

03-557-Cd  
TMP Co. Acquisition vs Sheet Metal Workers Int. etc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

vs.

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\*  
\* No. 03 - 557 - CD

SHEET METAL WORKERS INTERNATIONAL \* ACTION FOR DECLARATORY  
ASSOCIATION LOCAL UNION NO. 12 \* JUDGMENT  
and SHEET METAL WORKERS NATIONAL \*  
BENEFIT FUNDS, \*

## Defendants

\* ACTION FOR DECLARATORY  
\* JUDGMENT  
\*  
\*

\* Type of Pleading:

\* Filed on behalf of:  
\* Plaintiff

\*  
\* Counsel of Record for  
\* this party:

\* James A. Naddeo, Esq.  
\* Dr. J. D. #06829

\*  
\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

1900-1901

APR 14 2003

William A. Shaw  
Prothibution

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

## NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
Market and Second Streets  
Clearfield, PA 16830

(814) 765-2641, Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

**COMPLAINT**

NOW COMES the Plaintiff, TMP Company Acquisition, Inc., and by its attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff is TMP Company Acquisition, Inc., a Pennsylvania corporation having a place of business located at Graham Street, Hyde, Pennsylvania 16843.

2. That the Defendant, Sheet Metal Workers International Association Local Union No. 12 (hereinafter referred to as "Union"), is a local union with its principal place of business located at 1200 Gulf Lab Road - Harmarville, Pittsburgh, Pennsylvania 15238.

3. That the Defendant, Sheet Metal Workers National Benefit Funds (hereinafter referred to as "Fund"), is an

association with its principal place of business located at 601 North Fairfax Street, Suite 500, Alexandria, Virginia 22314.

4. That at all times referred to herein, the Plaintiff operated and continues to operate a manufacturing facility located in the Village of Hyde, Clearfield County, Pennsylvania, dedicated to the manufacture of refrigeration equipment and related products.

5. That commencing in 1989, Plaintiff and Defendant Union negotiated four separate Collective Bargaining Agreements, all of which were prepared and drafted by Defendant Union.

6. That all of the Collective Bargaining Agreements entered into between Plaintiff and Defendant Union provide that all persons newly hired by Plaintiff are required to serve a probationary period.

7. That the current Collective Bargaining Agreement for the period October 1, 2002, through March 31, 2004, provides for a probationary period of 100 days. A copy of said contract is attached hereto as Exhibit "A".

8. That ARTICLE XIX - WAGES and WELFARE BENEFITS, Paragraph 5, of the Collective Bargaining Agreement provides in part as follows:

TRAINEE

A. Probationary wage will be \$7.28 per hour for a ninety (100) day period.

B. After the first ninety (100) day period is complete, each employee's wage will be increased \$.36 per hour, bringing the base wage to \$7.64 per hour.

Basic Wage	\$7.64
Nat'l. Pension	.85

9. That on or about March 5, 2003, Defendant Fund demanded that Plaintiff submit to an audit of the contributions made on behalf of Plaintiff's employees to the Defendant Fund.

10. That during the course of said audit, Richard A. Gartner, an agent for Defendant Fund, informed Plaintiff that Plaintiff was obligated to make contributions to Defendant Fund on behalf of its employees while said employee was serving his or her probationary period of employment for the Plaintiff.

11. That the contention of Defendant Fund is in direct conflict with the terms of the Collective Bargaining Agreement attached hereto as Exhibit "A".

WHEREFORE, Plaintiff requests the Court to enter judgment:

A. Declaring that Plaintiff has no obligation to make contributions to the Defendant Fund for probationary employees;  
and

B. Granting such further relief as the  
Court may deem appropriate.

Respectfully submitted,

James A. Naddeo  
James A. Naddeo, Esquire  
Attorney for Plaintiff

Before me, the undersigned officer, personally appeared WILLIAM CARR, President of TMP Company, Inc., who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Will Carr  
William Carr

SWORN and SUBSCRIBED before me this 5th day of March, 2003.

NOTARY SEAL  
FRANK L. ROYER, Notary P. W.  
Clarfield, Clarfield County  
My Commission Expires May 17, 2003

*Peggy*

**COLLECTIVE BARGAINING AGREEMENT**

**BETWEEN**

**T.M.P. ACQUISITION COMPANY, INC.**

**AND**

**SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION**

**LOCAL UNION NO. 12**

**OCTOBER 1, 2002  
THROUGH  
MARCH 31, 2004**

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WHEREAS, it is the intent and desire of the parties hereto to foster and promote round, stable, and peaceful labor relations between the Employer, its employees covered by this Agreement and the Union and to establish a basic understanding relating to rates of pay, hours of work and other conditions of employment;

and

WHEREAS, it is the further intent and desire of the parties hereto to establish an orderly relationship between the Employer and the employees so that grievances and complaints will be settled quickly and to avoid all work interruptions during the term of the Agreement.

NOW, THEREFORE, the parties hereto mutually agree as follows:

#### ARTICLE I - RECOGNITION

The employer, the TMP Acquisition Company, Inc., recognizes Sheet Metal Workers' International Association Local Union No. 12 as the sole and exclusive bargaining agent for a unit of employees consisting of all employees including general labor employees of the aforementioned employer employed out of its Western Pennsylvania location excluding office clerical employees, professional employees, supervisors, kitchen equipment employees and guards as defined in the National Labor Relations Act.

#### ARTICLE II - UNION SHOP

1. It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution or effective date of this Agreement, whichever is the later, shall remain members in good standing and those who are not members on the execution or the effective date of this Agreement as aforesaid, shall one hundred (100) days following the execution or effective date of this Agreement or date of their employment, whichever date is the later, become and remain members in good standing in the Union. The term "good standing" shall be defined as is contained in the National Labor Relations Act.
2. If a discharge of an employee under this article is requested by the Union, the request shall be made in writing and the employee shall have five working days from the date that the written notice is served on the Employer, to become a member in good standing in the Union and the Union shall cooperate by accepting such employee into membership subject to the Union's by-laws.
3. The Employer has the right to employ non-union supervisory personnel for departments to coordinate the overall work in progress. Supervisor (s) may perform hands on duties as needed in a demonstration capacity when an emergency warrants such duty. Otherwise, work is normally to be done by those covered under this Agreement.
4. Upon authorization by the employee, TMP Acquisition Company shall deduct a 1.25% work assessment of the negotiated package on all hours paid. This work assessment will be transmitted to the Combined Funds of Sheet Metal Workers' Local Union #12 at 502 Martindale Street; 5th Floor; Pittsburgh, PA 15212, by the 15th day of each month.

### ARTICLE III - PROBATIONARY PERIOD

The probationary period shall be for one hundred (100) days. The 100 days are to be cumulative for a one (1) year period, from the date of hire. The employer may discharge such new employee at any time during the probationary period; and the discharge shall not be subject to the grievance procedures and arbitration provisions of this contract or to be questioned by the Union or the employee.

### ARTICLE IV - WORK WEEK

1. The regular scheduled work week shall consist of 5 eight hour days beginning on Monday and ending at the end of the shift on Friday.
2. There shall be a paid lunch period of thirty (30) minutes which shall be scheduled by the Employer.
3. The Employer shall have the right to establish and/or discontinue any shift of shift hours or starting time that it determines necessary by mutual consent between the Employer and the Union. NOTE: 2nd shift - 7% differential to be paid above hourly rate/3rd shift - 12% differential to be paid above hourly rate - agreed to, if needed. All shifts must begin on Monday and must be for a minimum of five (5) days.
4. All employees who are paid on a straight time hourly wage rate basis shall be paid time and one-half their regular straight time rate of pay for all hours worked in excess of eight hours in any one day.
5. The Employer shall have the right to establish a fourth shift. The 4th shift hours shall be from 7 A.M. Saturday to 11:00 P.M. Saturday and resume work on 7:00 A.M. Sunday to 11:00 P.M. Sunday. This shift will consist of 32 hours of work with 40 hours of pay, including fringe benefits. This shift may only be worked on a voluntary basis. Any additional hours worked shall be subject to the overtime clauses in this Agreement.

(Article XIII)

- 6.. The Employers agreed that it will endeavor to distribute the extra daily or Saturday work opportunity as equally as possible among the employees in the job classification affected, (if practical). However, it is understood that any employee working on a job shall continue to work on that job, if extra time is required thereon. All overtime must be offered to all employees presently working in the departments where the overtime occurs.

### ARTICLE V = DISCIPLINE AND DISCHARGE

The Employer retains the right to discipline or discharge employees for just cause or reason. In the event of a discipline or discharge, the Employer agrees to give prompt notice of same to the Union representative and Shop Steward. In the event that the Employee or Union questions the disciplinary action or discharge, a written grievance must be filed within two working days of the imposition of the discipline or discharge by the employee or the Union or be barred. If a grievance is filed as aforesaid, same shall then be processed in accordance with the grievance and arbitration provisions of this Agreement. Employees should adhere to company rules and regulations.

## ARTICLE VI - JOB INJURY

The Employer agrees to a time-off allowance not to exceed eight (8) hours pay at the employee's current shift straight time rate of pay, if the employee is injured while at work and treated by a doctor, and the Employer is so notified that the employee has been sent home by the doctor. The employee is entitled to an allowance of not more than eight (8) hours pay for the time missed at the employee's current straight time rate of pay, per job injury on company time.

## ARTICLE VII - HOLIDAYS WITH PAY

1. The following holidays shall be granted to all working employees, parties to this Agreement.  
New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, **Day after Thanksgiving**, First Day of Deer Season, and Christmas Day.
2. Should any of these holidays fall on a Saturday or Sunday, either the following Monday or the previous Friday will be observed as the holiday and shall be considered as within the holiday requirements of this Agreement.
3. Probationary employees shall not be eligible for holiday pay.
4. An employee who is otherwise eligible to receive Holiday Pay shall not receive the same, unless he is scheduled to work and works a full scheduled workday both preceding and following the holiday unless the absence has been excused by the Employer, except as provided in Section 5 of this Article.
5. Any employee who has been laid off during the week preceding or during the week in which a holiday falls shall be eligible and shall receive holiday pay.

