

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19

**HYDRO-TEMP MECHANICAL, INC.**

Employer

and

**Case 19-RC-114979**

**SHEET METAL, AIR, RAIL AND  
TRANSPORTATION WORKERS,  
LOCAL 16**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

The above-captioned matter is before the National Labor Relations Board (the Board) upon a petition duly filed under §9(c) of the National Labor Relations Act (the Act), as amended. A hearing on this Petition was held before a hearing officer of the Board to determine whether it is appropriate to conduct an election in light of the issues raised by the parties. Pursuant to the provisions of §3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned makes the following findings and conclusions.<sup>1</sup>

**I. SUMMARY**

Hydro-Temp Mechanical, Inc. (the Employer) is a mechanical contractor providing plumbing, heating, and air conditioning services. Sheet Metal, Air, Rail, and Transportation Workers, Local 16 (Petitioner) has filed the instant Petition seeking to represent a bargaining unit consisting of the Employer's 17 sheet metal workers, with the exception of one employee. The Employer opposes the unit sought. The Employer asserts the only appropriate unit must also include approximately 27 plumbers and 6 other dual-function employees employed in various classifications.

I have carefully reviewed and considered the record evidence and the arguments of the parties at both the hearing and in their post-hearing briefs.<sup>2</sup> Based on the evidence and the Board's well-established standards I find the petitioned-for unit of sheet metal workers constitutes an appropriate unit for the reasons stated. I have directed an election consistent with my findings.

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<sup>1</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of §9(c) (1) and §§2(6) and (7) of the Act.

<sup>2</sup> Both parties filed timely briefs.

Below, I have set forth the record evidence that forms the basis for my decision, as well as the applicable legal standards, and a section applying this standard to the evidence. In conclusion, I have addressed the details of the directed election, and the procedures for requesting review of this decision.

## **II. RECORD EVIDENCE<sup>3</sup>**

### **A. BACKGROUND**

The Employer is a construction contractor operating out of a facility located in Wilsonville, Oregon. The facility includes an office and a shop building, with the shop consisting of work and storage areas for the Employer's sheet metal workers, plumbers, and other employees. Clerical workers, accountants, project engineers, project managers, and an estimator work in the office. Ken Troyer, the Owner and President of the Employer, also has an office in the office building.

The Employer employs 9 sheet metal journeymen, 5 sheet metal apprentices, and 3 "shop" sheet metal journeymen. These employees constitute the petitioned-for unit with the exception of a single sheet metal journeyman, David Sasser, whom the Petitioner asserts does not share a community of interest with the other sheet metal workers. In this Decision the sheet metal journeymen, sheet metal apprentices, and shop sheet metal journeymen are referred to collectively as "sheet metal workers."

The Employer also employs 22 journeymen plumbers, 3 plumber apprentices, and 2 plumber foremen. The Employer asserts that the only appropriate bargaining unit includes these plumbers as well as the sheet metal workers. Plumbers, plumber apprentices, and plumber foremen are referred to in this Decision collectively as "plumbers."

The Employer employs 2 service technicians, Dan Pietz and Doug Ries; a single Power Equipment Operator, Ronald Hoggan; and a single pipefitter, Terry Rutledge. The Employer also employs two employees who perform a mix of work and are classified as such: Gabe Hostetler is a carpenter/service technician/sheet metal worker and Dale Humphrey is a laborer/sheet metal worker.

Approximately 80 to 85 percent of the Employer's work is performed on prevailing wage jobs. On these jobs employees are classified based on their job duties and are then paid at a rate established by the Oregon Bureau of Labor and Industries.

### **B. COMMUNITY OF INTEREST FACTORS**

#### **1. Departmental Organization**

At the most basic level the Employer's operations are split into two halves: sheet metal or "dry" work and plumbing or "wet" work. The record contains several examples of circumstances where activities or materials are divided along these lines, including the Employer's job board, which contains dry work on one side and wet on the other, and the tool trailers on job sites, which are designated as either dry or wet.

However, the split is in some ways a useful descriptive tool reflecting the two distinct trades working for the Employer instead of a strict departmental hierarchy. All employees

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<sup>3</sup> The Employer called Owner and President Ken Troyer, Carpenter/Service Technician/Sheet Metal Worker Gabriel Hostetler, Power Equipment Operator Ronald Hoggan, Laborer/Sheet Metal Worker Dale Humphrey, and Journeyman Plumber Gabe Buehler as witnesses. Petitioner called Journeyman Sheet Metal worker Darrin Boyce and Organizer Joseph Harris as witnesses.

report directly to Troyer, the Employer does not utilize an organizational chart, mid-level supervisors, or some other clear designation of departmental structure. Also, the maintenance and repair work performed by service technicians appears to exist outside this dry and wet division, as their work is not easily classified as either, for reasons explained in the following sections.

