

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF CERTIFICATION

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In the Matter of

LOCAL LODGE NO. 5, INTERNATIONAL  
BROTHERHOOD OF BOILERMAKERS, IRON  
SHIP BUILDERS, BLACKSMITHS, FORGERS  
AND HELPERS, AFL-CIO,

DECISION NO. 7-91

DOCKET NO. RU-1051-89

Petitioner,

-and-

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL UNION 15, AFL-CIO,  
and NEW YORK CITY LOCAL 246, SERVICE  
EMPLOYEES INTERNATIONAL UNION,  
AFL-CIO,

Intervenors,

-and-

CITY OF NEW YORK,

Employer.

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INTERIM DETERMINATION AND ORDER

On September 6, 1989, Local Lodge No. 5, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO ("Local Lodge 5") filed a petition seeking to accrete the newly created job title of Metal Work Mechanic to Certification Number 80-70 (as amended), covering Blacksmiths and Boiler Makers.

On September 8, 1989, the Director of Representation of the Office of Collective Bargaining mailed "interest letters" to the International Union of Operating Engineers, Local Union 15, AFL-CIO ("IUOE" or "Local 15"), and to New York City Local 246, Service Employees International Union, AFL-CIO ("SEIU" or "Local 246").

On September 20, 1989, Local 15 filed a motion to intervene,

requesting that the Metal Work Mechanic title be added to a unit that it represents pursuant to Certification Number 15-70 (as amended), covering Welders.

On October 24, 1989, Local 246 filed a motion to intervene, requesting that the Metal Work Mechanic title be added to a unit that it represents pursuant to Certification Number 54-70 (as amended), covering Auto Mechanics, Auto Machinists, and related titles.

The City of New York City, represented by the City's Office of Labor Relations ("the City") stated that it did not oppose union representation of the title; it took no position on the question of appropriate unit placement.

Thereupon, the Board of Certification ordered a hearing to permit the resolution of factual questions raised in the initial petition filed by Local Lodge 5, and in the motions to intervene filed by Local 15 and Local 246. Accordingly, a hearing was held that began on September 11, 1990; was continued on September 13, September 17, September 18, October 10, October 24, October 31, December 3, December 5, December 6, December 11, December 12, and December 19, 1990; and was concluded on December 20, 1990.

On October 10, 1990, while the hearing was in progress, Local 246 moved to amend its original motion to intervene, requesting that, as an alternative, the Metal Work Mechanic title be added to a second unit that Local 246 represents pursuant to Certification Number 7-70 (as amended), covering Sheet Metal Workers. Local 15 stated that it did not oppose the amendment. Local Lodge 5, however, did oppose the motion. It requested and was granted time to prepare and file a brief in support of its opposition position. On October

16, 1990, Local Lodge 5 filed a letter brief opposing the motion, based upon what it viewed as a belated and prejudicial request by the SEIU.

On October 17, 1990, Local 246 filed a new petition seeking to consolidate Certification Number 54-70 (as amended) with Certification Number 7-70 (as amended).<sup>1</sup>

On October 22, 1990, Local 246 filed a brief in support of its amendment motion.

On October 24, 1990, the Trial Examiner ruled that, in view of the pending consolidation petition, Local 246 resolved adequately the potential for a conflict of interest. Over the objections and exception of Local Lodge 5, he granted the request of Local 246 to amend its original motion to intervene.

On December 5, 1990, Local 246 moved to withdraw both its original motion to intervene and the amendment to its motion to intervene. The Trial Examiner accepted the motion, thereby eliminating all interests of SEIU Local 246 from this proceeding.

At the conclusion of the hearing, Local Lodge 5 and Local 15 agreed that they would file post-hearing briefs by February 27, 1991. Local Lodge 5 requested and was granted a filing extension until close of business March 1, 1991. On March 4, 1991, Local Lodge 5 submitted its post-hearing brief. Thereupon, the record was closed.

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<sup>1</sup> The petition, docketed as RU-1076-90, was approved by this Board on February 21, 1991 in Decision No. 4-91, wherein consolidation of the two certifications was ordered.

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BACKGROUND

On November 23, 1988, the New York City Department of Personnel issued job specifications for the newly created job title of Metal Work Mechanic. Employees in this title have the general duties and responsibilities for:

Fabricating, assembling, and installing structural metal components for use in the repair and maintenance of automotive equipment, machinery, buildings, public structures and appurtenances.

Examples of typical tasks include:

Lays out jobs working from blueprints, shop drawings, samples, and written descriptions;

Makes patterns and templates;

Prepares material by cutting, drilling, forging, burning, welding, brazing, or other such process necessary to fabricate a component;

Assembles and attaches components to structures or equipment using such hand and power equipment as may be required;

Does rigging;

Performs specialized and structural welding;

Does necessary preparation and finishing work;

Lubricates equipment as required.<sup>2</sup>

Metal Work Mechanic candidates are required to have:

Five years experience as a metal work mechanic, blacksmith, or welder in fabricating, installing and metalworking plates, structural shapes or other metal components; or

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<sup>2</sup> The lubrication of equipment task was added to the job description by amendment dated November 7, 1990.

Three years of such experience plus sufficient vocational training to make up a total of five years of acceptable experience.

Appointees also must hold a valid Class I Restricted Qualification Shop and Field welder's license. This licensing requirement satisfies the provisions of Section 26-154 of the Administrative Code of the City of New York, which makes it unlawful for a person "to perform manual welding work on any structural member of any building in the city . . . unless such work is performed by a person licensed as a welder . . . ."

The lines of promotion for the Metal Work Mechanic title are from "Blacksmith's Helper" or "Auto Body Worker" to "Supervisor of Ironwork."

