

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

RUSH ENTERPRISES, INC., d/b/a  
RUSH EQUIPMENT CENTERS OF MICHIGAN<sup>1</sup>

Employer

and

CASES      7-RC-21860  
                 7-RC-21862

LOCAL 324, A, B, C, D, INTERNATIONAL  
UNION OF OPERATING ENGINEERS, AFL-CIO

Petitioner

APPEARANCES:

R. Michael Moore, Attorney, of Houston, Texas, for the Employer  
J. Douglas Korney, Attorney, of Bingham Farms, Michigan, for the Petitioner

**DECISION AND DIRECTION OF ELECTIONS**

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:<sup>2</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Employer filed a brief which was carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. Questions affecting commerce exist concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner seeks two separate units of all full-time and regular part-time mechanics and truck drivers employed by the Employer at its facilities located in Sterling Heights and Mt. Morris, Michigan, excluding all parts employees, shop clericals, rental coordinators, service writers, office clericals, guards, and supervisors as defined by the Act. The Employer concedes the appropriateness of a separate unit at each facility, but contends that the smallest appropriate unit must include the parts employees, rental coordinators, and service writers because they share a community of interest with the mechanics and truck drivers. This would basically constitute wall-to-wall units of all non-supervisory service employees. There is no history of collective bargaining with respect to the petitioned-for employees or the broader units urged by the Employer.

The Employer is a Michigan corporation engaged in the sale, service, and rental of construction equipment to underground and road building contractors, large site developers, aggregate and mine producers, and government entities. The Sterling Heights facility has five mechanics, whom the Employer also refers to as service technicians, two parts counter persons, one service writer, one rental coordinator, along with an office clerical support staff, salesmen, and management/supervisory personnel. There is one driver that reports to the Mt. Morris facility who shares driving responsibilities for both the Sterling Heights and Mt. Morris facilities.<sup>3</sup> The Mt. Morris facility has the same classifications of employees, with the same number of employees in each classification as the Sterling Heights facility, except there is no rental coordinator in Mt. Morris.

The Sterling Heights facility consists of a 17,000 square foot building that holds two service bays, one on either end of the building, where equipment service is performed by the mechanics. Parts are warehoused adjacent to one of the service bays and equipment is stowed in the yard just outside the service bay on the south side of the building. Parts counters where the parts counter persons work are contiguous to the service bays. Offices are located near the middle of the building where the service writer

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<sup>3</sup> There is currently a driver vacancy at the Sterling Heights facility.

maintains an office along with the service manager, office clericals and other supervisory personnel.

The Mt. Morris facility consists of a 20,000 square foot building with a service bay at the north end of the building and offices at the south end. The service bay is contiguous to the parts counter. A "reference area" approximately 10 feet wide, where service manuals are maintained, separates the service bay and the parts counter.

The supervisory hierarchy at each facility is basically the same. Both the Sterling Heights and Mt. Morris facilities fall under the overall supervision of General Manager of Operations Dan Carson. Reporting to Carson at each facility are the managers of each of three departments: a service manager, a parts manager, and a sales manager.<sup>4</sup> The mechanics report to the service manager, as do the truck driver and the service writers. The parts counter persons report to the parts manager, and the rental coordinator reports to the sales manager, who presumably also supervises the salesmen.

The primary role of the mechanics is to repair rental equipment. The mechanics are utilized in two ways by the Employer. The first type of mechanic serves in the field utilizing a truck provided to service equipment at the jobsite or the customer's premises. The second type, shop mechanics, remain at the Employer's facilities, with much less customer contact, although even shop mechanics may be the first person to meet with customers who return equipment for repairs. After making a preliminary diagnosis of any mechanical problem, the mechanics consult with a parts counter person to determine the availability of the part from either the Employer's own inventory or from an outside source, and the cost of the part. For the shop mechanics, this consultation usually takes place at the parts counter and may involve reviewing service manuals or computer-generated diagrams or pictures of parts to determine exactly what parts are needed to complete a repair. The parts counter person may offer, depending on customer needs, a variety of sources for parts at competitive prices, and may suggest the use of kits versus the use of individual components, which may add to the cost. If the part is available from the Employer's inventory, the parts counter person will pull the part and promptly make it available to the mechanic. If the parts counter person has to go to an outside source for the part, he will make all the necessary arrangements for its delivery to the facility after consulting with the mechanic as to the needs of the customer in terms of timing for completion of the repair. The mechanics also provide preventive maintenance services on a regular schedule to rental equipment for customers, such as oil changes, lubrication, and checks of major components. In pricing such preventive maintenance packages, the mechanics and parts counter person confer as to the amount of labor involved, the cost of parts and materials, travel time to a customer's location, etc.

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<sup>4</sup> The parties stipulated, and I find, that all the individuals occupying these positions are statutory supervisors as defined by Sec. 2(11) of the Act based on their authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees.

