

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

In the Matter of

AT WALL COMPANY

Employer

and

NEW ENGLAND JOINT BOARD, UFCW,  
RWDSU

Petitioner

Case 01-UC-081085

**DECISION AND CLARIFICATION OF BARGAINING UNIT**<sup>1</sup>

The Employer, AT Wall Company (“AT Wall” or “Company” or “Employer”) is a Rhode Island corporation that operates a metal supply and production facility located at 55 Service Avenue in Warwick, Rhode Island. The Company’s administrative offices and headquarters are at the same location.

**A. Background and Employer’s Operations**

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<sup>1</sup> Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 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 in this matter.

AT Wall is a supply and production company that manufactures precision tubing and stamping products, specialized fabricated metal components, and metal gun magazines at its facility in Warwick, Rhode Island. In December 2011, AT Wall acquired a new company called Metalform Company (“Metalform”) which has a single facility located in New Britain, Connecticut. Metalform was engaged in the manufacture and production of gun magazines for firearms and employed approximately 22 employees at its New Britain facility.

Prior to the acquisition of Metalform, AT Wall manufactured specialty metal tubing and stamping products for microwave communications systems, slip rings, electronics, and other applications. It is undisputed that since the Company was founded in 1866, it did not manufacture gun magazines or any other type of firearms components or ammunitions until after it acquired Metalform in December 2011.

Since the acquisition, AT Wall added a Metalform Department at the Warwick facility to include the manufacture of gun magazines. AT Wall has added several Metalform positions, such as Metalform Toolsetter, Metalform Assembler, Metalform Machine Operator, and Metalform Welding Operator, that existed at Metalform’s New Britain facility to the Warwick facility.

## **B. Union’s Petition and Position**

The New England Joint Board RWDSU/UFCW (“Union”) currently represents a bargaining unit composed of approximately 29 employees at the Warwick facility.<sup>2</sup> The parties’ collective bargaining agreement (“Contract”) covering this unit is currently in effect. The Contract’s effective dates are June 1, 2011 to December 1, 2012.

The Union seeks by virtue of this petition to accrete the four above-referenced Metalform positions into the existing bargaining unit at the Warwick facility. The Union

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<sup>2</sup> Article 4 of the Contract, the Union Recognition Clause states as follows: (a) This Agreement relates to and covers, and the term “employee” as used in this Agreement shall include all employees as listed under classifications in Article SEVENTEENTH at the Employer’s Warwick, Rhode Island plant, but excluding office and clerical workers, executives, and all other supervisory employees with authority to hire, promote, discharge, discipline and otherwise effect changes in the status of employees or effectively recommend such action; (b) The Employer hereby recognizes the Union as the sole and exclusive bargaining agent for all employees of the Employer covered by this Agreement in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment. Section 17 of the collective bargaining agreement covers the following job classifications in the Company’s five other departments. In the Inspection Department, there are three classifications: Inspector C, Inspector, and Quality Technician. In the Maintenance Department, there are four job classifications: Maintenance Mechanic, Maintenance, Maintenance Mechanic, and Maintenance Electrician. In the Tubing Department, there are five job classifications: Annealer, Operator Assistant, Tubing Operator, Cutting Machine Operator, and Tube Department Coordinator. In the Department Material Handling, there are two job classifications: Material Administrator and Material Handler. In the Stamping Department, there are three classifications: Packer, Operator, and Set-Up Operator. Lastly, in the Toolroom Department, there are four job classifications: Machinist, Machinist C&C, Toolmaker and Master Toolmaker. Of these positions, there are several that are unfilled including Inspector C in Inspection, Maintenance Mechanic in Maintenance, Packer in Stamping and Finishing, and Machinist and Machinist CC in Toolroom.

asserts that the four Metalform job classifications at issue share a substantial community of interest with unit employees warranting accretion insofar that they possess the similar educational experience and skill requirements involved in the manufacture of each of AT Wall's metal products.<sup>3</sup> The Union also maintains that there is significant daily contact between the petitioned-for employees and unit employees at the facility and similar working conditions to warrant accretion. Lastly, the Union contends that the parties are required to negotiate the addition of any new department or job classification in accordance with the Contract, which the Company has failed to do.