## **2. Skills and Training**

A sheet metal journeyman is a sheet metal worker who has completed a four-year sheet metal apprenticeship program consistent with the nationwide standards established by the Sheet Metal Contractors National Association. The Employer's sheet metal apprentices are currently enrolled in this apprenticeship program and are working toward becoming sheet metal journeymen. During the program apprentices learn how to perform basic sheet metal skills, but also advanced skills such as duct detailing and layout to industry standards. During training apprentices learn to perform the sheet metal worker job functions described in the following section, as well as operation of specialized tools such as the plasma cutters, coil line, and spiral machine that produce duct work.

Detailing duct work involves planning how much and what type of duct work materials are needed on a job and then transferring that information to the project's blueprints. The mathematical formulas and other information used to correctly make this assessment, and then record it, are taught in the sheet metal apprenticeship. Only sheet metal journeymen are trained to perform this sheet metal detailing work. As described in detail later, sheet metal journeyman Sasser has received specialized training in utilizing a building image modeling (BIM) program, an advanced modeling program that allows the detailing of duct work to be integrated in construction in a manner different from blueprints.

Not all of the Employer's sheet metal workers have completed or are participating in a sheet metal apprenticeship. Contrary to the title used by the Employer, at least one of the employees in the shop sheet metal journeymen classification has not completed or participated in a sheet metal apprenticeship.

Plumbers must be licensed by the State of Oregon to perform their work, and plumbers complete an apprenticeship to obtain that license. Employees that lack a plumbing license, such as the sheet metal workers, cannot perform work such as cutting, soldering, brazing, and welding of pipe, as well as the installation of water and waste pipe.

## **3. Job Functions**

Sheet metal workers prepare sheet metal duct work in the shop and install it in the field. The basic aspects of this job include: assembling fittings, fabricating duct work, loading and unloading trucks, moving fabricated duct work, hanging duct work, verifying duct work is plumb (flat and level on each side), duct sealing, clipping, and insulating, and installing additional components. Journeymen sheet metal workers also detail upcoming jobs.

Fabricating duct work involves using a plasma cutter, coil line, and spiral machine to turn sheet metal into pieces of duct, and then using fittings to assemble those pieces consistent with instructions. Once fabricated, these pieces are then tagged with a BIM number, shrink wrapped, and placed in the sheet metal holding area of the shop.

When needed, these pieces are transported to the project and sheet metal journeymen, or apprentices under their direction, lay out the project by BIM model or

blueprint. Hangers are then set and the duct work put in place. The completed work is tested to verify it is plumb and then sealed with caulk, putty, or foam tape. A piece of metal is then overlaid on the seal to "clip" the connection. If necessary, the assembly is then wrapped in insulation. At certain points in construction sheet metal workers will also attach specialized pieces such as flex grills, seismic bracing, or rooftop curbs. Once assembly of the duct system is complete the active portion of the HVAC system is installed: air handlers, boilers, chillers, and exhaust fans. Typically these are roof mounted, with a team of two or three employees working on the roof, with four or five employees maneuvering the device into place utilizing a crane.

Shop sheet metal journeymen perform fabrication work with sheet metal journeymen and sheet metal apprentices in the shop. Sheet metal journeymen and sheet metal apprentices also install sheet metal in the field, shop sheet metal journeymen do not.

Plumbers' work involves installing different types of pipe that serve different purposes: water, waste, and hydronic pipe used in heating and cooling. In the shop plumbers prefabricate pipe for use in the field. This involves cutting, soldering, brazing, and welding a variety of pipe and assembling it into pre-fabricated pieces. Installing the completed pipe requires a plumbing license. Plumber apprentices can perform the same work under the supervision of a journeyman plumber.

The record does indicate that plumbers and service technicians perform basic sheet metal work. Witnesses questioned were all in general agreement that any of the Employer's employees could perform basic sheet metal work. Examples included providing an "extra set of hands" when a sheet metal employee is performing a task that could not be done without the assistance of another person up to actually hanging duct work.