As the foregoing evidences, the parts counter persons have as their primary focus the sale of parts for equipment repair. The parts counter persons handle both walk-in customers and phone callers seeking particular parts. However, the substantial majority of the parts they provide are for the Employer's own mechanics in the service department. After talking to the parts counter person, the mechanics may sometimes retrieve parts themselves from inventory. The parts counter persons may also provide routine assistance to mechanics in repairs by handing tools to mechanics working under a piece of equipment, holding a drift pin to allow the mechanics to strike it to remove a pin in a lock arrangement, and getting up on a piece of equipment to relieve hydraulic tension that may allow a bucket to be attached by the mechanics. The parts counter persons also load and unload equipment from trucks, as do the mechanics.

The service writers' primary job is to take all the information provided by the service and parts departments regarding time, parts, supplies, and mileage for a job and assigning it to a ledger account for customer billing and calculating Employer revenues. In performing this function, the service writers interact with both the mechanics and parts counter persons to double check figures. In Mt. Morris, the service writer shares an office with the service manager, and interaction may take place through a window in the office or in the reference area. In Sterling Heights, the service writer also has an office, but interaction with mechanics and parts counter persons usually takes place only on the shop floor. The service writers also accept and take service calls from customers. After recording pertinent information, the service writer confers with the parts counter persons to confirm serial numbers, account credit worthiness, etc., before passing the service call on to the service department. On occasion, the service writer may dispatch a mechanic for a call to a customer, which is usually the responsibility of the service manager.

The rental coordinator handles telephone and walk-in inquires as to the availability of equipment for rental and takes the pertinent information from the customer necessary to prepare a rental contract. The rental coordinator then contacts the service department to check out the piece of equipment, which may entail fueling, and checking fluid levels and sharpness of cutting edges. Upon the return of rental equipment, the same process repeats itself with the addition that the service department relays the number of hours that the equipment was used to the rental coordinator. As part of these processes, the rental coordinator will assist in loading and unloading equipment. The rental coordinator is also responsible for ensuring that rental equipment is properly stored in the yard, and ordering attachments for equipment such as buckets and hydraulic hammers. The driver confers with the rental coordinator for directions to jobsites for the delivery of equipment.

There is no evidence of transfers between the mechanics classification and other classifications at the facilities. However, all employees are cross-trained so that they can carry out the functions of absent employees in other departments. For instance, parts counter employees may field service calls or mechanics may attempt to fill parts orders for customers.

In hiring mechanics, the Employer prefers that they have extensive experience with the hydraulics and electronics of heavy construction equipment. Certain institutions offer programs sponsored by equipment manufacturers to provide basic knowledge of equipment repair. Manufacturers also provide periodic training for mechanics, parts counter persons, service writers, and sales people. Mechanics receive as much as 90 hours a year of training from the Employer's primary equipment manufacturer, and receive certifications from the manufacturer. Parts counter employees also receive certifications for training they receive from manufacturers. The mechanics have each invested at least \$10,000 in tools necessary to perform their duties for the Employer.

Drivers must possess a commercial drivers license and a clean driving record. The Employer prefers that they have experience hauling heavy equipment and knowledge of government highway regulations. It is generally expected that persons being considered for parts counter positions have knowledge of the rental industry, have mechanical aptitude, and be computer literate. Potential service writers should also be computer literate, and like parts counter employees, have good verbal and written communication skills, with a minimum of a high school diploma.

All the petitioned-for employees, mechanics and drivers, and the employees sought to be included in the unit by the Employer, parts counter persons, service writers, and rental coordinators, enjoy the same fringe benefits, including medical health insurance, 401(k) plan, holidays, and vacation pay. All the employees in dispute are hourly paid, except for the rental coordinator, who is salaried. The hourly wage for mechanics at the Sterling Heights facility ranges from \$17.00 to \$23.70, and at Mt. Morris from \$15.00 to \$21.00. The truck drivers' hourly wage ranges from \$18.00 to \$20.00 at both facilities. At Sterling Heights, the parts counter employees earn between \$13.00 to \$15.00 an hour, and at Mt. Morris \$9.00 to \$13.50. The service writers earn between \$13.00 to \$18.00 an hour. The parts counter employees are eligible for commissions depending on the sales performance of the parts departments, while mechanics are eligible for a commission on rentals they generate from their dealings with customers. Mechanics generally work from 7:00 a.m. to 3:30 or 4:00 p.m., while parts counter employees work 7:30 a.m. to 5:30 p.m.

The Act does not require that a petitioned-for unit for bargaining be the only appropriate unit, or the most appropriate unit; the Act requires only that the unit be appropriate. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Vincent M. Ippolito, Inc.*, 313 NLRB 715, 717 (1994); *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963).

In determining whether employees are properly included in a bargaining unit, the Board looks to whether the employees whose inclusion is at issue share a community of interest with the bargaining unit employees. The Board, in evaluating the community of interest of employees, considers the nature and skill of employee functions, the situs of the work, the degree of common supervision, working conditions, and fringe benefits, interchange and contact among employees, the functional integration of the facility, and bargaining history. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). I find the parts counter persons' and service writers' duties and responsibilities are highly integrated with and necessary for the smooth and efficient operation of the Employer's business, and they share a strong community of interest with the mechanics and truck drivers. I conclude that the rental coordinator does not share as strong of a community of interest.