### **C. Employer's Position**

AT Wall disputes the accretion of the four Metalform job positions into the existing unit on the grounds that the new employees lack an overwhelming community of interest with current unit employees. AT Wall further asserts that there are myriad factors such as lack of interchange, lack of common supervision, and different equipment and skills set involved in the manufacture of the tubing and stamping products and gun magazine products, which militates against the finding of accretion.

### **D. Employer's Operations and Hierarchy**

Al Goncalves is the General Manager at AT Wall and oversees its five different departments: Materials, Quality, Stamping, Tubing, and the newly-created Metalform Department.<sup>4</sup> Each of the departments is headed by a separate manager or supervisor. From the record evidence, it appears that department managers and supervisors all report to Goncalves.

Jackie Miranda is the Manager of the Materials Department. John Flibotte is the Manager of the Quality Department. Doug Buckley is the Manager of the Tubing Department. Lee Garcia, the Manager of the Stamping Department, is currently serving as the Interim Supervisor of the Metalform Department while Arthur Moniz, the Permanent Metalform Supervisor is conducting off-site training of new Metalform Department hires at the New Britain facility. Once training of the new hires is complete, Moniz will replace Garcia as the Metalform Supervisor at the Warwick facility.

Prior to the acquisition of Metalform, AT Wall employed 45 employees, 29 of whom are represented by the Union. Since the acquisition of Metalform, the Company hired an additional 13 non-supervisory employees to the newly created Metalform Department at its Warwick facility.

### **E. The Employer's Manufacturing Processes**

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<sup>3</sup> As the Union noted at hearing and in its brief, "the matter is simple and straightforward, not rocket science. . . metal is metal."

<sup>4</sup> At the hearing, the Employer submitted an organization chart, Employer's Exhibit 1, that reflects the Company's current chain of command and supervisory hierarchy.

AT Wall manufactures three different types of products: tubing, stamping, and gun magazine products. At the hearing, Goncalves testified that the Company typically hires employees to work with a specific product, such as tubing or stamping. Employees do not receive cross-training on its other products. The welding and assembly operations involved in the making of the gun magazines are the only operations that do not have a similar counterpart in the stamping and tubing manufacturing process.

### **1. Tubing Manufacturing Process**

The tubing product that AT Wall manufactures is a hollow metal tube that is drawn through a tool until it reaches a specified size. The end product is typically a long, metal tube that is used in microwave communications, slip rings, electronics, and other applications.

The tubing production process begins with the material handler. The material handler receives incoming tubes used for manufacture into the facility and moves it into the inspection area. The inspector then verifies that the tubes meet the manufacturing criteria for the tubing product. Once the tubes are approved, they are placed in inventory for use.

In order to manufacture the tubing product, an operator assistant “points” the tube or compresses it by using a hydraulic pointer and rotary sledger. Once the tube is compressed, an operator places the tube through a draw bench, after which an operator assistant will straighten, clean, and cut the tube. Operator assistants handle all activities outside of drawing the tube on the draw bench.

The tube may or may not be annealed depending on the type of product being manufactured. If the resulting tube needs to be annealed, an annealer will process the tube in the annealing room to remove stresses applied to the tube during the drawing process. Once the product is complete, the tube is sent for inspection. If the length of the tube needs to be adjusted, a cutting operator will be involved, and use a saw, an electric current machine, or a wave blade to cut the tube.

Once the product is finished, the material handler removes the product from the production area and moves it to the vault area using a forklift. The finished product remains in the vault until it is ready to be prepared for shipping by the material handler.

The six unit positions involved in the manufacture of tubing products include a material handler, inspector, operator, operator assistant, cutting operator, and annealer.