## ARTICLE VIII - GRIEVANCE AND ARBITRATION

1. Should any employee have a grievance or should any dispute arise between the Employer and the Union, as to the meaning, application, performance or operation of any provision of this Agreement, such grievance or dispute shall be taken up for settlement as follows:
  - a) The grievance must be submitted by the party or the employee aggrieved to the other party in writing and must be presented to the adverse party within three working days from the date the grievance arose or be barred (unless a shorter period is provided herein).
  - b) The grievance of an aggrieved employee shall first be discussed by the employee, his shop steward and the department manager. If the grievance is not satisfactorily adjusted by such discussion, then:
    - c) The said grievance shall be discussed by a representative of the Union and a representative of the Employer.
    - d) If the employer or union has a grievance, the same shall be presented to the other party in writing within the time limits aforesaid but shall be immediately discussed by a representative of the Union and a representative of the Employer.

e) If such grievance is not satisfactorily settled by the discussions heretofore provided, either the Union or the Employer may, within ten (10) working days after the answer of the disposition of the grievance in the discussion between the representatives of the Union and the Employer, give written notice to the other parties of the desire to arbitrate and the matter shall then be referred to final and binding arbitration. If timely notice is given, the Employer and the Union shall endeavor to select a party mutually satisfactory to them to act as arbitrator.

2. The parties hereto specifically agree to the decision of the arbitrator for any matter submitted under the terms of the Agreement.
3. Only the Employer and the Union shall have the right to request arbitration hereunder.
4. The fee of the impartial arbitrator shall be shared equally by both parties.

#### ARTICLE IX - CREDIT UNION

Employees are entitled to have payroll deductions made from their pay, either in dollar amounts or percentage amounts, payable to their individual accounts in the Sheet Metal Workers' Local Union #12 Credit Union.

#### ARTICLE X - PENSION

The employer shall contribute toward a pension plan set up and governed by the Union's National Pension Fund. It is further agreed that any adjustments or increases necessary by National Pension to maintain present benefit levels shall be the sole responsibility of the employer.

#### ARTICLE XI - VACATIONS

1. Vacations with pay shall be provided to employees who qualify based on the anniversary date of hire.

##### DURATION OF EMPLOYMENT

After one year of continuous employment -

After two years of continuous employment -

After five years of continuous employment -

per year of employment until a maximum of three weeks paid vacation is reached

##### PAID VACATION PERIOD

one week paid vacation

two weeks paid vacation

one additional day of paid vacation

2. The Employer may close his plant for vacation purposes with proper notice to the employees.

3. Vacation pay for an employee who is compensated on a straight time hourly wage rate basis shall be his regular straight time rate of pay. Employees working shifts will be compensated at shift rates of pay.

4. In the event that a scheduled holiday falls during an employee's vacation, then the employee affected shall have his vacation period extended one day or shall receive a day's pay in lieu thereof.

5. In the event that the Company should close the plant for two weeks during the Christmas holiday, all employees who qualify, will be paid Christmas Day, and New Year's Day in advance.

Those employees entitled, will receive their pro-rated vacation as earned as of January 1. If any employee chooses not to take his vacation at that time, it must be agreed upon between the Employer and employee.

6. Vacation pay shall be given on the basis of forty (40) hours per week and at the current shift straight time rate of pay for those eligible on the Friday before his vacation period.

7. All accrued vacation time shall be paid prior to an employee's scheduled vacation. All requests for vacation pay in advance shall be in writing at least 2 weeks early to accommodate the employer's pay schedule.

8. Vacation may be taken after July 1st Anniversary date, except not more than 20% of the working force per job classification may be on vacation at one time unless mutually agreed to by Employees and Employer.

#### ARTICLE XII - DEATH IN THE FAMILY & JURY DUTY

1. The Employer agrees that in the event an employee, other than a probationary employee, is actually working and takes time off on a scheduled workday because of a death in the immediate family, the Employer will pay the employee for any such scheduled workday taken off, which occurs within three (3) calendar days following the death and provided the employee actually attends the funeral. The first workday shall be either the day of death or the day immediately thereafter. The maximum number of days that can be granted under this provision is three (3) days. A death certificate must be furnished if the Employer requests same. The immediate family shall consist of the parents, spouse, child, brother, sister, mother-in-law, and father-in-law.

2. The employer agrees that any employee who has been called for jury duty and presents, upon request of the employer, documentation of such appointment shall be compensated at their regular hourly rate for 8 hours pay. This benefit shall not be extended past 2 weeks or 10 consecutive working days in 1 year.

### ARTICLE XIII - OVERTIME

1. Overtime will be paid at 1 ½ times the shift rate. Hours over eight (8) per day and over forty (40) per week.
2. Overtime will not be denied a man because of missed time during the week provided the Company is properly notified.
3. It is the duty of the Steward to report all overtime given him by Management.
4. Emergency overtime can be performed at any time.

Example: Truck to be unloaded or loaded, or waiting for equipment to be completed.

5. Any work performed on Saturday shall be at 1 ½ times the regular hourly rate. Any work performed on recognized holidays and Sundays shall be paid at 2 times the regular hourly rate.

### ARTICLE XIV - LAYOFF NOTICE

The Employer shall notify employees 2 hours by the end of the shift, the day of a layoff. However, if employees do not perform work satisfactorily during the aforesaid period, the Employer reserves the right to dismiss such employees immediately.

### ARTICLE XV - NO STRIKES OR LOCKOUTS

1. It is agreed that the Union, its officers and representatives and the employees covered by this Agreement shall not strike or picket, or in any way interfere with or interrupt the production of the Employer or the operation in the term of this Agreement.
2. The Employer agrees that there shall be no lockout of employees during the term of this Agreement.

Should there be a strike or slowdown, picketing, or interruption or interference with the Employer's production or any operations of the Employer in violation of this Article in any manner by the Union, its officers and/or agents, or by employees covered hereunder during the term of this Agreement, then the Union, its officers, agents and the shop steward shall immediately declare the strike, slowdown, picketing or interference with the production or operation to be illegal and unauthorized and shall order those engaged in such activity to stop same and resume full production. The order and the declaration shall be in writing.

## ARTICLE XVI - POLITICAL ACTION LEAGUE CHECK-OFF

The Employer agrees to honor political contribution deduction authorizations from it's Employees who are Union members in the following form:

"I hereby authorize the Employer to deduct from my pay the sum of two cents (\$.02) for each hour worked and to forward that amount to PAL Political Fund. This authorization is signed voluntarily and with the understanding that PAL Political Fund will use this money to make political contributions and expenditures in connection with Federal, State and Local elections. I am aware of my right to refuse to sign this authorization without reprisal." The authorization may be revoked by mailing notices of revocation by United States Registered or Certified Mail, Return Receipt Requested, to the Treasurer, PAL Political Committee, 1750 New York Avenue N.W., Washington, D.C. 20006, accompanied by a form stating the name and hours worked for each Employee for whom a deduction has been made."

Voluntary deduction authorization cards will be made available to the Employee.

## ARTICLE XVII - SHOP STEWARD

1. Each shift shall have a steward. The first shift steward shall be designated as chief steward. The second and third shift stewards will report any matters regarding safety or contract issues directly to the chief steward only.
2. The Employer shall recognize an employee as Shop Steward only after receiving written notice of his selection. The shop steward shall be the last to be withdrawn from employment in case of insufficient work or slack season and the first to be re-hired by the Employer. Under no circumstances shall the Shop Steward be discriminated against by the Employer.
3. The chief Shop Steward shall have the right to settle minor grievances between the Employer and the employees during working hours and shall be paid regular straight time rate of hourly pay for such time. Whenever a chief Shop Steward is not able to settle any dispute or grievance with the Employer or the designated representative of the Employer, the chief Shop Steward shall call in the Business Agent of the Union.
4. When more than two (2) men work overtime, the Steward shall also be asked to work all overtime.
5. Neither the Shop Steward or employee or group of employees covered by this Agreement is authorized to cause or engage in any strike, slowdown or stoppage in the shops or places of business of the Employer, or order the discharge of any employee, nor shall he be deemed the agent of or authorized to act for the Union for any purpose whatsoever.
6. The Union agrees to cooperate with the Employer to remedy any such situation by immediately giving written notice to the Employer and to the involved employees, declaring said activity to be unlawful and directing the employees to return to work.
7. The Employer shall have the right to take disciplinary action which it determines necessary - against any of all the employees who participate in any of the aforementioned activities.

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### ARTICLE XVIII - MISCELLANEOUS

1. The employees covered by this Agreement shall not engage in any competing business.
2. No employee covered by this Agreement shall work on his own on the premises of the employer without obtaining permission of the management.
3. The Union and the employees, and the Employer agree to cooperate in order that the required work shall be accomplished in the manner desired by the Employer and shall give efficient service to the customers.
4. The employer agrees to provide access to use a telephone on all shifts so that the employees may call out or receive calls at work. Such calls are to be of short duration for necessary business and are not meant for habitual or daily use unless approved by the employer.

### ARTICLE XIX - WAGES AND WELFARE BENEFITS

1. Wages at the established rates shall be paid by check and weekly on Thursday.
2. The established hourly wage rates shall be those specified below.
3. All employees regardless of seniority or status shall be paid in full including holiday or vacation pay if applicable on the day of lay-off.

Welfare shall be as specified below:

4. In the event Health and Welfare increases are not incurred, the 2nd and 3rd year of the contract as projected, it is agreed that the wages will increase a maximum of twenty cents (\$.20) per hour each year of the contract above the negotiated increase.

Any and all increases in Health and Welfare shall be deducted from the projected increase. All increases above projected increases will be incurred by the employer.

The projected increases are \$.20 per hour for the 2nd and 3rd years of the contract.

5. WELFARE - TMP Acquisition Company will provide health insurance coverage through Central Insurers Group with offices at 1360 North Atherton Street; State College, Pennsylvania 16803. During the term of coverage, there will be no additional charges made to members of Local 12 working for TMP Acquisition Company. TMP Acquisition Company further agrees not to modify the benefits provided as set forth in the Summary Plan Description and will not change deductibles, coverages or any other terms or conditions of the coverage prior to the end of the term or the present contract with Local 12, with an expiration date of March 31, 2004.

### SKILLED KITCHEN EQUIPMENT EMPLOYEES

As of October 1, 1999, the wage rate shall be:

Basic Wage	\$ 15.21
Nat'l. Pension	.85 (See Article X for stabilization increases)
<u>SASMI II (Based on 3% of the above)</u>	
TOTAL PACKAGE \$ 16.06	

### TRAINEE

- A. Probationary wage will be \$7.28 per hour for a ninety (100) day period.
- B. After the first ninety (100) day period is complete, each employee's wage will be increased \$.36 per hour, bringing the base wage to \$7.64 per hour

Basic Wage \$ 7.64

Nat'l. Pension .85

#### SASMI II (based on 3% of the above)

- C. After one (1) year from the starting date, the base wage will be \$8.58 plus fringe package. After two (2) years, the base wage will be \$9.06 plus fringe package.
- D. After three years, trainees will be elevated to Skilled General Labor Employees.
- E. NOTE: ALL WAGE INCREASES DUE EMPLOYEES WHO HAVE STARTED THEIR EMPLOYMENT PRIOR TO THIS AGREEMENT SHALL HAVE THOSE INCREASES ADDED TO THE BASE ESTABLISHED UNDER THE PREVIOUS CONTRACT.