The record indicates the nature of this assistance in sheet metal work is varied, and the evidence of its extent is incomplete. Journeyman plumber Buehler, in his testimony, indicated that he performed "significant" sheet metal work on only a single job, but even on this prevailing wage job his sheet metal work was insignificant enough he was classified as a plumber and paid at a plumber's wage rate.

#### **4. Functional Integration**

The work of the sheet metal workers and plumbers is separate, constituting separate systems within a construction environment. There is no evidence on the record of sheet metal work needing to be completed in order to allow plumbing work to begin, or vice versa. Similarly, in the shop it appears the fabrication of duct work and pipe are entirely separate functions, although they are done in close proximity. The shop includes a work area for constructing duct work, including equipment such as a plasma cutter and the coil line, where sheet metal is fabricated and duct work is assembled. Tools and supplies for the sheet metal workers are stored in the mezzanine of the Employer's facility. The work area of the plumbing employees is located in another part of the shop, in an area where the plumbers and the pipefitter perform welding work. Tools and supplies used by the plumbers are located on the ground floor of the shop. A separate area known as the service room is designated for the service technicians to store their tools.

When assisting with sheet metal work any of the classifications, including plumbers, may use the tools in the sheet metal area of the shop. The sheet metal workers do not use the tools in the plumbing area.

## **5. Contact and Interchange**

As described above, employees work in relatively close proximity in the shop. On job sites, sheet metal workers and plumbers may work in proximity, although within each environment they are more likely to be working in close proximity to others in their trade than across trades. How much time sheet metal workers and plumbers spend in the shop compared to the field is not established in the record, with some exceptions such as the shop sheet metal journeymen, who work only in the shop. The Employer has separate meetings for the sheet metal workers and plumbers.

In regard to interchange the record contains very limited evidence of permanent interchange between the sheet metal workers and plumbers. Only a single sheet metal worker has become a plumber, and no plumbers have become sheet metal workers. The record does not contain evidence of temporary interchange, as the Employer defines plumbers performing sheet metal work as a regular job duty and not a temporary transfer to a sheet metal position. There is no contention that sheet metal workers perform plumbing work, and indeed differences in licensing would likely make such a transfer impossible.

## **6. Terms and Conditions of Employment**

Sheet metal workers and plumbers are paid prevailing wage rates on the majority of the Employer's projects. For a sheet metal journeyman this hourly rate, including fringe benefit contributions, is \$51.53. When working in the shop, or on a non-prevailing wage project, the sheet metal journeymen are paid a range of \$22 to \$35 an hour. Sheet metal apprentice wage rates vary from \$11 to \$21 an hour on non-prevailing wage work, and shop sheet metal journeymen are paid a rate of \$20 to \$29 an hour.

The prevailing wage rate for a journeyman plumber is \$56.08 an hour, including the fringe benefit contribution. In the shop, or non-prevailing wage project, journeymen plumbers are paid \$22 to \$42 an hour. For this work plumbing apprentice wage rates vary from \$14 to \$16 an hour and plumbing foremen are paid a wage rate between \$29 and \$32 an hour.

With the exception of wage rates neither side highlights any differences in the terms and conditions of employment between sheet metal workers and plumbers.

## **7. Shared Supervision**

All of the Employer's employees are supervised by Owner and President Ken Troyer.

### **C. SHEET METAL JOURNEYMAN DAVID SASSER**

The Employer classifies Sasser as a sheet metal journeyman. Sasser has completed the sheet metal apprenticeship program, and has skills consistent with those described above in regard to sheet metal journeymen. In the past Sasser has also performed sheet metal fabrication and installation work as described above. However, in the last three months Sasser has not performed this work, and has instead worked almost exclusively with the BIM program, receiving training from the Employer's project managers and project engineers. The Employer maintains all sheet metal workers will learn the BIM system in time, but to date Sasser is the only employee to receive this training.

At hearing it was estimated that during this 3 month period 50 percent of Sasser's time has been spent in the office, 50 percent in the field, and none in the shop. The record also indicates that when in the field during this period Sasser has not been installing sheet

metal, but has instead solely focused on the operation of the BIM program. Sasser also performs some estimating work when the estimator has excess work, although the nature and extent of this work is not described in the record. The record indicates Sasser is paid \$35 an hour at all times.