### **2. The Stamping Product Manufacturing Process**

The stamping product that AT Wall manufactures is a small metal stamping produced in a progressive die. The stamping product is round and smaller in size than a quarter. It is typically made with a starting alloy material such as kovar, Deutsche nickel, stainless steel, cold rolled steel, or copper.

The production process similarly begins with a material handler receiving the starting materials into the facility followed by an inspection to ensure its suitability for use in manufacturing the stamping product. Once the materials are approved for use, they are placed in inventory.

To manufacture the stamping product, a toolmaker or set-up operator first prepares the die tool that is used to stamp out the product and then loads it into the press machine. The stamping operator then loads the starting materials onto the press and the set-up operator feeds it through the press for stamping. After the stamping product exits the press, the product goes through a cleaning and tumbling process to remove any bur or shavings that attached to the product during the pressing operation. Once the product is finished, the material handler removes it from the production area to the vault until it is ready for shipping.

The stamping product is mainly used in electronics, but is also sold to businesses in the automotive industry and to glass/metal ceiling businesses.

The five unit positions involved in the manufacture of the stamping product are a material handler, quality inspector, toolmaker, set-up operator, and stamping operator.

### **3. The Gun Magazine Metalform Manufacturing Process**

The only product that AT Wall's Metalform Department currently manufactures is a gun magazine for the Pistol 1911 series.<sup>5</sup> The Metalform Department uses the same machines that were used at Metalform's New Britain facility to manufacture the gun magazine. AT Wall acquired the machines after it purchased Metalform and shipped them to the Warwick facility for use.<sup>6</sup> Goncalves testified that the machines used are unique and specific to the magazine manufacturing process and that the machines used in the other departments cannot be calibrated and repurposed to manufacture gun magazines.

The production process for the gun magazine begins with a material handler receiving incoming materials used for manufacturing. Once the starting materials are received, they undergo an inspection and approval process before the materials can be placed into a production area for use.

The starting materials used to make gun magazines differ in size and alloy components than those used in the tubing and stamping products.<sup>7</sup> The manufacture of

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<sup>5</sup> AT Wall intends to develop additional gun magazines, such as the double stack magazine, for police and military applications. It does not appear from the record evidence that the Metalform Department intends to manufacture any other products.

<sup>6</sup> The machines used in the Metalform manufacturing process include power presses, slide machines, hydraulic feeding system, sanders, and specific tumblers for sanding and polishing.

<sup>7</sup> The Company uses 1050 cold rolled steel and 410 stainless steel in the manufacture of its gun magazines.

gun magazines in contrast to the tubing and stamping products is subject to certain regulatory certifications for firearms production.

In order to manufacture the gun magazines, the Metalform toolsetter or toolmaker prepares the tool used to stamp “blanks” or holes onto the starting material, which is usually a flat sheet of metal. The Metalform toolsetter then loads the starting material onto a press machine and then feeds the metal through the machine. The machine then punches holes into the metal. The Metalform toolsetter then has to verify that the first resulting piece meets the correct specifications.

Afterwards, the Metalform toolsetter turns the product over to a Metalform machine operator, who operates the same press machine until the correct quantity of the piece is produced. The quantity produced is determined by the product work order.

The Metalform machine operator then moves the product through secondary presses, which shape the flat metal to form a U-shape of the gun magazine. The Metalform machine operator may also have to use the secondary press to trim it to certain length and place a “rib” or indentation, along the side of the U-shaped metal.

The product is then degreased and sent to a Metalform welding operator, who will weld the two sides together. This process is called seam welding, where a plasma gas fed system is used to heat and weld the two sides together. After the two sides are welded together, the product is sent to an outside contractor for “stress relief,” after which it is returned to the Company to be cut. The Company plans to have this process performed in-house in its own annealing department with additional annealers.

Once the product is cut, the product undergoes a “canning” process in which a “feed lip,” where a bullet will ultimately rest, is created at the top of the magazine. The feed lip holds the bullet in place when it is put inside the magazine. Afterwards, the magazine is sent to an outside contractor to go through a hardening process.

