

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 32**

(French Camp, CA)

FRESNO TRUCK CENTER, d/b/a
DELTA TRUCK CENTER

Employer

and

Case 32-RC-4924

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS
IAM & AW, MACHINISTS AUTOMOTIVE
TRADES DISTRICT LODGE 190,
MACHINISTS & MECHANICS LODGE 2182

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein 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. 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 will effectuate the purposes of the Act to assert jurisdiction herein. 1/
3. The labor organization 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 the 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: 2/

INCLUDED: All full time and regular part-time service department technicians employed by the Employer at its French Camp, California facility.

EXCLUDED: All body shop employees, parts department employees, janitors, night and day clerks, warranty clerks, sales persons, service writers, managers, guards, and supervisors as defined in 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 3/ 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 the 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 INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS IAM & AW, MACHINISTS AUTOMOTIVE TRADES DISTRICT LODGE 190, MACHINISTS & MECHANICS LODGE 2182

LIST OF VOTERS

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 in the election should have access to a list 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, 361, fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with

the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, 1301 Clay Street, Suite 300 N, Oakland, California 94612-5211, on or before September 28, 2001. No extension of time to file this list 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 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. This request must be received by the Board in Washington by October 5, 2001.

DATED at Oakland, California, this 21st day of September, 2001.

James S. Scott, Regional Director
NLRB Region 32
32-1231

1/ The parties stipulated, and I find, that the Employer is a California corporation engaged in the sale and repair of commercial trucks. During the past twelve months, the Employer, in the course and conduct of its business operations, purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of California.

2/ Petitioner seeks to represent a unit limited to service department technicians. The Employer contends that body shop technicians share such a community of interest with service department technicians so as to warrant their inclusion in the unit. The parties are in agreement that all other classifications are properly excluded from the unit. In addition, the parties agreed to exclude the following individuals, who work in the

service department, as statutory supervisors: Mike Young, Nacho Segura, Wayne McClay, Jim Wise and Mark Amies. Ed Cullom, the service manager, and Tim Gillit, the body shop manager, report directly to Kevin Poirier, general manager.

The Employer is engaged in the repair of heavy duty trucks and motorhomes, as well as the sale of new and used trucks. In 1992, the facility was purchased by Fresno Truck Center, the current owner. The previous owners were signatory to a collective bargaining agreement with the Machinists Union which covered both service and body shop technicians. There is no history of collective bargaining since 1992.

The Employer's physical work area is divided into the main (long) shop, the body (short) shop and the parts area. The service technicians work in service bays in the main shop while the body technicians work in the body shop. The main shop operates continuously from Monday at 7:00 am to Saturday at 4:00 pm, with a day shift (7 am to 3:30 pm), swing shift (3:00 pm to 11:30 pm) and third shift (11:00 pm to 7:30 am). There is also one shift on Sundays from 8:00 am to 4:00 pm. Ed Cullom manages the service department and under him are 5 or 6 supervisors who oversee the service technicians. Currently, there are 18 service technicians on the day shift, 8 on the swing shift and 2 on the third shift. They work mostly on diesel engines. Some, but not all, of the service technicians are ASE (Automotive Service Excellence) certified and/or also certified by Freightliner Corporation. Service technicians are required to have their own tools which cost between \$10,000 and \$20,000. They also use laptop computers, which are supplied by the Employer, to diagnose and make the repairs. They are hourly paid; the lowest rate is \$14.00 and the highest is \$21.90. Service technicians punch their

own time clock and must have requests for time off, vacations, and schedules approved by the service manager, Cullom.

Tim Gillit is the only supervisor in the body shop where 9 technicians repair and paint damaged vehicles. There is only one shift which operates from 8:00 am to 4:30 pm, Monday through Friday, only. Body shop technicians punch their own time clock and are hourly paid with rates ranging from \$10.00 to \$22.30. They are not required to have their own tools nor do they use laptop computers in their work. Two body shop technicians are also qualified to perform some service repair work.

Employees in both departments share the same benefits, are covered by the same handbook, use the same restrooms and lockers and wear the same company provided uniforms/coveralls. Break and lunch times are the same for employees on the day shift.