### SKILLED GENERAL LABOR EMPLOYEES

- A. Skilled General Labor Employees, upon completion of the probationary and training period, all skilled general labor employees shall receive an \$10.35 hourly rate.
- B. Basic Wage \$10.78
- Nat'l. Pension .85
- SASMI II (based on 3% of the above)
- TOTAL PACKAGE \$11.63

### ARTICLE XX - BONDING

Each Employer covered by this Agreement shall place on deposit with the Health, Welfare, Pension Trustees: 1200 Gulf Lab Road; Pittsburgh, PA 15238, a Guaranty Bond written by a bonding company licensed to do business in the Commonwealth of Pennsylvania in the amount of:

1-10 men	\$10,000.
11-20 men	\$20,000.
21 & over	\$40,000.

in favor of the Sheet Metal Workers Combined Funds. This Guaranty Bond shall guarantee the payments required to be paid by the Employer pursuant to the terms of this Agreement to the following Funds: Sheet Metal Workers' Local Union No. 12 Welfare Fund, SMWIA National Pension Fund, and the Journeymen-Apprentice Training Fund. The provisions of this Section shall become effective on October 1, 2002. A Bond shall be furnished within fifteen (15) days from the date of employment of any employee covered by the terms and conditions of this Agreement. The Bond as required under the provisions of this Section shall remain in full force

and effect until the termination of this Agreement and furnished, at least on an annual basis. In the event the employer is unable to purchase a guaranty bond, all benefits and fringe payments included in this agreement shall be remitted on a weekly basis until the employer can purchase said bond.

#### ARTICLE XXI- MANAGEMENT PREROGATIVE

1. Except as specifically abridged, delegated, granted or modified by this Agreement, all the rights, powers, and the authority the Employer had prior to the signing of this Agreement, are retained by the Employer and remain the rights of management. Included in such rights, but not limited thereto, is management's right to operate it's shops, to contract for, and to sub-contract work (as heretofore or for economic reasons), to introduce new lines and departments, to discontinue present lines and departments; to direct the working force to determine the work to be done; to hire, transfer, promote, discipline and discharge for cause; to introduce new methods of operation or discontinue; to determine the work to be done in the shop and/or outside the shop.
2. There shall be no individual agreements with employees. This contract contains the full understanding between the parties and cannot be modified except by a written executed agreement. Any items not specifically included in this Agreement are understood to be management prerogatives.
3. The employer agrees that any employee on lay-off status who has completed the probationary period and who has maintained membership in Local #12 shall be recalled prior to hiring new employees.

It is further agreed that whenever possible, such recalls would be in the reverse order of lay-off, so as not to discriminate against those employees receiving a higher wage scale.

Management maintains the right to discharge employees for just cause.

#### ARTICLE XXII - TOOLS

1. Employees shall supply for their use the proper and necessary hand tools for the employee to do the work required in the shop of the Employer as has been a past practice.
2. The Employer shall supply all shop equipment.

#### ARTICLE XXIII-PLANT CLOSING NOTICE

The employer may not order a "plant closing" or "mass layoff" as those terms are defined in the Worker Adjustment & Restraining Notification Act, 29 U.S.C. 2101, et seq., until the end of a six-month period after the Employer serves written notice of such order upon the Union and all members of the bargaining unit. If the Employer fails to give such notice, or chooses not to give such notice, the Employer shall pay each bargaining unit member six-months pay.

#### ARTICLE XXIV-SUCCESSOR AGREEMENT FOR SHEET METAL WORKERS LOCAL 12

In the event of any sale or transfer of any facility or the sale or transfer of any business operation, in majority shares in, of the employer, or any employer subsidiary or division which is presently under contract with this Local Union, the sale or transfer agreement with the purchaser or transferee shall condition such sale or transfer upon the employment

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transferee of bargaining unit employees affected by such sale or transfer with recognition of their seniority, which is defined as the length of service the employee has with the existing company from their original date of hire until the date of sale and/or transfer, and upon the acceptance and adoption of the existing collective bargaining agreement covering such employees. Transactions covered by this provision include asset sales, as well as stock sales, mergers, consolidations, spinoffs, subcontracts, or any other method by which a business operation is transferred.

## ARTICLE XXV - SASMI - II NATIONAL STABILIZATION AGREEMENT

The undersigned Employer and Local Union agree as follows:

Beginning on the effective date of the collective bargaining agreement of which this clause is made a part (or on October 1, 2002), (if the effective date of such agreement and this clause differ), the Employer shall make monthly contributions of an amount equal to three percent (3%) of the Gross Earnings of each employee subject to this Agreement to the National Stabilization Agreement of the Sheet Metal Industry Trust Fund ("SASMI - II FUND"). "Gross Earnings," for purposes of this Agreement, shall mean total wages paid to an employee by the Employer which are reportable by the employee for federal income tax purposes.

The employer hereby adopts the SASMI - II Trust Agreement as presently constituted and as the same may be amended from time to time, and agrees to be bound by all Rules and Regulations of the SASMI - II Plan as adopted by the Trustees, as presently existing and as the same may be amended from time to time.

The SASMI - II Trust Agreement and the SASMI - II governing Rules are incorporated by reference into this Agreement as if the language of those documents was reproduced herein verbatim.

The Employer further agrees that contributions, in the form of a check made payable to the "SASMI -II Fund" are due on the twentieth (20th) day of the month immediately following the last day of the month in which work was performed for which contributions are required. Contributions are to be sent to the SASMI -II office at 601 North Fairfax Street, Suite 400, Alexandria, VA 22314, and are to be accompanied by a remittance report on a form approved by the SASMI - II Board of Trustees.

Contributions not received by SASMI - II by the date set out above are delinquent and the Local Union may take whatever action is necessary to insure prompt payment of such delinquent contributions. SASMI - II is entitled to the relief provided by Section 502(q) of the Employee Retirement Income Security Act of 1974, including but not limited to interest, liquidated damages, attorneys' fees and costs.

FOR THE EMPLOYER:

S/ \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE OF SIGNATURE: \_\_\_\_\_

FOR THE LOCAL UNION:

S/ \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE OF SIGNATURE: \_\_\_\_\_

## ARTICLE XXVI - DURATION OF AGREEMENT

This Agreement is made and entered into this 1st of October in the year 2002 and shall remain in full force and effect for a period of 18 months from the date thereof.

Thereafter, this Agreement shall be deemed to be renewed from year to year unless either party notifies the other in writing, by Registered or Certified Mail, at least sixty (60) days before the expiration date, of its desire to terminate or modify said Agreement on such expiration date. Upon giving notice, depending on the request the Agreement shall either be negotiated for the purpose of modification or it shall be deemed to expire as of the expiration date. The termination date of this Agreement shall be March 31, 2004.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, and have hereunto set their hands and seals the day and year first above written.

THE T.M.P. ACQUISITION COMPANY, INC.      SHEET METAL WORKERS' L.U. #12

---

---

AGREEMENT BETWEEN TMP ACQUISITION COMPANY  
AND SHEET METAL WORKERS' LOCAL NO. 12

Health Care Coverage for Local 12  
Employees of TMP Acquisition Company

Effective October 1, 2002, employees of TMP Acquisition Company will no longer be covered by the Sheet Metal Workers' Local Union No. 12 Health and Welfare Fund and health and welfare benefits will not be provided to those members of Local 12 working for TMP Acquisition Company after October 1, 1999. The employer, TMP Acquisition Company, agrees to provide health insurance coverage for members of Local No. 12 working for TMP Acquisition Company until the end of the term of the current collective bargaining agreement.

TMP Acquisition Company agrees that the plan of health insurance to be provided by the company will comply with the description of the Plan set forth in the Summary Plan Description attached hereto and made a part hereof as Exhibit "A". TMP Acquisition Company will provide health insurance coverage through Central Insurers Group Insurance/Geisinger Group with offices at 1360 North Atherton Street, State College, Pennsylvania 16803. During the term of coverage, there will be no additional charges made to members of Local 12/Acquisition Company other than those set forth in the Summary Plan Description.

TMP Acquisition Company further agrees not to modify the benefits provided as set forth in the Summary Plan Description and will not change deductibles, coverages or any other terms or conditions of the coverage prior to the end of the term of the present contract with Local 12.

It is further agreed that T.M.P. Acquisition Company is solely responsible to pay any and all increases in health and welfare benefits for the term of this agreement which expires on March 31, 2004.

S/

REPRESENTATIVE OF  
TMP ACQUISITION COMPANY

S/

REPRESENTATIVE OF  
SHEET METAL WORKERS' LOCAL #12

5

**Addendum No. 1**  
**Company Rules and Disciplinary Procedures:**

A.) Employees are subject to the following disciplinary action with respect to a certain offense in accordance with:

- A) One verbal reprimand with notification to shop steward
- B) One written warning with notification to shop steward
- C) Three days off without pay
- D) Dismissal

B.) The accumulation of any employee of any four (4) written notices or written notices of disciplinary penalties during any twelve (12) month period is cause for dismissal.

C.)	Offenses:	1st <u>Offenses</u>	2nd <u>Offenses</u>	3rd <u>Offenses</u>	4th <u>Offenses</u>
1.	Failure to follow Company job instructions - written or verbal.	(A)	(B)	(C)	(D)
2.	Causing material or parts to be scrapped due to carelessness.	(A)	(B)	(C)	(D)
3.	Violating a safety rule or safety practice.	(A)	(B)	(C)	(D)
4.	Being tardy or absent without notification.	(A)	(B)	(C)	(D)
5.	Failure of proper use of time clock (in or out).	(A)	(B)	(C)	(D)
6.	Wasting time, loitering, or leaving place of work during work hours without permission.	(A)	(B)	(C)	(D)

7. Use or misuse of another employee's tools without his consent. (A) (B) (C) (D)

8. Posting, altering, or removing any matter on bulletin boards or company property unless authorized. (A) (B) (C) (D)

9. Misusing, destroying, or damaging company property. (B) (C) (D)

10. Gambling on Company premises. (B) (C) (D)

11. Deliberately restricting output. (B) (C) (D)

12. Threatening, intimidating, or coercing, of fellow employees (B) (C) (D)

13. Removal of articles from Company property without authorization. (B) (D)

14. Immoral conduct or indecency (B) (D)

15. Punching another employee's time card or having one's time card punched with intent to defraud. (C) (D)

16. Fighting during working hours or on Company property. (C) (D)

17. Sleeping on the job during work hours. (C) (D)

18. Insubordination (C) (D)

19. Reporting for work under the influence of alcohol or drugs or consumption of same during work hours. (C) (D)

20. Theft of any Company or employee property (D)

21. Falsifying Company records. (D)

22. Possession of fire arms or explosives on Company premises without authorization. (D)

The intent of Rule 22, Company Rules and Disciplinary Procedures, is to prevent any firearms or explosives for entering the Plant. Employees are not specifically forbidden by this rule to bring hunting rifles, etc., to work as long as they remain locked in their cars or trucks. Under no circumstances can such weapons be brought into the plant.