According to a report of the City Payroll Management System, there were thirteen (13) incumbents in the title as of February 18, 1991. During the time that the hearing was held, there were sixteen (16) incumbents in the title, according to a series of City Payroll Management System reports. The sixteen incumbents worked at various repair facilities operated by the Department of Sanitation ("the Department").

#### THE EVIDENCE

##### Local Lodge 5's Evidence

Local Lodge 5 introduced nine witnesses in its behalf, some of whom made more than one appearance. The Union's first witness was Richard Cunningham, Records Access Officer for the New York City Department of Personnel. Mr. Cunningham gave his view of the events and steps leading to the creation of the Metal Work Mechanic job title.

The Union's second witness was Joseph Gregorio, Assistant Business Manager for Local Lodge 5. Mr. Gregorio testified that part of his job as business manager requires him to visit the sites where his members are working. He said that, as a result, he frequently observes the work being performed by employees who Local Lodge 5 currently represents: Blacksmiths,<sup>3</sup> Blacksmith Helpers,<sup>4</sup> and Boiler Makers.<sup>5</sup> The witness explained the work of each of these crafts in general and described the types of equipment with which they work. According to Mr. Gregorio, Boiler Makers perform gas welding and burning as "an every-day occurrence."

The witness then recounted some specific jobs that he observed being performed by them and by Metal Work Mechanics at various Department of Sanitation repair locations throughout the City. At the Staten Island landfill Plant 1 bucket shop, Mr. Gregorio said that he saw Metal Work

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<sup>3</sup> Blacksmiths forge, forge weld, and shape metal for building, maintaining, and repairing equipment and appurtenances. They work with power hammers, angle irons, bridle irons, tools, automobile parts, and other similar pieces of equipment. Applicants must have five years previous experience as a Blacksmith, or a combination of experience and technical training as a Blacksmith's Helper and a Blacksmith, to qualify for this job.

<sup>4</sup> Blacksmith's Helpers assist Blacksmiths by attending the forge, assisting in forging and shaping metal, and assisting in repairing iron parts of vehicles and equipment. Applicants must have three years previous experience as a Blacksmith's Helper to qualify for this job.

<sup>5</sup> Boilermakers construct, maintain, repair and overhaul steam generating boilers, incinerators, stacks, tanks and appurtenant equipment. They work with acetylene torches for burning steel; they make production welds; they do layout work; and they chip, caulk, rivet, fill, fit, grind, patch, and drill steel. Applicants must have five years previous experience as a Boilermaker to qualify for this job.

Marine Boilermakers specialize in maintaining boilers and installing new boiler parts and related equipment on ferries and other floating equipment, and they repair structural steel on vessels and in terminals by welding.

Mechanics refurbishing crane buckets by welding and burning them. He also saw the Metal Work Mechanics fabricating "strainer-type" devices for skimming garbage off the waterway. At the Plant 1 Athay wagon shop, he saw Metal Work Mechanics welding and burning heavy steel damage that had been caused by crane buckets hitting the wagons, crimping and ripping the steel. At the landfill Plant 2 shop, the witness said that he saw Metal Work Mechanics fabricating a steel spillway ramp to catch garbage as it is being unloaded from barges, and he also saw them making repairs to Athay wagons. At the Central Repair shop in Maspeth, Queens, Mr. Gregorio said that he saw Metal Work Mechanics repairing sections of damaged steel on garbage truck bodies and on street sweepers. At the Willow Avenue repair shop in the Bronx, he saw a Metal Work Mechanic fitting a piece of steel at the top of a water truck. At the Tenth Avenue repair shop in Manhattan, the witness said that he saw a Metal Work Mechanic and a Blacksmith welding and making repairs to the large cylinder on the back of a recycling truck.

Under cross examination, Mr. Gregorio conceded that he had not seen Metal Work Mechanics performing many of the typical tasks listed in their job specifications, such as making templates, rigging, or tack welding. He also conceded that Welders,<sup>6</sup> Blacksmiths and Metal Work Mechanics frequently use the same tools and share the same equipment in their work.

Mr. Gregorio said that between August 1989 and July 1990, he solicited

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<sup>6</sup> Welders perform electric arc and oxy-acetylene (gas) welding on both light and heavy metals. They read and work from blueprints and sketches; they cut, fit and weld material; and they brush and grind welds. Applicants must have five years previous experience as a welder and must hold a Class I Restricted Qualification Shop and Field welder's license to qualify for this job.

and obtained representation authorization cards from each Metal Work Mechanic currently employed by the City. According to the witness, none of these employees have ever sought to rescind their authorizations. He acknowledged, however, that at least one Metal Work Mechanic also signed an authorization card for Local 15.

Raymond Maiara has been a Metal Work Mechanic since August of 1989. He testified that during his first day on the job, a supervisor told him that the newly hired Metal Work Mechanics would replace retiring Blacksmiths.

Mr. Maiara is assigned to the Athay wagon shop where he is teamed up with a Welder and another Metal Work Mechanic. He said that their main job is to rebuild the Athay wagons and other pieces of heavy equipment that are damaged constantly at the landfill. The witness detailed the tasks that he and other Metal Work Mechanics perform while repairing Athay wagons: After assessing the damage, they cut away the damaged area with a gas cutting torch. Next, they measure, mark, and cut the replacement pieces out of steel stock with the torch. Then, after rigging and mechanically lifting the new section into place, the Metal Work Mechanics reattach it by making tack welds. Mr. Maiara said that the final step was the production weld, a task usually performed by a Welder, although he acknowledged that occasionally, depending upon the job, Metal Work Mechanics make production welds as well. According to the witness, Blacksmiths at the Athay wagon shop perform the same work, except that they do no welding. He also said that although Blacksmiths and Metal Work Mechanics share the same vacation pick list, Welders have a separate pick list.