In general, service technicians do not perform work in the body shop although on occasion (one time during 2001) they may have to take a laptop computer into the area for diagnostic work. On an unspecified number of times, service work has been performed in the body shop by the two technicians who are qualified to do so. However, even on these occasions, they do not perform major service work.

Technicians are not transferred between the departments on either a temporary or permanent basis, nor do they fill in for one another to cover absences or increases in workload. In fact, technicians are instructed not to enter the other shop without a supervisor's permission. Although managers Cullom and Gillit may confer with one another, there is no evidence that service technicians have work related contact with body shop technicians. Many years ago, one of the body shop technicians who can

perform service work used to work in the service department. There is some sharing of equipment in that body shop employees use service department air conditioning machines and a steam cleaner. Fork lifts go back and forth between the departments and they both use the main hoist and a common service truck.

It is well established that the unit sought by Petitioner does not have to be the only appropriate unit, but only an appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), enfd. 190 F.2d 576 (7th Cir. 1951). In deciding whether a unit is appropriate, the Board focuses on whether the employees share a community of interest, taking into account wages, hours of work, benefits, supervision, qualifications, training, skills, job functions, contact with other employees, and interchange. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). Other factors also include history of bargaining and extent of organization.

There are some factors present to support the inclusion of service and body technicians in the same unit, such as common benefits, rates of pay, work rules, and some sharing of certain equipment. However, the unit requested by Petitioner which would exclude them is *an* appropriate unit as well. Thus, the service technicians possess different qualifications and skills than body shop employees. They use computers and different tools, which they must purchase. Service technicians punch different time clocks, are separately supervised and, except for the day shift, work different hours and, in some cases, days of the week. There is virtually no work related interaction between the two groups and no history of permanent or temporary interchange. Although in the past both groups may have been covered by the same collective bargaining agreement, this occurred over nine years ago and under different ownership. Under these circumstances,

the service department technicians have a community of interest that is sufficiently separate so as to warrant the exclusion of body shop technicians from the unit.

The cases relied upon by the Employer in its brief are distinguishable. In *Austin Ford, Inc.*, 136 NLRB 1398 (1962), the Board directed an election among all service department employees which included paint, body shop and parts employees rather than only automotive line mechanics. In doing so, the Board relied on the fact that all of the mechanics in the additional departments have the same skills and prior experience and, as such, are assigned to any of the service departments upon hire. Because of this, the Employer would temporarily shift mechanics from one department to another based on work needs and would also consider all mechanics for a line mechanic vacancy. This type of interrelation does not exist in the instant case between the service and body shop technicians. In *W.R. Shadoff*, 154 NLRB 992 (1965), the Petitioner sought an election among only certain mechanics in the service department. Instead, the Board found a unit of all service department employees to be appropriate largely because some of the classifications requested by Petitioner required less experience and skill than others it sought to exclude. There had also been transfers between departments in *Shadoff*.

I find the more recent cases cited by Petitioner to be applicable to the instant case. In *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990), the Board found appropriate a unit limited to service department mechanics. Those mechanics supplied their own tools, performed job duties distinct from others and had limited contact with other service department employees. The Board found certain differences between service mechanics and body shop mechanics to be significant as well. Thus, the two groups used different tools and basically performed different work (repairs rather than mechanical). Further,

there was minimal integration of work, no transfers between departments and no day-to-day contact between service and body shop mechanics.

In *Dodge City of Wauwatosa, Inc.*, 289 NLRB 459 (1986), the Board found clear lines of demarcation between service and body shop mechanics where there was limited or casual contact and only a few transfers between the groups, specifically rejecting the Employer's reliance on *Austin Ford*. The Board also found there is no per se rule in favor of finding all employees of an employer's service department to be the only appropriate unit in this industry. Rather, the Board considers whether, as in the instant case, a distinct and homogeneous group of craftsmen is shown to exist.

Accordingly, I find a unit limited to service department technicians to be appropriate and direct an election among the employees in that group only.

There are approximately 28 employees in the petitioned-for unit.

3/ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

440-1760-9100

440-1760-9133-4300

440-1760-9167-0233