*R.M.C.*  
ADDENDUM NO. 2

01-07-03

*well Effective 1-07-03,*

It is agreed between T.M.P Acquisition Company and Sheet Metal Workers' Local Union #12 that all temporary or probationary employees must be laid off prior to any employees that have been initiated into sheet metal workers locals.

FOR T.M.P ACQUISITION COMPANY

FOR SHEET METAL WORKERS' LU#12

S/ W DC Curw

S/ R Michael Jencant

S/ President

S/ Asst. Rep. Jan. 8, 03

CLERAFFIELD, PENNSYLVANIA 16830  
R.O. BOX 552  
211 1/2 EAST LOCUST STREET  
ATTORNEY AT LAW  
JAMES A. NADDEO

— Lap over margin —

FILED 2cc  
Apr 13 1981  
APR 14 1981  
Aly naddeo  
Aly pd.  
85.00

Will. A. Shaw  
Prothonotary

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

**TMP COMPANY ACQUISITION, INC.**

**Sheriff Docket # 13938**

**VS.**

**03-557-CD**

**SHEET METAL WORKERS INTERNATIONAL ASSOC.**

**COMPLAINT ACTION FOR DECLARATORY JUDGMENT**

**SHERIFF RETURNS**

NOW APRIL 23, 2003, PETER DEFAZIO, SHERIFF OF ALLEGHENY COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ACTION TO DECLARATORY JUDGMENT ON SHEET METAL WORKERS INTERNATIONAL ASSOC. LOCAL UNION #12, DEFENDANT.

NOW APRIL 28, 2003 SERVED THE WITHIN COMPLAINT ACTION TO DECLARATORY JUDGMENT ON SHEET METAL WORKERS INTERNATINOAL ASSOC. LOCAL UNION #12, DEFENDANT BY DEPUTIZING THE SHERIFF OF ALLEGHENY COUNTY. THE RETURN OF SHERIFF DEFAZIO IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED MARCY, AGENT IN CHARGE.

NOW APRIL 17, 2003 MAILED THE WITHIN COMPLAINT ACTION FOR DECLARATORY JUDGMENT TO SHEET METAL WORKERS , DEFENDANT BY CERT. MAIL # 7002 2030 0000 6873 0750 AT 601 NORTH FAIRFAX ST., SUITE 500, ALEXANDRIA, VA. 22314 BEING THEIR LAST KNOWN ADDRESS. THE LETTER WAS RETURNED WITH ATTACHED LETTER STATING NO LEGAL ENTITY "SHEET METAL WORKERS NATIONAL BENEFIT FUNDS".

NOW MAY 12, 2003 SERVED THE WITHIN COMPLAINT ACTION FOR DECLARATORY JUDGMENT ON SHEET METAL WOKERSTNATIONAL PENSION FUND, DEFENDANT BY CERT. MAIL # 7002 2030 0000 6873 0842 AT 601 NORTH FAIRFAX ST., SUITE 500, ALEXANDRIA, VA. 22314 BEING THEIR LAST KNOWN ADDRESS. THE RETURN RECEIPT IS HERETO ATTACHED AND MADE A PART OF THIS RETURN ENDORSED BY AGENT FOR DEFENDANT.

---

**Return Costs**

<b>Cost</b>	<b>Description</b>
<b>44.51</b>	<b>SHERIFF HAWKINS PAID BY: ATTY CK3#14961</b>
<b>20.00</b>	<b>SURCHARGE PAID BY: ATTY. CK# 14962</b>
<b>50.00</b>	<b>ALLEGHENY CO. SHFF. PAID BY: ATTY.</b>
<b>3.00</b>	<b>NOTARY (ALLEGHENY) PAID BY: ATTY.</b>

---

**Sworn to Before Me This**

5<sup>th</sup> Day Of June 2003

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Term, Jan. 2006  
Clearfield Co., Clearfield, PA

**So Answers,**

*Chester Hawkins  
by Marlyn Harr*  
Chester A. Hawkins  
Sheriff

**FILED**  
JUN 05 2003  
01012014  
William A. Shaw  
Prothonotary/Clerk of Courts

*SW*  
PETER R. DEFAZIO  
Sheriff

(4) ALLEGHENY COUNTY SHERIFF'S DEPARTMENT

436 GRANT STREET  
PITTSBURGH, PA 15219-2496  
PHONE (412) 350-4700

13938  
4943  
DENNIS SKOSNIK  
Chief Deputy

PLAINTIFF TM Company

VS.

DEFT. SHEET METAL WORKERS INTER.

ADD. DEFT. 1200 Gulf L & B Road

ADD. DEFT. Harmarville

GARNISHEE Pittsburgh Pa 15238

ADDRESS

MUNICIPALITY or CITY WARD

ATTY.

*James Nadeo*

DATE: 19

ADDRESS

ATTY'S Phone 814-765-1601

*CLEARFIELD CO*

INDICATE TYPE OF SERVICE:  PERSONAL  PERSON IN CHARGE  DEPUTIZE  CERT. MAIL  POSTED  OTHER  LEVY  SEIZED & STORE

Now. April 23 2003, SHERIFF OF ALLEGHENY COUNTY, PA do hereby depose the Sheriff of Allegheny County to execute this Writ and make return thereof according to law

NOTE: ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person or attachment without liability on the part of such deputy herein for any loss, destruction or removal of any property before sheriff's sale thereof.

Seize, levy, advertise and sell all the personal property of the defendant on the premises located at: Shelby Bunn

MAKE	MODEL	MOTOR NUMBER	SERIAL NUMBER	Notarial LICENSE NUMBER
				Sheila R. O'Brien, Notary Public City of Pittsburgh, Allegheny County My Commission Expires June 19, 2004
				Member, Pennsylvania Association of Notaries

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY AND RETURN that on the 28 day of APR 2003 at 3:30 o'clock A.M./P.M. Address Above/Address Below. County of Allegheny, Pennsylvania

I have served in the manner described below:

- Defendant(s) personally served.
- Adult family member with whom said Defendant(s) reside(s). Name & Relationship \_\_\_\_\_
- Adult in charge of Defendant's residence who refused to give name or relationship.
- Manager/Clerk of place of lodging in which Defendant(s) reside(s).
- Agent or person in charge of Defendant(s) office or usual place of business.
- Other \_\_\_\_\_
- Property Posted

Defendant not found because:  Moved  Unknown  No Answer  Vacant  Other \_\_\_\_\_

Certified Mail  Receipt \_\_\_\_\_  Envelope Returned \_\_\_\_\_  Neither receipt or envelope returned: writ expired \_\_\_\_\_

Regular Mail Why \_\_\_\_\_

*MABCOY*

You are hereby notified that on \_\_\_\_\_, 19 \_\_\_\_\_, levy was made in the case of \_\_\_\_\_  
Possession/Sale has been set for \_\_\_\_\_, 19 \_\_\_\_\_ at \_\_\_\_\_ o'clock.

**YOU MUST CALL DEPUTY ON THE MORNING OF SALE/POSSESSION BETWEEN 8:30 - 9:30 A.M.**

ATTEMPTS \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**PETER R. DEFAZIO, Sheriff**

By \_\_\_\_\_

*Dee*  
Deputy

District \_\_\_\_\_

Additional Costs Due \$ \_\_\_\_\_, This is placed  
on writ when returned to Prothonotary. Please check before  
satisfying case.



CHESTER A. HAWKINS  
SHERIFF

# Sheriff's Office Clearfield County

OFFICE (814) 765-2641 EXT. 5986  
AFTER 4:00 P.M. (814) 765-1533  
FAX (814) 765-5915

COURTHOUSE  
1 NORTH SECOND STREET, SUITE 116  
CLEARFIELD, PENNSYLVANIA 16830

ROBERT SNYDER  
CHIEF DEPUTY

CYNTHIA AUGHENBAUGH  
OFFICE MANAGER

MARILYN HAMM  
DEPT. CLERK

PETER F. SMITH  
SOLICITOR

## DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
Pg. 13938

TMP COMPANY ACQUISITION INC.

TERM & NO. 03-557-CD

VS

DOCUMENT TO BE SERVED:

SHEET METAL WORKERS al

COMPLAINT ACTION FOR DECLARATORY  
JUDGMENT

**SERVE BY:** 05/14/2003

**MAKE REFUND PAYABLE TO:**

JAMES A. NADDEO, ATTORNEY

**SERVE:**

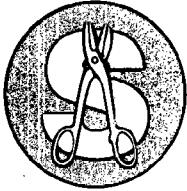
SHEET METAL WORKERS INTERNATIONAL ASSOC. LOCAL UNION #12

**ADDRESS:** 1200 GULF LAB ROAD, MARMARVILLE, PITTSBURGH, PA. 15238

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF OF ALLEGHENY COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 23rd Day of APRIL 2003

Respectfully,

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY



## SHEET METAL WORKERS' NATIONAL PENSION FUND

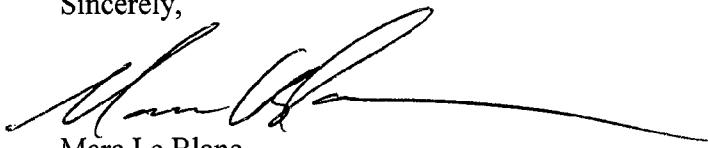
April 29, 2003

Honorable Chester A. Hawkins  
Sheriff, Clearfield County  
1 North Second Street  
Suite 116  
Clearfield, PA 16830

Dear Sheriff:

I am returning the complaint which you mailed to this address. There is no legal entity, "Sheet Metal Workers National Benefit Funds" and therefore no one to accept service.

