

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21**

YORK ENTERPRISES SOUTH INC.
d/b/a POWER FORD, HUNTINGTON BEACH
d/b/a POWER FORD¹

Employer

and

Case 21-RC-20678

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
DISTRICT LODGE NO. 725, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as 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 Regional Director.

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

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

² The name of the Petitioner appears as amended at the hearing.

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. Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and seeks 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.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time automotive technicians, lube men, and group leaders employed by the Employer at its Huntington Beach location; excluding all service advisors, office clerical employees, professional employees, managerial employees, all guards and supervisors as defined in the Act, and all other employees.

ISSUES:

The Petitioner seeks an election within a unit comprised of approximately 14 automotive technicians, 3 group

leaders³, and 3 lube men. The Petitioner contends that such a group of employees constitutes an appropriate craft unit under the Act. The Employer asserts that such a group of employees does not constitute a pure craft unit because of the inclusion of lube men, and that under the traditional community-of-interest standards, the appropriate unit must contain not only automotive technicians, group leaders, and lube men, but also the service advisors. The Petitioner contends that one of the service advisors, Randy Bradley, is a supervisor within the meaning of Section 2(11) of the Act and should be excluded from any unit that might include the service advisors.

CONCLUSION

For the reasons discussed in detail below, it is concluded that automotive technicians, group leaders, and lube men⁴ constitute a craft unit appropriate for collective bargaining. The record supports the conclusion that lube men essentially are "helpers" and "apprentices" to the automotive

³ The record reveals that group leaders are automotive technician group leaders, but it is not clear if these three group leaders are included among the 14 automotive technicians or not.

⁴ The parties stipulated that these three classifications should be included in any unit found appropriate.

technicians and therefore, appropriately included in the craft unit.⁵

FACTS

The Employer is engaged in the business of providing automotive sales and service. There is no history of collective bargaining among any of the Employer's employees.

Service Advisors

The repair process begins with a customer calling or coming to the facility for a vehicle repair. When a customer comes to the facility, he or she is greeted by a service advisor.⁶ The service advisor discusses the problem with the customer, and then writes out a repair order. The repair order contains information about the customer and the vehicle, including what work needs to be done and to which team it is assigned.⁷

Before the vehicle is given to the automotive technician, the service advisor may perform some minor work on

⁵ If it is concluded that the service advisors should be included in the appropriate bargaining unit, I conclude that the Petitioner did not sustain its burden of proving that Randy Bradley is a supervisor within the meaning of the Act.

⁶ Service advisors receive training through Ford Motor Company in customer handling, customer relations, and some technical training in transmission, brakes, suspension, engines, and transmission. Currently two service advisors previously worked for the Employer as automotive technicians.

⁷ One to two service advisors are assigned to one of three teams comprised of service advisors, automotive technicians and lube men.

the car, such as reprogramming the alarm, replacing wiper blades or light bulbs.

After the automobile is given to the automotive technician to perform the repair, the automotive technician will perform a specific diagnostic routine and report his findings on the repair order. Based on these findings, the automotive technician may go and speak to the service advisor about the work

that needs to be performed. The service advisor then calls the customer for approval. The service advisor estimates the repair time and then periodically checks with the automotive technician regarding progress on the repair.

If the automotive technician needs any parts, he completes a parts requisition document, which the service advisor turns into the parts department. Once the repair is completed, either the automotive technician or the service advisor completes a test drive of the vehicle.

If everything on the vehicle has been fixed, then the service advisor takes the completed repair order form and he may enter into discussions with the automotive technician about the repairs. The service advisor then discusses with the customer the repairs performed on the car.

Automotive Technicians

Automotive technicians perform the necessary repairs on the vehicles. Automotive technicians are required by the Employer to be certified.⁸ Automotive Technician Yi Tong ("Tong") testified that he has completed classes and is certified to work as an automotive technician.⁹ Tong also owns a tool chest stocked with tools valued roughly at \$20,000.¹⁰ Tong further testified that his wages are calculated differently than the service advisors.¹¹

Once the automotive technician has finished the repair, he completes the repair order form documenting the repairs he performed on the vehicle.

