

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

NISSAN NORTH AMERICA, INC.

Employer

and

Case 26-RC-8279

**INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE, AGRICULTURE
IMPLEMENT WORKERS OF AMERICA (UAW)**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, 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:^{1/}

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

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction herein.^{2/}

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

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

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{3/}

Included: All full time and regular part time production and maintenance employees including quality and material employees and lead technicians employed at the Employer's Smyrna, Tennessee facility.

Excluded: All office clerical employees, technical employees, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are 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 the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced

more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Union, United Automobile, Aerospace, Agriculture Implement Workers of America (UAW).

LIST OF VOTERS

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the **full** names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Memphis Regional Office (Region 26), 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before September 14, 2001.

RIGHT TO REQUEST REVIEW

Under the provision 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, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by September 21, 2001.

DATED, at Memphis, Tennessee this 7th day of September 2001.

/S/

Ronald K. Hooks, Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
tel: 901-544-0018

^{1/} The Petitioner and Employer filed timely briefs which have been duly considered.

^{2/} The parties stipulated that the Employer, Nissan North America, Inc., is a California corporation engaged in the production of automobiles at its facilities located in Smyrna and Decherd, Tennessee. During the past twelve months, a representative period of time, the Employer sold and shipped goods or services valued in excess of \$50,000 to customers located outside the State of Tennessee.

^{3/} While the Petitioner seeks to represent a unit of production and maintenance employees employed at the Employer's Smyrna, Tennessee facility, the Employer contends any appropriate unit must also include all production and maintenance employees employed at the Decherd, Tennessee

facility. At the hearing the parties stipulated that whatever the geographic scope of the unit, it should include lead technicians employed by the Employer.

The Employer operates seven plants in its manufacturing division. Six of the plants are located under one roof in Smyrna, Tennessee, and are jointly referred to herein as the Smyrna facility. Those plants include a stamping plant, a paint plant, a trim and chassis plant, a body assembly Altima plant (referred to as Ultima plant in the transcript), a component assembly plant, and the Altima trim and chassis plant. Additionally, there is a production control department at the Smyrna facility. The record reflects that unit employees are employed in this department. Each of the plants has its own plant manager, who reports to Vince Sorgi, the Vice-President of Manufacturing. In addition to its own plant manager, each plant also has its own Human Resources Section Manager. The record establishes that the corporate human resources office is located at the Smyrna facility.

The Employer's remaining plant, a power assembly plant, is located in Decherd, Tennessee, a location approximately 75 (seventy-five) miles from the Smyrna facility. Although hiring for the Decherd facility began in 1996, manufacturing at that plant did not commence until 1997. Charles Cooper is the plant manager for the Decherd facility, where a total of 307 technicians, including twelve lead technicians, are employed. Mark Stout is the Human Resources Section Manager for the Decherd facility. Additionally, the Decherd plant has its own area managers. The Decherd facility is divided into four separate departments, trans-axle, engine, assembly maintenance and machine and maintenance. Employees at this facility produce engines for use in the Altima,

which is manufactured at the Smyrna facility. Additionally, the trans-axle for the Altima is also produced at the Decherd facility. The Employer also has a joint venture with a Ford plant in Avon Lake, (also referred to as Avo Lake in the transcript) Ohio, where the Quest Villager is manufactured. Trans-axles for the Quest Villager are also produced at the Decherd facility. The finished engines and trans-axles are transported from the Decherd facility to Smyrna and Avon Lake, Ohio by common carrier.

The record reflects that the hiring process for the Employer's facilities is the same. In that regard, the Employer enlists the services of the Tennessee Department of Employment Security to assist in the recruitment of applicants. When the Employer is in a hiring mode advertisements are placed in the local newspaper. Applicants contact the Department of Employment Security to secure an application, which is completed and returned to the state agency. The Department of Employment Security screens the applications to ensure that they satisfy the basic Employer requirements. Those applications are then sent to the Employer. Each facility conducts its own interview process. Applicants for employment who successfully complete the interview process and initial screening process, (i.e. background checks and drug screening) go through a 48-hour pre-employment training process. Upon successful completion of the pre-employment training process, an ERGOS evaluation test is administered to each applicant. This test evaluates the applicant's ability to perform the essential functions of the job. Once applicants for employment have successfully completed the entire process, their names are placed in a hiring pool to await an offer of employment as positions become available. Each facility maintains its

own hiring pool for the selection of candidates for employment. However, the record reflects that when Smyrna lacked a sufficient supply of candidates in its hiring pool it obtained candidates from the Decherd pool. Specifically, on September 11, 2000, ten candidates were taken from the Decherd pool for employment at Smyrna. Thereafter, on October 2, 2000, three more candidates from the Decherd pool were hired for the Smyrna facility. On October 16, 2000, another candidate from the Decherd pool was hired for employment at the Smyrna facility.