Sincerely,



Marc Le Blanc  
Fund Administrator

cc: James A. Naddeo

Edward F. Carlough Plaza  
601 North Fairfax Street Suite 500 Alexandria, VA 22314-2075  
(703) 739-7000 Fax (703) 683-0932 [www.smwnpf.org](http://www.smwnpf.org)

PLACE STICKER AND USE DOTTED LINE  
OF THE RETURN ADDRESS FOLD AT DOTTED LINE

**CERTIFIED MAIL™**

Chester A. Hawkins  
Sheriff - Clearfield County  
1 North Second Street  
Suite 116  
Clearfield PA 16830

7002 2030 0000 6873 0750



**U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

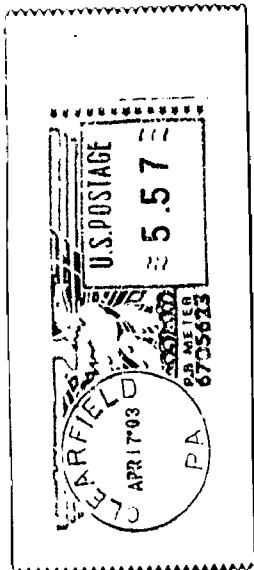
Postage \$ 1.52  
Certified Fee  
Return Recipient Fee  
(Endorsement Required)  
Restricted Delivery Fee  
(Endorsement Required)

**Total Postage & Fees** \$ 5.57

Postmark  
CLEARFIELD PA 16830  
APR 17 2003  
USPS

**SHEET METAL WORKERS NATIONAL**  
Street, Apt. No.: ..... BENEFIT FUND  
or P.O. Box No. 601, North Fairfax St., Suite 500  
City, State, Zip: ALEXANDRIA, VA. 22314  
See reverse for instructions

PS Form 3800, June 2002



Sheet Metal Workers National  
Benefit Fund  
601 North Fairfax St. Suite 500  
Alexandria, VA. 22314

**SENDER: COMPLETE THIS SECTION****COMPLETE THIS SECTION ON DELIVERY**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

**Sheet Metal Workers National Benefit Fund**

601 North Fairfax St

Suite 500

Alexandria, VA 22314

2. Article Number  
*(Transfer from service label)*

**7002 2030 0000 6873 0750**

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1035

**A. Signature**

**X**

Agent

Addressee

**B. Received by (Printed Name)****C. Date of Delivery****D. Is delivery address different from item 1?**

Yes

No

**3. Service Type**

Certified Mail

Express Mail

Registered

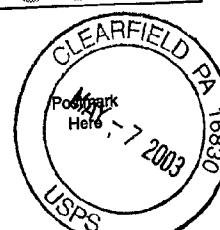
Return Receipt for Merchandise

Insured Mail

C.O.D.

**4. Restricted Delivery? (Extra Fee)**

Yes

<b>U.S. Postal Service™</b> <b>CERTIFIED MAIL™ RECEIPT</b> <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>																						
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>																						
<b>OFFICIAL USE</b>																						
L6742																						
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□ □ □																						
2030																						
2002																						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Postage</td> <td style="width: 15%; text-align: right;">\$</td> <td style="width: 70%; text-align: center;">152</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td colspan="3" style="text-align: right;">Total Postage &amp; Fees</td> </tr> <tr> <td colspan="3" style="text-align: right;">\$ 5.57</td> </tr> </table>		Postage	\$	152													Total Postage & Fees			\$ 5.57		
Postage	\$	152																				
Total Postage & Fees																						
\$ 5.57																						
																						
<b>Sent To:</b> <b>SHEET METAL WORKERS' NATIONAL PENSION FUND</b> <i>Street, Apt. No.; or PO Box No.</i> 601 North Fairfax St. Suite 500 <i>City, State, ZIP+4</i> Alexandria, VA 22314																						
<i>PS Form 3800, June 2002</i>																						
<i>See Reverse for Instructions</i>																						

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

SHEET METAL WORKERS' NATIONAL  
PENSION FUND  
501 North Fairfax St. Suite 500  
Alexandria, VA. 22314

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

### 3. Service Type

Certified Mail       Express Mail  
 Registered       Return Receipt

Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

## 2. Article Number

Transfer from service label)

2002 2030 0000 6873 0842

PS Forty 8811, August 2001

## Domestic Return Receipt

102595-02-M-1035

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

CHESTER A. HAWKINS  
Sheriff of Clearfield County  
1 N. 2nd ST. Suite 116  
Clearfield, Pa. 16830

13938

02



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TMP COMPANY AQUISITION, INC )  
Plaintiff )  
vs. )  
SHEET METAL WORKERS ) Civil Action No. 03 0767  
INTERNATIONAL ASSOCIATION )  
LOCAL UNION NO. 12 and SHEET )  
METAL WORKERS NATIONAL )  
BENEFIT FUND )  
Defendant )  
03-557-CD

2003 MAY 27 PM 2:54  
CLERK  
U.S. DISTRICT COURT

FILED

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Defendant, Sheet Metal Workers Local Union No. 12, by their attorneys, Joseph J. Pass, Esquire, and Jubelirer, Pass & Intrieri, P.C., hereby files this Notice of Removal of this proceeding from the Court of Common Pleas of Clearfield County for the following reasons:

1. Plaintiff is a Pennsylvania Corporation having its place of business at Graham Street, Hyde, Pennsylvania 15238.
2. Defendant, Sheet Metal Workers Local Union No. 12 (hereinafter referred to as "Local 12"), is an unincorporated labor organization with offices at 1200 Gulf Lab Road, Pittsburgh, Pennsylvania 15238. Local 12 is affiliated with the Sheet Metal Workers International Union, AFL-CIO.

FILED

JUN 03 2003

William A. Shaw  
Prothonotary

3. Defendant, Local 12, is a labor organization within the meaning of the Labor Management Relations Act, 29 U.S.C. § 141 et seq.

4. Upon reasonable investigation, Defendant is unable to determine the existence of the additionally named defendant, "Sheet Metal Workers National Benefit Fund," and therefore is unable to include them in the Notice of Removal.

4. Plaintiff and Local 12 are parties to a Collective Bargaining Agreement for the period of October 1, 2002 through March 31, 2004.

5. On or about April 14, 2003, plaintiff filed an action against Local 12 in the Court of Common Pleas of Clearfield County. A copy of the Complaint filed in that action is attached hereto as Exhibit "A".

6. The Complaint alleges, inter alia, that defendant is in violation of the Collective Bargaining Agreement in regards to employer contributions to a Pension fund and seeks declaratory relief from the court.

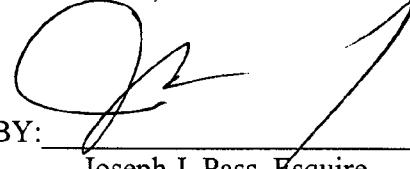
7. The Plaintiff's complaint is clearly one in which this court has original jurisdiction under section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. § 185, as well as 28 U.S.C. § 1331, and may be removed to this Court under the provisions of 28 U.S.C. § 1441(b).

8. This Notice of Removal is filed within (30) days after this defendant was served with a copy of the complaint.

WHEREFORE, defendant prays that the above-captioned proceeding now pending before the Court of Common Pleas of Clearfield County be removed therefrom to this Court.

Respectfully submitted,

JUBELIRER, PASS & INTRIERI, P.C.

BY: 

Joseph J. Pass, Esquire

Pa. I.D. #00044

219 Ft. Pitt Boulevard

Pittsburgh, Pennsylvania 15222

412-281-3850

Attorney for Defendant

Sheet Metal Workers Local Union

No. 12

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TMP COMPANY ACQUISITION, INC.,  
a Pennsylvania corporation,  
Plaintiff

vs.

SHEET METAL WORKERS INTERNATIONAL  
ASSOCIATION LOCAL UNION NO. 12  
and SHEET METAL WORKERS NATIONAL  
BENEFIT FUNDS,

Defendants

\*  
\*  
\*  
\* No. 03 - 557 - CD  
\*

\* ACTION FOR DECLARATORY  
\* JUDGMENT

\*  
\*

\* Type of Pleading:

\* COMPLAINT

\* Filed on behalf of:  
\* Plaintiff

\* Counsel of Record for  
\* this party:

\*  
\* James A. Naddeo, Esq.  
\* Pa I.D. #06820

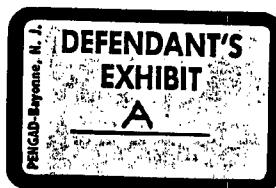
\*  
\* 211 1/2 E. Locust Street  
\* P.O. Box 552  
\* Clearfield, PA 16830  
\* (814) 765-1601

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

APR 14 2003

Attest.

*Wm. M. R.*  
Prothonotary/  
Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TMP COMPANY ACQUISITION, INC., \*  
a Pennsylvania corporation, \*  
Plaintiff \*  
\*  
vs. \* No. 03 - - CD  
\*  
SHEET METAL WORKERS INTERNATIONAL \* ACTION FOR DECLARATORY  
ASSOCIATION LOCAL UNION NO. 12 \* JUDGMENT  
and SHEET METAL WORKERS NATIONAL \*  
BENEFIT FUNDS,  
Defendants \*

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
Market and Second Streets  
Clearfield, PA 16830

(814) 765-2641, Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TMP COMPANY ACQUISITION, INC., \*  
a Pennsylvania corporation, \*  
Plaintiff \*  
\*  
\*  
vs. \* No. 03 - - CD  
\*  
SHEET METAL WORKERS INTERNATIONAL \* ACTION FOR DECLARATORY  
ASSOCIATION LOCAL UNION NO. 12 \* JUDGMENT  
and SHEET METAL WORKERS NATIONAL \*  
BENEFIT FUNDS, \*  
Defendants \*

C O M P L A I N T

NOW COMES the Plaintiff, TMP Company Acquisition, Inc., and by its attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff is TMP Company Acquisition, Inc., a Pennsylvania corporation having a place of business located at Graham Street, Hyde, Pennsylvania 16843.
2. That the Defendant, Sheet Metal Workers International Association Local Union No. 12 (hereinafter referred to as "Union"), is a local union with its principal place of business located at 1200 Gulf Lab Road - Harmarville, Pittsburgh, Pennsylvania 15238.
3. That the Defendant, Sheet Metal Workers National Benefit Funds (hereinafter referred to as "Fund"), is an

association with its principal place of business located at 601 North Fairfax Street, Suite 500, Alexandria, Virginia 22314.

4. That at all times referred to herein, the Plaintiff operated and continues to operate a manufacturing facility located in the Village of Hyde, Clearfield County, Pennsylvania, dedicated to the manufacture of refrigeration equipment and related products.