Steven Yandoli is a Metal Work Mechanic who works at the Plant 2 shop at



the Staten Island landfill. He described some of the projects he has worked on since he was hired in August 1989. Among other things, he has repaired and reinforced buckets on front-end loaders, he built a set of steel stairs, and he made two steel safety cages for lifts. Mr. Yandoli estimated that when he repaired and strengthened the front-end loader buckets, he made about twenty percent of the production welds and the Welder made the rest. When he built the stairs, the witness said that he did the lay-out work and cut the new materials with a torch. The Welder then burned out the old stair treads and heated them so that the witness could pound them straight with a sledge hammer on the blacksmith table. During the re-assembly, the Welder made all the production welds. When he made the lift cages, Mr. Yandoli said that he did all the measuring, cutting, and assembly, except the deck welds, which the Welder made. The witness confirmed that Blacksmiths and Metal Work Mechanics share the same vacation pick list, and he added that they share the same overtime pick list as well. He said that Welders have separate lists for both categories.

Steven Rogers is a Metal Work Mechanic who has worked at the Plant I bucket shop since March 1990. Most of his work has involved making repairs and exhaust system modifications on skimmer boats and repairing crane buckets. He said that on these jobs, at various times, he has been teamed up with a Blacksmith, a Boiler Maker, and another Metal Work Mechanic.

Mr. Rogers stated that he was teamed up with a Boiler Maker during most of the boat repair work. He said that they both did the ripping out and the cutting and fabricating of new material, but that he performed most of the welding because "Boiler Makers do not weld." Mr. Rogers has also worked on

re-riveting and re-bolting crane buckets, and he described the de-riveting, reaming, and hot riveting steps that the work entails. He stated that Welders do not rivet. Mr. Rogers said that the re-bolting process essentially is the same as re-riveting, except that bolts are used instead of hot rivets.

Wilfredo Vazquez is a Metal Work Mechanic assigned to the Facility Maintenance Unit. He has worked with a portable rig on temporary jobs at various locations for the Department of Sanitation since June 1990. He said that his first job involved the repair of several piers at the Staten Island landfill, which required him to cut out corroded sections of steel and fabricate replacement pieces that someone else later welded. He next went to the Southwest incinerator in Brooklyn, where he and two Boiler Makers worked on the conveyor system and replaced catwalk grates. The witness said that on both of those jobs, all three of them did the cutting, clamping, and tack welding. He said that although the grates required no production welding, all three of them made the production welds on the conveyor system.

Mr. Vazquez and the two Boiler Makers then went to Greenpoint incinerator where they replaced burned out exhaust flue sections. The work involved rigging, lifting, and bolting flue sections together, and welding the flue hangers. The witness said that they all shared the work equally.

Mel Glasser is an Auto Mechanic at the Central Repair shop in Queens. His functional title is auto adjuster, and his job is to estimate the cost of repairing damage to the Department's light vehicles. He said that small vehicle repairs are "vendored out," but any large trucks, such as garbage trucks, are repaired in the building. He had very limited experience with and knowledge of the work of Metal Work Mechanics, however.

Virginia Greene is a Metal Work Mechanic who has worked in the Central Repair shop's body shop since March 1990. She is teamed with a Welder. They mostly work on garbage trucks, but they have repaired open-backed trucks and buckets as well. Ms. Greene said that although she holds a current welder's license and allegedly was told during a pre-hiring interview that she would be doing some welding, the Welder with whom she works does all the welding and burning. According to Ms. Greene, the Welder asked her to weld or burn several times, and allegedly she refused. She stated that her job is limited to laying work out, fabricating pieces of steel, and fitting the pieces into place for welding. She testified that all Metal Work Mechanics and Blacksmiths in the body shop do the same work that she performs, whereas the Welders do the burning, tack welding, and production welding.

Roderick Crawford has been a Metal Work Mechanic since September 1989. He also works in the Central Repair shop's body shop. During the first eight months of his employment, he was teamed with a Welder. The witness estimated that during this time, about thirty percent of his work involved burning, tack welding, and production welding, and the balance involved blacksmithing. Since then, however, he has been paired with a Blacksmith, and he said that he now performs all the production welding.

#### Local 15's Evidence

Local 15 introduced ten witnesses in its behalf. Robert J. Breen has been a Supervisor of Mechanics responsible for directing work in both buildings at Staten Island landfill Plant 1 for four years. Previously he held the title of Auto Mechanic. Mr. Breen oversees repairs to heavy

equipment, machines, and pumps. As a Supervisor of Mechanics, he is in charges of Welders, Blacksmiths, Metal Work Mechanics, Auto Mechanics, Auto Machinists, Servicemen, Clerks, Stock Handlers, and one Carpenter.

Mr. Breen listed the tools that Metal Work Mechanics use commonly, which include a metal shear, burning rigs, grinders, sledge hammers, clamps and various hand tools. He said that, like Welders, Metal Work Mechanics perform gas welding, electric welding, and air arcing, as well as burning and fitting steel. The witness stated that he uses the same forms for evaluating the work performed by Metal Work Mechanics as he uses for Welders. He also stated that when one of the Welders is out sick, he assigns a Metal Work Mechanic to take the Welder's place. Mr. Breen confirmed earlier testimony, however, that Metal Work Mechanics and Blacksmiths share a common vacation pick list, whereas Welders pick from a separate list.

Jack Becaccio has been a Welder at the Staten Island landfill Plant 1 for five years. He is a member of Local 15. He said that two Metal Work Mechanics are assigned to work with him. The witness described the types of damaged equipment that his team has worked on, and listed the tools that they use. Mr. Becaccio said that as the Department hires Welders and Metal Work Mechanics, it issues them identical sets of tools. He estimated that the two Metal Work Mechanics he works with generally spend about seventy-five percent of their time making welds on damaged Athay wagons, spending the remainder on cutting and fitting the replacement pieces of steel.

