

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATION BOARD
REGION 9

SEARS, ROEBUCK AND COMPANY ^{1/}

Employer

and

Case 9-RC-17729

GENERAL DRIVERS, WAREHOUSEMEN &
HELPERS LOCAL UNION 89, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO, CLC

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, a New York corporation with its headquarters in Kaufman Estates, Illinois, operates retail department stores and auto centers throughout the United States. The only Employer facilities involved in this proceeding are the Jefferson Mall store and the Dixie Highway Auto Center, both located in Louisville, Kentucky. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent essentially a unit comprised of all full-time and regular part-time auto center employees, including customer service advisors, service technicians I, II, and III, and stock associates employed by the Employer at its Jefferson Mall Auto Center, excluding all office clerical employees, confidential employees, all other employees, and all guards, professional employees and supervisors as defined in the Act. There is no history of collective bargaining affecting the employees involved in this proceeding.

A hearing officer of the Board held a hearing on the issues raised by the petition and the Employer and the Petitioner filed briefs with me. The parties disagree both as to the scope and composition of the unit. Contrary to the Petitioner, the Employer contends that the only appropriate unit is a store-wide unit or, in the alternative, the smallest appropriate unit must include in addition to the employees sought by the Petitioner the employees employed at the Dixie Highway facility.

I have carefully considered the evidence and the arguments presented by the parties on the two issues. As discussed below in detail, I conclude that the employees in the petitioned for unit constitute an appropriate bargaining unit. In reaching this conclusion, I find that the auto center employees at the Jefferson Mall location possess a separate community of interest from the remaining employees at the Jefferson Mall Store and from those at the Dixie Highway facility. Both groups are distinguished from the unit employees by significant factors and could

^{1/} The Employer's name appears as amended at hearing.

constitute separate appropriate units in their own right. Accordingly, I have directed an election in a unit of approximately 17 full-time and part-time employees employed at the Employer's Jefferson Mall Auto Center.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. I will then present, in detail, the facts and reasoning that supports each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The Employer's Jefferson Mall Store opened for business in 1978. It is a two-story structure attached to the Jefferson Mall, which is a one-story shopping center with indoor corridors that provide inside access to the mall stores. The Employer's store consists of a department store and an auto center. The Employer's store is about 185,000 square feet with the auto center comprising 20,000 square feet of the total store space. There are a total of six customer entrances to the Employer's store. One of those entrances is through the mall and another entrance opens directly from the outside into the auto center. The department store sells a wide range of consumer items while the auto center provides basic automobile repair and automotive maintenance services. These services include selling and installing tires and batteries, shocks and struts, brakes and related parts, and performing oil changes and alignments. The auto center also offers limited "under the hood" preventative maintenance and repair such as installing starters, alternators, and serpentine belts. About 70 percent of the work at the auto center consists of selling and installing tires and batteries.

The Employer employs about 230 hourly employees at its Jefferson Mall store and an additional 9 employees at Dixie Highway. Of that number, about 18 work in the in-store marketing (ISM) department, about 26 to 28 work in brand central, about 32 to 35 work in home improvement, about 40 work in apparel, about 5 work in asset protection, about 15 work in receiving, about 55 work in center isle cashiering, about 6 work in "the hub," and about 17 work in the auto center.

Auto Center:

The auto center is located on the first floor of the store. The auto center includes a "back shop," a "front shop," a "stockroom," employee restrooms and a managerial office. The back shop contains nine service bays that are used for working on the customers' automobiles. The front shop includes a customer service counter where service orders are prepared, a customer waiting area, and an area for displaying small products. The stockroom contains inventory for the auto center, a work area for the preventative maintenance technician (PMT), who is not an auto center employee, and an employee break room. Another break room is located on the second floor of the store and is sometimes used by auto center employees. The employee restrooms are the only ones in the store that are solely dedicated to employee use. There is a managerial office in the auto center that is used by all store managers. However, it is not clear from the record whether all managers actually use the office or how frequently it is used.

Hours of Operation:

The hours of operation for employees at the store vary slightly. The department store is open for business from 9 a.m. to 9 p.m., Monday through Saturday, and from 11 a.m. to 6 p.m.

on Sunday. The auto center opens at 7:30 a.m. Monday through Saturday and closes at the same time as the department store on those days. Sunday hours for the auto center are the same time as the remainder of the store. During the periods of time when the auto center is open and the rest of the store is closed, a chain is placed across the opening between the auto center and the rest of the store so customers and store employees do not walk between these areas.