5. That commencing in 1989, Plaintiff and Defendant Union negotiated four separate Collective Bargaining Agreements, all of which were prepared and drafted by Defendant Union.

6. That all of the Collective Bargaining Agreements entered into between Plaintiff and Defendant Union provide that all persons newly hired by Plaintiff are required to serve a probationary period.

7. That the current Collective Bargaining Agreement for the period October 1, 2002, through March 31, 2004, provides for a probationary period of 100 days. A copy of said contract is attached hereto as Exhibit "A".

8. That ARTICLE XIX - WAGES and WELFARE BENEFITS, Paragraph 5, of the Collective Bargaining Agreement provides in part as follows:

TRAINEE

A. Probationary wage will be \$7.28 per hour for a ninety (100) day period.

B. After the first ninety (100) day period is complete, each employee's wage will be increased \$.36 per hour, bringing the base wage to \$7.64 per hour.

Basic Wage	\$7.64
Nat'l. Pension	.85

9. That on or about March 5, 2003, Defendant Fund demanded that Plaintiff submit to an audit of the contributions made on behalf of Plaintiff's employees to the Defendant Fund.

10. That during the course of said audit, Richard A. Gartner, an agent for Defendant Fund, informed Plaintiff that Plaintiff was obligated to make contributions to Defendant Fund on behalf of its employees while said employee was serving his or her probationary period of employment for the Plaintiff.

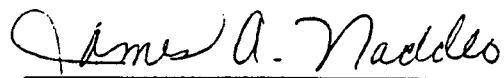
11. That the contention of Defendant Fund is in direct conflict with the terms of the Collective Bargaining Agreement attached hereto as Exhibit "A".

WHEREFORE, Plaintiff requests the Court to enter judgment:

A. Declaring that Plaintiff has no obligation to make contributions to the Defendant Fund for probationary employees;  
and

B. Granting such further relief as the  
Court may deem appropriate.

Respectfully submitted,



James A. Naddeo  
James A. Naddeo, Esquire  
Attorney for Plaintiff

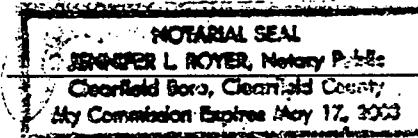
COMMONWEALTH OF PENNSYLVANIA )  
ss.  
COUNTY OF CLEARFIELD )

Before me, the undersigned officer, personally appeared WILLIAM CARR, President of TMP Company, Inc., who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Will Carr  
William Carr

SWORN and SUBSCRIBED before me this 5th day of March, 2003.

Jennifer L. Rover



*Peggy*

**COLLECTIVE BARGAINING AGREEMENT**

**BETWEEN**

**T.M.P. ACQUISITION COMPANY, INC.**

**AND**

**SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION**

**LOCAL UNION NO. 12**

**OCTOBER 1, 2002  
THROUGH  
MARCH 31, 2004**

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WHEREAS, it is the intent and desire of the parties hereto to foster and promote round, stable, and peaceful labor relations between the Employer, its employees covered by this Agreement and the Union and to establish a basic understanding relating to rates of pay, hours of work and other conditions of employment;

and

WHEREAS, it is the further intent and desire of the parties hereto to establish an orderly relationship between the Employer and the employees so that grievances and complaints will be settled quickly and to avoid all work interruptions during the term of the Agreement.

NOW, THEREFORE, the parties hereto mutually agree as follows:

#### ARTICLE I - RECOGNITION

The employer, the TMP Acquisition Company, Inc., recognizes Sheet Metal Workers' International Association Local Union No. 12 as the sole and exclusive bargaining agent for a unit of employees consisting of all employees including general labor employees of the aforementioned employer employed out of its Western Pennsylvania location excluding office clerical employees, professional employees, supervisors, kitchen equipment employees and guards as defined in the National Labor Relations Act.

#### ARTICLE II - UNION SHOP

1. It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution or effective date of this Agreement, whichever is the later, shall remain members in good standing and those who are not members on the execution or the effective date of this Agreement as aforesaid, shall one hundred (100) days following the execution or effective date of this Agreement or date of their employment, whichever date is the later, become and remain members in good standing in the Union. The term "good standing" shall be defined as is contained in the National Labor Relations Act.

2. If a discharge of an employee under this article is requested by the Union, the request shall be made in writing and the employee shall have five working days from the date that the written notice is served on the Employer, to become a member in good standing in the Union and the Union shall cooperate by accepting such employee into membership subject to the Union's by-laws.

3. The Employer has the right to employ non-union supervisory personnel for departments to coordinate the overall work in progress. Supervisor (s) may perform hands on duties as needed in a demonstration capacity when an emergency warrants such duty. Otherwise, work is normally to be done by those covered under this Agreement.

4. Upon authorization by the employee, TMP Acquisition Company shall deduct a 1.25% work assessment of the negotiated package on all hours paid. This work assessment will be transmitted to the Combined Funds of Sheet Metal Workers' Local Union #12 at 502 Martindale Street; 5th Floor; Pittsburgh, PA 15212, by the 15th day of each month.

### ARTICLE III - PROBATIONARY PERIOD

The probationary period shall be for one hundred (100) days. The 100 days are to be cumulative for a one (1) year period, from the date of hire. The employer may discharge such new employee at any time during the probationary period; and the discharge shall not be subject to the grievance procedures and arbitration provisions of this contract or to be questioned by the Union or the employee.

### ARTICLE IV - WORK WEEK

1. The regular scheduled work week shall consist of 5 eight hour days beginning on Monday and ending at the end of the shift on Friday.
2. There shall be a paid lunch period of thirty (30) minutes which shall be scheduled by the Employer.
3. The Employer shall have the right to establish and/or discontinue any shift of shift hours or starting time that it determines necessary by mutual consent between the Employer and the Union. NOTE: 2nd shift - 7% differential to be paid above hourly rate/3rd shift - 12% differential to be paid above hourly rate - agreed to, if needed. All shifts must begin on Monday and must be for a minimum of five (5) days.
4. All employees who are paid on a straight time hourly wage rate basis shall be paid time and one-half their regular straight time rate of pay for all hours worked in excess of eight hours in any one day.
5. The Employer shall have the right to establish a fourth shift. The 4th shift hours shall be from 7 A.M. Saturday to 11:00 P.M. Saturday and resume work on 7:00 A.M. Sunday to 11:00 P.M. Sunday. This shift will consist of 32 hours of work with 40 hours of pay, including fringe benefits. This shift may only be worked on a voluntary basis. Any additional hours worked shall be subject to the overtime clauses in this Agreement.  
(Article XIII)
- 6.. The Employers agreed that it will endeavor to distribute the extra daily or Saturday work opportunity as equally as possible among the employees in the job classification affected, (if practical). However, it is understood that any employee working on a job shall continue to work on that job, if extra time is required thereon. All overtime must be offered to all employees presently working in the departments where the overtime occurs.

### ARTICLE V = DISCIPLINE AND DISCHARGE

The Employer retains the right to discipline or discharge employees for just cause or reason. In the event of a discipline or discharge, the Employer agrees to give prompt notice of same to the Union representative and Shop Steward. In the event that the Employee or Union questions the disciplinary action or discharge, a written grievance must be filed within two working days of the imposition of the discipline or discharge by the employee or the Union or be barred. If a grievance is filed as aforesaid, same shall then be processed in accordance with the grievance and arbitration provisions of this Agreement. Employees should adhere to company rules and regulations.

## ARTICLE VI - JOB INJURY

The Employer agrees to a time-off allowance not to exceed eight (8) hours pay at the employee's current shift straight time rate of pay, if the employee is injured while at work and treated by a doctor, and the Employer is so notified that the employee has been sent home by the doctor. The employee is entitled to an allowance of not more than eight (8) hours pay for the time missed at the employee's current straight time rate of pay, per job injury on company time.

## ARTICLE VII - HOLIDAYS WITH PAY

1. The following holidays shall be granted to all working employees, parties to this Agreement.

New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Day after Thanksgiving, First Day of Deer Season, and Christmas Day.

2. Should any of these holidays fall on a Saturday or Sunday, either the following Monday or the previous Friday will be observed as the holiday and shall be considered as within the holiday requirements of this Agreement.

3. Probationary employees shall not be eligible for holiday pay.

4. An employee who is otherwise eligible to receive Holiday Pay shall not receive the same, unless he is scheduled to work and works a full scheduled workday both preceding and following the holiday unless the absence has been excused by the Employer, except as provided in Section 5 of this Article.

5. Any employee who has been laid off during the week preceding or during the week in which a holiday falls shall be eligible and shall receive holiday pay.

## ARTICLE VIII - GRIEVANCE AND ARBITRATION

1. Should any employee have a grievance or should any dispute arise between the Employer and the Union, as to the meaning, application, performance or operation of any provision of this Agreement, such grievance or dispute shall be taken up for settlement as follows:

a) The grievance must be submitted by the party or the employee aggrieved to the other party in writing and must be presented to the adverse party within three working days from the date the grievance arose or be barred (unless a shorter period is provided herein).

b) The grievance of an aggrieved employee shall first be discussed by the employee, his shop steward and the department manager. If the grievance is not satisfactorily adjusted by such discussion, then:

c) The said grievance shall be discussed by a representative of the Union and a representative of the Employer.

d) If the employer or union has a grievance, the same shall be presented to the other party in writing within the time limits aforesaid but shall be immediately discussed by a representative of the Union and a representative of the Employer.

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e) If such grievance is not satisfactorily settled by the discussions heretofore provided, either the Union or the Employer may, within ten (10) working days after the answer of the disposition of the grievance in the discussion between the representatives of the Union and the Employer, give written notice to the other parties of the desire to arbitrate and the matter shall then be referred to final and binding arbitration. If timely notice is given, the Employer and the Union shall endeavor to select a party mutually satisfactory to them to act as arbitrator.

2. The parties hereto specifically agree to the decision of the arbitrator for any matter submitted under the terms of the Agreement.

3. Only the Employer and the Union shall have the right to request arbitration hereunder.

4. The fee of the impartial arbitrator shall be shared equally by both parties.

#### ARTICLE IX - CREDIT UNION

Employees are entitled to have payroll deductions made from their pay, either in dollar amounts or percentage amounts, payable to their individual accounts in the Sheet Metal Workers' Local Union #12 Credit Union.

#### ARTICLE X - PENSION

The employer shall contribute toward a pension plan set up and governed by the Union's National Pension Fund. It is further agreed that any adjustments or increases necessary by National Pension to maintain present benefit levels shall be the sole responsibility of the employer.