Eugene Cretella is a Welder at the Staten Island landfill Plant 1 where he has worked for seventeen years. He has been the Local 15 shop steward for Welders' for about eight years. He estimated that about two-thirds of his

present work involves making repairs to damaged crane buckets, and that welding takes up about ninety percent of the total repair time. The witness stated that Welders and Metal Work Mechanics share the bucket repair work. He conceded, however, that as shop steward he is obligated to protect the jurisdiction of welding work. He also conceded that Metal Work Mechanics perform tasks commonly associated with work of Boiler Makers and Blacksmiths.

Kevin Codd has been a Supervisor of Mechanics for four years. He oversees work at both Staten Island landfill repair plants, including the bucket shop, the boat works, the blacksmith shop and the machine shop. Previously he held the title of Auto Machinist. The witness assigns work to Welders, Blacksmiths, Boiler Makers, and Metal Work Mechanics, among others. He estimated that in the bucket shop, welding and burning equals about eighty percent of the work. Mr. Codd said that the tools issued to newly hired Welders and Metal Work Mechanics are the same, their job descriptions and the work they actually perform is similar, and their annual work evaluation forms are identical.

Mr. Codd stated that Metal Work Mechanics now perform most of the work that Welders performed previously, although he acknowledged that he has assigned Boiler Makers and Blacksmiths to teach Metal Work Mechanics how to do some of their work. The witness said that there is a high degree of cooperation among all the trades being discussed, and that he did not regard any one of the titles as superior to the others. He explained that one team member could be the leader of one job and that a different team member holding another title could lead the next job, depending upon the type of work that the team is performing and the experience of each craftsman.

Robert Callahan has been a Supervisor of Ironwork at the Queens Central Repair Shop for seven years. Previously he worked for the City as a Welder and was a member of Local 15. Among the titles that he oversees are Blacksmiths, Welders, and Metal Work Mechanics. Mr. Callahan assigns jobs to teams and to people working by themselves, and makes daily inspections of their work. He said that he assigns Metal Work Mechanics to perform either welding work or blacksmithing work "depending on my needs for the day." Mr. Callahan said that of the five Metal Work Mechanics who work for him, three spend most of their time welding, while the other two work mainly as blacksmiths. He said that none of the Metal Work Mechanics perform welding work exclusively, although one of them has replaced a Blacksmith and performs only blacksmithing work.

Frank Pisciotta has been a Supervisor of Ironwork for the past four months. Before becoming a supervisor, he held the title of Welder for twenty years. He listed some of the jobs he has worked on, including the installation and repair of overhead garage doors and the installation of industrial ceiling fans. The witness also described the construction of a steel "Butler" building that he worked on. He said that on this job, he performed all the welding, while the Blacksmiths with whom he was working sorted and moved the beams and cross members. He had limited experience with and knowledge of the work of Metal Work Mechanics, however.

William McMeekin has been a Welder at the Queens Central Repair Shop for nine years and he is a member of Local 15. Before becoming a Welder, the witness worked as a Blacksmith for three years. He said that he did straightening and repair work during that time. Currently, Mr. McMeekin

operates a servograph, which is a steel-cutting machine located in the fifth floor body shop. The witness said that his experience as a Blacksmith has not helped him operate the machine.

Before working on the servograph, Mr. McMeekin worked with a Blacksmith repairing various types of damaged equipment. The witness said that during this time, he performed all the welding and burning, while the Blacksmith was responsible for evaluating the jobs, obtaining and laying out the materials, and clamping pieces into place. While he was welding, the Blacksmith usually acted as the "firewatch."

Eugene Egan is the Director of Labor Relations for the Department of Sanitation. He gave his view of the history behind the Metal Work Mechanic job title. According to Mr. Egan, there had been complaints from the administrative staff in the Bureau of Building Management "concerning the multiplicity of titles," including Blacksmith, Welder and Machinist, that were required to perform repairs. After discussions with representatives of the Commissioner's office and several bureaus, the Department decided not to attempt to change job descriptions for the existing titles, fearing "serious union problems because the building trades are very conscious of their jurisdictions." Instead, according to Mr. Egan, "the consensus was that the best course of action would be to create a new title." He explained that the Department wanted the Metal Work Mechanic title to "approximate the Welder's title, but carry with it additional mechanic duties, so in effect, the Welder could do mechanical work." He also explained that because the Welders' title already had a licensing requirement, following the course of the Welder position avoided the impediment of adding a licensing requirement to some

other type of job.

Mr. Egan acknowledged, however, that the job description that the Department eventually proposed included elements of the Blacksmiths' job description, elements of the Welders' job description, and elements that neither trade could perform. The witness also conceded that he lacked first-hand knowledge of the types of jobs present Metal Work Mechanics working in the field actually are performing.

Richard Van Velsor has worked was a Welder for over seven years at the Willow Avenue repair shop in the Bronx. He is a member of Local 15. Four weeks before testifying in this proceeding, the witness transferred to the Queens Central Repair Shop. Mr. Van Velsor said that a Metal Work Mechanic had been working in the Willow Avenue shop for about three months before he left. According to the witness, during this time, the Metal Work Mechanic assertedly performed the same welding, burning and layout work as he and another Welder performed. The witness then read the job specifications for Metal Work Mechanic. He stated that he does all the work listed in the Metal Work Mechanic description, except forging and supervising, at his present worksite. He also stated that he performed the same work at the Willow Avenue shop, and that when he left, a Metal Work Mechanic replaced him.

