

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

RUSH TRUCK CENTERS OF CALIFORNIA, INC.  
d/b/a RUSH TRUCK CENTER, SYLMAR<sup>1/</sup>  
Employer

and

Case 31-RC-8102

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 12, AFFILIATED WITH  
THE BUILDING AND CONSTRUCTION TRADES  
DEPARTMENT, AFL-CIO<sup>2/</sup>  
Petitioner

**DECISION AND DIRECTION OF ELECTION**

The International Union of Operating Engineers, Local No. 12, affiliated with the Building and Construction Trades Department, AFL-CIO, filed a petition under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent a unit of service technicians at the Employer's Sylmar facility. The Employer asserts that the unit must also include a service writer, a back counter parts employee and a shipping/receiving clerk. A hearing was held before a hearing officer of the National Labor Relations Board.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

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<sup>1/</sup> The name of the Employer appears as corrected at the Hearing.

<sup>2/</sup> The name of the Petitioner appears as corrected at the Hearing.

1. HEARING OFFICER RULINGS: The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. JURISDICTION: The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.<sup>3/</sup>
3. LABOR ORGANIZATION: The labor organization involved claims to represent certain employees of the Employer.
4. QUESTION CONCERNING COMMERCE: 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. APPROPRIATE UNIT: 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:

**INCLUDED**: All full-time and regular part-time service technicians employed the Employer at its location in Sylmar, California.

**EXCLUDED**: All other employees, confidential employees, office clerical employees, guards and supervisors as defined in the Act.

As noted above, the Petitioner seeks to represent a unit comprised of service technicians.<sup>4/</sup> The Employer asserts that a unit limited to service technicians is inappropriate and that an appropriate unit must also include a service writer, a back

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<sup>3/</sup> The Employer, a Delaware Corporation, is engaged in the repair of commercial trucks at its Sylmar, California facility. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$500,000. During that same period, the Employer purchased and received goods valued in excess of \$50,000 directly from customers located outside the State of California. Thus, the Employer satisfies the statutory jurisdictional requirement as well as the Board's discretionary standard for asserting jurisdiction herein.

<sup>4/</sup> The service technicians are sometimes referred to as mechanics. The two terms are used interchangeably by the Employer and throughout the record.

counter parts employee, and a shipping/receiving clerk. For the reasons set forth below, I conclude that the petitioned-for unit of service technicians is an appropriate craft unit.

The Board recognizes that there often is more than one way in which employees of a given employer may appropriately be grouped. The Board does not require a petitioner to seek any particular appropriate unit. Rather, the Board only considers whether the unit requested is an appropriate unit, even if it may not be the optimum or most appropriate unit for collective bargaining. *Overnite Transportation*, 322 NLRB 723 (1996). In determining an appropriate unit in a representation case, the Board first considers the unit requested by the union and determines whether that unit is appropriate. It is only when the petitioned-for unit is not appropriate that the Board considers alternative units proposed by the parties. *P.J. Dick*, 290 NLRB 150, 151 (1988). Thus, it is not my role to determine whether the unit requested by the Petitioner or the broader unit proposed by the Employer would be the most appropriate unit. Rather, I must determine whether or not the unit requested by the Petitioner is an appropriate craft unit. And, only if I were to determine that this unit is not appropriate would I consider whether the unit proposed by the Employer is appropriate.

The Board finds a craft unit to consist of a distinct and homogeneous group of skilled journeymen craftsmen, working as such, together with their apprentices and/or helpers. *Fletcher Jones Chevrolet*, 300 NLRB 875, 876 (1990), citing *American Potash & Chemical Corp.*, 107 NLRB 1418 (1954). In *Dodge City of Wauwatosa*, 282 NLRB 459 at 460 fn. 6, (1986), the Board noted that with respect to automotive mechanics, the Board finds that “mechanics possessing skills and training unique among other employees constitute a group of craft employees within an automotive...department, and therefore may, if requested, be represented in a separate unit, excluding other service department employees.” In rejecting the employer’s assertion that the appropriate unit must include all service department employees, the Board in *Dodge City* noted that the “mechanics are a distinct and homogeneous group of highly trained and skilled craftsmen who are primarily engaged in the performance of tasks that are not only different from

the work performed by the other service department employees, but that require the use of substantial specific craft skills, as well as specialized tools and equipment.”<sup>5/</sup>

