UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NORTHSHORE SHEET METAL, INC.	Case No. 19-CA-083657 Case No. 19-CA-088465 Case No. 19-CA-092102 Case No. 19-CA-094575
and	
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 66	
and	
PACIFIC NORTHWEST REGIONAL COUNCIL OF CARPENTERS	Case No. 19-CB-083623 Case No. 19-CB-094048
and	
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 66	

RESPONDENT PACIFIC NORTHWEST REGIONAL COUNCIL OF CARPENTERS' POST-HEARING BRIEF

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I. INTRODUCTION

Before an employer is notified of a valid election petition, it is free to recognize a labor organization which represents an uncoerced majority of its employees. This is precisely what happened in this case. When Northshore Sheet Metal's ("Northshore") § 8(f) agreement with the Sheet Metal Local 66 ("Sheet Metal") expired, Northshore introduced its employees to Pacific Northwest Regional Council of Carpenters ("the Carpenters Union"). After the employees had meetings with both the Carpenters Union and the Sheet Metal, the majority of the employees chose the Carpenters Union. Realizing Northshore was no longer an easy target, the Sheet Metal hastily faxed an election petition form to the NLRB to prevent Northshore from recognizing the Carpenters Union. But it was all too late. Northshore recognized the Carpenters Union before it received notices of the filing of a valid petition. In a final attempt to force Northshore back into a relationship neither Northshore nor its employees want, Sheet Metal filed NLRB charges against Northshore and the Carpenters Union.

Taking on the Sheet Metal's cause, the General Counsel alleges the Carpenters Union caused Northshore to discriminate its employees in violation of § 8(b)(2) of the NLRA. The General Counsel further alleges the Carpenters Union caused Northshore to coerce employees into supporting the Carpenters Union and signed with the Carpenters Union after it had notice of the election petition in violation of § 8(b)(1)(A). But the General Counsel fails its burden of proof.

The General Counsel argues that Northshore discriminated against two apprentices by making them perform cleanup work, reducing their hours, and laying off one of them. But it is not unusual for apprentices to do cleanup when the shop was not busy. They were sent home when no work was left to do. And the only apprentice was laid off because he asked to be laid

off. The General Counsel also argues that Northshore discriminated its employees by hiring from the Carpenters Union's hiring hall. But no evidence was presented to show this. On the contrary, evidence shows that Northshore hired from the Sheet Metal and the Carpenters Union by contacting both unions when it needs employees and no one was dispatched from the Carpenters Union's hiring hall. The General Counsel then argues that Northshore threatened to fire employees who did not sign the Carpenters Union's cards. But evidence clearly showed that the Carpenters Union never enforced the union security clause that the Sheet Metal always enforced when it was signed with Northshore.

The General Counsel next argues that Northshore coerced its employees to sign the Carpenters Union's authorization cards by holding meetings with the Carpenters Union, telling employees to sign cards, and by allowing its foremen to collect cards. Sure, Northshore paid its employees for attending a union meeting, but both the Carpenters Union and the Sheet Metal attended the meeting. Sure, Northshore tried to inform its employees of the potential effect of union security clause after it signed with the Carpenters Union, but it was to keep the employees, not to fire them. In fact, all of these employees are still working for Northshore. Sure, a few foremen offered to collect cards for the Carpenters Union, but foremen are not supervisors of Northshore. The Sheet Metal admits foremen are dues-paying unit employees; the Sheet Metal never asked foremen to leave the union meeting; and the foremen do not hold authority to engage in supervisory functions with independent judgment, nor exercise such authority in the interest of the Northshore.

Based on these facts, the Carpenters Union did not violate either § 8(b)(2) or § 8(b)(1)(A) of the NLRA.

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II. STATEMENT OF FACTS

A. NORTHSHORE EMPLOYEES YURIY KOSMIN AND JASON JOHNSTON'S DUTIES, WORK HOURS, AND LAYOFF

Yuriy Kosmin ("Kosmin") and Jason Johnston ("J. Johnston") were both apprentices while working at Northshore. (Hr'g tr. at 144; *see* Ex. ER3.) Both primarily perform field work, but were assigned to work in the shop in June, 2012 because of insufficient field work. (Hr'g tr. at 292-93, 568, 720.)

On June 12, 2012, J. Johnston discovered that there had been a break-in in Shop 2. (*Id.* at 268.) When he informed the Shop Foreman Todd McBee ("McBee"), McBee asked him to clean up the shop. (*Id.*) Because of the large equipment that had to be moved, McBee sent Kosmin to help J. Johnston. (*Id.* at 269.) McBee testified it was not unusual for apprentices to be assigned cleanup work at Northshore. (*Id.* at 563.) They were assigned cleanup because there was not enough production work that day. (*Id.* at 563-64.) McBee did not take into consideration that they wore Sheet Metal t-shirts. (*Id.* at 564.)

Earlier in the day, McBee reported to Brian Elbert, Northshore's co-president, that some employees were just doing basic cleanup. (*Id.* at 564, 719-20.) Later that morning, Elbert told McBee to send Kosmin and one other employee home. (*Id.* at 584-85, 720) Elbert chose Kosmin because Kosmin was primarily employed in the field. (*Id.* at 720.) McBee then chose J. Johnston because at that time, Kosmin and J. Johnston were the only two employees not performing production work. (*Id.* at 584-85) McBee then informed Kosmin and J. Johnston that they may leave after the cleanup. (*Id.*)

In June, 2012, J. Johnston wanted to pursue HVAC work. (*Id.* at 293.) He repeatedly requested the Sheet Metal to transferred him to HVAC. (*Id.*) Northshore does not perform

HVAC work. (*Id.* at 301.) Northshore's superintendent Leslie Johnson ("Johnson") testified that J. Johnston once talked to him about getting laid off so he could pursue HVAC. (*Id.* at 591.) Johnson asked McBee about the work load, and when McBee indicated that it was not busy, Johnson laid J. Johnston off. (*Id.*) At the time, Northshore had already laid off many employees and was still actively considering laying off employees because of the work slow-down. (Hr'g tr. at 299, 592.) Shortly after J. Johnston's layoff, Johnson mentioned to J. Johnston's father, Marvin Johnston ("M. Johnston"), that he laid J. Johnston off because J. Johnston wanted to do HVAC work. (*Id.* at 294; Ex. U3.) M. Johnston later forwarded this email to the Sheet Metal. (*See* Ex. U3.) The Sheet Metal, in an internal email, states this information is something the Sheet Metal does not want to hear. (*See id.*) Kosmin, who is also a supporter of the Sheet Metal was never laid off. (Hr'g tr. at 123.)

