

R. H. Peters Chevrolet, Inc. and Chauffeurs, Teamsters & Helpers Local Union No. 175, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Petitioner. Case 9-RC-15384

July 19, 1991

DECISION AND ORDER REMANDING TO
THE REGIONAL DIRECTOR

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held October 27, 1988, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement.¹ The tally of the ballots shows 13 for and 11 against the Petitioner, with 4 challenged ballots.²

The Board has reviewed the record in light of the Employer's exceptions and brief and adopts the hearing officer's findings, conclusions, and recommendations only to the extent consistent with this decision.³

The sole issue before the Board is the disposition of the challenged ballots of service advisors Dillman, Persinger, and Hager. At the election, the Petitioner challenged the ballots of Persinger and Hager on the basis that they were supervisors and/or managerial employees. The Petitioner challenged the ballot of Dillman on the basis that he was a managerial employee. The Petitioner also challenged the ballots of all three employees on the basis that they lacked a sufficient community of interest with acknowledged bargaining unit employees to warrant their inclusion in the bargaining unit.

The hearing officer rejected the Petitioner's contention that Persinger and Hager were supervisors and/or managerial employees and the Petitioner's contention that Dillman was a managerial employee. Nonetheless

¹The unit is "All mechanics, helpers, body-shop employees and parts department employees employed by the Employer at its Hurricane, West Virginia facility, but excluding all salesmen, office clerical employees and all professional employees, guards and supervisors as defined in the Act."

²On October 31, 1988, the Union also filed timely objections to conduct affecting the results of the election. On December 15, 1988, the Acting Regional Director issued a Report on Challenged Ballots, Objections to Election, Order Directing Hearing and Notice of Hearing in which, inter alia, he recommended the Board overrule the challenge to the ballot of Gibson, but that the opening and counting of his ballot be held in abeyance pending disposition of the remaining challenged ballots and ordered, inter alia, that a hearing be held to resolve the issues raised by the objections and the challenged ballots of Persinger, Dillman, and Hager. On January 11, 1989, the Board adopted the above recommendations of the Acting Regional Director. On April 20, 1989, following, inter alia, a request by the Petitioner to withdraw the objections, the Regional Director ordered, inter alia, that the Petitioner's request to withdraw the objections be approved and that a hearing be held to resolve the issues raised by the challenged ballots of Persinger, Dillman, and Hager.

³In the absence of exceptions, we adopt pro forma the hearing officer's findings that Dillman, Persinger, and Hager are neither supervisors nor managerial employees.

he recommended that the challenges to the ballots of Dillman, Persinger, and Hager be sustained based on his finding that the service advisors were not included in the unit stipulated to by both parties. While the hearing officer noted that on that basis alone he would exclude the service advisors from the unit, he also considered community-of-interest factors. He found that the service advisors did not share a community of interest with the unit employees (sufficient to warrant their inclusion in the unit) based on their job duties, backgrounds, lack of skilled training, hours of work, wage rates and methods by which they were paid, benefits, dress, and the fact that they neither use tools nor punch a timeclock.

The Employer has excepted to the hearing officer's recommendations, contending that the challenges should be overruled and the ballots counted. The Employer essentially asserts that the parties' intent is unclear (regarding whether the service advisor position is to be included or excluded from the unit) and that (the record evidence supports a finding that) the service advisors share a (sufficient) community of interest with unit employees (to warrant including them in the unit).

We find merit in the Employer's exceptions. Contrary to the hearing officer, we find that the parties' intent regarding the service advisors is unclear and we further find that the service advisors share a community of interest with the unit employees sufficient to warrant their inclusion in the unit.

The (record shows that the) Employer operates a car dealership where it maintains a sales operation, service department, body shop, and parts department. There are eight mechanics and one helper in the service department,⁴ six body shop technicians, and nine parts department employees. All service department employees are supervised by the service manager. Mechanics are certified, they attend periodic training provided by Chevrolet, and they are required to take examinations to maintain their certifications.⁵ Although service advisors are not certified mechanics and do not perform any mechanical work, they take the same yearly examination as the mechanics—"the GM test." The job duties of service advisors, who work in an office adjacent to the area where the mechanics work on vehicles, include greeting customers, filling out repair orders, and delivering the vehicle and the repair order to the mechanics. Service advisors also assign work to the mechanics when the service manager is absent from the service department, ask mechanics to redo work, and can ask a mechanic to work overtime. Mechanics inspect the vehicle, determine what services are needed, ascertain what parts are required and their cost, and provide the information to the service advisors for the

⁴The Employer considers the service advisors to be included in the service department.