Managerial Structure:

Daniel Moll is the general store manager and is in overall charge of the day-to-day operations of the Jefferson Mall store. He is also responsible for the operation of the Dixie Highway facility. Moll reports to Dennis Price, whose title was not specified on the record and who is based out of Cincinnati, Ohio. Reporting to Moll are six assistant store managers (ASMs) who are each responsible for one of the store's six divisions. They are: Barb Rausch, In Store Marketing ASM; Craig Uhl, Brand Central ASM; Judy Schworm, Home Improvement ASM; Carol Ben-Bullock, Apparel ASM; Henry Lovan, Operations ASM; and Vicki Travillian, Auto ASM. Dixie Highway Auto Center Manager John Brown also reports directly to Moll. Most of the ASMs have "leads" who report to them and exercise "some" ASM authority when a ASM is absent. Chris Weick is the Assistant ASM in the auto center and he reports to Travillian.^{2/} Additionally, under Lovan are Damon O'Neil, asset protection manager, and Human Resources Specialist Donna Eades.^{3/}

The parties stipulated and the record reflects that Price, Moll, Rausch, Uhl, Schworm, Ben-Bullock, Lovan, Travillian, Brown and Weick have the independent authority to discipline employees, among other Section 2(11) indicia, and are supervisors within the meaning of the Act. The parties also agreed that the position of Human Resources Specialist is confidential and on that basis the incumbent in that position is properly excluded from any unit found appropriate. Although there is no factual basis to support the confidentiality stipulation in the record, the Human Resources Specialist's position is not in the auto center and is excluded from the unit on that basis.

ASMs (Assistant Store Managers):

The ASMs are primarily responsible for the operation of their respective departments, including participating in hiring, evaluating, and issuing discipline to employees who work under them when the issue is performance related. Moll is involved at the outset of the process if the disciplinary issue is of an ethical nature or involves a policy violation. Moll testified generally that the ASMs are responsible for disciplining employees in other departments, but he was unable to cite to a single example of this having occurred. He specifically had no recall of Travillian having ever disciplined an employee who works in a department other than the auto center. Additionally, Travillian has never acted as an ASM over any other departments. However, Travillian is expected to attend, as business permits, regular meetings with other store supervisors that are held on Monday of each week to discuss sales and customer service issues and twice daily meetings, titled resource review meetings, wherein staffing issues are addressed. Travillian herself did not testify about the regularity of her attendance at such meetings, but Moll

^{2/} At the time of the hearing in this matter Weick was on a temporary leave of absence from the Employer.

^{3/} At the time of the hearing in this matter Eades was soon to be replaced in her position by Jennifer Poll.

testified that she attends the Monday meetings “from time to time,” in part because the auto center is already open for business when this meeting is held.

Travillian and Brown report directly to Moll. They also have “dotted line” reporting responsibility to Auto Center District Manager Jim Howard. Howard has responsibility for 15 free standing and store based auto centers in a district area that encompasses Cincinnati, Northern Kentucky, Lexington, Louisville, and Clarksville, Indiana. The auto centers are the only direct sales division of the Employer that utilizes a separate and distinct district manager. Travillian and Brown may interact with Howard to accomplish auto center initiatives; for example, such as that division’s process to garner customer satisfaction through the use of “speed and expertise goals.” Generally, Howard does not make personnel determinations with respect to the auto centers. However, he has input in choosing and evaluating the performance of auto center managers.

Customer Service Advisers, Technicians and Stock Associate:

Of the approximately 17 employees who work under Travillian and Weick in the auto center there are 6 customer service advisers (CSAs) – 3 part-time and 3 full-time, 1 stock associate, and about 10 technicians. Of the technicians, four are employed as technician Is, two are employed as technician IIs, and about four or five are employed as technician IIIs.

The auto center employees work staggered schedules. The first employee, a CSA, arrives at 7 a.m. to open the auto center, turn on equipment, and begin processing any vehicles that had been dropped off for service overnight. Other technicians and CSAs arrive at 7:30 a.m., late morning or midday, and afternoon. These schedules are not set and fluctuate based, in part, on projected manpower needs obtained by a review of the prior 10 weeks sales data. Weick normally schedules employees when he is present. Other store employees also work a variety of schedules as needed.

The CSAs work at the front counter and write up service orders and interact with customers to see that the proper service is performed on their vehicles. Auto center and Dixie Highway CSAs also sell merchandise, wait on customers, answer telephones, stock floors, and clean the front shop area. Some of the CSAs are qualified through the Employer’s “Diehard Express” program to install batteries they sell to customers.

After a CSA writes up a service order based on a customer’s expressed needs, he/she will then stage, or pull the vehicle into a bay for a technician to perform the requested service. Technicians perform the requested service work and evaluate each vehicle for other repair and maintenance needs. About 20 percent of the time a CSA or a technician will accompany a customer to his/her vehicle in a service bay for the purpose of explaining to the customer maintenance or repair issues that may warrant service.

The sole stock associate neither sells nor services vehicles. The person employed in this position apparently is primarily engaged in handling the merchandise and parts that are sold and serviced by the auto center.