Under cross examination, Mr. Van Velsor conceded that he had never performed structural welding on buildings. He explained that he had mistakenly thought that truck chassis welding qualified as structural welding. He also conceded that the Metal Work Mechanic and the Blacksmith at Willow Avenue shop performed similar tasks and used many of the same tools in their work. He insisted, however, that at the Central Repair shop, Welders as well



as Blacksmiths and Metal Work Mechanics do rigging work.

Robert Luciani, Union Business Representative, was the final witness for Local 15. Mr. Luciani testified that his Union holds the bargaining certification for the approximately one hundred Welders who the City employs currently. In response to a question asked by counsel for Local Lodge 5, the witness acknowledged that Boiler Makers occasionally perform welding on equipment other than boilers, incinerators, and appurtenant components. He also said it was possible that non-Welders were performing welding in other City departments. Mr. Luciani stressed, however, that he regards this as out-of-title work. He testified that he has complained to the Sanitation Department about welding assignments being given to non-Welders in its Field Maintenance Unit, and that when he tried to investigate welding reportedly being done by Parks and Recreation Department employees, he "was given the stone-wall treatment."

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Positions of the Parties

Local Lodge 5's Position

Local Lodge 5 maintains that Metal Work Mechanics share a far greater community of interest with Blacksmiths and Boiler Makers than they do with Welders. It asserts, therefore, that Local Lodge 5 represents the most appropriate unit for placement of the newly created Metal Work Mechanic title, and that Metal Work Mechanics should be added to the bargaining certificate covering Blacksmiths and Boiler Makers by accretion. In the alternative, the Union claims that even if Local Lodge 5 and Local 15 are deemed to be equally

appropriate, Local Lodge 5 should be certified as the bargaining agent because it is the union by which incumbent Metal Work Mechanics would prefer to be represented.

Comparing the work of Metal Work Mechanics to the work of Blacksmiths and Boiler Makers, Local Lodge 5 contends that employees in all three of the titles perform virtually the same job duties and have the same responsibilities. It also contends that Metal Work Mechanics possess similar skills, qualifications, and training as those possessed by Blacksmiths "and/or" Boiler Makers. The Union minimizes the impact of the Class I Restricted Welder's license that Metal Work Mechanics must possess by pointing out that incumbents have not been assigned to perform any structural welding, thus allegedly making the licensing issue irrelevant to this proceeding.

Local Lodge 5 then notes that Metal Work Mechanics use the same tools to do the same work that Blacksmiths and Boiler Makers perform: they all allegedly fabricate, bend, shape, measure, lay out, fit, smooth, grind chip, drill, bolt, rivet, and rig heavy gauge metal. Similarly, the Union notes, Metal Work Mechanics heat, burn, and cut heavy gauge metal with oxy-acetylene torches, and tack weld it with welding equipment. Like Boiler Makers, Metal Work Mechanics make production welds in the flat, vertical and over-head positions.

In contrast, Local Lodge 5 contends that the job duties of Metal Work Mechanics are largely dissimilar from those of Welders. It argues that many jobs to which Metal Work Mechanics are assigned involve no welding at all. The Union explains that this is so because Metal Work Mechanics are usually teamed with Welders, who perform the welding tasks on a job, while the Metal

Work Mechanics allegedly are responsible for the fabricating, shaping and fitting work.

On the other hand, Local Lodge 5 notes that Metal Work Mechanics have been used "interchangeably" with Blacksmiths at many locations. It points out that they have replaced Blacksmiths who are temporarily off the job or who have retired or transferred. It also points out that the Department has placed Metal Work Mechanics and Blacksmiths on the same overtime and vacations pick lists "in order to assure that employees with blacksmithing skills are available during the work day." Welders, the Union notes, have separate vacation and overtime pick lists.

Finally, according to Local Lodge 5, the direct line of promotion for Metal Work Mechanic listed on the job description "mirrors" that of Blacksmiths. In contrast, it points out, the lines of promotion for Metal Work Mechanic do not mention the Welders title.

With respect to the employees' preference, the Union maintains that the record shows that Metal Work Mechanics clearly desire to be represented by Local Lodge 5, as evidenced by its submission of authorization for representation cards signed by all of the incumbents. Therefore, in its view, the placement of the Metal Work Mechanic title under the bargaining certificate held currently by Local Lodge 5 would best protect the rights of these employees under the New York City Collective Bargaining Law.

According to Local Lodge 5, where two employee organizations are equally appropriate to represent a job title and conclusive evidence of the employees' preference exists, an election is unnecessary. Instead of ordering an election, it contends that this Board should grant certification based upon

"other appropriate and suitable methods -- usually administrative review of dues authorization cards submitted by the preferred organization."<sup>7</sup> The Union argues that, in view of the "utter failure" of Local 15 to solicit even one authorization card, it would be "highly unlikely" that the rival union could obtain even the ten percent showing necessary to be placed on a ballot. Under these circumstances, according to Local Lodge 5, an election would be a futile waste of public funds. Therefore, it contends, this Board should grant the petition of Local Lodge 5, even if it deems the Local Lodge 5 and the Local 15 bargaining units to be equally appropriate.

#### Local 15's Position

Local 15 acknowledges that the job functions of the Metal Work Mechanic title have "some similarities" with the job functions of Welders, Blacksmiths, and Boiler Makers. It argues, however, that the job functions of Welders and Metal Work Mechanics are far more similar to each other than they are to the latter two titles. In its view, the overall differences between the qualifications and work of Welders and Metal Work Mechanics, viz-a-viz the work of Blacksmiths and Boiler Makers, are substantial enough to direct accretion of the Metal Work Mechanics into the existing unit of Welders. This, the Union insists, will "promote coordination of work functions and continuity on the jobsite."