#### **D. DUAL-FUNCTION EMPLOYEES**

##### **1. Service Technicians**

The Employer's service technicians, Dan Pietz and Doug Ries, service and repair HVAC equipment. This includes routine maintenance, such as testing motors and replacing filters, belts, and bearings, but also the repair and replacement of malfunctioning equipment. The record indicates service technician work is predominantly done in the field, with only 5 to 20 percent of time spent in the shop.

The Employer's service technicians hold a refrigerant license, allowing them to work with refrigerant chemicals. The training necessary for this license can be obtained through an apprenticeship or other training; service technician Reis is currently participating in a controls apprenticeship. Similar to plumbers, service technicians work with copper piping, torches and solder, but service technicians' work on refrigerant lines, not water or waste lines. As with plumbing, the need for a license precludes non-service technicians from performing service technician work. The service technicians drive Employer-owned vans and are issued cell phones by the Employer.

In addition to performing their service technician duties, Pietz and Ries spend a significant amount of time performing sheet metal work. Pietz and Ries did not testify at hearing, but the Employer introduced extensive payroll records from 2011 to 2013, from prevailing wage jobs, demonstrating Pietz and Ries were paid at a sheet metal journeyman rate. During the most recent 6 month period contained in these records, the pay periods from February 24, 2013, to August 25, 2013, Pietz was paid as a sheet metal journeyman for 587 hours of work, and Ries for 615.5. Pietz also worked about 20 hours of overtime as a sheet metal journeyman, while Reis was compensated as a sheet metal journeyman for almost 50 hours of overtime work during this period.

##### **2. Power Equipment Operator Ronald Hoggan**

Hoggan's work as a power equipment operator involves using power equipment to dig ditches for plumbing pipe. This work involves laying out the dig, digging the ditch, backfilling the ditch when the work is complete, and then hauling away any excess material using a dump truck. Hoggan has also used the Employer's power equipment to perform landscaping work at the Employer's facility, and he utilizes the Employer's dump truck to move the Employer's power equipment by trailer.

Hoggan testified that 60 percent of his work time is spent performing sheet metal work, 30 percent is spent on equipment operator work, and the remaining 10 percent involves deliveries and carpentry work. The record does not contain payroll records from prevailing wage jobs for Hoggan.

Hoggan has not participated in a sheet metal apprenticeship. Hoggan attends the plumbers' meetings, but not those of the sheet metal workers.

##### **3. Pipefitter Terry Rutledge**

The Employer's single pipefitter, Terry Rutledge, works in the shop with the plumbers preparing pipe for installation. Although it is asserted that Rutledge performs

sheet metal work, Rutledge did not testify at hearing and the record contains no payroll records from prevailing wage jobs or other evidence quantifying that work.

**4. Carpenter/Service Technician/Sheet Metal Worker Gabe Hostetler**

Service technician Hostetler testified at the hearing, where he estimated that he regularly spends 60 percent of his working time performing sheet metal work, including the hanging, sealing, and insulating of duct work; 20 percent performing service technician work, as described previously; and 20 percent performing general maintenance, including carpentry. However, he testified in the last six months the need for service technician work has been high, and he has spent 60 percent of his time performing service technician work, 25 percent performing sheet metal work, and 15 percent performing general maintenance.

Hostetler testified that he spends about 10 percent of his time in the shop, in part because his duties as a service technician are almost exclusively in the field. Hostetler holds the refrigerant license necessary to perform service technician work. He has not completed a sheet metal or any other apprenticeship program. The record does not contain payroll records from prevailing wage jobs for Hoggan.

**5. Laborer/Sheet Metal Worker Dale Humphrey**

Laborer Dale Humphrey began work for the Employer as an equipment operator before becoming a laborer for approximately the last 8 years. He is licensed to operate a forklift, and holds a Class A commercial driver's license. He does not hold a plumbers' or refrigerant license and he has not completed a sheet metal apprenticeship or any other type of apprenticeship.

Humphrey testified at hearing that he spends approximately 33 percent of his work time fabricating sheet metal, 30 percent of his time performing other sheet metal work, and the remaining portion performing laborer duties such as operating a forklift, maintenance, and making deliveries. However, Humphrey also testified that on prevailing wage jobs he is classified as a laborer, earning \$25.25 an hour, and acknowledged that he has never been paid at the rate of a sheet metal journeyman.

In describing his work assisting the sheet metal work workers, Humphrey provided the example of his work at the Englewood Grade school project, a prevailing wage job. On that job he assisted the sheet metal workers with basic sheet metal work, but also performed laborer work. Consistent with his other work, on that project Humphrey was classified as a laborer and paid at a laborer's rate.