Employee Training:

As new hires, service technicians receive lower training pay for about 2 weeks, during which time they shadow other technicians to learn the Employer's processes and procedures. New technicians are required to attend a 1-day "battery" class and a 2-day "tire" class to learn to service and install/mount batteries and tires. Technician IIs attend a 4-day "alignment" training class. This training is conducted on-site or at a location away from the respective auto centers by a trainer in the employ of the Employer. District Manager Howard is responsible for these training sessions. The Employer's technicians also increase their skills by reviewing proprietary manuals on vehicle maintenance and repair. None of the Employer's other employees receive comparable training, although cashiers receive some on-site training utilizing a computer work station and other employees receive on the job training with regard to the products they are expected to sell.

Employee Uniforms:

All employees, with the exception of the technicians, wear name tags that are a replica of the Employer's credit card. For safety purposes, the technicians have their names sewn onto shirts supplied by the Employer. The auto center CSAs wear a uniform of blue trousers and a blue shirt with a "Diehard" or other Employer name brand logos that is distinctive from the attire worn by department store employees. Currently, only tool consultants and tool experts wear something similar, which are black shirts or vests with the "Craftsman" name on them. There are plans for appliance and electronic department employees to wear navy and khaki uniforms bearing the name of an Employer brand in the near future.

Employee Benefits:

All full-time hourly associates employed at the Jefferson Mall Store and at the Dixie Highway facility are entitled to the same benefits. These benefits include health insurance; 2 weeks of paid vacation for employees with 5 years or less of service with incremental increases thereafter, dental insurance, and life insurance. All hourly employees receive a 15-minute break every four hours. Employees from all areas of the store, including the auto center, may spend their breaks in the first (auto center) or second floor break rooms, customer waiting area in the auto center, employee restrooms, or the smoking area that is located outside of the auto center. All Jefferson Mall employees are required to park their vehicles in the same parking area and to enter and exit the store through a door that accesses the merchandise pick up area.

Personnel Policies:

Common personnel policies apply to all hourly employees employed at the Jefferson Mall Store and at the Dixie Highway facility and personnel issues for those employees are handled by the human resource specialist located at the Jefferson Mall Store. These policies include an attendance policy and a performance plan for improving the performance of poor performing employees. All employees receive and are subject to the policies contained in an "Associate Handbook" and a "Harassment and Discrimination In the Workplace" brochure. A corporate wide policy prohibits employees from taking vacation between Thanksgiving and Christmas. Vacation requests for the remainder of the year are determined by the ASM in the department in which the employee works. A corporate reward policy sets goals for employees to obtain credit applications and pays a small bonus to employees who meet and exceed those goals.

Auto center employees have the option of attending storewide meetings that are held on Wednesday and Saturday before work each week. However, it is not clear from the record how often auto center employees attend such meetings.

Employee Compensations:

A number of employees at the Jefferson Mall Store and the Dixie Highway facility are classified as consultative sales employees and are compensated with an hourly base rate and a sales commission. Employees compensated on this basis are located in many departments, including sporting goods, lawn and garden, shoes, fine jewelry, electronics, home appliances, home office, the auto center and the Dixie Highway CSAs. Higher profit margin merchandise generally carries a higher commission rate and the commission paid in the auto center is approximately in the middle of the various rates. Technicians in the auto center are compensated with an hourly base rate and an incentive that is tied to their output and to the difficulty of the work that they perform. The remainder of the Employer's non-selling employees are compensated by payment of a base or flat hourly rate.

The hourly rate for auto center CSAs is between \$6.50 and \$7 an hour plus commission. This compares with the brand central division employees who earn an hourly rate of \$6 plus commission. Those employees who are not paid on a commission basis have a starting hourly rate that is similar to that of the Dixie Highway and auto center CSAs, but which increases with experience and other, presumably performance related standards. Thus, for example, ISM employees begin at \$7.80 to \$8.50 an hour and may earn about \$13 an hour, apparel employees begin at \$6.50 an hour and currently earn as much as \$12 an hour, and receiving and hub employees begin at \$7 an hour and currently earn up to \$11 and \$13 an hour, respectively. The record does not disclose the precise hourly rates of technicians, but indicates that they receive a progressively higher base rate depending on whether they are classified as a technician I, II, or III.

Employee Timekeeping Systems:

The auto center employees and the department store employees at the Jefferson Mall have different timekeeping systems. The auto center employees clock in and out using a register located within the auto center. The department store employees clock in at a different location on a KRONOS system that involves the swiping of a time card. However, the Employer plans to install a time keeping system similar to the auto center's system in the remainder of the Jefferson Mall facility during the early part of the 2003 calendar year.

Integration of Operations:

The auto center has a separate inventory system called T-POS. This system allows auto center employees to electronically check other locations for merchandise or parts specific to the auto centers that are not in stock at the Jefferson Mall Store.

The auto center, to a degree, is also integrated with the remainder of the Jefferson Mall Store. Thus, the profit and loss statement that is generated on a monthly, quarterly, and annual basis for the store includes all departments, including the auto center and the Dixie Highway location. Bonuses for Moll and the ASMs are tied to sales and profitability of the entire store, including Dixie Highway. Currently, the bonuses are also dependent on the successful

implementation of “conversion.” Conversion involves the Employer’s transition to a new model of organization in non-consultative sales areas of its stores wherein cash registers are centralized and manned at all times. The record reflects that this process has little functional impact on consultative sales areas of the Jefferson Mall facility, including the auto center.