In order to analyze whether the service technicians in this case constitute an appropriate separate craft unit, it is useful to first understand an overview of the Employer’s operations and the positions that the Employer asserts should be included in the unit. The Employer is a full-service truck dealer, providing sales and service of new and used trucks. At its Sylmar facility, the Employer has a new and used truck department, a parts department and a service department. There currently are five service technicians employed at the Sylmar facility. These service technicians work in the Employer’s service department and are supervised by the service manager. There is one service writer in the service department. He also is supervised by the service manager. Although the back counter parts employee works in the parts department and is supervised by the parts department manager, a small percentage (10%) of his wages is paid from the service department budget. The shipping/receiving clerk is in the parts department and reports to the parts department manager.

When a customer brings in a truck to be serviced, the service writer generates a repair order and assigns the work to one of the service technicians. During the course of the day, the service technicians interact with the service writer concerning the status of their repairs and concerning possible “up-sales.” An “up-sale” is work that the Employer recommends be performed in addition to the work the customer initially requested. The service technicians and the service writer also interact in connection with determinations concerning warranty work. After a service technician completes repair

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<sup>5/</sup> In its post-hearing brief, the Employer asserts that the Board has a long-standing rule that employees in the parts and service department of automotive dealerships should be in the same unit unless there is an affirmative showing that there is no substantial community of interest between these groups. This assertion is contrary to the Board’s decision in *Dodge City*, supra at 460. In support of its assertion, the Employer cites certain cases (*Graneto Datsun*, 203 NLRB 550 (1973); *Gregory Chevrolet*, 258 NLRB 233 (1981)) that were distinguished by and questioned by the Board in *Dodge City*, supra at 460 fn.6.

work, he prepares a description of the work he performed and gives it to the service writer. The service writer enters that information into a computer and generates a bill.

The back counter parts employee works exclusively with parts used in connection with repair work. The back counter parts employee uses a computer terminal to determine the availability of parts needed by the service technicians. The service technicians do not use that computer terminal. The service technicians interact with the back counter parts employee during the day to obtain the necessary parts for repairs. They also interact in connection with the operation of an oil pump and air conditioning compound machine. The shipping/receiving clerk dispatches drivers to obtain parts needed for specific repair jobs and notifies the back counter parts employee when the parts have arrived. The record does not reveal what, if any, other duties the shipping/receiving clerk performs.

The service technicians are compensated in a manner different from other employees. Their compensation is determined by multiplying their assigned hourly rate by the number of hours allocated for specific repair work, as set out in a "flat rate book." Thus, they receive a certain amount of money for a particular repair job, determined by their hourly rate and the amount of time allotted for the job in the flat rate book, regardless of how much time they actually spend on the job. When there is no work available for them to perform, they do not earn any money during that waiting time, which is considered to be "lost and idle time." The hourly rate applied to the flat time for repair work for the current service technicians ranges from \$17/hour to \$22/hour. The service technicians also earn \$5.00 for each "up sale" for which they are responsible. They can either receive that \$5.00 as taxable income or can apply it towards a certificate for the purchase of tools.

At the beginning of this calendar year, the Employer implemented a new flat rate compensation program to determine the applicable hourly rate for the service technicians. Under this new program, service technicians are designated as a service

technician level 1, 2, 3, 4 or 5 based upon their certifications, prior experience, and the personal tools they possess. The record does not contain a description of the required certifications, experience, and tool possession for the various levels. At the time of the hearing, this new flat rate compensation program was only fully applied to the one recently-hired service technician. The other service technicians were “grandfathered-in” at their current hourly rate, regardless of whether they met the specified requirements for tools, experience, and certifications for that rate of pay.