In addition to the similarities in the hiring procedures, the record reflects that there are similarities in employee benefits, hours of work, review standards, and job classifications between the employees at the two facilities. In that regard, both facilities have the job classifications of production technician and apprentices. Employees at both facilities go through the same orientation procedure. Both facilities use the same personnel forms. Personnel files for both the Smyrna and Decherd facilities are maintained at the Smyrna location. Payroll for all employees is processed at the Smyrna facility. The payday and paycheck for all employees is the same. The employee handbook, which is prepared by the corporate human resources group, applies equally to both facilities. Employees wear the same uniforms. The benefits program and schedule of hours are the same for both facilities. With the exception of wages for the maintenance technicians, (which are slightly lower at the Decherd facility) employees' pay scales and pay progression are the same. Employees at both facilities have similar skills. Each of the facilities has an apprenticeship program. The record reflects that job openings in the apprenticeship program are posted

on the boards at each plant, and those interested can apply for positions at either location. Employees at the two facilities participate in certain recreational activities together, such as the annual company picnic.

Mark Stout, Human Resource Section Manager for the Decherd facility, was involved in the hiring process and initial staffing of the Decherd facility. He testified that when the Employer commenced its Decherd operation it had a goal of obtaining the majority of its workforce from the Decherd community. Consistent with that goal, only 20% of the technician jobs were filled pursuant to employee transfers from the Smyrna facility. The remaining 80% were newly hired employees. With respect to the new hires, Stout was responsible for screening the thousands of employment applications provided to the Employer by the Department of Employment Security.

The number of employees employed at the Smyrna facility who expressed an interest in transferring to the Decherd facility exceeded the 20% goal. Consequently, not every employee expressing an interest in transferring received an interview. Employees were selected for transfer based upon management evaluations and the personal interview with Stout. Moreover, those employees who were allowed to transfer to the Decherd facility were told that the transfer was one-way and they had no option of transferring back to the Smyrna facility. The transferring employees were advised that career opportunity openings would be posted in the facility where the openings were available. They were further told that cross posting of openings would only occur when there was no qualified applicant at the facility where the opening occurred. However, the record reflects that in March of 2000 the Employer changed its policy to allow for simultaneous

posting of career opportunities. Thus, employees from both facilities now have the option of applying for positions at either location.

When the employees transferred to the Decherd facility they were required to waive specific aspects of their seniority rights. Although they retained their seniority with respect to their pension benefits and vacation accrual, they lost their seniority rights in other pertinent areas, such as employee movement, (i.e. transfers), shift preference, and vacation scheduling. Additionally, the transferring employees were required to take a three-dollar an hour pay cut. Documentary evidence reflects that there have been a total of 123 permanent technician transfers from Smyrna to Decherd. Of the current 307 production and maintenance employees at the Decherd facility, 88 originated from the Smyrna facility.

The record also reflects that there have been 65 technicians who have transferred from Decherd to Smyrna on a permanent basis. These transfers occurred as a result of a reduction in production at the Decherd facility during various periods in the year 2000. Some of the employees voluntarily transferred, while others were forced to transfer. Additionally from the time period of August 1999 to March 2000, there were 12 temporary transfers of Decherd employees to the Smyrna facility. A temporary transfer is typically for a period of ninety days. However, it can extend longer if the technician is amenable to such. Temporary transfers are generally voluntary. Finally, employee interchange can occur when there is a production-related problem. For example, on two occasions, once in 1997 and again in July 2001, Decherd technicians traveled to Smyrna to assist with the launching of a new engine. With regard to the July transfer the record

reflects that as many as 12 employees were involved. The record does not reflect how long the transfer lasted. In addition to these two instances, Human Resource Manager Stout testified that similar situations periodically occur throughout the year.

The record indicates employees at the Smyrna facility are able to transfer between the six plants, which comprise that facility. However, unlike employees who elected to transfer from Smyrna to Decherd, employees who transfer within the Smyrna facility do not forfeit any seniority rights.

The record reflects that Charles Cooper, plant manager for the Decherd facility, goes to the Smyrna facility every Monday and Tuesday for management meetings. Additionally, Human Resources Section Manager Mark Stout visits the Smyrna facility every Tuesday afternoon for management meetings. He also visits the plant if there is training on personnel changes. He communicates the information to the Decherd managers.

The record indicates that the individual plant managers and their support teams oversee the daily performance of each of the plants. While serious problems, requiring formal discipline must be approved by upper management, the record indicates that the plant managers have some autonomy with respect to correcting minor infractions. In that regard, when questioned regarding his authority to discipline employees at the Decherd facility, Stout responded that a written corrective action and above would go through Smyrna.

Although there was an election in 1989, which was prior to the existence of the Decherd facility, the record reflects that there is no history of collective bargaining at either facility.