⁵Mechanics are also required to maintain their own tools.

preparation of an estimate. Service advisors then contact the customers with the estimate and deal with the customers when they return to pick up their vehicle. Sometimes a mechanic substitutes for a service advisor when all the service advisors and the service manager are absent. In addition, one mechanic was previously employed as a service advisor.

Mechanics wear uniforms and punch a timeclock. They work from 8 a.m. to 5 p.m. Although service advisors generally report for work earlier and work later than mechanics, sometimes the mechanics report for work early in order to get extra work and sometimes they work past 5 p.m. in order to finish a job. The service department and body shop are open on Saturdays, and a mechanic, body technician, and service advisor work each Saturday. The mechanics and body technicians rotate Saturday work among themselves and are paid for working Saturdays. Likewise, the service advisors rotate Saturday service writing duties with the service manager or the operations manager; however, service advisors are not paid for working Saturdays. Service advisors are salaried⁶ and mechanics and body shop technicians are paid a flat hourly rate based on the length of time specified for each job by a manual.⁷ Both mechanics' and service advisors' incomes can vary from week to week. Because mechanics are paid for the number of hours listed in the manual regardless of how long the job actually takes, a mechanic's income depends on the assignments he receives and his efficiency in completing them. Service advisors are eligible to receive commissions on the sale of certain services. All employees are eligible to participate in the same health plan and service advisors are furnished with cars for traveling to and from work.

It is well settled that in a stipulated-unit election, "the Board's function is to ascertain the parties' intent with regard to the disputed employees." *Tribune Co.*, 190 NLRB 398 (1971). If the intent is unclear or the stipulation ambiguous, then community-of-interest principles come into play. *Viacom Cablevision*, 268 NLRB 633 (1984).

The express language of the stipulation in this case does not specifically include or exclude the service advisor classification. We find that the failure to list the service advisor position as an included classification does not establish that the parties clearly intended to

⁶Service advisor Persinger is paid \$275 a week, Hager is paid \$250 a week, and Dillman is paid \$500 a week. Dillman was initially engaged in purchasing and performing work on special projects for the Employer. In July or August 1988, Persinger injured his back and at that time, Dillman was assigned to Persinger's service advisor job. Shortly before the election, Dillman was informed that his assignment of service advisor was likely to be permanent. In addition to his service advisor duties, Dillman continues to perform work on special projects for the Employer.

⁷Mechanics are paid a flat rate of \$14 an hour and body shop technicians are paid either \$10 or \$14 an hour depending on the nature of the job.

omit the classification. The unit description specifically includes the parts department and body shop employees and, within the service department, the job titles of mechanics and helpers. It specifically excludes all salesmen, office clerical employees, professional employees, guards, and supervisors as defined in the Act. With regard to the classifications of employees mentioned in the stipulation, the parties' intent is clear; however, as the express language of the stipulation does not include or exclude the classification of service advisor, the parties' intent with regard to that position is unclear. *Lear Siegler*, 287 NLRB 372 (1987); *Browning Ferris, Inc.*, 275 NLRB 292 (1985).

Because we find that it is not possible to ascertain the parties' clear intent with regard to whether the service advisor position is to be included or excluded from the unit, community-of-interest principles must be used to determine whether the service advisor position belongs in the unit. The evidence establishes that there is a sufficient community of interest between the service advisors and the mechanics to require including them in the same unit. The service advisors work under the same supervision as the mechanics and they are required to take the same yearly examination as the mechanics. Regarding daily contact, service advisors and mechanics work together in preparing estimates. Service advisors sometimes give work orders directly to the mechanics and also sometimes request that a mechanic redo work. Service advisors can request a mechanic to work overtime. Regarding interchange, sometimes a mechanic will substitute for an absent service advisor, and at least one mechanic was previously employed as a service advisor. Finally, service advisors, like mechanics and body shop technicians, take turns working on Saturdays; like mechanics, there is potential for service advisors' income to vary; and the service advisors receive the same health benefits as do the unit employees. Based on the above record evidence, we find that service advisors share a community of interest with unit employees and shall include them in the unit.

ORDER

It is ordered that the Regional Director for Region 9, within 14 days from the date of this decision, open and count the ballots of Floyd Gibson, John Persinger, Wayne Dillman, and Michael Hager and thereafter prepare and cause to be served on the parties a revised tally of ballots, on which basis he shall issue the appropriate certification.

IT IS FURTHER ORDERED that the matter is referred to the Regional Director for Region 9 for further processing consistent with this decision.