**III. ANALYSIS**

**A. COMMUNITY OF INTEREST STANDARD**

The Board has long held in representation cases that a petitioned-for unit need only be an appropriate unit for purposes of collective-bargaining within the meaning of the Act, the unit need not be the only appropriate unit or the most appropriate unit. *Barron Heating and Air Conditioning, Inc.*, 343 NLRB 450, 452 (2004), citing *American Hosp. Ass'n v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996).

In determining whether a proposed unit is appropriate for collective bargaining, consistent with §9(a) of the Act, the Board's "focus is on whether the employees share a 'community of interest.'" *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 9 (2011), quoting *NLRB v. Action Automotive, Inc.*, 469 U.S. 490,

491 (1985). In determining whether a group of employees possesses a community of interest, the Board examines such factors as:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

*Specialty Healthcare*, slip op. at 9; quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002).

Where a party objects to the petitioned-for unit on the basis it is too small, that the smallest appropriate unit must contain additional employees, it is insufficient for the objecting party to merely show the employees share a community of interest with other employees, or even that there is a more appropriate unit, instead the objecting party must show the petitioned-for unit is "clearly inappropriate." *Specialty Healthcare* at 10. Demonstrating that a petitioned-for unit is clearly inappropriate requires demonstrating included and excluded employees share an overwhelming community of interest. *DTG Operations*, 357 NLRB No. 175, slip op. at 5 (2011); *Odwalla, Inc.*, 357 NLRB No. 132, slip op. at 5 (2011); *Specialty Healthcare* at 11-13, citing *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417 (D.C. Cir. 2008) (on a Venn diagram an overwhelming community of interest exists when the community of interest factors "overlap almost completely."). An overwhelming community of interest exists where the unit sought "fractures" an appropriate unit, seeking only an "arbitrary segment" of that unit where there is no rational basis for including some, but excluding others. *Odwalla* at 5; *Specialty Healthcare* at 13.

The Board recognizes that distinct crafts, typically with extensive apprenticeship programs, licensing, and receiving pay based on the being a member of that craft, constitute a readily identifiable and homogeneous group with a community of interests separate and apart from the other employees. *Burns & Roe Services Corp.*, 313 NLRB 1307 (1994). Sheet metal journeymen and apprentices have long been recognized as a traditional craft by the Board. *Gulf Oil Corp.*, 77 NLRB 308 (1948).

## **B. COMMUNITY OF INTEREST FACTORS**

### **1. Departmental Organization**

Although the Employer does not have a strict organizational division within its operations, the record does indicate that an operational split exists between dry and wet work. Therefore, to the extent any departmental organization separates the sheet metal workers and the plumbers; it mirrors the line the Petitioner seeks to draw. As such, the petitioned-for unit seeking only sheet metal workers and excluding plumbers cannot be said to fracture a department. This factor weighs against the Employer demonstrating an overwhelming community of interest.

### **2. Skills and Training**

The skills and training of the sheet metal workers and plumbers are distinct. Both participate in separate apprenticeships, which teach different skills utilizing different tools. There is no contention by the Employer that plumbers use tools such as a plasma cutter,

coil line, or spiral machine in their work, or that sheet metal workers are skilled in the cutting, soldering, brazing, and welding of pipe.

The analysis is complicated to a degree in the instant case by the apparent inclusion of employees who have not completed a sheet metal apprenticeship in the petitioned-for unit. All of the witnesses agreed that the Employer's employees, sheet metal workers and plumbers alike, can perform basic sheet metal work. This does raise the question how much the skills and training of a sheet metal worker who has never participated in a sheet metal apprenticeship differ from the skills and training of a plumber who has never participated in a sheet metal apprenticeship.

However, only one of the Employer's 17 sheet metal workers was identified in the record as never having participated in a sheet metal apprenticeship. As such, the impact is limited and does not prevent this factor from having probative value. Moreover, the problem does not exist in reverse. Due to licensing only a journeyman plumber or apprentice is performing the plumbing work, and there is no contention sheet metal workers have gained through work experience any of the skills of a plumber. On balance, the distinct skills and training of the sheet metal and plumbing trades weigh against the Employer demonstrating an overwhelming community of interest.

