

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

DAN YOUNG MOTORS, LLC,
d/b/a PENSKE HONDA

and

Case 25-RC-10145

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
AFL-CIO

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 October 21, 2002, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.¹

I. ISSUES

The Petitioner seeks an election within a unit comprised of approximately nineteen Automotive Technicians (which include Group Leaders), and four Lube Technicians/apprentices. The Petitioner contends that such a group of employees constitutes an appropriate craft unit under the Act. The Petitioner further contends that the six Group Leaders are not supervisors within the meaning of Section 2(11) of the Act and that those employees should be included within the craft unit. The Employer asserts that the unit requested by the Petitioner is not an

¹ Upon the entire record in this proceeding, the undersigned finds:

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

b. 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.

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

d. 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.

appropriate unit for the purposes of collective bargaining and that under a traditional community of interest analysis the appropriate unit should contain approximately thirteen Automotive Technicians and apprentices, four Lube Technicians, four Porters, and five Service Advisors. The Employer also argues that the six Group Leader Technicians are supervisors within the meaning of Section 2(11) of the Act and must be excluded from the unit.

II. DECISION

For the reasons discussed in detail below, including such factors as the Automotive Technicians' specialized training and experience, use of specialized tools and equipment, and different duties than other employees, it is concluded that Automotive Technicians, Lube Technicians/apprentices constitute a craft unit appropriate for collective bargaining. The unit shall also include the six Group Leader Technicians. There is insufficient evidence in the record to support the Employer's position that these six employees are supervisors under the Act. The record further supports the conclusion that even if the Automotive, Group Leader, and Lube Technicians do not comprise a craft unit, they share a sufficient community of interest to warrant their joinder in one unit, and they constitute an appropriate unit for collective bargaining.

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:

All full-time and regular part-time Automotive Technicians, Lube Technicians, apprentices, and Group Leader Technicians employed by the Employer at its Indianapolis, Indiana location; BUT EXCLUDING all Service Advisors, Porters, office clerical employees, professional employees, managerial employees, all guards and supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 24 employees for whom no history of collective bargaining exists.

A. Statement of Facts

The Employer, Dan Young Motors LLC, d/b/a Penske Honda, is engaged in the sale and service of new and used automobiles and trucks. The Employer's operations are divided into three functions: sales, service, and administrative. All of these functions operate at the same location. The service area of the facility is located immediately behind the showroom. The showroom is where the sales portion of the Employer's operation is located. The service area contains work areas for a number of the Employer's service department employees. Above the showroom and the service area is the second floor of the Employer's facility where the administrative office area is located. Staff in this office area handle paperwork and financial matters.

The highest-ranking member of management at the facility is its General Manager. The General Manager oversees all three departments of the Employer's business. Under the General Manager are a Sales Manager, who oversees the sales department, a Service Manager, who oversees the service area, and a manager for the administrative portion of the Employer's operations. There is also an Assistant Service Manager who reports directly to the Service Manager.

The Employer currently employs approximately 19 Automotive Technicians at the Employer's facility, six of whom are known as Group Leader Technicians. It is the responsibility of the Automotive Technicians to maintain, diagnose and repair vehicles brought in by customers for service as well as used vehicles prior to sale. All of the Employer's Automotive Technicians are required to undergo training in the diagnosis and repair of automobiles and trucks. Some of them have trained at various educational institutions and some have received training through programs offered by Honda. A majority of the Employer's Automotive Technicians are certified by ASE.² The Employer's Automotive Technicians do not specialize in any particular areas and are trained to perform a variety of types of repair. Automotive Technicians also receive certifications through the various training programs offered by Honda and are certified by Honda as either Bronze, Silver, Gold, or Platinum level mechanics. Technicians are also required to provide their own specialized tools and it is not unusual for a Technicians to own over \$40,000 worth of specialized tools.³ These tools are used by the Automotive Technicians to perform both their diagnostic and repair work.