The record discloses that the administrative functions of the Jefferson Mall Store are centralized. The store’s general office area, referred to as “the hub,” is located on the first floor and contains Moll’s office, human resources, and space for the office clerical staff. The store’s merchandise pick up area, mailbox and office supplies are also located in the hub. All cash is kept in the hub and payroll is processed in that area. Employees, including some auto center employees, go to the hub on a daily basis to obtain change for their cash drawers, pick up mail for their respective departments, and to turn in money at the end of each work-day. Auto center employees may also go to the hub a couple of times a week to obtain office supplies such as pens and staples.

The Employer’s asset protection office is located in a separate office on the first floor of the facility between the hub and the auto center. It contains 40 television monitors that transmit images from cameras placed throughout the facility, including cameras in the auto center that are focused on the sales floor and the stockroom. The Employer’s asset protection employees are responsible for protecting the assets of the entire store as well as those of the Dixie Highway facility.

Asset Protection Manager O’Neil visits Dixie Highway anywhere from several times a month to daily if the Employer is experiencing loss or possible employee theft at that location. Auto center employees may go to the asset protection office to deposit excess funds, or to discuss issues regarding a customer or a check that the store’s system has declined. An Asset protection employee is present during all of the hours that the Jefferson Mall Store is open and when the store is closed but other employees are working inside. ^{4/}

Employees from the auto center also go to the receiving area on a daily basis to utilize the garbage disposal in that area or, less frequently, to pick up UPS packages. The record does not disclose the nature or frequency of any contact that may occur during those times between auto center and receiving employees.

Employee Interchange:

The record discloses that there is little daily interchange or contact between employees in the auto center and the vast majority of employees in the remainder of the store other than their potential interaction during break periods as previously described. ^{5/} Opportunity for daily interaction exists between auto center employees and the Preventive Maintenance Technician (PMT), whose primary work area is located in the stockroom of the auto center. The PMT is responsible for distressed merchandise disposition. In this capacity he is charged with determining whether returned merchandise may be repaired and resold at a reduced price or whether it must be returned to a corporate disbursement location maintained by the Employer. The PMT uses an area in the stockroom to house and repair this merchandise. Other employees

^{4/} The parties stipulated that the asset protection employees are excluded from the unit as guards.

^{5/} Some of the interchange noted concerns work related interaction between auto center employees and asset protection employees whom the parties agreed to exclude as guards from any unit found appropriate.

throughout the store bring returned merchandise to the PMT several times a day. The PMT uses some of the tools in the auto center's back shop area to perform his repairs and auto center employees are sometimes in the area when the PMT is making repairs. However, neither the PMT nor any other employee testified about the nature and frequency of any work-related contacts that may occur during such occasions.

With regard to transfers, the record reflects that there have been few permanent transfers between the auto center and the department store. Thus, the record reflects that five non-supervisory employees have transferred between the department store and the auto center between late 1999 to the present. Three of these employees transferred from a CSA position to a department store position. Two other employees transferred from department store positions to technician positions and one transferred back and forth three times within a short period.

Within the Jefferson Mall department store it is not unusual for employees to transfer temporarily between departments in times of need, such as when there is high absenteeism. However, temporary transfers between the auto center and the department store are rare. Moll explained the lack of such transfers to the auto center by stating, "to take care of cars is quite different from selling a pair of jeans or selling a lawn mower . . ." Additionally, he testified that during his year and half tenure employees have never been temporarily transferred from the auto center to work in other departments at the Jefferson Mall store. The only record evidence of a temporary transfer occurred in September of this year when a former and longtime CSA who had permanently transferred to a position in the department store returned to the auto center for a 7 to 10 day period while AASM Weick was unavailable for work. On that occasion, the CSA assisted with inventory and worked the counter performing the duties of a CSA.

Dixie Highway Auto Center:

The Dixie Highway Auto Center is located approximately 10 to 12 miles from the Jefferson Mall Store, or about a 20 minute drive. It is one of five auto centers operated by the Employer in the Greater Louisville area, including the auto center at the Jefferson Mall Store. Of the remaining three auto centers in the area, one located at Jeffersontown, Kentucky is also a stand-alone facility. The other two auto centers are situated in conjunction with department stores, one in the Oxmoor Center in eastern Jefferson County, Kentucky that has administrative responsibility for the Jeffersontown location and another in Clarksville, Indiana. None of these other auto centers are as close to the Jefferson Mall facility as the Dixie Highway Auto Center, with the next closest being the Jeffersontown location that is about 15 to 16 miles away. ^{6/}

John Brown is the Manager of the Dixie Highway Auto Center. He is assisted by Tom Wade, who holds the position of Assistant ASM, the same position with the same duties and responsibilities as is held by Weick at the Jefferson Mall auto center. Brown has limited disciplinary authority over the employees at Dixie Highway, but his authority is circumscribed by Moll's authority to make all termination decisions for the Jefferson Mall Store and Dixie Highway that involve employees who have been employed by the Employer beyond the 60-day probationary period. In fact, the record reflects one example when Moll reversed a termination decision made by Brown. The record discloses generally that the Dixie Highway employees

^{6/} Jefferson Mall, Jeffersontown, and eastern Jefferson County are all distinct locations in the general vicinity of Louisville, Kentucky.

hold the same types of positions and perform the same types of duties as the employees of the Jefferson Mall auto center.