On or around August 4, 2012, Northshore rehired J. Johnston. (*Id.* at 291.) Shortly thereafter, on December 19, 2012, the Sheet Metal sent Northshore a letter stating that J. Johnston was being transferred to another company. (Ex. ER3.) J. Johnston testified that he performed HVAC work in January and February of 2013. (Hr'g tr. at 294.)

B. NORTHSHORE'S RECOGNITION OF THE CARPENTERS UNION

Northshore's contract with the Sheet Metal Local 66 was set to expire on May 31, 2012. (Hr'g tr. At 83; *see* Ex. GC 30.) On May 18, 2012, Meyer contacted the Carpenters Union to inquire about the wage rate contained in the Carpenters Union's collective bargaining agreement ("CBA"). (Ex. GC3.) From May 31 until June 14, 2012, Meyer and the Carpenters Union negotiated the terms of the CBA. (Exs. GC5-GC15, GC 17-19.) Northshore was also negotiating with the Sheet Metal during this time. (Hr. Tr. at 710.) On June 5, 12, and 13, 2012, meetings were held at Northshore. (*See infra.*, II.D.) Neither unions attended the June 5

meeting; both the Carpenters Union and the Sheet Metal attended the June 12 meeting; and Northshore's employees only invited the Carpenters Union back for the June 13 meeting. (*Id.*)

On June 13, 2012 at or around 1:29 p.m., the Sheet Metal Local 66 ("Sheet Metal") faxed to the NLRB an election petition form. (Ex. ER11.) On this form, the Sheet Metal described the "unit involved" as "See unit description in attached collective bargaining agreement, Article 1, Section 1." (*See id.*) No CBA was attached. (*Id.*) On June 13, 2012 at or around 6:17 p.m., the NLRB faxed Northshore a letter along with the election petition form the Sheet Metal sent earlier that day (hereinafter "Notice1"). (*See* Ex. GC21.) No CBA was attached to this letter (*See id.*) The NLRB also mailed a copy of the Notice1 to Northshore. (Ex. GC29.) No CBA was attached to the mailed material. (*See id.*)

On June 14, 2012 at or around 10:06 a.m., Meyer received delivery confirmation that Northshore's letter of intent to terminate the Sheet Metal CBA. (Hr'g tr. at 111; Ex. GC23.) Meyer then met with the Carpenters Union's representative, Ed Triezenberg ("Triezenberg"). (Hr'g tr. at 79, 111-12.) Triezenberg presented Meyer a stack of signed authorization cards. (*Id.* at 78-79) On June 14, 2012, Northshore had 38 bargaining unit members. (*Id.* at 79.) Meyer noticed there were more than 20 cards. (*Id.*) Northshore and the Carpenters Union then entered into a CBA at or around 10:45 a.m. on June 14, 2012. (Hr'g tr. at 79, 112, 115; Exs. GC2, GC16.)

On June 14, 2012 at or around 1:22 p.m., the NLRB faxed Northshore another letter (hereinafter "Notice2"). (*See* Ex. GC22.) Unlike Notice1, Notice2 was accompanied with an excerpt of the Sheet Metal's CBA. (*See id.*)

Sometime in the afternoon of June 14, 2012, Meyer received Notice1. (Hr'g tr. at 102.) Meyer was unsure when he received Notice2. (*Id.* at 105-06.) Meyer testified the normal

practice at the office is that the receptionist takes the faxes and place them into an employee's inbox. (Hr'g tr. at 115, 117.) The receptionist at Northshore had no authority to conduct any business on behalf of Northshore. (*Id.* at 116.) As usual, no one at the office notified Meyer that there was a fax waiting for him. (*Id.* at 115.) Joseph G. Marra, who was Northshore's attorney in June, 2012, also testified he saw both notices at 1:30 p.m. or later on June 14, 2012, and that prior to that time, no one notified him of the Sheet Metal's filing of a petition. (*Id.* at 785-87.) Marra thought it was unusual that the NLRB sent the same thing twice. (*Id.* at 787.)

Northshore never promised to journey anyone up or to make anyone foremen if they signed the Carpenters Union's authorization card. (*Id.* at 857.) Meyer never threatened or instruct anyone to threaten employees or promise promotion to employees in order to coerce them into signing the Carpenters Union's authorization cards. (Hr'g tr. at 113-14.)

C. NORTHSHORE'S EMPLOYEE MEETINGS

Three meetings related to this case were held at Northshore. The first meeting (hereinafter "Meeting1") was held on June 5, 2012. (*Id.* at 59.) All the shop and field employees were invited. (*Id.* at 60.) Meyer notified the employees of the meeting by simply asking Johnson to get the employees. (*Id.* at 65.) Northshore's management, including Meyer, Brian Elbert ("Elbert"), Dan Meyer, and Earland Millikan were present. (*Id.* at 60) The management gave a brief update on the bargaining status with the Sheet Metal, spoke about the work being slow, Northshore's ability to compete with other contractors using different trades, and about how the Sheet Metal was not responding to Northshore with regards to information related to the various funds that the union was taking out of the checks. (*Id.* at 62-63, 156-57, 796) The management told the employees they were not allowed to give information other than what has happened at the bargaining table. (*Id.* at 64.) Employees were paid for this meeting. (*Id.* at 67, 158; Ex.

ER15.)

The second meeting (hereinafter "Meeting2") was held on June 12, 2012 because the Triezenberg, wanted to meet with Northshore's employees. (*Id.* at 65.) Meyer invited the employees the same way he did with the earlier meeting. (*Id.* at 66.) The meeting lasted from early afternoon until 5:00 p.m. (Hr'g tr. at 67.) The management introduced Triezenberg and left. (*Id.* at 67-69.) Meyer testified they went into the shop area and the room was enclosed by soundproof walls. (*Id.* at 70.) During this meeting and while Triezenberg was not in the room, the employee decided to ask Triezenberg to come back the next day. (*Id.* at 127, 423.) Foreman Bruce Champeaux ("Champeaux") then left the room and went across to the other side of the shop to get Triezenberg in order to inform him of the employees' decision. (*Id.* at 760-761.) Champeaux testified he did not have any paper with him and did not get information from Northshore's management to relay information to the employees. (*Id.* at 759, 770.) Then the employees decided to speak to the Sheet Metal as well. (*Id.* at 761.) Meyer returned to the meeting room at 5:00 p.m. to inform the employees he had to lock up the building. (*Id.*) At this time, the employees were meeting with the Sheet Metal. (*Id.*) Meyer told the employees and the Sheet Metal they were welcome to continue the meeting next door at the Sheet Metal's facility. (*Id.*) The employees were paid for their time until 5:00 p.m. (*Id.* at 67, 129; Ex. ER15.) Employees who were not working at the time of the meeting were not specifically told to return for the meeting and were not paid for the meeting. (*See* Ex. ER17.) About half a dozen employees were absent on June 12, 2012. (*See id.*)

The third meeting was held on June 13, 2012 (hereinafter "Meeting3"). (*Id.* at 127.) This meeting was organized by Northshore's employees and the management did not participate. (*Id.* at 127, 423.) Employees were not paid for attending Meeting3. (Ex. ER15.)