All of the Employer's Automotive Technicians are assigned to one of six groups within the service area. There are four groups that are responsible for diagnosing and servicing vehicles brought into the Employer's facility by customers for repairs or maintenance. One group is responsible for the pre-delivery inspection of new vehicles. This involves checking new vehicles delivered by the manufacturer to ensure that they are mechanically sound and ready to be sold to customers. The final group handles maintenance and repairs on used vehicles before they are sold to the public. Within each group one of the Automotive Technicians serves as a Group Leader. Each group is comprised of approximately two Technicians and a Group Leader. All of the Automotive Technicians, including the Group Leaders, are paid on a flat rate basis. Under this system each Technician earns an hourly wage, which is multiplied by the estimated time to complete a repair in order to compute the amount of money earned by that Technician for that specific repair. So if an Automotive Technician is given a job with an estimated time of completion of two hours, the Technician is paid his hourly wage times two hours for completing the repair regardless of whether the repair actually takes the Technician one hour or three hours to complete.⁴ In addition to their pay for the flat rate hours they complete in a week, each of the

² ASE is a nationwide testing program for automobile and truck repair. Individuals can take ASE tests and become ASE certified in a number of specialty areas of vehicular repair.

³ Some tools including battery chargers and balancers are supplied by the Employer and are used in common by all of the Automotive Technicians.

⁴ Under the flat rate system, most Automotive Technicians are paid for more hours than they actually work in a given week.

Group Leaders is also paid a weekly bonus based upon the number of flat rate hours worked by the other Technicians in his group for the week, if each member of the group has reached his weekly goals. The Group Leaders also receive a bonus dependent upon the level of customer satisfaction for repairs performed by the group. Group Leaders in the pre-delivery inspection and used car groups do not receive a bonus for their Group Leader duties. They receive a salary for their Group Leader duties in addition to flat rate wages for the repairs they perform.

The Employer implemented the group system in March 2002. Prior to that time each Automotive Technician was treated as a single individual and received work assignments from a central dispatcher. Prior to March 2002, the Automotive Technicians were surveyed concerning which Technicians they recommended for Group Leader positions, and which Technicians would be willing to serve as Group Leaders. The Employer used the results of those surveys along with interviews of the Technicians to select the Group Leaders. Once the Group Leaders were selected, they participated along with the Service Manager and representatives from an outside consulting firm to establish the group system and divide the remaining Technicians among the six groups. The Group Leaders' choices were limited by the fact that most groups consisted only of two Technicians, and the Employer required that each group be comprised of a balanced mix of experienced and skilled Technicians. The Group Leaders also participated in a one-hour long training session with the outside consultants concerning their responsibilities as Group Leaders. At that meeting the Group Leaders were issued a handbook outlining their duties.

Each Group Leader receives a repair order from the Service Advisor assigned to his group and then gives that repair order to one of the Automotive Technicians in his group or completes the repair himself. The Group Leader maintains a record of the assigned work on a form supplied by the Employer called a routing sheet. The Group Leader's Handbook contains detailed criteria which Group Leaders must utilize in distributing repair orders among the Technicians. It dictates two primary objectives which must guide the Group Leader's dispatching function: meeting the time deadline promised the customer for each repair, and ensuring that each Technician is provided enough work to meet his weekly production objective. The Handbook further describes a ten-step process the Group Leaders should follow in distributing daily work. Group Leaders spend approximately 90% of their working hours performing the same types of diagnostic and repair work performed by all Automotive Technicians.

The record contains two instances since March 2002 that Group Leaders have reported Technician misconduct to management. The Group Leader for the pre-delivery inspection group reported attendance problems of one Technician and recommended that he be terminated. The Technician had been late on 38 occasions between July 2002 and October 14, 2002. The Service Manager was aware of the Technician's attendance record and prior discipline for attendance, and made the decision to discharge the Technician. A Group Leader for the used car group also reported a problem to the Service Manager concerning the quality of a Technician's work, and the Technician was issued a written warning by the Service Manager. Group Leaders are permitted to select a Technician to serve as Group Leader in their absence. According to the sole Group Leader who testified, this essentially involves asking the two Technicians in his group which one is willing to serve as his substitute.

