

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

LANCASTER NISSAN, INC.

Employer

and

Case 4-RC-20448

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE  
WORKERS, DISTRICT LODGE 98

Petitioner

**DECISION**

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, herein called 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 it will effectuate the purposes of the Act to assert jurisdiction herein.
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 Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer is engaged in the sale and service of new and used automobiles at a dealership in East Petersburg, Pennsylvania (herein called the Dealership).<sup>1</sup> The Petitioner seeks to represent a unit of all full-time and regular part-time Automotive Technicians at the Dealership. The Employer takes the position that the unit should also include Parts Department employees, Reconditioning employees, Service Drivers and Service Writers.

### *Background*

The Dealership has four departments, New Car, Used Car, Service, and Parts. There are about 45 employees at the Dealership, including eight Automotive Technicians, four Parts Department employees, four Reconditioning employees, two Service Drivers, and two Service Writers. One of the Automotive Technicians is a recently hired trainee.

The Service Manager is in charge of the Service area, which includes the Shop and Reconditioning Area.<sup>2</sup> The Parts Manager supervises the Parts Department. There are two Team Leaders for the Automotive Technicians.

The Dealership has separate buildings for new car sales and used car sales about 100 feet apart. The Service area, which is in the new car building, is divided into a Shop, Parts Department, Reconditioning area, and Service Waiting area.

The Service Department and Parts Department are open from 7:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to 3:00 p.m. on Saturdays. The Reconditioning area is open from 8:00 a.m. to 5:00 p.m. Monday through Friday and has one person on duty on Saturdays. The Automotive Technicians, Service Writers, and Parts Department employees rotate working on Saturdays.<sup>3</sup>

The Shop is divided into two teams, the Green Team and the Blue Team. Each team has a Service Writer, a Team Leader, and four Automotive Technicians.

### *Job Classifications*

The Automotive Technicians work in the Shop, which has eight service bays, one for each technician. They diagnose the problems with the customer's vehicle and then perform the necessary repair or maintenance work. The Team Leader assigns the work to one of the Automotive Technicians based on their availability and skill levels. The Team Leader may speak to the customer about the work, but the Automotive Technicians only rarely speak to customers.

The Service Writers work in the Service Waiting area. Service Writers discuss with customers what work needs to be done, enter the relevant information into the computer, and assign the work to one of the two teams. After the work is completed, the Service Writers

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<sup>1</sup> All of the new cars, and the majority of the used cars, sold by the Employer are manufactured by Nissan.

<sup>2</sup> The parties stipulated that the Parts Manager and Team Leaders are supervisors within the meaning of Section 2(11) of the Act.

<sup>3</sup> Each employee in these classifications works about one Saturday in three.

contact and bill the customer. They also answer customer questions on the telephone. Service Writers receive “menu training” as to the types of service available to customers and are certified by Nissan in service writing skills.

Reconditioning employees are in charge of cleaning cars for customer purchase.<sup>4</sup> Three Reconditioning employees work on used cars, while the other works on new cars.<sup>5</sup> Reconditioning employees are not licensed and receive no formal training.

Service Drivers transport customers to and from the Dealership as needed. When they are not driving, they perform additional duties such as emptying trashcans, maintaining the Automotive Technician’s washer fluid supply, or substituting as a receptionist. They do not require education or training and have minimal contact with the Automotive Technicians.

Two of the Parts Department employees pick up parts as needed for repairs on cars that were not manufactured by Nissan. The other two Parts Department employees work at the Parts counter. One of the Parts counter employees spends one day a week attempting to establish wholesale accounts for parts sales. When an Automotive Technician needs a part, he goes from his service bay to the adjacent Parts Department to get what he needs. He may consult with a Parts Department employee as to which part is best suited for the job. Parts Department employees receive on-the-job training from their supervisor, but they do not need to be certified.

### *Qualifications*

All of the Automotive Technicians have Pennsylvania state inspection licenses, which must be renewed every four years.<sup>6</sup> Most, if not all, of the Automotive Technicians have also passed the Automotive Service Excellence (ASE) test. The Employer encourages the Automotive Technicians to take additional training courses and tests provided by Nissan in order to become certified to perform specialized work, such as air conditioning and transmission work. Automotive Technician certifications are displayed on the wall of the reception area of the Service Department.

The Automotive Technicians are required to own their own tools, which can cost as much as \$15,000. The Employer supplies a toolbox and one or two basic tools to each Automotive Technician, as well as some expensive specialty tools, and the employees buy the rest of the tools themselves. The Employer’s other employees are not required to own their tools.

### *Compensation*

The Automotive Technicians are paid pursuant to a “flat rate” system. Under this system, each job to be performed is allocated a fixed number of hours in the Nissan flat rate manual or Chilton guide. The Employer pays the technicians based on the aggregate number of

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<sup>4</sup> The Employer also subcontracts some of the cleaning work.

<sup>5</sup> Automotive Technicians must certify that the cars are ready to be purchased and must complete a checklist certifying that the car is clean.

<sup>6</sup> Although Automotive Technicians are not required to have a state inspection license to be hired, they may not perform Pennsylvania state inspections without them, and the Employer encourages them to secure the license.

allocated hours in the manual for the jobs they perform during a workday. Thus, if a clutch replacement job is allocated three hours in the manual, the Automotive Technician will receive three hours pay for performing the work even if the job actually requires two hours or four hours. In practice, most Automotive Technicians are generally paid for more than 40 hours a week. The Employer increases the Automotive Technicians' wage rate based on the number of certification tests that they have passed. The Automotive Technician trainee's hourly rate is \$7 per hour, and the top hourly rate for an Automotive Technician is \$21.