Once the product is returned to AT Wall, the Metalform assembler assembles the magazine by welding a metal butt plate to the bottom of the magazine. This process is known as resistance or spot welding, whereby two copper contacts on the pieces are joined together by electric heat. After the butt plate is welded, the product undergoes a tumbling process.<sup>8</sup> The tumbling operator then places the magazine product inside a vibrating tumbler machine for sanding and polishing, which is performed in a separate room at the facility called the “dirty room.”

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<sup>8</sup> The Metalform welder operator and assembler only perform work on the metal form product. Their positions are unique to the gun magazine manufacturing process. The record is silent on the Company’s job and skills requirements for the Metalform welding operator and assembler positions. No job description or job posting was provided for either position at the hearing. There is no evidence to suggest that either position requires welding certification or prior welding experience. Based on the record, there is also no evidence indicating that the Metalform welder and assembler is part of an integrated production process with other department employees.

Machines used for polishing stamping and tubing products are also located in the same room. After the tumbling process is complete, a Metalform assembler inspects the product to verify that the feed lips are in the correct position, and adjust them if necessary.

Finally, the Metalform assembler places a follower and spring inside the magazine.<sup>9</sup> Once assembly is complete, the material handler moves the finish product to the vault room until it is ready for shipping. The gun magazines are then sold to gun manufacturers and gun distributors.

There are approximately six job classifications involved in the manufacture of the gun magazine: material handler, tumbling operator, Metalform tool setter, Metalform operator, Metalform assembler, and Metalform welder, the latter four which are not unit positions.

## **F. Description of the Facility**

The tubing, stamping, and metal form department are all contained on the same floor within the same facility in Warwick. There is an area in the facility that is designated as the tubing production area and another as the stamping department production area. The tubing production is located adjacent to the main offices, towards the front of facility.

The stamping department is located behind the annealing area, which in turn, is located behind the tubing department.

There are two separate areas where metal form production occurs. The larger metal form production area is located across an aisle from the tubing production area.<sup>10</sup> There are no walls that separate the first metal area from the tubing area. All the Metalform employees work in the first Metalform area, which is located next to the dirty room. The dirty room is closed off with cinderblocks to contain the dust that is released during the tumbling process in the area.

The second and smaller Metalform area is located next to the stamping production area, behind the annealing department. The annealing department is walled off from the rest of the facility. There are two press machines located in the second metal area. There are no employees permanently assigned to work there. The only time the Metalform employees work in the second area is when the specific press machines located in this area are called for; otherwise employees work in the first area.

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<sup>9</sup> The Metalform assemblers are provided with process instructions (“PI”), which are work instructions that depict their tasks in picture form, similar to assembly instructions that accompany some IKEA products.

<sup>10</sup> Only a five foot wide aisle separates the first Metalform area from the tubing production area.

The Metalform employees mainly stay and work in the first metal area during the course of their job duties. They do not leave other than to occasionally deliver a tool to the toolroom or to use the bathroom, cafeteria, or locker areas. Similarly, stamping and tubing employees largely remain in their respective production areas to perform their work duties.

### **G. Hiring of AT Wall Employees**

The hiring process at AT Wall is similar for each department. Both Goncalves and Human Resources Caitlin Pratt are involved in making final hiring decisions. They may receive input from the Department Manager that oversees the job position about the applicant and decide together.

At the hearing, Goncalves also testified that AT Wall typically hires employees to make a specific single product, rather than multiple products. Goncalves noted that the Company has hired and would hire an employee with no experience or prior training in a product, and in such instances, the Company provides the employee with on-the-job training. Most of the new Metalform employees hired lacked prior training or experience in manufacturing gun magazines and were provided with on-the job training.

Since the acquisition of Metalform, AT Wall has hired 13 Metalform employees for the toolsetter, machine operator, welding operator, and assembler positions. All four positions were advertised through Monster.com and a local Rhode Island newspaper. Both General Manager Al Goncalves and the Human Resources Manager Caitlin Pratt were involved in the selection and hiring of the Metalform employees.