#### ARTICLE XI - VACATIONS

1. Vacations with pay shall be provided to employees who qualify based on the anniversary date of hire.

##### DURATION OF EMPLOYMENT

After one year of continuous employment -

After two years of continuous employment -

After five years of continuous employment -

per year of employment until a maximum of three weeks paid vacation is reached

##### PAID VACATION PERIOD

one week paid vacation

two weeks paid vacation

one additional day of paid vacation

2. The Employer may close his plant for vacation purposes with proper notice to the employees.

3. Vacation pay for an employee who is compensated on a straight time hourly wage rate basis shall be his regular straight time rate of pay. Employees working shifts will be compensated at shift rates of pay.

4. In the event that a scheduled holiday falls during an employee's vacation, then the employee affected shall have his vacation period extended one day or shall receive a day's pay in lieu thereof.

5. In the event that the Company should close the plant for two weeks during the Christmas holiday, all employees who qualify, will be paid Christmas Day, and New Year's Day in advance.

Those employees entitled, will receive their pro-rated vacation as earned as of January 1. If any employee chooses not to take his vacation at that time, it must be agreed upon between the Employer and employee.

6. Vacation pay shall be given on the basis of forty (40) hours per week and at the current shift straight time rate of pay for those eligible on the Friday before his vacation period.

7. All accrued vacation time shall be paid prior to an employee's scheduled vacation. All requests for vacation pay in advance shall be in writing at least 2 weeks early to accommodate the employer's pay schedule.

8. Vacation may be taken after July 1st Anniversary date, except not more than 20% of the working force per job classification may be on vacation at one time unless mutually agreed to by Employees and Employer.

#### ARTICLE XII - DEATH IN THE FAMILY & JURY DUTY

1. The Employer agrees that in the event an employee, other than a probationary employee, is actually working and takes time off on a scheduled workday because of a death in the immediate family, the Employer will pay the employee for any such scheduled workday taken off, which occurs within three (3) calendar days following the death and provided the employee actually attends the funeral. The first workday shall be either the day of death or the day immediately thereafter. The maximum number of days that can be granted under this provision is three (3) days. A death certificate must be furnished if the Employer requests same. The immediate family shall consist of the parents, spouse, child, brother, sister, mother-in-law, and father-in-law.

2. The employer agrees that any employee who has been called for jury duty and presents, upon request of the employer, documentation of such appointment shall be compensated at their regular hourly rate for 8 hours pay. This benefit shall not be extended past 2 weeks or 10 consecutive working days in 1 year.

### ARTICLE XIII - OVERTIME

1. Overtime will be paid at 1 1/2 times the shift rate. Hours over eight (8) per day and over forty (40) per week.
2. Overtime will not be denied a man because of missed time during the week provided the Company is properly notified.
3. It is the duty of the Steward to report all overtime given him by Management.
4. Emergency overtime can be performed at any time.

Example: Truck to be unloaded or loaded, or waiting for equipment to be completed.

5. Any work performed on Saturday shall be at 1 1/2 times the regular hourly rate. Any work performed on recognized holidays and Sundays shall be paid at 2 times the regular hourly rate.

### ARTICLE XIV - LAYOFF NOTICE

The Employer shall notify employees 2 hours by the end of the shift, the day of a layoff. However, if employees do not perform work satisfactorily during the aforesaid period, the Employer reserves the right to dismiss such employees immediately.

### ARTICLE XV - NO STRIKES OR LOCKOUTS

1. It is agreed that the Union, it's officers and representatives and the employees covered by this Agreement shall not strike or picket, or in any way interfere with or interrupt the production of the Employer or the operation in the term of this Agreement.
2. The Employer agrees that there shall be no lockout of employees during the term of this Agreement.

Should there be a strike or slowdown, picketing, or interruption or interference with the Employer's production or any operations of the Employer in violation of this Article in any manner by the Union, it's officers and/or agents, or by employees covered hereunder during the term of this Agreement, then the Union, it's officers, agents and the shop steward shall immediately declare the strike, slowdown, picketing or interference with the production or operation to be illegal and unauthorized and shall order those engaged in such activity to stop same and resume full production. The order and the declaration shall be in writing.

## ARTICLE XVI - POLITICAL ACTION LEAGUE CHECK-OFF

The Employer agrees to honor political contribution deduction authorizations from it's Employees who are Union members in the following form:

"I hereby authorize the Employer to deduct from my pay the sum of two cents (\$.02) for each hour worked and to forward that amount to PAL Political Fund. This authorization is signed voluntarily and with the understanding that PAL Political Fund will use this money to make political contributions and expenditures in connection with Federal, State and Local elections. I am aware of my right to refuse to sign this authorization without reprisal." The authorization may be revoked by mailing notices of revocation by United States Registered or Certified Mail, Return Receipt Requested, to the Treasurer, PAL Political Committee, 1750 New York Avenue N.W., Washington, D.C. 20006, accompanied by a form stating the name and hours worked for each Employee for whom a deduction has been made."

Voluntary deduction authorization cards will be made available to the Employee.

## ARTICLE XVII - SHOP STEWARD

1. Each shift shall have a steward. The first shift steward shall be designated as chief steward. The second and third shift stewards will report any matters regarding safety or contract issues directly to the chief steward only.
2. The Employer shall recognize an employee as Shop Steward only after receiving written notice of his selection. The shop steward shall be the last to be withdrawn from employment in case of insufficient work or slack season and the first to be re-hired by the Employer. Under no circumstances shall the Shop Steward be discriminated against by the Employer.
3. The chief Shop Steward shall have the right to settle minor grievances between the Employer and the employees during working hours and shall be paid regular straight time rate of hourly pay for such time. Whenever a chief Shop Steward is not able to settle any dispute or grievance with the Employer or the designated representative of the Employer, the chief Shop Steward shall call in the Business Agent of the Union.
4. When more than two (2) men work overtime, the Steward shall also be asked to work all overtime.
5. Neither the Shop Steward or employee or group of employees covered by this Agreement is authorized to cause or engage in any strike, slowdown or stoppage in the shops or places of business of the Employer, or order the discharge of any employee, nor shall he be deemed the agent of or authorized to act for the Union for any purpose whatsoever.
6. The Union agrees to cooperate with the Employer to remedy any such situation by immediately giving written notice to the Employer and to the involved employees, declaring said activity to be unlawful and directing the employees to return to work.
7. The Employer shall have the right to take disciplinary action which it determines necessary - against any of all the employees who participate in any of the aforementioned activities.

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### ARTICLE XVIII - MISCELLANEOUS

1. The employees covered by this Agreement shall not engage in any competing business.
2. No employee covered by this Agreement shall work on his own on the premises of the employer without obtaining permission of the management.
3. The Union and the employees, and the Employer agree to cooperate in order that the required work shall be accomplished in the manner desired by the Employer and shall give efficient service to the customers.
4. The employer agrees to provide access to use a telephone on all shifts so that the employees may call out or receive calls at work. Such calls are to be of short duration for necessary business and are not meant for habitual or daily use unless approved by the employer.

### ARTICLE XIX - WAGES AND WELFARE BENEFITS

1. Wages at the established rates shall be paid by check and weekly on Thursday.
2. The established hourly wage rates shall be those specified below.
3. All employees regardless of seniority or status shall be paid in full including holiday or vacation pay if applicable on the day of lay-off.  
Welfare shall be as specified below:
- 4. In the event Health and Welfare increases are not incurred, the 2nd and 3rd year of the contract as projected, it is agreed that the wages will increase a maximum of twenty cents (\$.20) per hour each year of the contract above the negotiated increase.

Any and all increases in Health and Welfare shall be deducted from the projected increase. All increases above projected increases will be incurred by the employer.

The projected increases are \$.20 per hour for the 2nd and 3rd years of the contract.

5. WELFARE - TMP Acquisition Company will provide health insurance coverage through Central Insurers Group with offices at 1360 North Atherton Street; State College, Pennsylvania 16803. During the term of coverage, there will be no additional charges made to members of Local 12 working for TMP Acquisition Company. TMP Acquisition Company further agrees not to modify the benefits provided as set forth in the Summary Plan Description and will not change deductibles, coverages or any other terms or conditions of the coverage prior to the end of the term or the present contract with Local 12, with an expiration date of March 31, 2004.

### SKILLED KITCHEN EQUIPMENT EMPLOYEES

As of October 1, 1999, the wage rate shall be:

Basic Wage	\$ 15.21
Nat'l. Pension	.85 (See Article X for stabilization increases)
<u>SASMI II (Based on 3% of the above)</u>	
TOTAL PACKAGE	\$ 16.06

TRAINEE

A. Probationary wage will be \$7.28 per hour for a ninety (100) day period.  
B. After the first ninety (100) day period is complete, each employee's wage will be increased \$.36 per hour, bringing the base wage to \$7.64 per hour

Basic Wage \$ 7.64

Nat'l. Pension .85

SASMI II (based on 3% of the above)

C. After one (1) year from the starting date, the base wage will be \$8.58 plus fringe package.  
After two (2) years, the base wage will be \$9.06 plus fringe package.  
D. After three years, trainees will be elevated to Skilled General Labor Employees.  
E. NOTE: ALL WAGE INCREASES DUE TO EMPLOYEES WHO HAVE STARTED THEIR EMPLOYMENT PRIOR TO THIS AGREEMENT SHALL HAVE THOSE INCREASES ADDED TO THE BASE ESTABLISHED UNDER THE PREVIOUS CONTRACT.

SKILLED GENERAL LABOR EMPLOYEES

A. Skilled General Labor Employees, upon completion of the probationary and training period, all skilled general labor employees shall receive an \$10.35 hourly rate.  
B. Basic Wage \$10.78  
Nat'l. Pension .85  
SASMI II (based on 3% of the above)  
TOTAL PACKAGE \$11.63

ARTICLE XX - BONDING

Each Employer covered by this Agreement shall place on deposit with the Health, Welfare, Pension Trustees: 1200 Gulf Lab Road; Pittsburgh, PA 15238, a Guaranty Bond written by a bonding company licensed to do business in the Commonwealth of Pennsylvania in the amount of:

1-10 men \$10,000.

11-20 men \$20,000.

