees Union Local 274 (Warwick Caterers)*, 282 NLRB 939, 943 (1987). The fact that day-to-day management is handled at the local level is not controlling. *Task Force Security and Investigations, Inc.*, 323 NLRB 674, 677 (1997). See also *Pathology Institute*, 320 NLRB 1050, 1061-1062 (1996).

In the instant case, although the day to day decisions with respect to supervision and administration of labor policy are made at lower levels by each subsidiary, DEN's overwhelming role in the operations of its subsidiaries Dean E. Norris and PMC more than adequately support a

single employer finding. In fact, DEN's management agreements with both subsidiaries support not only a finding of common management, but also complete functional integration of the operations, including centralized control of labor relations.

In support of this finding, and as performed through the companies' management agreements:

- DEN estimates and bids on projects on behalf of Dean E. Norris and PMC. In doing so, DEN solely determines which of its subsidiary will bid on projects. DEN project managers subsequently manage, monitor and guide projects for both entities. The determination of which entity will bid the work, the bidding, and the subsequent management of each project provides significant daily interaction and control by DEN over its subsidiaries.
- DEN creates and distributes employee handbooks and policies, including substance abuse and safety policies that are subsequently implemented and administered by Dean E. Norris and PMC.
- DEN owns and provides all vehicles, materials and tools for use by Dean E. Norris and PMC. Vehicles driven by DEN, Dean E. Norris and PMC are utilized out of a single pool. As established through the record, company vehicles utilized by employees of all three entities will have the DEN logo, either by itself or in conjunction with Dean E. Norris or PMC.
- Dean E. Norris and PMC utilize DEN's tool crib, storage yard and bonded warehouse.
- DEN employs logistics employees and a materials truck driver tasked with making sure that materials are delivered to jobsites of both subsidiaries, using the vehicles described above.
- DEN maintains a single accounting system that is utilized to track and account for all financial transactions of DEN, Dean E. Norris and PMC, including accounts receivable, accounts payable, and payroll for each subsidiary. While the entities often invoice each other for services, this is not always done, and even when invoicing is done, these are merely paper transactions flowing through one accounting system and one DEN bank account, which services all three entities.
- DEN maintains the single line of credit utilized by both subsidiaries. As is mentioned above, all three companies utilize a single bank account, with the exception of an account utilized for Dean E. Norris due to its employees receiving physical payroll checks.

- DEN obtains single business insurance coverage for itself, Dean E. Norris and PMC.
- DEN maintains accounting and personnel records for Dean E. Norris and PMC.

In addition to these factors, the record sets forth additional evidence supporting a finding that the three companies maintain a high level of functional integration. Dean E. Norris, PMC and DEN all operate out of the same physical address, excluding the David Norris' owned facility at 626 East Douglas where PMC possesses its fabrication shop. Each entity staffs employees at the 4053 Navajo Lane facility. See *Western Union*, 224 NLRB 274, 277 (1976)(For a single employer analysis, Board noted that it considers combined offices, switchboards, accounting records, bank accounts, and payroll preparation as indicia of interrelatedness). Also, PMC subcontracts a large amount of work to Dean E. Norris. For calendar year 2011, Dean E. Norris was PMC's largest vendor. Accounting for these services was sometimes at a profit and other times at a loss. Although there is no evidence that PMC directly supervised Dean E. Norris employees for this work, such an absence is understandable as it would constitute a violation of Dean E. Norris' collective bargaining agreement with the Petitioner.

With respect to labor relations, I am mindful that certain terms and conditions of employment for Dean E. Norris and PMC are different due to the nature of the double breasted operation that exists. Dean E. Norris and its employees are subject to the terms of a collective-bargaining agreement. PMC and its employees are not. "However, the situation where terms and conditions of employment vary between unionized and non-unionized components of a single employer is more the rule than the exception", and does not necessarily undercut a single employer finding. *Naperville Jeep/Dodge*, 357 NLRB No. 183, slip op. 23 (January 3, 2012), citing *Illinois-American Water Co.*, 296 NLRB 715, 720 (1989), enf'd. 933 F.2d 1368 (7th Cir. 1991). There are certain

contractual wage, benefit and working conditions parameters that Dean E. Norris must adhere to or risk violating its contract with the Petitioner.