Compensation varies among the other classifications of employees. Service Writers earn a salary of \$275 per week plus 80 cents per hour for each hour worked in the shop. Some of the Parts Department employees receive a salary of \$350 to \$400 per week plus a small percentage of the parts sold; other Parts Department employees receive only an hourly rate. Service Drivers earn an hourly rate of \$8. Reconditioning employees are paid an hourly rate of \$7 to \$12, based on their skills and experience.

All of the Employer's employees are paid weekly and receive the same holidays and vacation days. All full-time employees receive health and welfare benefits and retirement benefits after a fixed number of years of service.

#### *Miscellaneous*

All employees are subject to the same employee handbook. The Automotive Technicians, Parts Department employees, and Reconditioning employees punch a time clock, but the Service Writers do not. Automotive Technicians attend team meetings every morning. All of the Employer's employees take smoking breaks in a common area, and they share a lunchroom. The Automotive Technicians wear uniforms supplied by the Employer, while the other employees in the Service Department wear golf shirts supplied by the Employer. All of the Employer's employees received a blue logo jacket last December.

On one occasion, a Parts Department employee became an Automotive Technician. One Reconditioning Employee transferred to an Automotive Technician job and later became a Service Writer.

#### *Analysis and Conclusion*

As the Board stated in *Bartlett Collins, Co.*, 334 NLRB No. 76 (2001), the Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See, e.g., *Overnite Transportation Co.*, 331 NLRB 662 (2000); *NLRB v. Lake County Assn. for the Retarded, Inc.*, 128 F.3d 1181, 1185 fn. 2 (7<sup>th</sup> Cir. 1997). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F. 2d 356 (7<sup>th</sup> Cir. 1969). It is well settled that the unit need only be *an* appropriate unit, not the most

appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), enfd. 190 F.2d 576 (2d Cir. 1951).

The Board has held that automotive mechanics may be represented in a separate craft unit, excluding other service department employees, if they possess skills and training unique among employees in the department. *Fletcher Jones Chevrolet*, 300 NLRB 875, 875-876 (1990); *Dodge City of Wauwatosa*, 282 NLRB 459, 460 fn. 6 (1986). In finding automobile service technicians to constitute a craft unit in *Fletcher Jones Chevrolet*, the Board emphasized that 85 percent of them had ASE or vehicle manufacturer certifications, and all of them provided their own tools and were paid on a flat rate system based on a time estimate from a repair manual. Similarly, in *Dodge City of Wauwatosa*, the Board stressed that the mechanics provided their own tools and were paid on a flat rate, and that 15 out of 17 were certified by the ASE. See also *Overnite Transportation Co.*, supra at 663; *Overnite Transportation Co.*, 322 NLRB 723, 726 (1996).

In this case, the Automotive Technicians employed by the Employer are a distinct and homogeneous group of skilled employees. Thus, they have acquired state inspection licenses, received specialized training leading to ASE and Nissan certifications, and they provide their own tools. The Employer compensates them pursuant to a flat rate system that is different from the compensation of other employees. Additionally, they work in a separate area and wear different uniforms than other service employees. In these circumstances, they constitute a separate appropriate craft unit.

The cases relied on by the Employer are inapposite because they did not involve craft unit issues. In *Gregory Chevrolet*, 258 NLRB 233 (1981), the Board included parts department employees along with employees in a petitioned-for unit of all service department employees. However, unlike the instant case, the petitioner did not seek a craft unit limited to mechanics but also sought other classifications.<sup>7</sup> In *R.H. Peters Chevrolet, Inc.*, 303 NLRB 791 (1991), the parties stipulated to a unit of all parts department employees, body shop employees, and service department mechanics and helpers, but the stipulation was silent as to the inclusion of service advisors.<sup>8</sup> The Board was unable to determine the intent of the stipulation and included the service advisors based on a community-of-interest analysis. That case did not involve the issue of whether automotive mechanics constituted an appropriate craft unit.<sup>9</sup>

Based on the foregoing, I find that the petitioned-for unit limited to Automotive Technicians is appropriate. *Fletcher Jones Chevrolet*, supra; *Dodge City of Wauwatosa*, supra.

Accordingly, I find the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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<sup>7</sup> The Board recognized this distinction in *Dodge City*, supra at 460 fn. 6.

<sup>8</sup> This classification is similar to the Service Writers in this case.

<sup>9</sup> In *Dodge City*, supra, fn. 6, the Board found that *W.R. Shadoff*, 154 NLRB 992 (1965), another case cited by the Employer, was distinguishable because the petitioned-for unit included non-certified employees with limited skills who could not appropriately be included in a craft unit of auto mechanics.

All full time and regular part-time Automotive Technicians employed by the Employer at its East Petersburg, Pennsylvania dealership, excluding all other employees, office clerical employees, professional employees, managerial employees, Cashiers, Warranty Clerks, Janitors, Service Writers, Parts Department employees, Reconditioning employees, Service Drivers, guards and supervisors as defined in the Act.

The Petitioner has filed unfair labor practice charges against the Employer in Cases 4–CA–31369 and 4–CA–31422, which are currently under investigation. The allegations encompassed by these charges, if proven, may impose conditions upon or preclude the existence of the question concerning representation sought to be raised by the instant petition. Therefore, no election can be conducted until the investigation is complete. Upon disposition of these cases, I may, if appropriate, issue a Direction of Election by secret ballot among the employees in the appropriate unit, as set forth above at a time and place to be set forth in a Notice of Election to be issued subject to the Board’s Rules and Regulations.

### **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, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **August 20, 2002**.

Signed: August 6, 2002

at Philadelphia, PA

/s/  
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DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four

440-1760-9167-0200  
440-1760-9167-0233  
440-1760 9167-0267