### **3. Job Functions**

Sheet metal workers detail, fabricate, and install duct work. Plumbers fabricate and install water, waste, and other types of pipe. It is uncontested that plumbers do perform some basic sheet metal work on occasion, but the nature and extent of this assistance is largely unaddressed by the record. Some witnesses asserted it was a constant and widespread practice, but other witnesses described a workplace where the two trades were largely separate, but the plumbers would occasionally lend a hand to the sheet metal workers during busy periods of sheet metal work. The record does not contain evidence of any plumbers being compensated as sheet metal workers on prevailing wage jobs, or any other sort of record that would demonstrate the crossover work done by plumbers. There is no contention that any plumbing work is done by sheet metal workers.

It is clear that when performing their respective trades, sheet metal workers and plumbers perform entirely different job functions. The only argument in favor of the Employer's position is that the Employer's plumbers spend some amount of time not performing the work of a plumber, but instead performing the work of a sheet metal worker. However, while the record establishes such work occurs, it does not quantify the nature and extent of this cross-trade work to a sufficient degree to mitigate this factor from strongly weighing against the Employer demonstrating an overwhelming community of interest.

### **4. Functional Integration**

Given that both the Employer's sheet metal workers and plumbers are working on the same construction projects, the record reveals a significant lack of functional integration. There is no evidence in the record, for example, of either the sheet metal workers or the plumbers relying on the other to complete work so the other may begin. There is no evidence of either group fabricating materials for the other group so the other group may proceed. There are simply two separate systems that occur within the same construction project. It is true that both are working toward the ultimate goal of completing the project, but an assessment this broad is true of any business and provides no probative value. The

record lacks evidence of functional integration between the sheet metal workers and the plumbers, and this weighs against the Employer meeting its burden.

#### **5. Contact and Interchange**

In regard to contact, it does appear that sheet metal workers and plumbers work in generally close proximity, particularly in the shop. They may also work in proximity on job sites, but the record suggests their work occurs at different times in construction, creating a distance of time if not space. Petitioner argues that the sheet metal workers and plumbers work in different areas of the shop, limiting their contact, but this seems unlikely given that both groups are ultimately in the same building of modest size.

In regard to interchange the record contains very limited evidence of permanent interchange between the sheet metal workers and plumbers. Only a single sheet metal worker has become a plumber, and no plumbers have become sheet metal workers. While permanent transfers are generally accorded less weight than temporary transfers, permanent transfers are relevant and I find the minimal evidence here does matter. *Ore-Ida Foods, Inc.*, 313 NLRB 1016, 1021, fn. 4 (1994).

The record does not contain evidence of temporary interchange among sheet metal workers and plumbers, such as pay records from a prevailing wage job showing plumbers being paid at a sheet metal rate or vice versa.<sup>4</sup> I recognize that the sheet metal work done by plumbers could be seen as a type of temporary transfer, but again without a way to quantify how frequently and to what extent this occurred, it is impossible to assign this cross-trade work much weight. Given these circumstances, contact and interchange is essentially a neutral factor in the Employer demonstrating an overwhelming community of interest.

#### **6. Terms and Conditions of Employment**

The wage rates of journeymen sheet metal workers and plumbers are essentially equal on prevailing wage jobs, and across the board sheet metal workers and plumbers appear to earn a roughly equivalent hourly wage for non-prevailing wage and shop work. It is undisputed that the other terms and conditions of employment are the same. This factor weighs in favor of the Employer demonstrating an overwhelming community of interest.

#### **7. Shared Supervision**

All of the Employer's employees are supervised by Owner and President Ken Troyer, and this too weighs in favor of the Employer demonstrating an overwhelming community of interest.

#### **8. Conclusion regarding Community of Interest**

Some of the factors addressed above, such as shared supervision and the terms and conditions of employment shared by sheet metal workers and plumbers, do support the Employer's argument that the sheet metal workers and plumbers share an overwhelming community of interest. However, the evidence in regard to other factors, particularly departmental organization, skills and training, and job functions, is much stronger. The evidence demonstrates that the Employer's sheet metal workers and plumbers are two

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<sup>4</sup> As noted, extensive records of this type were introduced regarding service technicians performing sheet metal work.

distinct crafts, and the petitioned-for sheet metal workers constitute a readily identifiable group with a community of interest separate and apart from the plumbers.

### **C. SHEET METAL JOURNEYMAN DAVID SASSER**

Petitioner essentially argues that the skills and training and job duties of journeyman Sasser, devoted almost exclusively to the BIM program during the last 3 months, prevents him from sharing a community of interest with the other sheet metal journeymen. This is not supported by the evidence. Sasser has completed the sheet metal apprenticeship program, and has skills consistent with those described above in regard to a sheet metal journeyman. In the past Sasser has also performed sheet metal fabrication and installation work as described above.

