

R.D. # 0012-02
Hillside, NJ

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**RT. 22 AUTO SALES, INC., d/b/a
RT. 22 TOYOTA¹**

Employer

and

**RT. 22 AUTOMOBILES, INC., d/b/a
RT. 22 HONDA²**

Employer

and

CASE 22-RC-12209

**LOCAL 355, UNITED SERVICE
WORKERS, TRANSPORTATION
COMMUNICATIONS INTERNATIONAL
UNION, AFL-CIO³**

Petitioner

DECISION AND DIRECTIONS OF ELECTION

The Petitioner filed an amended petition under Section 9(c) of the National Labor Relations Act seeking to represent appropriate units of the Employers' employees. As there were no issues raised which would preclude elections in this matter, I will direct elections in appropriate units. I further find, for the reasons described below, that the Petitioner is a labor organization within the meaning of the

¹ The name of this Employer appears as amended at the hearing.

² The name of this Employer appears as amended at the hearing.

³ The name of the Petitioner appears as amended at the hearing.

Act, that the units sought are appropriate and that there is no basis for further blocking elections herein.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,⁴ I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employers are engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁵
3. The labor organization involved claims to represent certain employees of the Employers.⁶
4. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.⁷
5. The following employees of the Employers constitute units appropriate

⁴ A brief filed by the Employers was fully considered. No other briefs were filed.

⁵ Rt. 22 Auto Sales, Inc., d/b/a Rt. 22 Toyota (herein Rt. 22 Toyota), a New Jersey corporation, is engaged in the sale and service of automobiles at its 109 Rt. 22, Hillside, New Jersey facility, the only location involved herein. Rt. 22 Automobiles, Inc., d/b/a Rt. 22 Honda (herein Rt. 22 Honda), a New Jersey corporation, is engaged in the sale and service of automobiles at its 105 Rt. 22, Hillside, New Jersey facility, the only location involved herein. Rt. 22 Toyota and Rt. 22 Honda, herein collectively called the Employers, and the Petitioner agree that Rt. 22 Toyota and Rt. 22 Honda are separate entities and are separate employers within the meaning of the Act, as discussed *infra*.

⁶ The status of the Petitioner as a labor organization within the meaning of Section 2(5) of the Act is discussed *infra*.

⁷ There are no bars asserted to elections in this matter as described *infra*.

for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁸

Rt. 22 Toyota Unit:⁹

All mechanics, mechanics helpers, parts department employees, lubricators, washer/polishers, car jockeys, porters, tiremen, used car get ready and partsmen and lotmen employed by Rt. 22 Toyota at its Hillside, New Jersey facility, excluding all office clerical employees, professional employees, summer help, new and used car salesmen, service writers, watchmen, guards and supervisors as defined in the Act.

Rt. 22 Honda Unit:¹⁰

All mechanics, mechanics helpers, body men, parts department employees, lubricators, washer/polishers, car jockeys, porters, tiremen, used car get ready and partsmen and lotmen employed by Rt. 22 Honda at its Hillside, New Jersey facility, excluding all office clerical employees, professional employees, summer help, new and used car salesmen, service writers, watchmen, guards and supervisors as defined in the Act.

I. Labor Organization Status of Petitioner:

Although not in dispute, there was no stipulation as to the labor organization status of the Petitioner. With regard to the labor organization status of the Petitioner, there are essentially only two requirements for a party to meet to achieve the status of a labor organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other

⁸ The unit descriptions which are in accord with the agreement of the parties, I find to be appropriate for purposes of collective bargaining, as discussed infra.

⁹ The record reveals that there are no part-time employees, undercoaters or body men employed in this unit. There are approximately 24 employees employed in the unit.