According to Local 15, the new Metal Work Mechanic title, in actuality, amounts merely to a "restructuring" or an "amendment" of the Welders' title.

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<sup>7</sup> Citing Decision Nos. 14-80 and 51-70.

It asserts that, had the new title been in effect at the time of the original certification, Metal Work Mechanics would have been included in the Welders' unit. The Union bases this contention upon the Metal Work Mechanics' job description and examples of typical tasks, their licensing requirement, their skills and qualifications, the work that they actually perform, and the purposes of the Department, as expressed by the Director of Labor Relations. According to Local 15, when such conditions existed in past cases, they formed the basis upon which a community of interest was found to exist by this Board.<sup>8</sup>

The Union argues that the record is "replete" with instances of interchange between Welders and Metal Work Mechanics. It notes, for example, that one supervisor (Codd) considers Welders and Metal Work Mechanics to be "the same trade," different from the Blacksmith and the Boiler Maker trades. As another example, the Union points to the testimony of both Codd and a second supervisor (Breen), both of whom said that they use the same evaluation form when rating the work of Welders and Metal Work Mechanics. According to Local 15, welding is the critical function of Welders and Metal Work Mechanics, although all the testimony, including that of Local Lodge 5's witnesses, establishes that they also do fitting, laying out, measuring and rigging.

The Union then points out that Welders and Metal Work Mechanics have similar wage rates of \$47,000 and \$45,049 respectively. It asserts, however, that the Blacksmith rate of \$58,000 "is almost one third more than [that of]

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<sup>8</sup> Citing Decision Nos. 9-88 and 23-75.

the Metal Work Mechanic."

Local 15 also notes that the City requires only Welders and Metal Work Mechanics to possess licenses to perform welding. It contends that every Metal Work Mechanic testified that he or she was licensed and had years of experience performing welding before being hired, allegedly a skill separate and apart from other titles. The Union singles out the testimony of Frank Pisciotta as particularly noteworthy. When he formerly worked as a Welder, Mr. Pisciotta said that performed many welding functions that requires a license under the Administrative Code, including the installation and repair of overhead doors, the installation of gas lines and heavy ceiling fans, and the erection of a steel building. In the Union's view, the license requirement and ability of both Welders and Metal Work Mechanics to perform structural welding further evinces a similarity in their job qualifications, skills and training. It predicts that Metal Work Mechanics will be performing similar structural welding work in the future, which is why it is "imperative" that the Metal Work Mechanic be a licensed welder, "as is his fellow craftsman, the Welder."

With respect to the interest cards filed by Local Lodge 5, Local 15 contends that they have no probative value. The Union argues that due to the significant difference in the wage rates of the competing unions and the wages that the City pays to Metal Work Mechanics, these workers would have been willing to sign cards that could lead to higher wages, even if they have no community of interest with the employees in the higher paid title. According to Local 15, the fact that some or all the incumbent Metal Work Mechanics may have signed interest cards for a particular union does not override the duty

that this Board has to determine which unit placement is more appropriate to promote stable labor relations.

For all these reasons, according to Local 15, the Metal Work Mechanic title deserves to be accreted to the Welders' bargaining unit. In its view, this accretion will enhance the efficient operation of a public service, will foster stable labor relations, and will promote coordination of work functions and continuity on the job site.

#### Discussion

Section 2.10 of the Revised Consolidated Rules of the Office of Collective Bargaining ("OCB Rules") sets forth criteria to be applied by the Board in making determinations of appropriate unit placement of employees.

The Rule provides that the Board must consider, among other factors:

- a. Which unit will assure public employees the fullest freedom in the exercise of the rights granted under the [NYCCBL] and the applicable executive order;
- b. The community of interest of the employees;
- c. The history of collective bargaining in the unit, among other employees of the public employer, and in similar public employment;
- d. The effect of the unit on the efficient operation of the public service and sound labor relations;
- e. Whether the officials of government at the level of the unit have the power to agree or make effective recommendations to other administrative authority or the legislative body with respect to the terms and conditions of employment which are the subject of collective bargaining;
- f. Whether the unit is consistent with the decisions

and policies of the Board.

The issue that we must decide here is whether the newly created title of Metal Work Mechanic should be accreted to a previously certified unit, and, if so, which unit is the most appropriate. Of the various factors set forth in Section 2.10 of the OCB Rules that we use in making determinations of appropriate unit placement of employees, only three are of significance here: which unit will assure public employees the fullest freedom in the exercise of their rights granted under the New York City Collective Bargaining Law; where the community of interest of the employees lies; and which unit is consistent with the decisions and policies of the Board. Among these factors, we will give first consideration to the question of whether either of the new titles shares a community of interest with one or more of the pre-existing units.<sup>9</sup>

In making unit determinations in the past, we have considered a number of factors such as: the job duties and responsibilities of the employees involved;<sup>10</sup> employee qualifications, skills and training;<sup>11</sup> wage rates;<sup>12</sup> lines of promotion;<sup>13</sup> and the organization or supervision of the department, office,

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<sup>9</sup> Decision Nos. 11-90 and 15-87.

<sup>10</sup> Decision Nos. 16-86; 13-85; 18-81; 13-81; 34-80; 6-69; and 44-68.

<sup>11</sup> Decision Nos. 13-85; 13-81; 34-80; and 46-75.

<sup>12</sup> Decision Nos. 13-85; 41-82; 41-73; 45-72; 4-69; and 44-68.