### **H. Skill Set Requirements**

At the hearing, Goncalves testified that, when the Company is seeking to hire employees to work in the Tubing, Stamping, and Metalform Department, there are similarities in skills set between the unit and new Metalform positions, such as manual dexterity, ability to read micrometers, and basic math skills.

According to Goncalves' testimony, there are some skills set requirements unique to each department.<sup>11</sup> Goncalves testified that when the Company is hiring for the Stamping Department, it seeks individuals with familiarity and experience with progressive tools, single step power presses, and repetitive activities.<sup>12</sup> When it is hiring

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<sup>11</sup> The Employer did not present any written job descriptions or prior job postings for any tubing, stamping, or metal form positions.

<sup>12</sup> Goncalves testified that Stamping Toolmakers differ from the other positions because it is a skilled position, requiring significant training in geometrical tolerancing, various alloys, material tempers. Goncalves stated that individuals are usually trained on these skills at a vocational or technical school, but acknowledged that none of its toolmakers are specially trained or certified in toolmaking.

for the Tubing Department, the Company seeks individuals that can lift up to 50 pounds, have the ability to read micrometers and slightly more than basic math skills. Goncalves, however, acknowledged that none of the non-supervisory positions in the three departments require any certification or prior experience or training. A high school degree is typically required. Employees without prior experience or training are provided with on-the-job training.

## **I. Training of Metal Form Employees**

All the Metalform employees were hired locally in Rhode Island and then sent to the New Britain facility where they received training.<sup>13</sup> Al Moniz, AT Wall's Metalform Supervisor, and Domenic Piombino, the former Metalform Plant Manager at the New Britain facility trained the new hires.<sup>14</sup> Most of the new Metalform hires received additional pay or "incentive pay" to incentivize employees to travel to New Britain for training.

To train some of AT Wall's new Metalform employees, Piombino used training matrices created by AT Wall.<sup>15</sup> Piombino has trained new AT Wall employees for the toolsetter, machine operator, and assembler positions on how to use the Metalform machines. AT Wall created a separate training matrix for each of the four Metalform positions. The training matrix is used to train and then evaluate each Metalform hire for their position. The training matrix identifies the skill set required for the position, which in the case of a machine operator, includes degreasing, packaging, tumbling, sanding, and buffing.

The Metalform Supervisor and Goncalves, the General Manager, have discretion to determine the duration of a Metalform employee's training period.<sup>16</sup> Once it is determined that an employee's training period is complete, the employee can begin working at Warwick facility

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<sup>13</sup> ATW Companies' Chief Financial Officer, Caryn Mitchell testified that the Company initially sought to hire and transfer the 22 employees that were working at the Metalform New Britain facility before the acquisition, but all the employees there declined to relocate.

<sup>14</sup> AT Wall hired Piombino on a consulting basis to train some of its new Metalform employees at the New Britain facility.

<sup>15</sup> At the hearing, the Company only presented a copy of the training matrix used for the Metalform machine operators, marked as Employer's Exhibit 3. It did not present the training matrices used for the other Metalform positions. There is no evidence that the other departments use similar training matrices to train and evaluate their new employees.

<sup>16</sup> At the hearing, Goncalves testified that it takes between 6 to 12 months of training for an assembler to learn the assembly process and attain proficiency, 3 to 6 months of training for a machine operator to attain proficiency, three months for a tool setter to attain proficiency, and about 30 days for a welding operator to achieve proficiency in Metalform welding operation.

## 1. Employee Probationary Period

Piombino and the Metalform Supervisor train the new hires and then grade their proficiency on each skill. The new hires must achieve a minimum of grade of 50 or higher in order to move on to the next skill stage. Each Metalform form hire is subject to a 90-day probationary period. At the end of the 90-day period, an employee can either be terminated for failure to meet job expectations or be allowed to continue in his or her position with or without a pay increase. The Metalform Supervisor has some degree of discretion to decide if an employee will receive a wage increase and the amount of the increase after the 90-day period.<sup>17</sup> The Metalform Supervisor uses the training matrix to evaluate an employee's proficiency and to set wages at the end of the 90-day period.