Furthermore, as stated above, the Board has held that “[S]ingle employer status depends on all the circumstances of the case and is characterized by absence of an ‘arm’s length relationship found among unintegrated companies.’” See *NLRB v. Al Bryant, Inc.*, 711 F.2d 543, 551 (3rd Cir. 1983). Pursuant to DEN’s management agreement with its subsidiaries, and as confirmed by DEN’s co-Chief Operating Officer Melissa Dick, DEN provides its numerous management services to Dean E. Norris and PMC by charging its subsidiaries “fees equal to” DEN’s costs. The fact that DEN provides this valuable service to its subsidiaries without profit is not indicative of an arm’s length relationship. Additionally, Dick testified that there are years where DEN does not invoice Dean E. Norris or PMC for its services. During those years, DEN, as the entity that controls the accounting for its subsidiaries, simply notes its fees on the financial statements for each company and adjusts their balances accordingly. Such accounting does not indicate an arm’s length relationship between the parties and supports the single employer conclusion.

Importantly, the record also establishes that DEN holds itself, PMC and Dean E. Norris out to the public as a single mechanical contractor. Although DEN takes the position that it is not a mechanical contractor, but an entity that provides management services to mechanical contractors within the construction industry, the record is replete with examples of DEN presenting itself as “DEN Mechanical Contractor” in conjunction with PMC and Dean E. Norris, including on the vehicles driven by DEN, Dean E. Norris, and PMC employees; through social media; through its email and network domain; and even on the front door of the facility located at 4053 Navajo Lane. See *Southern Interiors, Inc.*, 319 NLRB 379 (1995)(single employer status based, inter alia, on the fact that entities held themselves out to the public as parts of a single integrated business enterprise).

The company logos found on the vehicles and materials utilized by all three companies, the name of the facility door, the email and network domains and social media used by DEN supports that the entities hold themselves out as three parts of a single enterprise.

Lastly, I find the Board's decision in *Naperville Jeep/Dodge*, 375 NLRB No. 183 (January 3, 2012) illustrative. *Naperville Jeep/Dodge* involved a determination of whether two entities constituted a single employer within the context of a withdrawal of recognition and subsequent unilateral changes. The Board upheld the ALJ's finding that there was unquestionable common ownership between two car dealerships. While evidence of common management was found only at the higher levels and common control of labor relations was mixed as the two companies in question maintained separate employee handbooks, the ALJ found this inconsequential in double breasted operations. The ALJ found significant functional integration, noting that management was the same at higher levels; the two companies were engaged in the same business, as well as shared office space, equipment, accounting personnel, etc. Lastly, and equally as important, the employers in *Naperville Jeep/Dodge*, much like DEN, Dean E. Norris and PMC, held themselves out to be a single entity.

3. *Conclusion*

For the reasons discussed above, I conclude that the record evidence establishes that Dean E. Norris, PMC and DEN constitute a single employer under the Act. However, a determination of a single employer status does not, by itself, determine the appropriate bargaining unit. Consideration must also be made of the scope of the unit as examined by employee community of interest. *Peter Kiewit Sons' Co.*, 231 NLRB 76 (1977); *Edenwall Construction Co.*, 294 NLRB 297 (1989). In this regard, the parties stipulated that if the three entities were found to be a single employer, the petitioned for employees performing fabrication and installation of sheet metal, HVAC and

associated work employed by Dean E. Norris, PMC and DEN share a sufficient community of interest to constitute an appropriate unit for the purpose of collective bargaining. As I have found Dean E. Norris, PMC and DEN constitute a single employer, and pursuant to the parties' stipulation regarding the community of interest of the employees, I further find that the petitioned for employees employed by Dean E. Norris, PMC and DEN constitute an appropriate unit for the purpose of collective bargaining.

B. Supervisory Status - Foreman

1. *Supervisory Indicia*

Having found that DEN, Dean E. Norris and PMC are a single employer, it must be determined if Dean E. Norris' and PMC's shop and field foreman are supervisors. Pursuant to Section 2(3) of the Act, any individual employed as a supervisor is specifically excluded from the term employee. Section 2(11) of the Act defines the term supervisor to include any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action. Possession of any one of these indicia specified in Section 2(11) is sufficient to confer supervisory status on an employee, provided that authority is exercised with independent judgment on behalf of management and not in a routine manner. See, e.g., *Airline Commercial Barge Line Co.*, 337 NLRB 1070 (2002); and *Browne of Houston*, 280 NLRB 1222, 1223 (1986).

The Board construes supervisory status narrowly "because the employee who is deemed a supervisor is denied the rights which the Act is intended to protect." *Chevron Shipping Co.*, 317 NLRB 379, 389-381 (1995). The burden of proof to show supervisory status lies with the party asserting such status and any lack of evidence is construed against the party asserting supervisory

status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-712 (2001); and *Elmhurst Extended Care Facilities*, 329 NLRB 535, 535 fn. 8 (1999). General assertions unsupported by specifics and contradicted by other evidence are not sufficient.