There is little contact between the Jefferson Mall auto center employees and those who are employed at Dixie Highway. Job vacancies at the Jefferson Mall Store are not posted at Dixie Highway or vice-versa. With regard to transfers, the record discloses only a single permanent transfer between the Jefferson Mall Store and Dixie Highway. This occurred in July 2002, when an employee transferred from the Jefferson Mall Store to Dixie Highway. There is no record evidence of any temporary transfers between the two locations. Work related interchange between employees of the auto center and Dixie Highway is confined almost exclusively to telephonic contact when an inter-store transfer of merchandise is requested. Employees generally do not personally handle deliveries of merchandise between stores. Rather, a delivery service is used.

II. THE LAW AND ITS APPLICATION

The Act does not require that the unit for bargaining be the only appropriate unit, or the ultimate unit, or even the most appropriate unit; the Act requires only that the petitioned-for unit be appropriate. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). Moreover, a union is not required to seek representation in the most comprehensive grouping of employees unless such grouping alone constitutes an appropriate unit. *Bamberger's Paramus*, 151 NLRB 748 (1965). Although not dispositive, a petitioner's unit desire is a relevant consideration. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). Moreover, it is well settled that there is often more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. *Overnite Transportation Co.*, 322 NLRB 723 (1996). In determining whether the employees in a proposed unit share a community of interest separate and apart from employees outside the unit, the Board considers certain criteria including wages, hours and benefits, supervision, qualifications, training and skills, job functions, degree of contact, integration of work functions and interchange. *Home Depot USA*, 331 NLRB 1289 (2000).

The Board, relying on its community of interest analysis, has found units limited to auto center employees to be appropriate. For example, in *Sears, Roebuck and Company*, 261 NLRB 245 (1982), the Board reversed a regional director's finding that a single storewide unit was the only appropriate unit, and found that the petitioned-for unit of auto center employees consisting of mechanics, tire and battery installers (who performed duties similar to the technicians), parts employees, cashiers, service writers and a receiver in the auto center constituted an appropriate unit. The Board in *Sears* noted a high level of interaction between the employees within the auto center and the comparatively limited interaction with other store employees. The Board found that the strong community of interest shared by the auto center employees was evidenced by a number of factors, including their separate supervision, different working hours and separate vacation schedules, their separate and readily identifiable work area and their separate group identity arising from working in a recognized product line separate and distinct from that of the retail store. Thus, the Board concluded that the auto center constituted a separate appropriate unit, although it noted that certain factors, not found here, militated against finding the requested auto center unit to be appropriate. Such factors included the fact that all employees punched the same time clock, transferred on a temporary basis between departments as needed, and customers could select merchandise from any department and pay at any register. *Sears*, supra; see also, *J.C. Penney Company*, 196 NLRB 446 (1972). (Petitioned for unit limited to

automotive service employees, as opposed to storewide unit urged by employer, found appropriate.)

The specific inquiry here is whether a unit limited to the auto center employees at the Jefferson Mall store sought by the Petitioner is appropriate for purposes of collective bargaining. Applying the Board's traditional community of interest factors to the facts of this case, I find that the Jefferson Mall Auto Center employees constitute an appropriate unit. Specifically, they share a distinct and separate community of interest from other employees outside the unit. In reaching this conclusion, I acknowledge that some of the community of interest criteria militate finding in favor of the larger unit urged by the Employer to be appropriate. For example, all the employees receive common benefits and are under the common overall supervision of General Store Manager Moll. Additionally, certain common policies and procedures apply to all of the Employer's employees. Moreover, a small degree of operational and functional interchange exists among the auto center and the department store, and to a lesser degree, Dixie Highway. However, an analysis of the remaining criteria, on balance, supports my finding that a unit limited to the auto center employees of the Jefferson Mall store is appropriate for purposes of collective bargaining.

Training and Skill:

The technicians, and to a lesser extent the CSAs in the auto center, receive formal training and develop on the job skills that are more complex than the skills needed by the vast majority of department store employees. Moll implicitly recognized this distinction when he noted that taking, "care of cars is quite different from selling a pair of jeans or selling a lawnmower . . ." By the same token, the job functions of the technicians are quite different from the functions performed by other employees at the Jefferson Mall Store. The PMT is the only employee whose job functions are arguably similar. However, repairing and refurbishing a wide array of consumer items is significantly distinctive from repairing and maintaining automobiles and requires different knowledge and skills. Moreover, the PMT is separately supervised and spends some of his work time in the stockroom and in other parts of the store where his interaction with auto center employees is bound to be significantly less extensive than the interaction that the auto center employees have with each other while working in the front and back shop areas.