<sup>13</sup> Decision Nos. 34-80; 22-75; 42-74; 45-72; 26-70 and 4-69.



or other subdivision.<sup>14</sup> This list is not exclusive. Not all these considerations are relevant in every case, nor are they necessarily controlling. Rather, we make unit determinations on a case-by-case basis after balancing the various factors to decide which unit finding is supported by the greatest weight of factors relevant to the matter at issue.<sup>15</sup>

Each of the nineteen witnesses presented by the Unions in this case gave knowledgeable and credible testimony. Most of the witnesses either were employed as Metal Work Mechanics when they testified, or had first-hand knowledge of the Metal Work Mechanics' work. After carefully evaluating their testimony, we are unable to conclude that the unit represented by Local Lodge 5 or the unit represented by Local 15 is the more appropriate one. A number of factors have frustrated our attempt at determining the more preferable unit among the two, which we now briefly review.

Throughout their many hours of testimony, the witnesses described a remarkable variety of work performed by the craftsmen in titles with which we are concerned. Equally remarkable is the esprit de corps and sense of teamwork shared by each of the skilled trades in their day-to-day operations.

The evidence shows that even amongst Welders, Blacksmiths and Boiler Makers, their skills intersect and the line of demarcation in their work is not always clear. The introduction of the Metal Work Mechanic title further amalgamates the work. According to the Sanitation Department's Director of Labor Relations, this, in fact, was management's intention when it proposed

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<sup>14</sup> Decision Nos. 55-76; 65-73; 61-71; 31A-71; 31B-71; 19-71; and 31-69.

<sup>15</sup> Decision Nos. 11-90 and 15-87.

the Metal Work Mechanic job specifications to the Department of Personnel.

Moreover, there is a wide disparity in the actual work that individual Metal Work Mechanics perform, depending upon their supervisors and their work locations. In the opinion of two supervisors (Breen and Codd), Metal Work Mechanics and Welders have skills that roughly are equivalent. A third supervisor (Callahan), however, is willing to assign Metal Work Mechanics to work either as Welders or as Blacksmiths, depending upon his needs for the day. One Metal Work Mechanic (Greene) said that she does no welding on her job at the Central Repair Shop in Queens; two others (Maiara and Yandoli) said that they do some welding at the Staten Island landfill, but that most of their work involves blacksmithing; a fourth Metal Work Mechanic (Vazquez) said that he does as much welding as do the two Boiler Makers with whom he works on the portable rig; and the fifth and sixth Metal Work Mechanics who testified (Rogers and Crawford) said that they have done a large amount of welding; Rogers while working in the boatyard at the landfill, and Crawford after being teamed with a Blacksmith at the Central Repair shop. A Welder (Becaccio) said that the two Metal Work Mechanics with whom he works at the landfill spend most of their time welding. However, a second Welder (Van Velsor) said that Welders, as well as a Metal Work Mechanic with whom he worked in the Bronx, all performed burning and layout work routinely.

Overlaying the apparent fungibility of at least some work involving heavy steel fabrication and repair, is the equivalency in levels of professional skill shared by each of the trades represented by Local Lodge 5 and Local 15. Kevin Codd showed himself to be a completely impartial witness. Not only was he one of the highest ranking supervisors to give testimony, but

his background as an Auto Machinist isolated him from the trades primarily involved in this case. According to Mr. Codd, which ever team member has the most experience on a particular job, or in doing a particular kind of work, would be the team leader of that job, regardless of their craft title. Although he viewed Metal Work Mechanics as being more closely akin to Welders than to Blacksmiths, he distinctly communicated his willingness to assign Metal Work Mechanics to any job that they were qualified to perform, regardless of whether the work consisted primarily of blacksmithing or of welding. Mr. Codd's attitude reflects the Department's original intention, which, according to its Director of Labor Relations, was to end "the multiplicity of titles" that were required to perform repairs on small jobs, by creating a new title whose incumbents could perform various types of repair work by themselves.

Administrative particulars also lack clear direction. On the one hand, job descriptions and the licensing requirement arguably appear to connect Metal Work Mechanics more closely to Welders than to Blacksmiths or Boiler Makers. On the other hand, the Department's system of overtime and vacation pick lists contradicts this apparent affinity. Blacksmiths and Metal Work Mechanics share one list, while Welders select vacations and overtime assignments from a separate list. While management appears willing to allow a Welder and a Metal Work Mechanic to be on vacation simultaneously, it seemingly prefers not to allow a Blacksmith and a Metal Work Mechanic to be away or to be earning overtime pay at the same time. Thus, from the standpoint of vacations and overtime, at least, we could deduce that the Department views Blacksmiths and Metal Work Mechanics as being more

interchangeable than Metal Work Mechanics and Welders.

The licensing requirement and the pay differentials also are not of sufficient weight to be controlling factors.

Welders, Blacksmiths and Boilermakers all are entitled to have their wages and certain supplemental benefits established at the "prevailing rate" by a determination of the City Comptroller pursuant to §220 of the Labor Law. Conversely, Metal Work Mechanics are non-prevailing rate employees. Thus, in this case, we are forced to divert from our policy not to include non-prevailing rate employees with §220 employees.<sup>16</sup> Otherwise, the exclusion would either leave Metal Work Mechanics unrepresented, or it would require the creation of a separate unit, contravening our long-standing and pre-eminent policy against the proliferation of units.<sup>17</sup>

Units comprised of employees subject to Labor Law Section 220 prevailing rate procedures may properly be more diverse and heterogeneous than bargaining units of ordinary titles faced with a full range of bargaining issues.<sup>18</sup> Additionally, these bargaining units frequently include numerous titles in one or several related occupational groups despite differences in salary ranges and variations in duties and promotional lines.<sup>19</sup> Thus, under these moderating circumstances, the facially disparate wage differential between Blacksmiths and Boiler Makers, and Welders and Metal Work Mechanics, is not a controlling

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<sup>16</sup> Decision Nos. 10-83; 9-74; 61-71; 12-70 and 98-70.

<sup>17</sup> Decision Nos. 15-87; 13-85; 41-82 and 12-70.