Northshore's employees never threatened anyone into signing the Carpenters Union's cards during or outside of these meetings. (Hr'g tr. at 856.)

D. NORTHSHORE'S FOREMEN'S AUTHORITIES

1. Hire or Recommend Hiring

Meyer, Johnson, Champeaux, and Postma each testified Northshore's foremen are not authorized to hire. (*Id.* at 122-23, 359, 639, 745.) McBee testified that he had sat in on interviews of programmers, a shipping manager, and a driver. (*Id.* at 561.) McBee helped with the interviews of programmers because McBee had worked as a programmer for a long time; but neither Elbert nor Meyer knew about programming. (*Id.* at 561, 826-37.) Meyer testified McBee never recommended whom to hire, but simply advised "Yeah, he has a good knowledge of the programs," or "I don't think he has a very good knowledge of these programs." (*Id.* at 851.) Meyer asked McBee to interview a driver once because Meyer was in a meeting; but Meyer gave McBee instructions on what to ask, and how much to pay. (*Id.* at 826.) Meyer testified he believed Elbert participated in the interview of the driver. (*Id.*) Meyer asked McBee to sit in on the interview of the shipping manager because at the time McBee was doing the job, and he was there to explain all the tasks to the applicant. (*Id.* at 827.)

2. Fire or Recommend Firing

Meyer, Johnson, Champeaux, and Postma each testified Northshore's foremen are not authorized to fire employees. (*Id.* at 122-23, 359, 640, 746.) Scott Waxler ("Waxler") testified he once told Johnson someone "had to go," but he also testified he did not know whether this employee was simply just transferred to a different crew. (*Id.* at 401.)

3. Transfer or Recommend Transfer

Champeaux testified foremen do not transfer workers. (*Id.* at 746.)

4. Lay Off or Recommend Laying Off

Northshore's foremen are not authorized to lay off employees. (*Id.* at 641.) J. Johnston testified he believe foremen has a role in laying off workers based on a conversation he had with Nakapaahu six years ago. (*Id.* at 283.) He stated that Nakapaahu, after getting a call from Johnson, told him that Johnson directed him to "let at least one guy go." (*Id.* at 284.) J. Johnston did not know the content of the phone conversation. (*Id.*) He testified that Nakapaahu asked him whom to choose. (*Id.*) J. Johnston was an alcoholic at that time. (*Id.* at 304-05.) J. Johnston also does not think his selection resulted in that person being laid off. (*Id.* at 304.)

5. Suspend or Recommend Suspend

No testimony was given showing foremen can suspend ore recommend suspension.

6. Recall

No testimony was given showing foremen can suspend ore recommend suspension.

7. Promote or Recommend Promotion

Nakapaahu testified foremen have no authority to make anyone a journeyman. (*Id*. at 803.) McBee has filled out evaluation form for apprentices, which goes to the Sheet Metal's apprenticeship program, and he does not know what the form is used for. (*Id.* at 532-33; Ex. GC24) McBee does not believe Northshore management even reviews those forms. (Hr'g tr. at 582-83.)

8. Assign of Recommend Assignment

Johnson and Elbert alone assign crew members to a particular job. (*Id.* at 639.) Foremen may ask for an employee but they do not always get whom they want. (*Id.* at 639-40.) Foremen assign tasks and may tell the employees to pick up the pace. (*Id.* at 238, 746.) Kosmin testified he observed Foreman McBee assign tasks based on the employees' routine history of doing their

work. (*Id.* at 238.) McBee testified the same employee usually works on the same machine from day to day based on who is trained to work on what machine. (*Id.* at 528, 530.)

Northshore's employee handbook prohibits foremen from authorizing overtime. (Ex. ER4.) Foreman may decide who gets to work the overtime in their own crew. (Hr'g tr. at 352.) McBee testified he determines which employee should work overtime based on the type of work, equipment, employees' qualification and training. (*Id.* at 528-30.)

9. Reward

Foremen are not authorized to reward employees. (*Id.* at 641, 794.) Waxler testified he bought employees lunch for good work, but he never gave any cash or plague as reward. (*Id.* at 403.)

10. Discipline or Recommend Discipline

Foremen are not authorized to discipline employees. (*Id.* at 640.) McBee testified he once sent one employee home for frequent tardiness, but he obtained permission from Meyer first. (*Id.* at 559-60.) He also testified 10 years ago, he sent employees home because there was a potential fight. (*Id.* at 560.) Postma testified to a M. Johnston was cited for a safety incident at a jobsite in 2008. (*Id.* at 360.) Johnson testified that safety issues are different because they have to be fixed immediately, but all safety guidelines are specified in the contract. (*Id.* at 360, 640-41.) Evidence presented at the hearing shows that safety violations are initiated by the general contractors. (*See* Exs. ER7, ER8; Hr'g tr. at 510.)

11. Responsibly Direct

Meyer and Johnson all testified that foremen are not held responsible if a job loses money. (*Id.* at 125, 644.) Meyer testified foremen have no authority to change the scope of work or materials used in a project. (*Id.* at 124.)

12. Adjust Grievances

Foremen do not have authority to adjust grievances. (*Id.* at 748.)

13. Effective Recommendation Generally

Both McBee and Nakapaahu further testified that their recommendations are sometimes not followed. (*Id.* at 587, 795.) Nakapaahu stated that his requests are generally honored only less than 50% of the time. (*Id.* at 812.) Johnson testified he values long term employees' input whether they are working as foremen or as journeymen. (*Id.* at 642-43.)

14. Independent Judgment

Johnson testified that at Northshore, a foreman's duties and wages are defined by Northshore's contract with the Sheet Metal. (*Id.* at 624.) A foreman can be a foreman one day and a journeyman another depending on the job. (*Id.* at 625.) The foremen's duties at Northshore are the same as the foremen's duties at everyone else in the industry. (*Id.* at 626-27.) Foremen may appear to have authority sometimes when they relay messages from Northshore's management with respect to these activities. (*Id.* at 123-24, 359.) Foremen are given trucks only because this allows them to bring equipment with them instead of having to keep delivering equipment from the Shop. (*Id.* at 627.) This is no different than other companies' practices. (*Id.* at 628.)