In comparison to the technicians, the training and skills needed by the CSAs are closer to the training and skills needed by employees in the department store. However, important distinctions remain as some of the CSAs are trained to install batteries and they learn on the job how to interact with customers and obtain knowledge of vehicle maintenance and repair requirements. Such skills are necessary for the purpose of taking service orders.

Integration and Contact:

More importantly, auto center employees work in an integrated process to ensure that customers' vehicles are properly and timely serviced. For example, CSAs regularly accompany customers to their vehicles while they are in the service bays for the purpose of explaining and showing the customer maintenance and repair needs. Additionally, the CSAs interact with the technicians to add requested services to a service order following the technicians' evaluation of the vehicles.

The significant degree of contact among auto center employees is starkly in contrast with the limited degree of contact that the auto center employees have with the other employees at the Jefferson Mall Store. Thus, there are virtually no temporary transfers between the auto center and the rest of the store. Permanent transfers occur infrequently, only slightly more often than temporary transfers. Employees from all parts of the store, including the auto center, concededly interact with each other during their break periods as there are areas inside and outside of the auto center where employees gather during these times. However, the record does not disclose the nature and extent of any interaction which occurs among employees in these areas and does not address whether employees take their breaks away from designated break areas, e.g., such as within the mall. Even assuming regular contact occurs during breaks between the auto center employees and employees from the remainder of the store, I note that there is little, if any, work-related interaction between auto center employees and the vast majority of the other store employees.

Employees of the auto center are separately supervised from other store employees by ASM Travillian and Assistant ASM Weick. Travillian is responsible for setting their work and vacation schedules, subject to some corporate limitations, and she is responsible for initial disciplinary action in performance related areas. Other store employees are immediately supervised by other ASMs and leads in their respective divisions.

Although there is a centralization of many of the store's administrative functions, such as payroll, cash flow, and human resource functions, the work performed by the auto center employees is unique. Indeed, the auto center has a separate and distinct product line and service and separate computer systems for the purpose of recording sales and services. Although small auto center items may be cross sold in other store departments, products from other parts of the store cannot be processed through the auto center's cash registers. The limited cross selling of product between the auto center and other parts of the store, therefore, does not diminish the separate nature of the auto center.

Wages and Hours:

Wages and hours of the auto center employees differ from the wages and hours of other store employees, although the extent of these differences is not entirely clear from the record. With respect to wages, the technicians are the only employees who are paid on a base rate plus incentive. The CSAs receive a base rate plus commission, and the stock associate receives a base rate only. This compares with employees in the remainder of the store, some of whom are paid a base rate, and some of whom receive a base rate plus commission. Although the gross pay of the various employees is not discernible, the record discloses that there are different methods of compensation for the various employees and that the auto center technicians are compensated uniquely with incentive pay. With regard to hours of work, the earlier opening hours for the auto center results in a higher proportion of auto center employees beginning work before the vast majority of the store's other employees. The staggered shift scheduling of employees in the auto center and in the department store does result in some auto center employees working similar hours to those worked by some department store employees. On balance, however, it is clear that the auto center employees are a homogeneous group whose day to day interaction, job functions, separate supervision, and distinct product line and service separates them from other Jefferson Mall Store employees as an appropriate bargaining unit. *Sears, supra; J. C. Penney, supra.*

Dixie Highway:

There remains for analysis the issue of whether the Dixie Highway employees must be included in any appropriate unit comprising the auto center employees. In analyzing this issue, I have considered the application of the single facility presumption. It is well-settled that a single retail facility is presumptively appropriate unless it is established that the single facility unit has been effectively merged into a more comprehensive unit so as to have lost its individual identity. See, *Walgreen Co.*, 198 NLRB 1138 (1972); *Gray Drug Stores*, 197 NLRB 924 (1972); *Haag Drug Co.*, 169 NLRB 877 (1968). The Board examines a number of factors in determining whether the single facility presumption has been rebutted. These factors include geographic separation of retail stores, local autonomy, centralized labor relations, interchange of employees between stores, similarity of skills and conditions of employment, common supervision, functional integration of operations, bargaining history or lack thereof, and the extent of organization. See, *J & L Plate, Inc.*, 310 NLRB 429 (1993); *Penn Color, Inc.*, 249 NLRB 1117 (1980); *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962); *Tempco Aircraft Corp.*, 121 NLRB 1085 (1958).

Here, there are concededly a number of factors that militate in favor of finding the combined unit urged by the Employer to be appropriate. For example, the Dixie Highway employees share common qualifications, training, skills and job functions with the employees in the auto center. Moreover, employees at both facilities service and sell the same products. Additionally, Moll has overall responsibility for both locations and administrative and human resource functions are centralized at the Jefferson Mall Store.