On brief Petitioner argues extensively how the advanced detailing work done by sheet metal journeymen separates them from the plumbers and others who perform “basic” sheet metal work. However, from the record it appears Sasser’s work over the last 3 months is simply intense training on a computerized way to integrate that layout into blueprints and a construction plan. A change in the form of how detailing is completed is not so significant as to sever Sasser’s community of interest from the other sheet metal workers.

### **D. DUAL-FUNCTION EMPLOYEES**

Employees who perform more than one function for the same employer are considered by the Board to be dual-function employees. *Berea Publishing*, 140 NLRB 516 (1963). In determining whether dual-function employees should be included in a bargaining unit, the Board looks to whether such employees regularly perform work for sufficient periods of time to demonstrate that they have a substantial interest in the unit’s wages, hours, and conditions of employment. *Avco Corp.*, 308 NLRB 1045 (1992). Although no bright line rule has been established, the Board generally finds that dual-function employees should be included in a bargaining unit if they spend 25 percent or more of their time performing unit work. *Id.* at 1047. The burden to demonstrate dual-function status is on the party asserting that status. *Harold J. Becker Co.*, 343 NLRB 51, 52 (2004).

#### **1. Service Technicians**

The Employer asserts that its service technicians, Dan Pietz and Doug Ries, are dual-function employees properly included in a bargaining unit of sheet metal workers because they spend a significant portion of their work time performing sheet metal work. Service technicians Pietz and Ries did not testify at the hearing, but the payroll records placed in the record by the Employer show Pietz and Ries regularly receiving the pay of a sheet metal journeyman on prevailing wage projects between 2011 and 2013. The Employer argues that this evidence of regular and consistent sheet metal work is sufficient to qualify Pietz and Ries as dual-function employees.

It is clear from these records that both Pietz and Ries regularly perform sheet metal work. Assuming a 40 hour work week, if Pietz was paid as a journeyman sheet metal worker for 587 straight time hours during the most recent 6 month period this represents approximately 60 percent of his working time. If Ries for was paid as a journeyman sheet metal worker for 615.5 straight time hours this constitutes almost 65 percent of his working time. The Board has repeatedly held that percentages this high are sufficient to qualify employees as dual-function. Accordingly, I find that service technicians Pietz and Ries should be included in the petitioned-for unit as dual-function employees.

## **2. Power Equipment Operator Ronald Hoggan**

The record does not contain evidence of Hoggan being compensated at a sheet metal journeyman wage rate. Instead, Hoggan testified and made the assessment that he spends a majority of his time, 60 percent, performing sheet metal work. The record does not contain evidence to contradict this assessment.

Petitioner argues, in regard to Hoggen, Hostetler, and Humphrey, that the absence of prevailing wage pay records, of the type proffered in regard to Pietz and Ries, contradicts the witnesses' assessment of the work they perform. Petitioner contends that because 80 to 85 percent of the Employer's work is prevailing wage work, and there is no evidence of Hoggen, Hostetler, and Humphrey being paid at a sheet metal journeyman rate on a prevailing wage job, it follows that at least 80 to 85 percent of their work is non-sheet metal work.

I do not agree with this conclusion. There is nothing in the record to suggest that an employee must be classified as a sheet metal worker in order to perform *any* sheet metal work. Further, there is nothing in the record to suggest that an employee performing both sheet metal work and the work of an equipment operator, laborer, or service technician must be classified as a sheet metal worker, or that it is inappropriate to classify these employees as equipment operators, laborers, or service technicians. While the existence of extensive prevailing wage documentation in the instant record is useful in determining the work performed in regard to Pietz and Ries, I do not use its absence in the manner Petitioner suggests; i.e., that a non-sheet metal prevailing wage classification precludes finding an employee performs any sheet metal work.

Hoggan's assessment that 60 percent of his work is sheet metal work is sufficient to qualify him as a dual-function employee under the Board's standard, and accordingly, I find he should be included in the petitioned-for unit as dual-function employee.

## **3. Pipefitter Terry Rutledge**

It is asserted in the record that Rutledge performs sheet metal work, but Rutledge did not testify at hearing and the record contains no time card or other evidence quantifying that work. Petitioner argues that an adverse inference should be drawn due to the Employer's failure to call Rutledge.