As part of Northshore's business practice, a week or so before a job, Northshore's foremen have a pre-job with Northshore's management to go over the scope of work. (*Id.* at 631.) The project manager prepares work orders and Johnson prepares job submittals. (*Id.* at 632.) Foremen are given job submittals, blueprints, and work orders. (*Id.* at 633; *see e.g.* Ex. ER 9.) Foremen have no discretion to deviate from the materials given to them. (Hr'g tr. at 643.) Foremen usually have to provide dailies to Johnson to update on the work status. (*Id.* at 357-58,

411-12; *see e.g.* Ex. ER16.) The dailies list every single employees that work on the jobsite and includes every single area of the site. (Hr'g tr. at 411-12.) Sometimes journeymen fill out the dailies as well. (*See Id.* at 357-58.)

15. Foremen vs. Supervisors

The Sheet Metal never contended that foremen are supervisors. (*Id.* at 128.) The Sheet Metal also did not remove foremen from the Meeting2 when it met with employees on June 12, 2012. (*Id.* at 129.)

E. NORTHSHORE'S HIRING AND TREATMENT OF ITS UNION EMPLOYEES

After Northshore signed with the Carpenters Union, Northshore's president, Jeff Meyer ("Meyer") spoke to employees who were strong Sheet Metal supporters because he did not want them to quit. (*Id.* at 837-38.) Journeyman William Bailey ("W. Bailey") testified Meyer spoke to him and Journeyman Scott Waxler ("Waxler") at 2:00-2:30 p.m. on June 14, 2012, stating that if they went with the Carpenters Union, there would be more work and they may be made foremen again. (*Id.* at 452-53.) Waxler testified Meyer said he would be running more work if he went along with the Carpenters Union; but he also testified that no one questioned him about signing a Carpenters Union's card which he also admitted in his prior affidavit. (*Id.* at 422-23, 428-29.) Meyer testified he informed these employees that the Carpenters Union CBA had a union security clause which meant they would probably have to join the Carpenters Union. (*Id.* at 837-38) Meyer also told them they did not have to do anything immediately. (*Id.*) Meyer testified he never pressured them to sign the cards. (*Id.* at 838.)

Journeyman Matt Postma testified Johnson talked to him via the telephone on June 14, 2012 and told him Northshore wanted to keep him as an employee, that Northshore had decided

to go with the Carpenters Union, and that Postma would have to be onboard with that. (*Id*. at 348-50.) Postma at first suggest Johnson talked to him between 10:00 a.m. and 1 p.m., but when confronted with prior affidavit, he admitted the conversation was around 12:00 p.m. (*See id.* at 368-69.) Meyer recalled Journeyman Matt Postma ("Postma") calling him to asking whether he would be fired if he did not sign the Carpenters Union's card; Meyer recalled telling Postma "you don't have to sign any new car[d]s." (*Id.* at 838-39.) Postma testified he then called representative of the Sheet Metal, A. Bailey, who told him to call Meyer back and ask if Northshore will lay him off or fire him. (*Id.* at 350-51.) Postma then called Johnson and Meyer back. (*Id.* at 351.) Meyer testified he felt Postma was being coached to say that employees were going to get fired for not signing the cards. (*Id.* at 839.)

J. Johnston alleged that on June 14, 2012, Foreman Roy Nakapaahu ("Nakapaahu") told him Northshore will make him a journeyman if he signed the card. (*Id.* at 313.) But he never mentioned this in the first affidavit he gave to the NLRB. (*Id.* at 313.) The first time he talked about this incident was when the Sheet Metal asked him to give a second affidavit at the Sheet Metal's office. (*Id.* at 310-12.)

Northshore never discriminated against the Sheet Metal employees. (Hr'g tr. at 842.) The Carpenters Union never asked Northshore to, nor has Northshore ever terminated any employee who has not signed up with the Carpenters Union. (*Id*. at 841.) On July 15, 2012, the Carpenters Union unequivocally informed Northshore that it will not enforce its union security clause. (*Id.* at 841; Ex. ER19.) Northshore has not collected monies on behalf of the Carpenters Union. (*Id.* at 842-43.)

Northshore currently has both Sheet Metal members and the Carpenters Union members on its crews. (*Id.* at 117.) Northshore has not forced any employees to become members of the

Carpenters Union. (*Id.* at 118.) Even after Northshore's contract with the Sheet Metal expired, Northshore has hired employees from both the Sheet Metal and the Carpenters Union. (*Id.* at 131, 645-46.) When Northshore needed workers, Johnson notified both the Carpenters Union and the Sheet Metal. (*Id.* at 131-32, 644-46.) Each union then sent people to Northshore. (*Id.*; see e.g. Ex. GC28) Johnson testified he has not hired from the Carpenters Union's hiring hall. (Hr'g tr. at 644.) When the Carpenters Union sent someone to Northshore, Johnson interviewed them. (*Id*. at 645-46.) Not everyone sent from the Carpenters Union was hired. (*Id*.) But the Sheet Metal does not allow Northshore to conduct its own interview. (*Id*.) Since June, 2012, Northshore has hired about equal numbers of employees from both the Carpenters Union and the Sheet Metal. (*Id.* at 646.)

III. <u>ARGUMENT</u>

A. PNRCC DID NOT ATTEMPT TO CAUSE OR CAUSE NORTHSHORE TO DISCRIMINATE AGAINST ITS SHEET METAL EMPLOYEES IN VIOLATION § 8(b)(2) OF THE ACT

The General Counsel's first charge against the Carpenters Union is based on § 8(b)(2) of the NLRA, which prohibits an union from causing or attempting to cause an employer to discriminate in violation of § 8(a)(3). (*See Compl.* § 14(a).) Section 8(a)(3), in turn, prohibits discrimination based on the exercise of employee rights that has the tendency to encourage or discourage union membership. 29 U.S.C. § 158(a)(3). The General Counsel claims the Carpenters Union caused Northshore to assign its employees J. Johnston and Kosmin less desirable work duties, reduce their work hours, and discharge J. Johnston and Kosmin based on their support of the Sheet Metal. (*See compl.*,¶¶ 6, 10-12.)

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1. Northshore's Assignment of Work to and Reduction of Work Hours of Kosmin and J. Johnston Were Not the Result of Discrimination Based on Their Union Affiliation

It is not unusual for Northshore to assign apprentices to perform cleanup work. Both J. Johnston and Kosmin are apprentices at Northshore. They primarily work in the field. On June 12, 2012, both employees were assigned to work in the Shop because of work slow-down in the field. When J. Johnston discovered that Shop 2 had been broken into, Foreman McBee asked J. Johnston and Kosmin, the only two people not working production, to clean up. Throughout the morning of June 12, 2012, McBee had been in contact with Elbert, his supervisor. Elbert was made aware that work was sparse and that some employees were simply sweeping floors. Hence at around 9 or 10 a.m., he told McBee to send Kosmin and another employee home. Elbert picked Kosmin because Kosmin was a primarily a field employee. McBee picked J. Johnston because other than Kosmin, he was the only one not working production that day.