New employees in the Stamping and Tubing Department are also subject to a 90-day probationary period, which terms are set forth in the parties' collective bargaining agreement. For these employees, the Company has the right to terminate any employee for any reason at the end of the probationary period. Employee wages are also governed by the terms of the collective bargaining agreement, which follows a rate pay schedule for each unit position.<sup>18</sup>

To date, AT Wall has hired one toolsetter for its Metalform Department.<sup>19</sup> Additionally, it has hired five Metalform machine operators,<sup>20</sup> two Metalform welding operators,<sup>21</sup> and five Metalform assemblers.<sup>22</sup>

AT Wall plans to hire another tool setter, a welding operator, and two assemblers and machine operators for the Metalform Department.

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<sup>17</sup> Mitchell testified that the Metalform Supervisor can use his discretion to set employee wages based on considerations such as the cost of living, financial health of the Company, industry averages, input from the General Manager, and the Company's general guidelines on wage ranges. The Company did not produce these wage guidelines at the hearing.

<sup>18</sup> Section 18 of the contract, page 24, contains the Progression Rate Schedule for the covered unit positions.

<sup>19</sup> The Company hired Thomas Horton on May 5, 2012. Horton received a premium pay rate of \$19/hour and received training at the New Britain facility.

<sup>20</sup> The Company hired Richard Huntoon on May 14, 2012, Gary Wolfden on July 2, 2012, Cole Murphy on July 9, 2012, Christopher Ponte on July 9, 2012, and Jairo Palacio on July 9, 2012

<sup>21</sup> Jose Andrade was hired on May 22, 2012 and started working at the Warwick facility on June 18, 2012.

<sup>22</sup> The Company hired Shirley Simpanen on May 21, 2012, Halil Cabric on June 18, 2012, Marijana Cabric on June 18, 2012, Elisa Blazevic on June 25, 2012, and Valter Fortes on July 16, 2012.

## **2. Orientation and Meetings**

All new employees receive an orientation. During times when stamping and tubing employees were hired at the same time as Metalform employees, the Company has conducted separate orientations for the two groups of new employees. Goncalves testified that although he did not personally conduct the orientations, the information covered at the tubing and stamping orientation and the metal form orientation can differ in the type of information covered. For instance, Goncalves noted that at orientation, tubing and stamping employees receive and review a copy of the collective bargaining agreement, whereas metal form employees receive and review a separate employee handbook.<sup>23</sup> At both orientations, the Company may cover similar information such as tag out work related programs and OSHA required certification trainings.

Employee meetings are held on a quarterly basis. Since the acquisition, the Company has not held any employee meetings with Metalform employees. Goncalves testified that in the future, Metalform employees will have separate meetings from the bargaining unit employees because they have “different issue and different metrics to be discussed,” without further specifics.

## **3. Pay and Benefits**

As noted above, some Metalform employees received premium pay to incentivize training in New Britain. This premium pay is not offered to bargaining unit employees.<sup>24</sup>

The benefits received by Metalform employees and unit employees are slightly different. Unit employees receive two additional holidays, Christmas Eve and New Year’s Eve, than Metalform employees. Vacation time accrual is also slightly different. Unit employees accrue an additional day of vacation more than Metalform employees during the first five years of employment. Unit employees’ medical insurance co-premium slight differ in the amount of their co-pay contribution. Unit employees contribute 18 percent of their monthly premium whereas Metalform employees contribute 20 percent.

## **4. Paperwork**

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<sup>23</sup> The employee handbook is 57 pages and covers employees’ terms of employment such as work hours, breaks, overtime, pay schedule, health benefits, vacation, holiday, and sick leave, progressive discipline, and safety and security procedures. The parties’ collective bargaining agreement including the appendix is 69 pages and covers similar terms of employment.