Nothing in the statute requires that the unit for bargaining be the only appropriate unit. The Act merely requires that the unit be “appropriate.” **Morand Bros. Beverage Co.**, 91 NLRB 409, 418 (1950), *enfd.* on other grounds 190 F.2d 576 (7th Cir. 1951). Thus, in a representation proceeding the unit sought by the petitioner is always a relevant consideration. **Overnite Transportation Co.**, 322 NLRB 723 (1996); **Lundy Packing Co.**, 314 NLRB 1042, 1043 (1994); **Dezcon, Inc.**, 295 NLRB 109 (1989). When confronted with issues concerning a multifacility operation, the well established Board policy is to find a single facility unit presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. **Centurion Auto Transport, Inc.**, 329 NLRB 394 (1999); **D & L Transportation**, 324 NLRB 160 (1997), citing **J & L Plate**, 310 NLRB 429 (1993); and **Dixie Belle Mills**, 139 NLRB 629, 631 (1962). Thus, the presumption is a rebuttable one, with the party challenging the appropriateness of a single-facility unit bearing the burden of establishing that the day-to-day interests of the employees at the single location have merged with those of the employees at the other location. **Centurion**, *supra* at 400. In determining whether or not the presumption has been rebutted in a particular case the Board considers such factors as the degree to which the Employer has centralized its control over dispersed operations and labor relations, the distance between those operations, the extent of local autonomy, the similarity of employee skills and working conditions at the various locations, the extent or degree of employee interchange among the various sites, and bargaining history, if any. **J & L Plate**, *supra*; **Esco Corp.**, 298 NLRB 837, 839 (1990), and cases cited. In the absence

of any bargaining history at either facility and for the reasons set forth below, I find that the Employer has failed to rebut the single location presumption.

The Decherd facility is located approximately 75 miles from the Smyrna site. Thus, the Decherd facility is geographically separate from the petitioned for location. Although labor relations are centralized, the Decherd facility has in place its own supervisory/management structure, which is responsible for the day to day operation of the facility, including the issuance of minor discipline. Despite the centralization of personnel matters such as payroll, wages and benefits, the record establishes that there is some local autonomy within the facilities. In that regard, Decherd management conducts its own interviewing process with respect to prospective employees. Moreover, Decherd management made the initial determinations on whether or not employees who desired to transfer from Smyrna to the new facility met the Decherd's transfer criteria. The record further establishes that employees are primarily trained and evaluated at the facility where they are employed. Thus, the existence of centralized administration and control of some labor relations policies and procedures is not inconsistent with my finding that there exists sufficient local autonomy to support the single location presumption. ***New Britain Transportation Company***, 330 NLRB No. 57 (1999).

Although there is evidence of frequent contact and interaction between the management personnel of both facilities, the evidence of daily contact between the technicians at the two facilities is limited. Aside from isolated instances, primarily when there may be production issues with a new product, there is no other evidence that employees from the two facilities work side by side on a daily

basis. Although the Employer presented evidence that employees have made permanent transfers from the Smyrna facility to the Decherd facility and vice versa. The record reveals that employees who transferred to the Decherd facility were required to waive seniority rights and suffered a reduction in pay. Conversely, when employees transfer within the Smyrna facility there is no loss of seniority rights. Under these circumstances, I find that such evidence is insufficient to rebut the single location presumption. In **Red Lobster**, 300 NLRB 908, 911(1990) the Board concluded that permanent transfers are a “less significant indication of actual interchange” than temporary movement. See, also, **Franklin Mint Corporation**, 254 NLRB 714, 716 (1981).

Concerning temporary transfers, the evidence establishes that only twelve employees have transferred on a temporary basis from Decherd to Smyrna. In light of the large number of permanent employees at the Smyrna facility these statistics are insufficient to conclude that significant employee interchange has been established. **See, New Britain Transportation Co.**, supra; Compare, **Purolator Courier Corp.**, 265 NLRB 659, 661 (1982) (interchange factor met where 50 percent of the work force was involved in transfer work). Thus, I find that the percentage of employees who were temporarily transferred falls short of the degree of interchange typically required to constitute significant interchange.

In support of its position that a multi-facility unit is appropriate, the Employer relies on the Board’s decisions in **Waste Management of Washington**, 331 NLRB No. 51 (2000) and **R & D Trucking, Inc.**, 327 NLRB 531 (1999). In each of those cases the Board reversed the Regional Directors and found that the single-facility presumption had been rebutted. In each of

those cases the Board found that the evidence established that there was a lack of local autonomy. Moreover, in **Waste Management**, the Board found that there was common supervision of employees at each location. Finally, in **R & D Trucking, Inc.**, the Board found substantial interchange of the employees at issue. I find the facts of those cases distinguishable from the facts herein. Specifically, I have found the evidence insufficient to conclude that there is a lack of local autonomy at the Decherd facility. Moreover, I do not find that the employee interchange is substantial enough to warrant inclusion of the Decherd facility. Accordingly, I conclude that the petitioned for unit, limited to employees at the Smyrna facility, is an appropriate unit for purposes of collective bargaining. Additionally, in light of the parties stipulation that the lead technicians employed at the facility are appropriately included in the unit, and there being no evidence to the contrary, I shall include those employees in the unit. There are approximately 4700 employees in the unit found appropriate.

In accordance with §102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a Request for Review is filed, unless the Board expressly directs otherwise.

CLASSIFICATION INDEX:

420-4600
420-5000
420-5034
420-7303
420-6260
440-3300