As an initial matter, it is significant that the Petitioner is not seeking a mechanics-only unit, which potentially could qualify as a craft unit. *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990); *Dodge City of Wauwatosa*, 282 NLRB 459 (1986). Nor is the Petitioner seeking all the employees of a functionally distinct department for which a tradition of separate representation exists. See *E.I. DuPont & Co.*, 162 NLRB 413 (1966). Instead, Petitioner is seeking units of employees in the service department, but which exclude the service writers who are members of that department. However, the petitioned-for employees, mechanics and drivers, as a group do not have a separate identity of functions, skills and supervision. Nor is there a history of collective bargaining limited to mechanics and drivers. Consequently, traditional community of interest factors must be examined to determine if mechanics and drivers have interests separate from other employees who provide repair services to customers.

The rather small size of the Employer's facilities and employee complement, and rather intimate work area shared by the employees in dispute, bears emphasis. Parts counter employees work adjacent to mechanics and interact with mechanics on a daily and frequent basis in providing the necessary parts for repairs. This regularly requires the parts counter persons and the mechanics to confer and discuss the types of parts that are needed for the repair, and a strategy for obtaining the parts if not in the Employer's inventory. The parts counter employees also provide direct mechanic assistance to the mechanics. Although mechanics are clearly more skilled and require more regular training than parts counter employees, both classifications receive certifications from equipment manufacturers for training. Comparatively, parts counter employees are more highly skilled and trained than the drivers whom the Petitioner seeks to include in the unit. The generally higher pay of the mechanics is reflective of their higher skills and personal investment in tools, but mechanics and parts counter persons otherwise share all other fringe benefits and terms and conditions, including commissions for additional sales and rentals to customers. Although there are no permanent transfers between the mechanic and parts counter person positions, the cross-training of employees has allowed these two positions to carry out the duties of the other when necessary.

As the name implies, the service writers play an integral role in the functioning of the service department and interact regularly with both the mechanics and the parts counter persons. While the service writers are less involved in the provision of direct repair service to customers, their record keeping responsibilities functionally integrates them into the service function of the department. The service writers fall under the direct supervision of the service manager, who supervises the petitioned-for mechanics and drivers, and they all share common benefits such as health insurance, 401(k), holidays, and vacation pay. *Sears Roebuck & Co.*, 319 NLRB 607 (1995). The skill level of the service writers appears comparable to that of the part counter employees.

The role of the rental coordinator in the service process is considerably less apparent. While the rental coordinator cannot avoid contact with mechanics, parts counter persons, and drivers during the rental process, that process is distinct from the service process. The rental process appears more akin to the function carried out by the Employer's sales employees, which no doubt accounts for the rental coordinator's inclusion in the sales department under the supervision of the sales manager. Unlike all the hourly employees included in the units found appropriate herein, the rental coordinator is paid a salary, although the record is not clear whether the rental coordinator is also eligible for commissions. The rental coordinator does not appear to work in the service area with the mechanics and part counter employees.

Accordingly, I find that the parts counter persons and service writers have a substantial community of interest with the mechanics and drivers, and that their inclusion in the units is required.<sup>5</sup> The rental coordinator is not included in the petitioned-for units.

5. For the above reasons, and based on the record as a whole, the following employees of the Employer constitute units appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

Case 7-RC-21860:

All full-time and regular part-time mechanics, truck drivers, parts counter persons, and service writers employed at or out of the Employer's facility located at 7200 15 Mile Road, Sterling Heights, Michigan; but excluding rental coordinators, office clerical employees, sales employees, guards, and supervisors as defined in the Act.

Case 7-RC-21862:

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<sup>5</sup> As the units found appropriate herein are broader than those petitioned-for, an administrative review of the Petitioner's showings of interest indicates that they are nevertheless sufficient at both facilities.

All full-time and regular part-time mechanics, truck drivers, parts counter persons, and service writers employed at or out of the Employer's facility located at 10040 N. Dort Highway, Mt. Morris, Michigan; but excluding rental coordinators, office clerical employees, sales employees, guards, and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Elections.

Dated at Detroit, Michigan this 14<sup>th</sup> day of September, 2000.

(Seal)

/s/ William C. Schaub  
William C. Schaub, Jr.  
Regional Director, Region Seven  
National Labor Relations Board  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 300  
Detroit, Michigan 48226-2569

420-2933  
420-5014  
420-5021  
420-5068  
420-5075  
420-2912  
420-2921

## DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

LOCAL 324, A, B, C, D, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

### LIST OF VOTERS<sup>6</sup>

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the elections should have access to lists of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list for each unit, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the lists available to all parties to the election. The lists must be of sufficient clarity to be clearly legible. The lists may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such lists must be received in the **DETROIT REGIONAL OFFICE** on or before **September 21, 2000**. No extension of time to file those lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by: **September 28, 2000**.

**Section 103.20 of the Board's Rule concerns the posting of election notices. Your attention is directed to the attached copy of that Section.**

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<sup>6</sup> If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.