Group Leaders do not have the authority to change the work hours of any Technician, including their own. If a Technician is going to be absent, he must notify the Service Manager or Assistant Service Manager. The normal working hours for all Automotive Technicians, including Group Leaders, is Monday through Friday, from 8:00 AM to 5:30 PM. If a Technician needs to leave early or come in late, he must obtain the permission of either the Service Manager or Assistant Service Manager. No Automotive Technician, including Group Leaders, may perform any repair at the Employer's facility unless the Service Manager or Assistant Service Manager is present in the facility. The record is devoid of any evidence indicating that Group Leaders play any role in evaluating or determining the hourly wage of the Technicians in their groups, or that they possess any authority to hire or discharge Technicians or to transfer them between groups. All Automotive Technicians, including Group Leaders, report to the Service Manager and Assistant Service Manager. All Technicians also wear the same uniform.

The Employer employs four Lube Technicians.⁵ The Lube Technicians are responsible for changing the oil and oil filter on customers' vehicles, as well as checking other fluid levels and lubricating vehicles. Each of the Lube Technicians is assigned to one of the Automotive Technician groups which perform repairs on customer vehicles. Lube Technicians are assigned to a group by either the Employer's Human Resources Manager or the Service Manager. Lube Technicians are paid on an hourly basis and wear the same uniforms worn by the other Technicians. It is the Employer's expectation that Lube Technicians will gradually increase their skills and knowledge and eventually be promoted to an Automotive Technician position to perform some of the less-skilled repair work.

The Employer currently employs five individuals in the position of Service Advisor. The Service Advisors essentially perform a customer-relations function. When a customer brings a vehicle into the Employer's facility, the customer speaks with a Service Advisor. The Service Advisor discusses the customer's problem, and determines the symptoms of each problem or the specific repair desired by the customer. The Service Advisor then prepares a repair order, which is given to an Automotive Technician Group Leader. Each Service Advisor is assigned to a specific group and the repair order is given to the Automotive Technician Group Leader of the Service Advisor's group. As described above, the Group Leader then distributes the work order to a Technician. Service Advisors undergo some type of training, but apparently it differs from the training which Technicians receive. Service Advisors are paid on a commission basis. Each Service Advisor receives \$2.05 for each flat rate hour worked by the Automotive Technicians in the Service Advisor's own group, and \$.25 for each flat rate hour worked by the Automotive Technicians in other groups. Service Advisors wear different clothing than that worn by Automotive and Lube Technicians. Like the Porters, Service Advisors wear khaki slacks and a denim shirt.

The Employer has four Porters at its facility. The Porters drive cars in and out of the service area, provide rides to customers, place plastic mats in the vehicles prior to service, and occasionally pick up parts for the Employer. The record does not reflect whether the Porters are

⁵ The Service Manager also refers to the Lube Technicians as apprentice technicians, since they are learning the automotive repair trade.

assigned to a specific team or if they receive any type of training. Porters are paid on an hourly basis. Porters report to the Service Manager and Assistant Service Manager.

B. Discussion

1. Supervisory Issue

In representation proceedings the burden of proving that an individual is a statutory supervisor rests upon the party making the assertion, The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989); Tucson Gas & Electric Co., 241 NLRB 181 (1979). Here the record evidence is insufficient to establish that employees who occupy the positions of Automotive Technician Group Leader are supervisors under the Act. Section 2(3) of the Act excludes from the definition of the term "employee" any individual employed as a supervisor, and Section 2(11) of the Act defines a supervisor as a person who possesses any of the twelve powers listed therein, or the authority to effectively recommend such personnel actions if in doing so s/he exercises independent judgment. In determining whether an individual is a statutory supervisor, the Board and the courts are reluctant to interpret Section 2(11) with an expansive approach since the finding of supervisory status denies to the individual the rights and protections of the Act, Holly Farms Corp. v. NLRB, 517 U.S. 392 (1996). To this end, the Board closely examines the record in its determination of supervisory status, and conclusionary statements made by witnesses in their testimony, without supporting evidence, are insufficient to establish supervisory authority, Sears, Roebuck & Co., 304 NLRB 193 (1991).