The General Counsel contends Northshore sent Kosmin and J. Johnston home because of their support for the Sheet Metal and because Northshore did not want them to attend Meeting2. But records do not support this contention. Witnesses Waxler, Postma, M. Johnston are all strong supporters of the Sheet Metal. None of them were sent home on June 12, 2012 and all of them were invited to Meeting2. Evidence also shows that about half a dozen employees who were absent on June 12, 2012 similarly were not asked to attend the meeting. Elbert states that he did not find out about when the meeting was until after Kosmin and J. Johnston were sent home. Kosmin and J. Johnston also participated in Meeting3 with the Carpenters Union.

Based on the foregoing, the General Counsel fails its burden of showing that the assignment of work to and reduction of work hours of Kosmin and J. Johnston on June 12, 2012 was the result of any discrimination.

2. The Layoff of J. Johnston Was Pursuant to His Request and Kosmin was not Discharged

J. Johnston was laid off in June, 2012, and rehired in August, 2012. According to Superintendent Johnson, he laid J. Johnston off pursuant to J. Johnston's request. All throughout June, 2012, J. Johnston made his preference to pursue HVAC work known. Northshore does not have HVAC work. J. Johnston once told Johnson he would be ok if he were laid off because he wanted to pursue HVAC. At the time of this request, Northshore had already laid off many employees and was still considering laying off more. After making sure McBee did not need J. Johnston, Johnson laid him off.

To ensure that no animosity arises, Johnson emailed J. Johnston's father, M. Johnston, explaining the reason for J. Johnston's layoff. All of the evidence is further supported by the fact that J. Johnston left Northshore to pursue HVAC even after he was rehired. J. Johnston worked for another company that performs HVAC at least in January and February, 2013.

The Sheet Metal's contention that J. Johnston was laid off due to his union activity appears to be an afterthought. When M. Johnston forwarded Johnson's email to the Sheet Metal's representative Aaron Bailey ("Bailey"), Baily told another employee of the Sheet Metal Eric Martinson "I'm not sure it's what we wanted to hear." Moreover, it is unrebutted that various employees who are strong supporters of the Sheet Metal, including Kosmin, were never laid off. Based on these facts, the General Counsel fails to show J. Johnston was fired because of discrimination.

3. PNRCC Did Not Dispatch Workers to Northshore from its Hiring Hall

It is unrebutted that Northshore did not hire and the Carpenters Union did not dispatch workers to Northshore from the Carpenters Union's hiring hall. Johnson testified that he did not

hire anyone from the Carpenters Union's hiring hall. In the midst of all the confusion, Meyer told Johnson to contact both the Sheet Metal and the Carpenters Union when Northshore needed more workers. Johnson did exactly that. He contacted Torkelson from the Carpenters Union directly. Both the Sheet Metal and the Carpenters Union sent people to Northshore. The only difference is – the Carpenters Union allowed Northshore to interview the people sent from it and the Sheet Metal didn't. Johnson testified he did not hire everyone the Carpenters Union sent. And Since June, 2012, Johnson had hired roughly equal numbers of the Carpenters Union members and the Sheet Metal members.

The only evidence the General Counsel provided was an email from Johnson to the Carpenters Union inquiring about a member who showed up at Northshore's jobsite seeking work. (*See* Ex. GC 28.) This email does not contradict Johnson's testimony and it does not in any way show that the worker was dispatched from the Carpenters Union's hiring hall. The General Counsel therefore fails too to show that Northshore accorded preferential treatment by hiring workers from the Carpenters Union's hiring hall.

B. THE CARPENTERS UNION DID NOT VIOLATE § 8(B)(1)(A) OF THE NLRA BY COERCING OR RESTRAINING, OR ATTEMPTING TO COERCE OR RESTRAIN EMPLOYEES OF NORTHSHORE FROM EXERCISING THEIR RIGHTS GUARANTEED UNDER SECTION 7

The General Counsel's second charge against the Carpenters Union is that the Carpenters Union violated § 8(b)(1)(A). Section 8(b)(1)(A) prohibits a labor organization from coercing or restraining or attempting to coerce or restrain employees from exercising their rights under Section 7 of the NLRA. 29 U.S.C. 158(b)(1)(A). A § 8(b)(1)(A) violation may be derived from the union's violation § 8(b)(2) or the union's acceptance of employer's unlawful support in violation of § 8(a)(2). While § 8(a)(2) prohibits an employer from contributing "support" to a

labor organization, the Board will not find violations in situations involving initial organizing by rival unions when an employer recognizes a labor organization that presents an uncoerced majority before the employer is notified of a valid election petition. *Bruckner Nursing Home*, 262 NLRB 963.

As set forth in Section III.A, *supra*, the Carpenters Union did not violate § 8(b)(2) of the NLRA. The remaining allegations are that the Carpenters Union accepted Northshore's unlawful support because 1) Northshore recognized the Carpenters Union and the Carpenters Union accepted such recognition after the Sheet Metal filed an election petition (*see id.*, ¶ 8); 2) Northshore assisted the Carpenters Union in obtaining majority support by holding meetings and allowing foremen to collect authorization cards (*See compl.*, ¶¶ 7); and 3) Northshore assisted the Carpenters Union by threatening employees into signing the Carpenters Union's authorization cards. As explained below, however, neither allegation is true. Consistent with the holding in *Bruckner Nursing Home*, Northshore recognized the Carpenters Union upon showing of uncoerced majority support before it was notified of the Sheet Metal's filing of a valid election petition.

1. Northshore Recognized the Carpenters Union Before it Had Proper Notice of the Sheet Metal's Filing of a Valid Election Petition

The General Counsel first contends Northshore's recognition of the Carpenters Union was unlawful because it recognized the Carpenters Union after it sent a notice of the Sheet Metal's election petition.

Under *Bruckner Nursing Home*, the triggering event for the requirement of employer neutrality is when the employer is *notified* of the filing of the election petition. *Bruckner Nursing Home*, 262 NLRB at 957. "Knowledge" is a critical element in determining the lawfulness of an

employer's granting recognition in the rival union, initial organizing unfair labor practice setting. *Rollins Transportation System, Inc.*, 296 NLRB 793, 795 (1989). And such knowledge exists only when the employer has "received" notice of a properly filed petition. *See Abraham Grossman d/b/a Bruckner Nursing Home,* 262 N.L.R.B. 955, 957 (1982).