<sup>24</sup> At the hearing, Caryn Mitchell testified that the purpose of offering premium pay is to incentivize employees to go receive training out of state or at a remote location. Here, there is no evidence that unit employees were required to receive training out of state so that premium pay would apply.

Goncalves testified at hearing that the Company uses different paperwork for the Metalform employees. The Metalform Department uses production log forms to track the daily progress of each operation. These logs are not used by other departments. Operators are required to complete a production tracking log that tracks the number of operations for each product and the time it took to complete each operation. Additionally, welding operators are required to complete a setting log, which is not used by other departments. The setting log is used to monitor process controls and track any weld-related problems that can occur during manufacturing. Lastly, Goncalves testified that the ways costs are calculated and the bill of materials is also different from other departments.

## **J. Work Shift and Common Areas**

All employees are required to “punch in” and “punch out” at the start and end of their work shift on computer stations located throughout the facility. They do not all punch in at the same computer station. Metalform employees have a different work shift than unit employees. Their work shift is from 7:00 am to 3:00 pm. In contrast, unit employees’ work shift is from 6:30 am to 3:00 pm. Employees do not wear uniforms, but they are required wear identification badges.

All employees use a common lunch room, lavatories, and locker facilities. With the exception of one unit employee,<sup>25</sup> Metalform employees take lunch at a different time than unit employees at the facility. There are two separate lunch shifts. Unit employees take the first lunch shift from 12:00 pm to 12:30 pm while Metalform employees take the second one from 12:30 pm to 1:00 pm.

## **K. Bargaining History**

The record establishes that the parties have a substantial bargaining relationship. The parties first became signatories to a collective bargaining agreement in 1960. The parties’ current collective bargaining agreement has a provision covering wages of employees in newly created classifications or working in newly created departments.<sup>26</sup>

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<sup>25</sup> Materials Handler Henry Cochrane testified that he is permanently placed on the second lunch schedule so that he can cover the Materials Department while the other three Material Handlers are on the first lunch schedule.

<sup>26</sup> Article 18(h) of the contract sets forth as follows: “[b]eginning with the payroll period commencing at 12:01 am on June 1, 2011, and continuing during the term of this Agreement, the basic hourly rate range as set forth in Article EIGHTEENTH shall be established for each of the departments listed in Employee Classifications SEVENTEENTH – (a) hereof. Provided, however, that in case the Employer shall, at any time or from time to time, establish any new classification in any department listed in Employee Classifications – SEVENTEENTH- (a) hereof or shall establish any new department, the basic hourly rate range of each such new classification and/or for each new classification of any new department shall be negotiated by the Employer and the Union.

To date, the parties have not had any negotiations concerning the creation of the new Metalform classifications. The Metalform employees were not previously represented by a union.

### **Analysis and Conclusion**

The Union asserts that there exists an overwhelming community of interest to warrant accretion of the petitioned for Metalform employees into the current unit at the Warwick facility. In contrast, AT Wall disputes the inclusion of the Metalform employees under an accretion analysis, based primarily on the lack of employee interchange and contact and common supervision with unit employees. AT Wall asserts that the differences in working conditions, including, hours, benefits, wage rates, training, and work areas of the Metalform employees and unit employees militate against a finding of accretion.

Based on the above, I find, that an accretion analysis under the circumstances is inapposite, and the *Premcor*<sup>27</sup> doctrine controls. I further find and that the existing bargaining unit should be clarified to include the petitioned-for employees since AT Wall's Metalform Department essentially performs the same basic functions as unit employees in other departments.

The Board has applied the *Premcor* doctrine where a newly created classification performs work that was previously performed by the bargaining unit. The Board has applied it in two types of scenarios. Firstly, in *Premcor* itself, the employer moved its control room work from one facility to another and created a new "PCC" position to perform work that was essentially the same as work performed by "operators 1s" at the old facility. All six of the new PCPs were former operator 1s or spares, and the operator 1 classification was to be eventually eliminated as a result of the creation of the new PCC classification. Secondly, in *Developmental Disabilities Institute*, 334 NLRB 1166 (2001) the employer created a new classification that performed the same type of work performed by unit employees at the same location, and the new classification was arguably encompassed by the unit description. In each of these circumstances, the Board found that the new classification simply remained or belonged in the unit without the need for an accretion analysis.