In the case at hand, the Employer asserts that the total of 17 Technicians are supervised by six Group Leaders, an Assistant Service Manager and a Service Manager. This constitutes a supervisory ratio of one supervisor for every two employees. Although such ratios are only secondary indicia used to assess supervisory status, they provide a backdrop for better understanding and assessing record evidence, Sanborn Telephone Co., 140 NLRB 512, 515 (1963); Commercial Fleet Wash Inc., 190 NLRB 326 (1971).

Although Group Leaders assign work to themselves and the two members of their group, this assignment is narrowly circumscribed by the Employer's two objectives and the ten-step work assignment process. If, for example, one Technician is busy completing a repair which he began the previous day, and a repair order given the Group Leader indicates a time deadline for the repair, it requires little discretion or judgment on the part of the Group Leader to decide whether to perform the work himself or assign it to the other Technician.⁶

⁶ Little if any discretion was also involved in the Group Leaders' selection of members of their groups. This process was controlled by the Employer to ensure an equal distribution of talent in each group. There is no evidence that this was more than a one-time event. The record contains no evidence that Group Leaders have an ongoing role in the selection of Technicians for their groups.

Group Leaders received approximately one hour of training in their new duties. While the Group Leader's Handbook states in general terms that serious misconduct such as theft, vandalism or fighting may result in a Technician's termination, it is silent regarding the role of the Group Leader in matters of discipline. The closest topic to discipline in which the role of the Group Leader is discussed, is an encouragement that Group Leaders "counsel" Technicians both to complement them for good work as well as to correct them for deficient work. The concept of counseling, however, is also vague and is not further explained. Neither the Handbook nor the record indicates whether counselings constitute a form of discipline or may otherwise affect an employee's terms or tenure of employment.

The record indicates that Group Leaders serve a reportorial function in respect to employee discipline. In the two incidents cited in the record, Group Leaders brought employee problems to the attention of management. The Service Manager made the decision to issue discipline in each case, and determined the level of discipline. In one case, although the Service Manager testified that the Group Leader recommended a Technician be terminated for excessive tardiness, it was not necessary for the Manager to rely upon this recommendation because the Service Manager was herself familiar with the Technician's attendance record and prior discipline for attendance problems. In the second incident, a Group Leader reported to the Service Manager that a Technician had failed to properly complete certain reports. The Manager determined that a reprimand was warranted, and issued the discipline. It is not entirely clear whether the Group Leader had recommended any specific discipline. Assuming a recommendation was made and adopted by the Service Manager, it cannot be concluded, based upon this single incident, that either the Group Leader involved or all Group Leaders, are statutory supervisors. The sporadic exercise of Section 2(11) powers does not confer supervisory status; the authority must be exercised regularly and substantially for supervisory status to accrue, Brown & Root, Inc., 314 NLRB 19, 20-21 (1994); Fred Rogers Company, 226 NLRB 1160, 1161 (1976). Thus, it is concluded that Group Leaders play a reportorial role in matters pertaining to employee misconduct, and simply reporting misconduct which leads to an employer investigation, does not confer supervisor status, E.I. DuPont de Nemours & Co., 69 NLRB 509, 517 (1946). Based upon the above, it is concluded that preponderance of record evidence fails to establish that Group Leaders are statutory supervisors.

Other characteristics such as the fact that Group leaders complete routing sheets and other paperwork; have extra shelving in their work stations; and will be receiving computers to access repair orders and service bulletins, are factors equally consistent with their status as Group Leaders, as they would be if their status were supervisory. Accordingly, it is concluded that the Employer's Group Leader Technicians are not supervisors within the meaning of Section 2(11) of the Act.

2. Appropriate Bargaining Unit

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act," NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an

appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit, American Hospital Association v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988).