In the instant case, it is undisputed that Northshore recognized the Carpenters Union at or around 10:45 a.m. on June 14, 2012. It is also undisputed that the Board faxed two notices to Northshore. Notice1 was sent on June 13, 2012 at 6:17 p.m., and Notice2 was sent on June 14, 2012 at or around 1:24 p.m. Meyer testified that Northshore closes at 5:00 p.m. As part of Northshore's usual business practice, whoever the receptionist was would pick up the faxes and place them in the appropriate inbox. Receptionists don't usually run to Meyer every time Northshore receives a fax. Receptionists have no authority to conduct business on behalf of Northshore. For these reasons, Meyer did not receive Notice1 until sometime after 1:00 p.m. on June 14, 2012. Meyer did not even remember when he saw Notice2. Similarly, Marra saw two notices together in the afternoon of June 14, 2012. Marra remembered thinking this was unusual that the Board would send two separate notices for the same petition. Neither Meyer nor Marra received any phone calls or letters regarding the petition until they saw the notices. No question therefore should exist as to the timeliness of Northshore's recognition of the Carpenters Union.

The General Counsel nevertheless insists that the Court should impute knowledge onto Northshore merely because Notice1 was sent the night before Northshore recognized the Carpenters Union after Northshore had closed its business. In addition to being inconsistent with the Board's prior holding that the neutrality requirement is imposed upon the employer only after the employer *received* the notice, the General Counsel's argument fails for three reasons: 1) the June 13, 2012 notice was defective, 2) the filing of the election petition was invalid or

incomplete as of June 13, 2012, and 3) the notice on its face states that the validity of the election petition had not yet been determined.

The first problem with the General Counsel's argument is that Notice1 was defective. On this particular notice, the "unit involved" is described as "See unit description in attached collective bargaining agreement, Article 1, Section 1." Notwithstanding this description, no CBA was attached with this notice. Setting aside the validity of the actual petition, this notice does not sufficiently notify Northshore for which unit the election is sought even if Northshore had received the notice earlier, which it did not. The Board is apparently aware of this defect. This explains the Board's decision to send Notice2 the following day.

The second problem with the General Counsel's argument is that the election petition filed on June 13, 2012, to which the first notice referenced was incomplete or invalid. *Bruckner Nursing Home* and its progeny held, the duty to remain neutral only arises when a *valid petition* has been filed and the notice of that valid petition has been received by the employer. As the General Counsel's own evidence show, the election petition faxed to the Board on June 13, 2012 from the Sheet Metal did not contain a CBA. Even the letter sent out from the Board on June 13, 2012 did not contain the CBA. The CBA excerpt that was attached to the second notice sent after Northshore had recognized the Carpenters Union evidently was not part of the initial filing because it did not have the fax printing on the sheet. Hence, regardless of the validity of the election petition today, the notice that was sent referred to an invalid or incomplete petition, the filing of which did not or had not yet triggered any obligation for Northshore to remain neutral.

Finally, a question still exists today whether Notice1 and Notice2 notified Northshore that a valid election petition had been filed. On both notices, the Board specifically states that the

petition still had to be investigated to determine if, *inter alia*, the petition was properly filed. (Ex. GC21 at 1.)

Due to the vagueness and timing of the completion of the Sheet Metal's filing of a valid election petition, Notice1 cannot be considered a proper notice.

Since Northshore did not receive a proper notice until the afternoon of June 14, 2012 and it signed with the Carpenters Union in the morning of June 14, 2012, its recognition of the Carpenters Union did not violate § 8(b)(1)(A).

2. Northshore Did Not Unlawfully Assist the Carpenters Union Is Obtaining Majority Support By Allowing Foremen to Collect Cards, by Communicating with the Carpenters Union, or by Holding Meetings

The General Counsel next contends Northshore's recognition of the Carpenters Union was unlawful because Northshore assisted the Carpenters Union in obtaining majority support. According to the charges, Northshore assisted the Carpenters Union when its foremen solicited and/or collected authorization cards for the Carpenters Union, when Northshore paid its employees to attend meetings with the Carpenters Union, and when Northshore's management asked some of its employees to sign the Carpenters Union's authorization cards on June 14, 2012. (*See compl.,* ¶¶ 7, 9.*)* As demonstrated below, the foremen who collected the Carpenters Union's authorization cards are not Northshore's supervisors and Northshore's other conducts are lawful.

a. Northshore's Foremen Are Not Statutory Supervisors

The burden of proving supervisory status rests on the General Counsel. *Croft Metals, Inc. et. al.*, 348 N.L.R.B. 717, 721 (2006). Under § 2(11) of the act, individuals are statutory supervisors if:

> 1) they hold the authority to engage in supervisory functions (to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other

employees, or responsibility to direct them, or to adjust their grievances or to effectively recommend such action)

2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and

3) their authority is held in the interest of the employer.

Id. To exercise "independent judgment," an individual 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*. a judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in policies or rules, the verbal instructions of higher authority, or in the provisions of a CBA. *Id* Furthermore, isolated exercise of authority is insufficient to establish supervisory status. *Shaw Inc.*, 350 NLRB 354, 357 (2007).

In the instant case, witnesses testified that foremen do not directly hire, fire, transfer, layoff, promote, or adjust grievances. These testimonies are unrebutted. The General Counsel never showed that foremen may recall or suspend employees. The only statutory duties the General Counsel purports to show that the foremen had independent judgment to exercise are the following:

(1) Recommendation to Hire

Because McBee had sat in on some interviews of programmers, a driver, and a shipping manager, the General Counsel contends McBee had effectively recommended hiring. According to Meyer, however, McBee's functions was simply to tell the management whether the applicant possess certain criteria the management decides are important. For example, since McBee has extensive experience in programming and neither Meyer nor Elbert does, McBee was there to ensure the applicants are able to program. Similarly, McBee was present at the interview of a driver because Meyer was unable to attend and Meyer had told McBee to hire the first applicant

that fits Meyer's requirements. McBee was present at the interview of the shipping management because McBee had filled in to do the work and he could explain the work to applicants.

In none of these instances did McBee select which applicants to interview or recommend which qualifying interviewee should be hired. Meyer testified that the extent of McBee's advice regarding the programmers consists of a simple "yeah, he has a good knowledge of the program" or " no I don't think he has a very good knowledge of these programs." McBee also was present at the interviews of the driver and the shipping manager only to relay information to applicants. Under these circumstances, it cannot be said foremen have the authority to effectively recommend hiring.