I do not find it necessary to address the question of an adverse inference. In asserting Rutledge performs sheet metal work a sufficient amount of time to be properly considered a dual-function employee, the Employer has the burden to support this assertion. Here, the record lacks any quantified evidence of Rutledge's work. For this reason Rutledge should not be included in the unit as a dual-function employee.

## **4. Carpenter/Service Technician/Sheet Metal Worker Gabe Hostetler**

Hostetler testified he spends up to 60 percent of his working time performing sheet metal work, although recently this percentage has fallen as low as 25 percent. The record does not contain evidence of Hoggan being compensated at a sheet metal journeyman wage rate, but the record also does not contain evidence contradicting Hostetler's assessment of his duties.

Under the Board's standard it is likely Hostetler is properly qualified as a dual-function employee even at his current percentage of sheet metal work, 25 percent. Given that he testified that the more common percentage is near 60 percent, I find his sheet metal

work is certainly sufficient to qualify him as a dual-function employee properly placed in a unit of sheet metal workers. Accordingly, I find he should be included in the petitioned-for unit as dual-function employee.

#### **5. Laborer/Sheet Metal Worker Dale Humphrey**

Humphrey testified at hearing that he spends approximately 33 percent of his work time fabricating sheet metal, 30 percent of his time performing other sheet metal work, and the remaining portion performing laborer duties such as operating a forklift, maintenance, and making deliveries. The record contains no evidence of Humphrey being compensated at a sheet metal journeyman wage rate, but the record also does not contain evidence contradicting Humphrey's assessment of his duties.

Petitioner argues that Humphrey's own testimony contradicts his self-assessment. Specifically, Humphrey testified that it is not uncommon for him to operate the forklift on a daily basis. Petitioner extrapolates from this testimony that if he is performing laborer work such as forklift operation on a daily basis Humphrey cannot possibly be performing 63 percent of his working time performing sheet metal work. I do not agree with this conclusion. Humphrey may well perform some laborer work on a daily basis, but it does not follow that he is therefore performing only laborer work for the entire day. Humphrey's two statements are easily reconciled, and I do not find his testimony raises any conflict regarding his own assessment of his duties.

As Humphrey's assessment that over 60 percent of his working time is spent on sheet metal work is sufficient to qualify him as a dual-function employee I find Humphrey is properly included in the petitioned-for unit as dual-function employee.

#### **IV. CONCLUSION**

Petitioner seeks to represent a bargaining unit consisting of the Employer's sheet metal workers, while the Employer asserts the only appropriate unit must also include its plumbers, due to their overwhelming community of interest with the sheet metal workers, and a number of other employees, due to their status as dual-function employees.

For the reasons described above Petitioner seeks an appropriate unit, and the Employer has failed to demonstrate an overwhelming community of interest with the plumbers rendering the petitioned-for unit inappropriate. In regard to the dual-function employees the evidence is sufficient to conclude these employees regularly perform sheet metal work for a sufficient period of time to demonstrate they have a substantial interest in the sheet metal workers' wages, hours, and conditions of employment, with the exception of pipefitter Rutledge.

For these reasons, and in view of the record evidence, I shall direct an election in the following appropriate Unit:

All full-time and regular part-time sheet metal journeymen, shop sheet metal journeymen, and sheet metal apprentices; excluding all plumbers, pipefitters, clerical employees, guards, and supervisors as defined by the Act.<sup>5</sup>

There are approximately 22 employees in the Unit found appropriate.

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<sup>5</sup> The Unit found appropriate conforms substantially with the unit the Petitioner sought at hearing.

## V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Sheet Metal, Air, Rail and Transportation Workers, Local 16.

### A. LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received at the SubRegional Office, Green-Wyatt Federal Building, 1220 SW 3<sup>rd</sup> Ave, Suite 605, Portland, OR 97204-2170 on or before **December 10, 2013**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of four copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

### B. NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, §103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. §103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to

12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**C. RIGHT TO REQUEST REVIEW**

Under the provisions of §102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570. This request must be received by the Board in Washington by **5:00 p.m. (EDT) on December 17, 2013**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>, but may not be filed by facsimile.<sup>6</sup>

**DATED** at Seattle, Washington on the 3<sup>rd</sup> day of December, 2013.



Ronald Hooks, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

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<sup>6</sup> To file a request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Regional office's original correspondence in this matter, and is also available on [www.nlr.gov](http://www.nlr.gov) under the E-file tab.