Applying the *Premcor* standard, here, the four Metalform positions are newly created classifications that effectively perform the same or similar type of production work that is historically performed by unit employees in the Stamping and Tubing Departments. While the Metalform Department produces a new product, AT Wall's Metalform Department is essentially part of the same production and maintenance unit at the facility, simply working on a different product line. While the product itself, a gun magazine, is somewhat more complex than the products of the Stamping and Tubing Departments, the basic operations in fabricating the product are similar to those already existing in the facility. The requirements of the Metalform positions are neither unique

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<sup>27</sup> *Premcor, Inc. v. PACEIU Local*, 6-1195, 333 NLRB 1365 (2001).

nor different than those required in the unit positions. Indeed, when the Company is hiring for any department, it seeks employees with the basic skills set of manual dexterity, ability to read micrometers, and basic math skills and at minimum, a high school degree. There is no special certification required for any of the unit or Metalform positions. Moreover, the majority of employees who are hired have no prior experience or training in AT Wall's products or manufacturing processes, and are usually provided with on-the-job training. While the greater complexity of the Metalform product requires a longer training period, and although much of the initial training for Metalform employees is being conducted in Connecticut, neither of these factors is sufficient to outweigh the reality that these employees are engaged in production processes extremely similar to those of employees in the existing unit.

At its core, the job tasks of the petitioned-for employees and unit employees are remarkably similar as they involve the processing of a metal starting material into a finished product. While the three AT Wall products differ in their appearance, the underlying manufacturing process of each product involve similar operations and to a certain extent employ similar equipment. For instance, each process is bookended by the work of a material handler who is responsible for receiving the starting materials for production and then moving the finished product to storage for shipping at the tail end of the manufacturing process.

Similarly, each product requires the processing of a starting material through a press machine that either compresses it or uses a die stamping tool to stamp out the product. The product is then cleaned and further processed. With regard to the gun magazine manufacturing process, it is slightly different than the stamping and tubing process because it involves a few additional tasks during production. After the flat metal sheet is bent into a U-shape and a welding operator welds the two side pieces together, an assembler welds the butt plate and installs a few components inside the magazine. These additional steps are not complex and do not represent a significant departure from the Company's normal production operations.

While I note that there does not appear to be any welding performed during the tubing and stamping production process, the welding tasks does not appear to require any special expertise, skills, or experience, similar to the unit positions. From the record, I further note that on the job training is provided for the Metalform welding and assembler positions and proficiency in welding can be attained in as few as 30 days of training. I also note that the welding tasks are not that different in a broad sense from the annealing process performed on the tubing product, which also requires the application of directed heat for the ostensible purpose of fortifying the resulting metal product.

Accordingly, I do not find that the additional tasks involved in the manufacture of the gun magazine product represent a substantial change from the Company's production processes so as to render *Premcor* inapplicable. Differences between the skills required and tasks involved between the Metalform and the other departments are little different than the differences between those in the pre-existing departments. In this regard, the

work performed by the Metalform employees falls within the realm of the type of work and job classifications that is historically performed and occupied by unit employees.

Accordingly, I find that the new classifications belong in the unit and the existing unit should be clarified to include the petitioned-for employees at the Warwick facility.

IT IS HEREBY ORDERED that the collective bargaining unit represented by the Petitioner be clarified to include the positions of Metalform toolsetter, Metalform assembler, Metalform machine operators, and Metalform welding operator:

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by September 13, 2012.

In the Regional Office's original correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the web site, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

/s/ Ronald Cohen

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Ronald Cohen, Acting Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 30<sup>th</sup> day of August, 2012.