(2) Recommendation to Fire

Waxler testified that he once told Johnson someone from his crew had to go. In *Shaw*, the Board noted that when foremen do not know whether their recommendation resulted in reward, the recommendation is not effective. *Shaw*, 350 NLRB at 357. Here, Waxler similarly testified he had no idea whether the employee was transferred to another crew or fired. Moreover, this apparently is the only incident where a foreman recommending firing of an employee. Such isolated incident does not support supervisory duties.

During the hearing, witnesses suggest that there were two isolated incidents where foremen were asked to choose to layoff a certain number of employees. Witnesses also testified that in general, foremen do not have authority to layoff employees.

(3) Recommendation to Lay Off

J. Johnston testified he believed foremen has a role in laying off workers because once, about six years ago, Nakapaahu asked him who he should select to lay off after Johnson had a phone conversation with Nakapaahu. J. Johnston also admits that the recommended employee

was not laid off. The evidence thus shows that in one isolated incident, a foreman's possible recommendation to lay off was not followed. This evidence, if anything, supports the employer and the Carpenters Union's position that foremen cannot effectively recommend lay-offs.

(4) Recommendation to Promote

The only evidence arguably supports foremen's power to recommend promotion was the apprentice evaluation form filled out by McBee. McBee testified, however, that Northshore does not even review these forms. These forms are required by the Sheet Metal's apprenticeship program, not Northshore. Thus, the evidence does not support that even recommendation to promote has ever occurred, let along it being effective.

(5) Assign or Recommendation to Assign

The authority to "assign" refers to "the act of designating an employee to a place (such as location, department, or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties. *Croft Metals, Inc. et. al.*, 348 N.L.R.B. at 721.In *Shaw*, the Board held that foremen are not supervisors when the composition of his or her crew was determined by field supervisor, when foremen were charged with ensuring performance and completion of the job assigned to the crew, including switching task assignments based on the type of work each employee regularly work on. *Shaw*, 350 NLRB at 355. The Board notes that assigning employees according to their known skills is not evidence of independent judgment. *Id*. at 356. Thus in *Shaw*, the Board held no independent judgment in assignment exists when the foremen receive a sheet prepared by upper management identifying the job they will be working on, listing the names of employees assigned to their crews and when the foremen's designation of which crew members will perform particular functions is often based on an employee's trade or known skills, or their readiness to carry out one of the less skilled tasks. *Id.*

Here, similar to the foremen in *Shaw*, it is undisputed that foremen do not assign employees to a crew. Foremen may ask for certain employees but they don't always get who they want. In fact, Nakapaahu testified he gets less than 50% of what he asked for. It is also undisputed that foremen do not assign which job goes to which crew, nor authorize overtime. Like in *Shaw*, the scope of the foremen's authority extends only to assignment of tasks within his crew and assignment of persons to perform certain overtime work. Witnesses testified however that the assignment of tasks is routine and based on training. The same employee is assigned to the same machine from day to day. McBee also testified assignment of who works certain overtime depends on the type of work, equipment, employees' qualification and training. These determinations are all self-evident and do not involve a formation of opinion by discerning or comparing data. Thus no independent judgment exists.

(6) Reward or Recommend Reward

Although Waxler testified that he bought employees lunch for good work, this appear to have been something he did on his own. He did not testify that he had authority to pay for the lunch from Northshore's account. No one, including Waxler, testified that foremen have authority to give monetary reward or recognition. This evidence therefore does not show foremen have authority to reward. Similarly, although McBee filled out evaluation forms for apprentices, these forms are not considered by Northshore in any way. McBee therefore did not effectively recommend reward by filling out the Sheet Metal's evaluations forms.

(7) Discipline or Recommend Discipline

In *Shaw*, the Board held that when foremen had no discretion whether to write up sheets to memorialize incidents and do not know whether the write-ups were part of a formal

disciplinary procedure, no statutory duties with independent judgment exists. *Shaw*, 350 NLRB at 356-57.

Here, the General Counsel provided evidence showing that Marvin Johnston was written up for a safety violation by a foreman. But Postma, the General Counsel's witness, admits he did not know if anything was done about the write-up. Postma also sometimes Furthermore, Johnson testified that safety issues are different only because they have to be corrected immediately. And evidence indicates safety violations are initiated by project manager and specific safety guidelines are contained in the contract. Thus no independent judgment was involved when foremen writes someone up for safety violations.

The only two other isolated incidents the General Counsel provides involve McBee sending someone home when a fight was about to occur and McBee sending someone home for frequent tardiness. In the latter case, McBee actually obtained permission from Meyer. Based on the current case law, these do not sufficient show that all foremen have authority to discipline employees with independent judgment.

(8) Responsibly Direct

The authority "responsibly to direct" arises when a person decides what job shall be undertaken next or who shall do it, and such person must be held accountable for the performance of the task by others. *Croft Metals, Inc. et. al.*, 348 N.L.R.B. at 721. In order to direct, there must be a showing that such authority requires more than minimal guidance. *See Shaw*, 350 NLRB at 356.

Here, although witness testified that foremen can tell them what to do, it is undisputed that foremen are not held accountable when the job loses money. Foremen cannot at all change

the scope of the job assigned to their crews. Foremen do not responsibly direct employees with independent judgment.

At Northshore, foremen's duties are defined by the CBA. Just like foremen in other companies, they have always been part of the bargaining unit. From the beginning of the project, managers prepare blueprints, work orders, and submittal with extreme details down to the particular sealant to use for a part. Foremen have to prepare dailies that cover each and every employees who worked at the jobsite. Sometimes the journeymen can fill out the dailies for them. Foremen work alongside their crews. And they can work as foremen one day and as journeymen the other. The Sheet Metal has never claimed foremen are supervisors until now. This contention is baseless.

Because foremen are not statutory supervisors, their voluntary assistance in collecting the Carpenters Union's authorization cards for efficiency purpose does not equate the employer's unlawful assistance or support of the Carpenters Union.

b. Northshore's Management Did Not Unlawfully Support the Carpenters Union Because it Was Free to Communicate with the Carpenters Union and Express its Preference, it Did Not Deny the Sheet Metal Access to Meetings, and it Did Not Surveil the Employees' Meetings with the Unions

Within construction industry, valid 29 USCS. § 158(f) agreement carries no presumption of union majority status. *South Country Sand & Gravel*, NLRB Advice Memo Case No. 1-CA-32959 (1995). There is significant difference between union's representative status in construction industry under 29 USCS § 158(f) and under 29 USCS § 159(a); under former statute, employer may terminate bargaining relationship upon expiration of agreement is not required to continue to bargain with union after agreement expires. *See Classical Stairways, Inc.*, NLRB Advice Memo Case No. 32-CA-21531-1 (2004).