The Petitioner asserts that a unit of Automotive Technicians, including Group Leaders, Lube Technicians and apprentices is appropriate because this group constitutes a craft unit. The Employer argues that such a group of employees does not constitute an appropriate craft unit and that under the traditional community-of-interest standards, the appropriate unit must contain not only the above classifications of employees, but the Service Advisors and Porters as well. A review of the record and existing Board law support the conclusion that Automotive and Group Leader Technicians, Lube Technicians, and apprentices constitute an appropriate craft unit.

In Burns & Roe Service Corp., 313 NLRB 1307, 1308 (1994), the Board defined a craft unit as

... a distinct and homogeneous group of skilled journeyman craftsmen, who together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which required the use of substantial craft skills and specialized tools and equipment, at 1308.

The Automotive Technicians in the instant case meet this definition. They constitute a distinct and homogenous group. Automotive Technicians are paid by a method different than the Service Advisors or Porters. Technicians receive extensive training through outside educational institutions and through Honda, and a majority of the Automotive Technicians have been certified by the nationwide ASE automotive repair certification service. Automotive Technicians also use highly specialized and expensive tools in performing their jobs. It is not unusual for a Technician to have \$40,000 invested in his work tools. Automotive Technicians also have little interaction with any other job classifications. The only Automotive Technicians who have any work-related interaction with the Service Advisors are the Group Leaders, and that interaction is limited. The only work-related interaction between Automotive Technicians and Porters indicated in the record is that the Porters drive vehicles into and out of the stalls where the vehicles are serviced. Based upon the above, it is concluded that Automotive Technicians and Group Leader Technicians constitute a craft unit. Since craft units traditionally include apprentices and helpers, Lube Technicians shall also be included in the unit.

In Dodge City of Wauwatosa, 289 NLRB 459 (1986) the Board held that a unit of service technicians employed by an automobile dealership was an appropriate craft unit. In that case the employer sought to include all of service department employees in a single unit, including body shop employees who worked in a separate building doing body and painting work on vehicles, and parts employees who provided parts to the service technicians and public. The Board held that the service technicians constituted an appropriate craft unit based on the fact that 15 of the 17 technicians were ASE certified; many of the service technicians possessed specialized skills; the service technicians had a substantial investment in specialized tools; and the technicians were paid on the same book-rate basis as in the present case. These factors considered by the Board in Dodge City are present in the instant case, including the certifications, specialties, and highly expensive and specialized tools. The Board in Dodge City also relied upon an absence of regular

work-related interaction between the service technicians and the other service employees. The record in the instant case also demonstrates very little work-related contact between the Automotive Technicians and the Service Advisors or Porters.

In Fletcher Jones Chevrolet, 300 NLRB 875 (1990), the Board also held that a unit of service technicians employed at an automobile dealership was an appropriate craft unit. As in Dodge City the employer argued that all of its service and parts employees, including body shop employees and service advisors, should be included in one unit. The Board found that the service technicians in Fletcher Jones constituted a distinct and homogeneous group based upon their lack of daily work-related interaction with other employees, their method of compensation, their certifications, different supervision, and use of specialized tools. Based upon their specialized education and the highly skilled functions they perform which require the use of specialized tools and equipment, it is concluded that the Service Technicians, Group Leader Technicians and Lube Technician/apprentices constitute a craft unit.

Even if one were to conclude that performing complex vehicular repairs is not a craft, an application of standard community-of-interest criteria supports a finding that the petitioned unit is one appropriate for collective bargaining. All of the Technicians share common supervision, daily contact and work the same hours. They possess related skills, undergo similar training, utilize similar tools, and perform functions which are integrally related. Their skills, training, tools and work location differ from the those of the Service Advisors and Porters. Accordingly, it is concluded that even absent a finding that the Service Technicians, Group Leader Technicians and Lube Technicians/apprentices constitute a craft unit, they constitute an appropriate non-craft unit.

III. 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 be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit 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 in the unit who are 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 unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit 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, AFL-CIO.

IV. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

V. LIST OF VOTERS

To insure 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 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 directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **November 19, 2002**. 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. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VI. 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, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by November 26, 2002.

Issued at Indianapolis, Indiana, this 12th day of November, 2002.

/s/ Roberto G. Chavarry

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