However, these factors are outweighed by those which support a finding that a single facility unit limited to the Jefferson Mall Auto Center may be appropriate. Here, the Jefferson Mall store, including the auto center, and the Dixie Highway facility are separate stores geographically located 10 to 12 miles apart requiring a 20-minute commute. Daily contact between the auto center and Dixie Highway employees is virtually non-existent. Telephonic contact may occur when an inner store transfer of merchandise is being effected, but deliveries of this merchandise are handled by an outside service.^{7/} Moreover, such merchandise transfers could occur between any auto center in the Employer's administrative district as inventory access is gained through the Employer's T-POS computer system. Temporary transfers between the auto center and Dixie Highway are also non-existent and the record discloses only one permanent transfer.

In addition to the above, the auto center and Dixie Highway employees have separate immediate and secondary supervision. In this regard, the ASMs possess a degree of autonomy in running their respective operations. Thus, they set employee work and vacation schedules, participate in and initiate the hiring process, and discipline employees for performance related issues until a termination decision must be made. Moreover, the ASMs are authorized to discharge probationary employees who have not completed 60 days with the Employer without prior or subsequent approval from Moll.

Although there are similarities, as noted above, between the auto center and Dixie Highway that might make a petitioned for unit of both locations appropriate, no labor organization is

^{7/} It is not even clear from the record whether such telephonic contacts are typically initiated by unit employees or whether the ASM or AASM would handle this responsibility.

seeking such a unit. In view of the separate identity of the two facilities, I find that they have not been merged into a comprehensive grouping. In reaching this conclusion, I note particularly the geographic separation between the two locations, the degree of local supervisory autonomy and, most importantly, the nearly complete absence of any kind of interchange between the employees at the auto center and Dixie Highway. *Dixie Belle Mills, Inc.*, supra at 632; *Van Lear Equipment, Inc.*, 336 NLRB No. 114 (November 26, 2001).

Based on the foregoing, the record as a whole, and having carefully considered the arguments of the parties at this hearing and in their briefs, I conclude that the single facility presumption has not been overcome and that the auto center employees at Jefferson Mall constitute a separate appropriate unit. *Van Lear Equipment, Inc.*, supra.

The Employer's Contentions:

The Employer contends that the Board, in the previous cited *Seas* case, found an auto center unit to be appropriate because it included (in addition to five other job classifications) mechanics who performed the skilled mechanical work of engine tune-ups, front-end alignments and brake overhauls. Contrary to the Employer's contention, the fact that the unit in that case included mechanics was not a controlling factor. Rather, the Board found that the automotive center employees as a whole had a sufficiently distinct community of interest to warrant their representation apart from the rest of the store. Moreover, the work performed by the employees here, contrary to the Employer's assertions in its brief, requires both skill and training, even if the training is provided after the employee is hired. The mounting and balancing of tires, the use of hydraulic lifts, the lubrication of automobiles, and the installation of tires and batteries, among other things, can be both dangerous and problematic if done incorrectly. Although the technicians may not be required to possess skills as advanced as the mechanics of the past, their job duties still require skills not ordinarily possessed or required by employees in other divisions of the Employer.

In its brief, the Employer also asserts that the instant case is distinguishable from the above *Sears* case because of the functional integration of the auto center management and employees into the entire store. I find this argument unpersuasive as those factors have a minimal effect on the day-to-day operation and function of the auto center. Moreover, as discussed above in detail, the minimal amount of employee interchange, separate immediate supervision, distinct work situs and product line, different job functions, and differing hours and methods of compensation, belie the contention that there is functional integration despite substantial administrative centralization.

Although I am not bound by Regional Directors' decisions, which have not been approved by the Board, I find, in any event, unpersuasive the Employer's reliance on the Regional Director's Decision and Direction of Election and Order in *Sears, Roebuck and Company*, Cases 6-RC-7618 and 6-RC-7659 (consolidated) because the issue in those cases was different from the issues here. In Case 6-RC-7618, the Petitioner Retail Clerks requested a unit consisting of all selling and nonselling employees in the Employer's Penn Center Store located in the Pittsburgh, Pennsylvania metropolitan area, including those in the auto center, but not the mechanics and "floormen," who performed work similar to the technicians in the present case. In Case 6-RC-7659, the Teamsters requested a unit of shipping, receiving, parts and stockroom employees throughout the Penn Center Store, including the auto center. Although the petitioners in those cases requested units which included employees from throughout the store, neither

petitioner sought to include in their units the mechanics and floormen who worked in the auto center. Consequently, the issue in those cases, with regard to the auto center employees, was whether the requested units resulted in a fragmentation of the employees into two separate groups with some auto center employees being excluded.