In contrast to the service technicians, the other employees who the Employer seeks to include in the unit are paid either an hourly wage or a base salary plus commission. The shipping and receiving clerk is paid on an hourly basis and the back counter parts employee is paid a base salary and receives a commission. The service writer is paid a base salary and receives a commission based on sales, as well as a bonus when he meets certain goals. Although the back counter parts employee, the service writer, and the shipping/receiving clerk are compensated in a different manner than the service technicians, the Employer does provide all of them with the same benefits, including 401(k) benefits, health insurance, sick pay, vacation pay and holiday pay.

The service technicians possess and use unique skills, performing work different from the work performed by other employees. They have significant experience and training and they possess various technical certifications. In addition, they use specialized tools and equipment, much of which they are encouraged to and do personally provide.

The work performed by the service technicians is repair work on diesel trucks. In contrast to the service writer, the service technicians do not communicate directly with customers. The service technicians’ duties include diagnosing, removing, rebuilding, and installing engines and transmissions and repairing electrical systems, air conditioning systems, brakes, and axle housings. At the hearing, the General Manager guessed that the service technicians only spend about four hours a day physically

performing repair work and spend the remaining time performing non-mechanical functions, such as completing parts requisition forms, documenting the repair work they performed, and completing the documentation for warranty work. Nevertheless, it is evident that the bulk of their work involves the use of skills distinct from those of other employees. Although it is beneficial for the service writer to have had some experience actually performing repair work in order to understand the repair orders, there is no evidence that any employee other than the service technicians actually performs mechanical work. To the contrary, the service technicians are the only employees who repair and service trucks. Furthermore, there is no evidence that any employee has transferred between the service technician position and any other position at the Employer's Sylmar facility.

Although the General Manager testified that the Employer does not "require" service technicians to possess prior experience and certifications, he did state that the Employer would prefer that service technicians do have experience and certifications. In fact, all of the current service technicians did have prior experience before being hired by the Employer. One of the current service technicians testified that he had over 10 years of experience before being hired by the Employer. In addition, he testified that the other four service technicians similarly had prior experience before being hired. The record reveals one occasion when the Employer hired an employee to perform repair work at the Sylmar facility as an apprentice service technician. However, even that employee, who no longer is employed by the Employer, did have some prior experience. Under the apprenticeship program, an apprentice would receive training by working with experienced technicians and by attending other training programs.<sup>6/</sup>

Notwithstanding the General Manger's testimony that the Employer does not "require" certifications, the record reveals that the service technicians employed by

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<sup>6/</sup> The Board includes apprentices and helpers in craft units with skilled journeyman craftsmen. *Fletcher Jones*, 300 NLRB 875, 876 (1990).

the Employer do possess certifications in different types of repair work. The Employer asked the service technicians to provide the Employer with copies of their certifications when they were hired and the Employer has asked them to provide certifications they have received since that time. With respect to certain certifications, the Employer pays for the certification process and pays the service technicians for their time in attending the training. The service technician who testified at the hearing possesses a number of different certifications. In fact, the Employer recently sent him to a particular type of transmission training to receive another certification. He testified that although he does not know about the certifications possessed by one of the other four service technicians, he does know that the other three service technicians do possess different certifications: one of these other service technicians possesses numerous certifications; another service technician possesses a master certification in Mac Trucks, and most likely possesses other certifications as well; and the remaining service technician attended an electronics school and is currently taking classes relating to diesel truck repair at a community college. The importance of certifications is revealed by the Employer's new rate structure that uses the possession of certifications as one of the criteria used to rank employees at different levels. The Employer not only encourages service technicians to receive certifications by paying for the classes and their time at the classes, and by using certifications as one of the criteria to rank service technicians under the new rate structure, but also by providing training schedules to the service technicians.<sup>7/</sup>

The service technicians use specialized tools and equipment. Although the General Manager testified that the service technicians are not "required" to provide their own tools, all of the service technicians do supply personal tools. One service technician testified that he spends about \$4,000 each year on the purchase of personal tools. The fact that the service technicians do provide their own tools is further evidenced by the

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<sup>7/</sup> The back counter parts employee can receive certifications from some of the same manufacturers that provide service technician certifications. However, obviously, they are different types of certifications; the back counter parts employee can receive certifications related to the identification of parts and the service technicians receive certifications related to repairs.