21 & over \$40,000.

in favor of the Sheet Metal Workers Combined Funds. This Guaranty Bond shall guarantee the payments required to be paid by the Employer pursuant to the terms of this Agreement to the following Funds: Sheet Metal Workers' Local Union No. 12 Welfare Fund, SMWIA National Pension Fund, and the Journeymen-Apprentice Training Fund. The provisions of this Section shall become effective on October 1, 2002. A Bond shall be furnished within fifteen (15) days from the date of employment of any employee covered by the terms and conditions of this Agreement. The Bond as required under the provisions of this Section shall remain in full force

and effect until the termination of this Agreement and furnished, at least on an annual basis. In the event the employer is unable to purchase a guaranty bond, all benefits and fringe payments included in this agreement shall be remitted on a weekly basis until the employer can purchase said bond.

#### ARTICLE XXI- MANAGEMENT PREROGATIVE

1. Except as specifically abridged, delegated, granted or modified by this Agreement, all the rights, powers, and the authority the Employer had prior to the signing of this Agreement, are retained by the Employer and remain the rights of management. Included in such rights, but not limited thereto, is management's right to operate it's shops, to contract for, and to sub-contract work (as heretofore or for economic reasons), to introduce new lines and departments, to discontinue present lines and departments; to direct the working force to determine the work to be done; to hire, transfer, promote, discipline and discharge for cause; to introduce new methods of operation or discontinue; to determine the work to be done in the shop and/or outside the shop.
2. There shall be no individual agreements with employees. This contract contains the full understanding between the parties and cannot be modified except by a written executed agreement. Any items not specifically included in this Agreement are understood to be management prerogatives.
3. The employer agrees that any employee on lay-off status who has completed the probationary period and who has maintained membership in Local #12 shall be recalled prior to hiring new employees.

It is further agreed that whenever possible, such recalls would be in the reverse order of lay-off, so as not to discriminate against those employees receiving a higher wage scale.

Management maintains the right to discharge employees for just cause.

#### ARTICLE XXII - TOOLS

1. Employees shall supply for their use the proper and necessary hand tools for the employee to do the work required in the shop of the Employer as has been a past practice.
2. The Employer shall supply all shop equipment.

#### ARTICLE XXIII-PLANT CLOSING NOTICE

The employer may not order a "plant closing" or "mass layoff" as those terms are defined in the Worker Adjustment & Restraining Notification Act, 29 U.S.C. 2101, et seq., until the end of a six-month period after the Employer serves written notice of such order upon the Union and all members of the bargaining unit. If the Employer fails to give such notice, or chooses not to give such notice, the Employer shall pay each bargaining unit member six-months pay.

#### ARTICLE XXIV-SUCCESSOR AGREEMENT FOR SHEET METAL WORKERS LOCAL 12

In the event of any sale or transfer of any facility or the sale or transfer of any business operation, in majority shares in, of the employer, or any employer subsidiary or division which is presently under contract with this Local Union, the sale or transfer agreement with the purchaser or transferee shall condition such sale or transfer upon the employment

transferee of bargaining unit employees affected by such sale or transfer with recognition of their seniority, which is defined as the length of service the employee has with the existing company from their original date of hire until the date of sale and/or transfer, and upon the acceptance and adoption of the existing collective bargaining agreement covering such employees. Transactions covered by this provision include asset sales, as well as stock sales, mergers, consolidations, spinoffs, subcontracts, or any other method by which a business operation is transferred.

## ARTICLE XXV - SASMI - II NATIONAL STABILIZATION AGREEMENT

The undersigned Employer and Local Union agree as follows:

Beginning on the effective date of the collective bargaining agreement of which this clause is made a part (or on October 1, 2002), (if the effective date of such agreement and this clause differ), the Employer shall make monthly contributions of an amount equal to three percent (3%) of the Gross Earnings of each employee subject to this Agreement to the National Stabilization Agreement of the Sheet Metal Industry Trust Fund ("SASMI - II FUND"). "Gross Earnings," for purposes of this Agreement, shall mean total wages paid to an employee by the Employer which are reportable by the employee for federal income tax purposes.

The employer hereby adopts the SASMI - II Trust Agreement as presently constituted and as the same may be amended from time to time, and agrees to be bound by all Rules and Regulations of the SASMI - II Plan as adopted by the Trustees, as presently existing and as the same may be amended from time to time.

The SASMI - II Trust Agreement and the SASMI - II governing Rules are incorporated by reference into this Agreement as if the language of those documents was reproduced herein verbatim.

The Employer further agrees that contributions, in the form of a check made payable to the "SASMI - II Fund" are due on the twentieth (20th) day of the month immediately following the last day of the month in which work was performed for which contributions are required. Contributions are to be sent to the SASMI - II office at 601 North Fairfax Street, Suite 400, Alexandria, VA 22314, and are to be accompanied by a remittance report on a form approved by the SASMI - II Board of Trustees.

Contributions not received by SASMI - II by the date set out above are delinquent and the Local Union may take whatever action is necessary to insure prompt payment of such delinquent contributions. SASMI - II is entitled to the relief provided by Section 502(q) of the Employee Retirement Income Security Act of 1974, including but not limited to interest, liquidated damages, attorneys' fees and costs.

FOR THE EMPLOYER:

S/ \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE OF SIGNATURE: \_\_\_\_\_

FOR THE LOCAL UNION:

S/ \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE OF SIGNATURE: \_\_\_\_\_

ARTICLE XXVI - DURATION OF AGREEMENT

This Agreement is made and entered into this 1st of October in the year 2002 and shall remain in full force and effect for a period of 18 months from the date thereof.

Thereafter, this Agreement shall be deemed to be renewed from year to year unless either party notifies the other in writing, by Registered or Certified Mail, at least sixty (60) days before the expiration date, of its desire to terminate or modify said Agreement on such expiration date. Upon giving notice, depending on the request the Agreement shall either be negotiated for the purpose of modification or it shall be deemed to expire as of the expiration date. The termination date of this Agreement shall be March 31, 2004.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, and have hereunto set their hands and seals the day and year first above written.

THE T.M.P. ACQUISITION COMPANY, INC.      SHEET METAL WORKERS' L.U. #12

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AGREEMENT BETWEEN TMP ACQUISITION COMPANY  
AND SHEET METAL WORKERS' LOCAL NO. 12

Health Care Coverage for Local 12  
Employees of TMP Acquisition Company

Effective October 1, 2002, employees of TMP Acquisition Company will no longer be covered by the Sheet Metal Workers' Local Union No. 12 Health and Welfare Fund and health and welfare benefits will not be provided to those members of Local 12 working for TMP Acquisition Company after October 1, 1999. The employer, TMP Acquisition Company, agrees to provide health insurance coverage for members of Local No. 12 working for TMP Acquisition Company until the end of the term of the current collective bargaining agreement.

→ TMP Acquisition Company agrees that the plan of health insurance to be provided by the company will comply with the description of the Plan set forth in the Summary Plan Description attached hereto and made a part hereof as Exhibit "A". TMP Acquisition Company will provide health insurance coverage through Central Insurers Group Insurance/Geisinger Group with offices at 1360 North Atherton Street, State College, Pennsylvania 16803. During the term of coverage, there will be no additional charges made to members of Local 12 Acquisition Company other than those set forth in the Summary Plan Description.

→ TMP Acquisition Company further agrees not to modify the benefits provided as set forth in the Summary Plan Description and will not change deductibles, coverages or any other terms or conditions of the coverage prior to the end of the term of the present contract with Local 12.

It is further agreed that T.M.P. Acquisition Company is solely responsible to pay any and all increases in health and welfare benefits for the term of this agreement which expires on March 31, 2004.

S/

REPRESENTATIVE OF  
TMP ACQUISITION COMPANY

S/

REPRESENTATIVE OF  
SHEET METAL WORKERS' LOCAL #12

Addendum No. 1  
Company Rules and Disciplinary Procedures:

A.) Employees are subject to the following disciplinary action with respect to a certain offense in accordance with:

- A) One verbal reprimand with notification to shop steward
- B) One written warning with notification to shop steward
- C) Three days off without pay
- D) Dismissal

B.) The accumulation of any employee of any four (4) written notices or written notices of disciplinary penalties during any twelve (12) month period is cause for dismissal.

C.) Offenses:	1st <u>Offenses</u>	2nd <u>Offenses</u>	3rd <u>Offenses</u>	4th <u>Offenses</u>
1. Failure to follow Company job instructions - written or verbal.	(A)	(B)	(C)	(D)
2. Causing material or parts to be scrapped due to carelessness.	(A)	(B)	(C)	(D)
3. Violating a safety rule or safety practice.	(A)	(B)	(C)	(D)
4. Being tardy or absent without notification.	(A)	(B)	(C)	(D)
5. Failure of proper use of time clock (in or out).	(A)	(B)	(C)	(D)
6. Wasting time, loitering, or leaving place of work during work hours without permission.	(A)	(B)	(C)	(D)

7. Use or misuse of another employee's tools without his consent. (A) (B) (C) (D)

8. Posting, altering, or removing any matter on bulletin boards or company property unless authorized. (A) (B) (C) (D)

9. Misusing, destroying, or damaging company property. (B) (C) (D)

10. Gambling on Company premises. (B) (C) (D)

11. Deliberately restricting output. (B) (C) (D)

12. Threatening, intimidating, or coercing, of fellow employees (B) (C) (D)

13. Removal of articles from Company property without authorization. (B) (D)

14. Immoral conduct or indecency. (B) (D)

15. Punching another employee's time card or having one's time card punched with intent to defraud. (C) (D)

16. Fighting during working hours or on Company property. (C) (D)

17. Sleeping on the job during work hours. (C) (D)

18. Insubordination (C) (D)

19. Reporting for work under the influence of alcohol or drugs or consumption of same during work hours. (C) (D)

20. Theft of any Company (D) or employee property

21. Falsifying Company (D) records.

22. Possession of fire (D) arms or explosives on Company premises without authorization.

The intent of Rule 22, Company Rules and Disciplinary Procedures, is to prevent any firearms or explosives for entering the Plant. Employees are not specifically forbidden by this rule to bring hunting rifles, etc., to work as long as they remain locked in their cars or trucks. Under no circumstances can such weapons be brought into the plant.

2M-5  
ADDENDUM NO. 2

01-07-03

*rec* Effective 1-07-03,

It is agreed between T.M.P Acquisition Company and Sheet Metal Workers' Local Union #12 that all temporary or probationary employees must be laid off prior to any employees that have been initiated into sheet metal workers locals.

FOR T.M.P ACQUISITION COMPANY

FOR SHEET METAL WORKERS' LU#12

S/ WDC Carr

S/ R. Michael Juszczak

S/ President

S/ Bus. Rep. Jan. 8, 03

FILED  
M 11:28 AM  
JUN 03 2003  
cc  
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William A. Shaw  
Prothonotary