¹⁰ The record reveals that there are no part-time employees or undercoaters employed in this unit. There are approximately 31 employees employed in the unit.

terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962). In this regard, the record reveals that employees have participated in the Petitioner. The record also discloses that the Petitioner deals with employers concerning wages, rates of pay, hours and other terms and conditions of employment and has entered into collective bargaining agreements with various employers. In these circumstances, I find the Petitioner is a labor organization under Section 2(5) of the Act. *Ana Colon, Inc.*, 266 NLRB 611, 612 (1983); *Alto Plastics Manufacturing Corp.*, above.

II. Appropriate Units:

A. Bargaining History

I have taken administrative notice that since September 1992, Rt. 22 Toyota and Rt. 22 Honda have recognized Amalgamated Local 747 (Local 747) as their employees' collective bargaining representative in a single unit. In a Decision and Order, dated December 20, 2001, the Board found, *inter alia*, that the Employers violated Section 8(a)(1) and (5) of the Act by withdrawing recognition from Local 747.¹¹ The Board further found that there was a collective bargaining agreement in effect between the Employers and Local 747 effective until July 31, 2002. The Board also held that the Employers' relationship with Production Workers Union, Local 148 (Local 148) was of no consequence to its unlawful withdrawal of recognition *vis a vis* Local 747.

¹¹ 337 NLRB No. 10 (2001).

B. Timeliness of Petition and Non-Intervention

The Petitioner filed the instant petition on May 20, 2002, during the 90 to 60 day period prior to expiration of the existing collective bargaining agreement.

Accordingly, I find that the petition was timely filed. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962).

I have taken administrative notice that both Local 747 and Local 148 were notified of the filing of the petition and served with a notice of hearing in this matter. Notwithstanding this notice, neither Local 747 or Local 148 has demonstrated any interest in intervening in this case nor did they appear at the hearing conducted in this matter.

C. Two Separate Units Appropriate

At the hearing the Employers and the Petitioner agreed that a separate unit for each of the entities is appropriate in this matter. In this regard, the record revealed that Rt. 22 Toyota and Rt. 22 Honda are two separate legal entities, separately incorporated and each having its own General Manager who has independent authority to hire, fire, discipline and conduct the day-to-day operations of the respective employers.¹² Further, each entity has its own payroll, accounting department, equipment, separate service facilities, training program, supervisors and grievance handling. There is no interchange of employees between the two entities.

In the above circumstances, noting the positions of the parties, I find that a separate unit for each entity is appropriate. Further, in the absence of incumbents in

¹² Rt. 22 Toyota and Rt. 22 Honda have essentially the same ownership and corporate officers, who do not have day-to-day operational involvement in the administration of the Employers.

certain positions described in the unit represented by Local 747, I have removed those classifications from the units herein. See fns. 9 and 10.

D. Blocking Charge Issue

As noted above, the Board issued its Decision and Order, 337 NLRB No. 10, on December 20, 2001, which found, inter alia, that the Employers committed certain unfair labor practices and that the Employers had a duty to recognize and adhere to the collective bargaining agreement between it and Local 747. I have taken administrative notice that the Employers have essentially complied with the terms of the Board's Order although the case is as yet not closed.¹³ Further, Local 747's contract with the Employers expired on July 31, 2002. Noting the lack of interest by Local 747 with respect to the processing of the current petition, including the fact that Local 747 failed to intervene in this proceeding notwithstanding appropriate notice, I find that it would effectuate the purposes and policies of the Ac, at this time, to proceed to elections in this matter.

DIRECTIONS OF ELECTION

Elections by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notices of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not

¹³ Some monies currently held in escrow have as yet not been distributed, a factor that I have determined has no impact on my decision to direct immediate elections in this matter.

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 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 **Local 355, United Service Workers, Transportation Communications International Union, AFL-CIO.**

LISTS 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 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). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (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 Employers with the undersigned, who shall make the lists

available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, Veterans Administration Building, 20 Washington Place, 5th Floor, Newark, New Jersey 07102, on or before September 4, 2002. No extension of time to file these 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 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 11, 2002.

Signed at Newark, New Jersey this 28th day of August 2002.

Gary T. Kendellen, Regional Director
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