Here, the General Counsel stipulates that the Sheet Metal CBA is an agreement under 29 U.S.C. § 158(f) which expired on May 31, 2012. Because Northshore had no duties to continue to bargain with the Sheet Metal after the expiration of the Sheet Metal CBA, Northshore did not violate the NLRA when it communicated with the Carpenters Union to inquire about its CBA. Moreover, Company permitting one union to recruit membership in its plant, on company time, and with aid of company telephones and other facilities was not unfair labor practice in absence of showing that rival union requested and was denied similar privileges. *NLRB v. Brown Co.*, 160 F2d 449 (1st Cir. 1947). And in the absence of unlawful interference, the Act does not prohibit an employer from expressing a preference for a particular union over its rival. *Alley Constr. Co.*, 210 NLRB 999 (1974). In *Alley Constr. Co.*, the Board held the employer's letter asking employees to vote for a particular union does not violate § 8(a)(2) when it was merely pointing out that based upon a reading of both contracts, the possibility of more employment existed under one CBA because of its flexibility. *See id.*, at 999, 1000. Here, the General Counsel's witnesses testified that at the June 5, 2012 meeting, Northshore's management simply pointed out that Northshore was losing business to other Carpenters Union's signatory companies. This is merely Northshore's objective assessment. Witnesses also testified that the management did not do more than introducing representatives from the Carpenters Union at the June 12, 2012 meeting, and the management did not participate in the July 13, 2012 meeting.

No evidence was produced to show that Northshore denied access to the Sheet Metal. To the contrary, evidence clearly indicates that Northshore indiscriminately paid its employees when the meetings were held on June 5, 2012 and June 12, 2012 during its normal business hours; the Sheet Metal participated in the meeting on June 12, 2012; and Northshore did not pay for the meeting with the Carpenters Union held on June 13, 2012.

No one testified that they were threatened into signing with the Carpenters Union. Even though employees were told about the meetings, as the General Counsel's witness admits, employees had the option of not attending the meeting and the employees who did not attend was not punished for failure to attend. The only testimonies related to conversation regarding signing of the authorization cards relate to conversations which took place after Northshore had already recognized the Carpenters Union on June 14, 2012. Meyer testified that he was merely informing the employees he wished to keep that the Carpenters Union's security clause may require the employees to sign the cards.

Although the General Counsel alleges that the management surveilled the meeting on June 12, 2012, the only testimony arguably supporting the allegation was Postma's testimony that he saw Champeaux exiting the same door that the management did sometime during the meeting. Champeaux testified that he merely informed Meyer that the employees wished to meet with the Sheet Metal, which Meyer agreed, and then later in the day he went outside to let the Carpenters Union's representative know the meeting was over. Champeaux further testified that he did not carry a notebook with him. Shop 2, where the meeting was held is a warehouse. The room in which the meetings were held had steel door and walls.

3. Northshore Did not Unlawfully Assist the Carpenters Union by Threatening or Coercing its Employees Into Signing the Carpenters Union's Authorization Cards

The General Counsel finally contends the Carpenters Union accepted Northshore's assistance in obtaining the cards by threatening to terminate employees who did not sign the Carpenters Union's authorization cards. But the General Counsel fails to show Northshore threatened to terminate or terminated any employees based on their union preference, or that the Carpenters Union ever enforced its union security clause.

W. Bailey and Waxler who are still members of the Sheet Metal testified that Meyer told them they would have to become members of the Carpenters Union. It is undisputed that this conversation occurred after Northshore signed with the Carpenters Union. It is also undisputed that Meyer did not pressure them to sign the card right away, but was merely informing them of the effect of the union security clause. The Sheet Metal's CBA contains the same union security language. Northshore therefore reasonably believed that it needed to explain to employees whose services Northshore value. Both Bailey and Waxler are still members of the Sheet Metal and both still work for Northshore.

Postma who is still a member of the Sheet Metal testified that he talked to Johnson and Meyer. It is undisputed that the conversation occurred after Northshore signed with the Carpenters Union. It is undisputed that Postma talked to A. Baily before calling Meyer back the second time. Meyer felt that Postma was being coached. This feeling is consistent with A. Bailey's statement that the fact that J. Johnston was laid off pursuant to his own HVAC interest was "not something [the Sheet Metal] wants to hear."

J. Johnston curiously testified that Nakapaahu told him he could be journeyed up if he go along with the Carpenters Union. Yet, even Postma's testimony states that Nakapaahu at most asked Postma to speak with Johnson. Moreover, J. Johnston never talked about this meeting until after he was asked by A. Bailey to give the NLRB a second affidavit.

In any case, Meyer thought Northshore was bound by the union security clause and he was trying to keep the employees instead of firing them when he spoke with Postma, Waxler, and W. Bailey. By the time the conversation took place, the Carpenters Union already had majority support. This confusion became a non-issue as of July 15, 2012 when the Carpenters Union unequivocally and indisputably informed Northshore that it will not enforce its union security

clause. No employees were terminated because of their refusal to sign the Carpenters Union's cards.

Based on the foregoing, evidence does not support the General Counsel's *compl.* that Northshore unlawfully supported the Carpenters Union.

IV. CONCLUSION

The Carpenters Union accepted Northshore's recognition before Northshore received notice of a valid election petition. The Carpenters Union obtained its majority support without Northshore's unlawful assistance. Even though the Carpenters Union's CBA was validly signed, the Carpenters Union did not enforce its union security clause and did not dispatch workers to Northshore. No contrary evidence was produced at the hearing. The Carpenters Union therefore has not violated § 8 of the NLRA.

DATE: April 25, 2013

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is DeCARLO & SHANLEY, a Professional Corporation, 533 South Fremont Avenue, Ninth Floor, Los Angeles, California 90071-1706.

On , April 25, 2013, I served the foregoing document described RESPONDENT PACIFIC NORTHWEST REGIONAL COUNCIL OF CARPENTERS' POST-HEARING BRIEF on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Dan Hutzenbiler, Esq. ROBBLEE DETWILER & BLACK, P.L.L.P. 2101 4th Avenue, Suite 1000 Seattle, WA 98121-2392	Attorneys for SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 66
Selena C. Smith, Esq. Joseph Marra, Esq. Christopher L. Hilgenfeld, Esq. DAVIS GRIMM PAYNE & MARRA 701 5th Avenue, Suite 4040 Seattle, WA 98104-7071	Attorneys for NORTHSHORE SHEET METAL, INC.

[X] (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at Los Angeles, California.

Executed on April 25, 2013, at Los Angeles, California.

[ ] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[X] (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

/s/ Nelly Caywood