\$5.00 credit the service technicians can receive for “up-sales” toward a certificate to purchase tools and by the fact that under the Employer’s new rate structure the Employer requires the service technicians to possess different amounts of tools in connection with the designation of different service technician levels.

The Employer asserts that a unit limited to service technicians is inappropriate in light of the integrated nature of the operations. In *E.I. Dupont De Nemours & CO.*, 162 NLRB 413, 419 (1966), the Board specifically rejected a similar argument by the employer in that case and noted that although an employer’s operation might be highly integrated, that factor is not “in and of itself sufficient to preclude the formation of a separate craft bargaining unit, unless it results in such a fusion of functions, skills and working conditions between those in the asserted craft group and others outside it as to obliterate any meaningful lines of separate craft identity.” I find that the degree of integration of the Employer’s operations in this case certainly does not result in a merger of functions skills and working conditions that would negate the appropriateness of a separate craft unit.

The Employer also asserts that the smallness of the Employer’s operations impacts jobs because employees are called upon to do more work than they would in a larger facility. Notwithstanding the smallness of the Employer’s operations, no employee other than service technicians performs mechanical repair work on trucks. In its post-hearing brief, the Employer states that, “The back counter parts employee is interchangeable with the service technician and the service writer...” This statement is not supported by the evidence. There is no evidence whatsoever that the back counter parts employee does, or even could, perform the work of the service technician. Moreover, although there may be occasions when a service technician might help the back counter

parts employee carry a heavy part, there is no evidence that any service technician has been assigned to work in the back parts employee position even on a temporary basis.<sup>8/</sup>

There are certain factors that would support the appropriateness of a unit including more than the service technicians. These factors include the common supervision between the service technicians and the service writer and the interactions between the service technicians and both the back counter parts employee and the service writer. However, these factors do not preclude a determination that the crafts status of the mechanics warrants their being represented in a separate unit, apart from the other service department and parts department employees. Since the petitioned-for unit need only be *an* appropriate unit, I find that the service technicians share a community of interest apart from the other employees and they constitute an appropriate craft unit for the purposes of collective bargaining.

In reaching this conclusion, I particularly note the following facts with respect to the service technicians: they are a distinct and homogeneous group of highly trained and skilled craftsmen; they are primarily engaged in the performance of work different from the work performed by other employees; their work requires the use of substantial specific craft skills; their work requires the use of specialized tools and equipment, some of which they provide themselves; they have had significant prior experience and/or training; and at least a majority of them possess specialized certifications. In addition, the service technicians are compensated in a manner different from the other employees. I also note that there is no history of collective bargaining in the unit sought and that the Petitioner has experience in representing mechanics who repair heavy equipment and trucks.

There are approximately 5 employees in the unit.

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<sup>8/</sup> Nor is there any evidence in the record reflecting any temporary or permanent interchange between the back counter parts employee and the service writer.

## **DIRECTION OF ELECTION<sup>9/</sup>**

I shall conduct an election by secret ballot 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:** 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, are eligible to vote. 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:** 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 are ineligible to vote.

Those eligible shall vote whether they desire to be represented for collective bargaining purposes by **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 12, AFFILIATED WITH THE BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO.**

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<sup>9/</sup> In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that I will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

## LIST OF VOTERS

In order to assure 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 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 Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that an election eligibility list, containing the **FULL** names and addresses of all the eligible voters, must be filed by the Employer with me within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before, **May 3, 2002**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

## **RIGHT TO REQUEST REVIEW**

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, under the provision of Section 102.67 of the Board's Rules and Regulations. This request must be received by the Board in Washington by **May 10, 2002**.

**DATED** at Los Angeles, California this 26<sup>th</sup> day of April, 2002.

/s/ James McDermott  
James McDermott, Regional Director  
National Labor Relations Board  
Region 31

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