With regard to the auto center employees, the Regional Director in Cases 6-RC-7618 and 6-RC-7659 considered whether the mechanics and floormen should be excluded from a storewide unit that included the auto center sales people. In those cases, the employer argued that the unit sought by the Retail Clerks was inappropriate and that the only appropriate unit should consist of the employees in all of the Employer's stores in the area. Thus, there was a completely different issue being analyzed in those cases. The Regional Director found, in those cases, that because there was a community of interest among all of the employees in the auto center, the mechanics and floormen, as well as the parts, stockroom and receiving employees in the auto center, must be included in a store-wide unit. The Regional Director did not find that a store-wide unit was required, rather a store-wide unit was the unit covered by the petition. Accordingly, I find the Employer's reliance on those cases to be misplaced.

In addition to the above, I note that at the time when the above decision issued, nearly 26 years ago, the structure and function of the auto center as well as the Penn Center Store was quite different from the present day Jefferson Mall Store. Indeed, it is also quite different from the present day Penn Center store. In the above cases, the Regional Director found a high degree of integration on a day-to-day basis between the auto center employees, whose work was located in a freestanding separate building, and the employees in the rest of the store, as well as between the mechanics, floormen and salespeople in the auto center. Further, auto center shipping and receiving employees regularly worked in the store. Thus, as the Regional Director for Region 6 recently concluded in *Sears, Roebuck and Company*, Case 6-RC-12107 (August 15, 2002), which raised issues identical to those presented here, I find the decision in Cases 6-RC-7618 and 6-RC-7659 regarding the Employer's Penn Center store to be inapposite, both because of the different factual situation and because of the different focus of the analysis.

In analyzing the Employer's contentions on this point, I note in particular that its brief does not reference the Decision and Direction of Election which issued on August 15, 2002 in Case 6-RC-12107, and which involves a requested unit of auto center employees in the very same Penn Center Store that Region 6 addressed many years ago in Cases 6-RC-7618 and 6-RC-7659. At first blush, it appears that a current decision in which a labor organization sought nearly the identical unit requested here would provide a more instructive factual and legal comparison than would a 1977 decision involving different issues. Indeed, a review of the more recent Region 6 decision is instructive because there are striking similarities between the Penn Center Store and the Jefferson Mall Store. Thus, the auto center at the Penn Center Store is now physically located in the same building as the remainder of the store as is the case at Jefferson Mall. Additionally, the auto center in the Penn Center is set up nearly identically to the auto center here, with a front counter, customer waiting area, back shop, and stock room, right down to the chain that is placed between the auto center and the rest of the store.

In finding a separate appropriate unit comprised of the auto center employees, the Regional Director in Case 6-RC-12107 relied on many of the same factors found here. For example, he noted that the auto center employees have separate job functions, little daily interaction with employees in the rest of the store, separate supervision, different hours of work, separate vacation schedules, a separate and easily identifiable work area, a distinct product line, and a

separate timekeeping and cash register system. Although there are some minor factors in the Penn Center record that are not present here, such as greater store-wide use of the break room and bathroom located in the auto center, a common parking area for all employees, and a common employee handbook.^{8/} I find, however, that these minor distinctions are insufficient to compel a different result in this case than the one reached in Case 6-RC-12107.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that a unit of auto center employees employed at the Jefferson Mall store constitutes a functionally-integrated group with a sufficiently distinct community of interest to constitute an appropriate unit. *Sears, Roebuck and Company*, supra; *J.C. Penney Company*, supra. In reaching this decision, I note that there is no bargaining history among any of the employees, and no labor organization seeks to represent auto center employees as part of a broader unit.

III. EXCLUSIONS FROM THE UNIT

The parties agree, the record shows, and I find that the following persons are supervisors within the meaning of Section 2(11) of the Act: Daniel Moll, general store manager; Barb Rausch, in store marketing ASM; Craig Uhl, brand central ASM; Judy Schworm, home improvement ASM; Carol Ben-Bullock, apparel ASM; Henry Lovan, operations ASM; Vicki Travillian, auto ASM; John Brown, auto center manager (Dixie Highway); Chris Weick, Assistant ASM auto; and Damon O'Neil, asset protection manager. Accordingly, I will exclude them from the unit.

The parties agree, and the record shows, that Jennifer Poll, human resources specialist, does not share a community of interest with unit employees. Therefore, I will exclude her from the unit.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the above discussion, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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 in this case.
3. The Petitioner 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.

^{8/} Although there may be such a handbook for the auto center employees at the Jefferson Mall Store, there is no record evidence of one existing.

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:

All full-time and regular part-time auto center employees, including customer service advisors, service technicians I, II, and III, and stock associates employed by the Employer at its Jefferson Mall, Louisville, Kentucky retail store; excluding all office clerical employees, confidential employees, the Dixie Highway employees, the preventative maintenance technician (PMT), all other employees and all guards, professional employees and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by General Drivers, Warehousemen & Helpers Local Union 89, affiliated with the International Brotherhood of Teamsters, AFL-CIO, CLC. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

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 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 hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full

names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **December 24, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **December 31, 2002**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 17th day of December 2002.

/s / Richard L. Ahearn

Richard L. Ahearn, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
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**Classification Index 440-1720-0133
440-1720-0167
440-1760-9900**