<sup>18</sup> Decision Nos. 23-76 and 61-71.

<sup>19</sup> Decision Nos. 23-76 and 12-70.

factor.

With respect to licensing, although a welder's license is required for structural welding, work on buildings does not appear to be a major job function of either Welders or Metal Work Mechanics in the Department of Sanitation, the only agency that employs this title. The testimony of the only two non-Metal Work Mechanics who had structural welding experience (Cretella and Pisciotta) indicated that structural welding constituted a relatively minor part of their careers in the Department. Of the six Metal Work Mechanics who testified, only one (Vazquez) had performed structural welding. Significantly, when Vazquez was performing the structural welding work at the Southwest and Greenpoint incinerators, he was teamed, not with licensed Welders, but with two Boiler Makers, whose licensing credentials were not established. Based upon this record, we cannot agree with Local 15's prediction the Metal Work Mechanics will be performing significant amounts of structural welding in the future, or that they share a unique community of interest with Welders because of an exclusive licensing requirement.

In view of all the evidence, we conclude that either of the two unions involved in this case represents a bargaining unit that could be appropriate for the Metal Work Mechanic title. Similarly, there is nothing of such compelling force in the record before us as to justify our singling out one of the units as being clearly more appropriate than the other. Under these circumstances, placing the petitioned-for employees in Certification Number 80-70 (as amended) covering Blacksmiths and Boiler Makers, or in Certification Number 15-70 (as amended) covering Welders, would be appropriate and entirely consistent with the decisions and policies of the Board.

We will, therefore, direct that an election be held among employees in the title of Metal Work Mechanic.<sup>20</sup> Local Lodge 5 and Local 15 will be named on the ballots. We will add the employees to the bargaining unit represented by the union that receives a majority of the ballots cast in the election.

We will not require authorization cards or other showing of interest from either union. We note that this proceeding began with a petition filed by Local Lodge 5 seeking the accretion the Metal Work Mechanic job title. As such, neither Local Lodge 5 nor either of the two original intervening parties were required by law to make a showing of interest.<sup>21</sup>

In other types of representation cases, we have regularly followed the policy of the Public Employment Relations Board (PERB) and the National Labor Relations Board (NLRB) by requiring, as a matter of administrative efficiency, a minimum showing of interest beyond the requirements of Rule 2.3b. to determine whether further proceedings are warranted. The purpose of this policy is to prevent the needless expenditure of public funds in the processing of frivolous applications.<sup>22</sup> Having satisfied ourselves that either

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<sup>20</sup> We have directed elections in several past cases involving unit placement. See, for example, Decision Nos. 29-79 and 12-70. See especially, Decision Nos. 11-90 and 27-80, which involved circumstances similar to this case.

<sup>21</sup> See Decision No. 11-90, wherein we noted that Section 2.3b. of the OCB Rules requires a showing of interest by a petitioning labor organization only for specific types of certification cases.

<sup>22</sup> See, NLRB v. J.I. Case Co., 31 LRRM 2330 (1953); Northport-East Northport Union Free School District v. UFT, 19 PERB 3016 (1986); Union of School Lunch Managers, Local 74 v. Terminal Employees Local 832, 15 PERB 3138 (1982); and State of New York v. Fraternal Order of New York State Troopers v. PBA, 15 PERB 3014 (1982).

unit involved currently in this case has a community of interest sufficient to justify the holding of an election, it cannot be said that their participation in the election would be frivolous.

In this same regard, we will not declare the election unnecessary simply because Local Lodge 5, at some point, was able to obtain signed authorization for representation cards from all of the incumbents. Authorization cards, distributed in the field by union officials, are not the equivalent of a secret ballot election conducted by an impartial agency. Moreover, at least one of the incumbents also signed an authorization card for Local 15, thus indicating some uncertainty on his part. Other incumbents also may since have changed their minds.

Therefore, we will neither declare Local Lodge 5 to be the winner on the basis of the authorization cards that it has submitted, nor will we require any additional showing of interest by Local 15. To do so at this point would delay the process unduly and would serve no useful purpose. On the other hand, if either of the unions does not desire to participate in the election, it may have its name removed from the ballot upon written request filed with this Board within ten days after service of this Determination and Direction of Election.

#### DIRECTION OF ELECTION

Pursuant to the powers vested in the Board of Certification by the New York City Collective Bargaining Law, it is hereby

DIRECTED, that as part of the investigation authorized by this Board, an election by secret ballot shall be conducted among the employees in the title

of Metal Work Mechanic employed by the City of New York and related public employers subject to the jurisdiction of the Office of Collective Bargaining. All such employees whose names appear on the payroll for the period immediately preceding this Direction of Election (other than those employees who have voluntarily quit, retired or who have been discharged for cause before the date of election) shall be eligible to vote. The elections shall be held under the supervision of the Board, or its agents, at a time, manner, place, and hours to be fixed by the Board. The purpose of the election is to determine whether the employees desire to be represented for the purposes of collective bargaining by Local Lodge 5, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, and thereby be added to the bargaining unit covered by Certification No. 80-70 (as amended), or by the International Union of Operating Engineers, Local Union 15, AFL-CIO, and thereby be added to the bargaining unit covered by Certification No. 15-70 (as amended); and it is further

DIRECTED, that either of these two employee organizations may have its name removed from the ballot in the aforementioned election by filing with the Board, within ten (10) days after service of this Direction of Election, a written request that its name be removed from said ballot.

DATED: New York, N.Y.  
March 14, 1991

MALCOLM D. MacDONALD  
CHAIRMAN

GEORGE NICOLAU



Decision No. 7-91  
Docket Nos. RU-1051-89

33

MEMBER

DANIEL G. COLLINS

MEMBER