In their brief, the Employers argue that the foremen of Dean E. Norris and PMC are supervisors in that they have the authority to discipline, assign and/or responsibly direct. I will address Dean E. Norris and PMC foremen separately below.

2. *Shop and Field Foremen - Dean E. Norris*

There is no record testimony regarding the job duties of Dean E. Norris shop foreman Keith Wise or his asserted supervisory authority. As such, Dean E. Norris failed to carry its burden of proof in establishing that Wise is a supervisor under the Act. With respect to Dean E. Norris field foremen Bryan Daniels, Lawrence Tull and Michael Wolke, I also find that Dean E. Norris failed to present sufficient evidence to conclude that these individuals possess satisfactory indicia to warrant their exclusion from the unit as supervisors under the Act. I first note that Dean E. Norris currently employs ten sheet metal workers, four of whom the Employer claims are supervisors. As such, the Employer's position is that it maintains a 2:3 supervisor to worker ratio. With that statistic in mind, Dean E. Norris also failed to call any of its foremen to provide direct testimony regarding their duties in that position. Through the testimony of General Manager Dusty Meyer, there was insufficient evidence to conclude that field foremen act in a capacity where "independent judgment" is used or that "responsible direction" exists such that they are supervisors under the Act. The term "independent judgment" applies regardless of the supervisory function implicated. See *Oakwood Healthcare, Inc.*, 348 NLRB 686, 686 (2006). To demonstrate independent judgment, the supervisor in question "must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data." *Id.* An employee does not

exercise independent judgment if his or her decisions are “dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Id.* The general and typically hypothetical testimony provided by General Manager Meyer does not support a conclusion that Dean E. Norris field foremen possess either the duties or the independent judgment necessary for such a finding. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991)(holding that conclusionary statements without supporting evidence do not establish supervisory authority). The record testimony does not set forth to what extent Dean E. Norris’ field foremen utilize independent judgment in the decisions that they make in modifying project plans or making recommendations on which individuals should staff a project. Further, the testimony of Meyer clearly establishes that he, not the foremen, is tasked with assigning work to employees. Regarding a foreman’s ability to responsibly direct other employees, Meyer provided no examples of foremen being held accountable for failing to effectively supervise a project’s crew. With respect to Dean E. Norris foremen having the authority to issue employees discipline, counter to the Employers’ position on brief, the record testimony does not support this position. Rather, the record testimony supports that all discipline is handled by General Manager Meyer. Lastly, secondary indicia, such as the use of company trucks and cell phones, does not by itself establish supervisory status, in the absence of primary indicia. *Billows Electric Supply*, 311 NLRB 878 fn. 2 (1993). For these reasons, I find that Dean E. Norris shop and field foremen are not supervisors under the Act and will be included in the unit.

3. *Shop and Field Foremen - PMC*

Similar to Dean E. Morris, PMC failed to provide record testimony concerning the job duties or supervisory authority of PMC shop foreman Steve Ward. As such, PMC failed to carry its burden of proof in establishing that Ward is a supervisor under the Act. With respect to PMC

field foremen Wayne Bennett, Chris Thompson, Wes Russell, and Oscar Bustamante, I also find that the evidence presented by PMC at hearing was insufficient to conclude that PMC field foremen possess sufficient supervisory indicia as set forth above. As with Dean E. Norris, I will note that PMC currently employs thirteen sheet metal workers, five of whom PMC claims are supervisors. As such, PMC's position is that it maintains a 5:8 supervisor to worker ratio. With that ratio in mind, PMC also failed to call any of its foremen to provide direct testimony regarding their duties in that position. The record established that Supervisor Steve Luce determines overall staffing levels; decides whether additional manpower is needed; determines how manpower is selected; whether advertising is necessary; conducts interviews of potential employees; makes the final hiring decision; and determines wage rates for PMC sheet metal employees. PMC argues, similar to Dean E. Norris, that PMC foremen perform supervisory duties such as assigning work and responsibly directing employees. As with the record provided by Dean E. Norris, the company's testimony failed to provide evidence of independent judgment regarding the decisions that are made by PMC's foremen, which might have included what factors the foremen use in putting together the two week "look-ahead" schedule, beyond what is pre-determined by the general contractor. The sample look-ahead provided by PMC at the hearing shows that the same number of employees are utilized each day on the project in question, and the record is devoid of testimony regarding the foreman's decision to distribute manpower for each tasks on that project. The record also does not provide details regarding the decision making process used by a foreman when making a minor change to the plans of a project or in deciding which employee will perform a particular job on the job site. "Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the

basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). The Employers draw a comparison between the facts of this case and a recent ALJ decision in *Allservice Plumbing and Maintenance, Inc.*, 2011 WL 6009109 (December 01, 2011)(ALJ found that a single foreman exercised independent judgment in assignment of work), which it should be noted has not been ruled on by the Board. I find that the ALJ’s conclusion in *Allservice Plumbing* is distinguishable and not controlling in the instant case. In *Allservice Plumbing*, the ALJ found sufficient record evidence of the manner and method that the foreman used in determining how to assign employees on the job site to particular tasks, thus supporting that such assignment was done with independent judgment. In the instant case, other than generalized evidence that the foreman may choose to assign employees to particular duties on the jobsite, there is no evidence to support how the PMC foremen exercise this assignment function. As such, there is no evidence to support a finding that such assignments are made with independent judgment. With respect to the Employers’ argument that PMC foremen have been held responsible for the manner in which they direct their crews, PMC points to an example in 2010 when Steve Luce demoted a foreman for not “running a job” efficiently. The record does not establish that the foreman’s demotion was a result of his being held accountable for a failure of his crew to follow his directives as foreman, rather than because of his failure to follow the instructions of his Employer. The Employers also argue that PMC foremen have the authority to discipline. As for Luce’s testimony that foremen have the authority to provide verbal discipline to employees or send employees home without pay, there is no evidence to support this conclusionary testimony. The only example of discipline provided by General Manager Luce was a situation when one of his foremen was a recipient of discipline. The Employers cite *Bashas’ Inc.*, 2009 WL 3046525 (September 24, 2009), another ALJ decision that was not heard

by the Board, as a case where supervisory status was found and based on an individual's authority to administer discipline when the employee in question had only exercised the authority one time. Although not precedent setting, *Bashas' Inc.* is also easily distinguishable from the instant matter because in the instant case there are no examples on the record of any foreman utilizing such supervisory authority. For these reasons, I find that PMC shop and field foremen are not supervisors under the Act and will be included in the unit.

4. *Conclusion*

For the reasons addressed above, I find that Dean E. Norris, PMC, and DEN failed to carry their burden of proof to show that shop or field foremen employed by Dean E. Norris or PMC constitute supervisors under Section 2(11) of the Act. Therefore, I will include shop and field foremen in the bargaining unit found appropriate herein.

V. 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. Those employees eligible to vote in this matter are all employees employed in the bargaining unit during the payroll period immediately preceding the date of this Decision (payroll cutoff date), including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees who have been employed by Dean E. Norris, PMC, and DEN in the bargaining unit for a total of 30 working days or more within the period of 12 month period preceding the payroll cutoff date described above or who have had some employment in that period and who have been employed 45 working days or more within the 24 months immediately proceeding the

payroll cutoff date, and who have not been terminated for cause or quit voluntarily prior to completion of the last job for which they were hired. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit 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' INTERNATIONAL ASSOCIATION, LOCAL NO. 29, affiliated with SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO.**

VI. ELECTION NOTICES

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. LIST OF VOTERS

In order to insure 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 directed that two 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 Regional Director for Region 17 within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make this list available to all parties to the election.

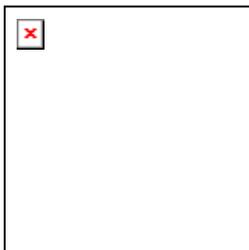
In order to be timely filed, such list must be received in the Regional Office, Suite 100, 8600 Farley, Overland Park, Kansas 66212, **on or before January 30, 2012**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for 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. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is to be submitted by facsimile, in which

case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall by department, etc.) If you have questions, please contact the Regional Office.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by February 6, 2012. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov, but may not be filed by facsimile. Refer to the attachment supplied with the Regional Office's initial correspondence for guidance in filing electronically. Guidance for E-filing can also be found on the National Labor Relations Board website at www.nlr.gov. On the home page of the website, select the E-Gov tab and click E-Filing. Then select the NLRB office for which you wish to E-file your documents. Detailed E-filing instructions explaining how to file documents electronically will be displayed.

SIGNED at Overland Park, Kansas, this 23rd day of January, 2012.



/s/ Daniel L. Hubbel

Daniel L. Hubbel, Regional Director
National Labor Relations Board
Region 17
8600 Farley Street, Suite 100
Overland Park, Kansas 66212