Group Leaders

There are three group leaders. The record reveals that

⁸ The record fails to reveal whether all automotive technicians are certified; what the certifications are; and whether the certifications are the same for all the automotive technicians or if they vary.

⁹ The record does not reveal if all other automotive technicians completed the same classes as Yi Tong or if they vary depending upon their assigned position.

¹⁰ The record does not reveal if all other automotive technicians have the same amount or value of tools.

¹¹ On cross-examination of Tong, the Employer's counsel appears to "testify" about automotive technicians' compensation; however the record does not establish any foundation regarding counsel's expertise to render such testimony or the basis for his assertions. There is also testimony by Fixed Operations Director Robert Monroe that automotive technicians make 30 to 50 percent of what a service advisor would make, but the record provides no more details on this point.

these group leaders are actually automotive technicians, but hold the title of group leader.¹² The only evidence in the record regarding the duties of a group leader is that the group leader picks up the repair order and gives it to an automotive technician.

Lube Men

The Employer employs three lube men. The lube men perform the oil changes and the maintenance of the automobile. Lube men are not required to have any certifications. However, once working for the Employer, they are able to go through a specialty training process that Ford offers so they can become automotive technicians. The Employer is affiliated with the Ford Asset Program, which is a 2-year program in which the lube men can learn the skills of the trade to become automotive technicians as well as earn an Associate of Arts degree. Tong testified about certain training available to lube men, that assists them in becoming automotive technicians. He recalled that in the past, there have been a few lube men who worked their way up to the position of automotive technician.

Tong further testified that lube men use specialty machines to perform their duties. The parties stipulated that

¹² There is no actual testimony on this point, only a reference by the Hearing Officer regarding an off-the-record discussion between the parties.

lube men do not have the same level of tools that the automotive technicians have.¹³

Supervisory Status of Service Advisor Randy Bradley

Randy Bradley ("Bradley") currently works as a service advisor for the Employer. Prior to being a service advisor, Bradley worked for the Employer at another location as a service manager from approximately 1995 to November 2002. Bradley returned to work for the Employer at Huntington Beach in November 2002 as a service advisor.

When Fixed Operations Manager Robert Monroe ("Monroe") is not at the facility, Bradley is given additional responsibilities.¹⁴ Bradley can make certain decisions, such as giving a customer a free oil change, but does not have the authority to make any personnel decisions. He does not have the ability to hire or fire employees when he is filling in for Monroe. Bradley cannot promote, transfer or lay off employees. Bradley does not have the authority to send employees home early or discipline employees. In Monroe's absence, Bradley can decide whether or not an employee works overtime. However, most employees know they can work overtime if it is necessary in order to finish a repair on a car for a

¹³ The record does not reveal whether the Employer requires lube men to have their own tools, and what the value of those tools might be if any are indeed required.

¹⁴ The record does not reveal how often Bradley fills in for Monroe.

customer. In fact, automotive technicians work overtime without any prior approval.

If there is an emergency, then Bradley can contact Monroe either on his cell phone or at home.

ANALYSIS

Craft Unit

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act." NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-497 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit. American Hospital Association v. NLRB 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc. 290 NLRB 150, 151 (1988).

The Petitioner asserts that a unit of automotive technicians, including group leaders, and lube men, is an appropriate unit because this group constitutes a craft unit. The Employer argues that such a group of employees does not

constitute a "pure" craft unit because of the inclusion of lube men, and that under the traditional community of interest standards, the appropriate unit must contain not only the above classifications of employees, but also the service advisors.

The Board has found that a separate unit of mechanics performing work such as that performed by the automotive technicians at issue here constitutes a craft unit appropriate for collective-bargaining purposes. Fletcher Jones Chevrolet,

300 NLRB 875, 875-877 (1990); Dodge City of Wauwatosa, 282 NLRB 459 (1986). In so finding, the Board in Dodge City of Wauwatosa, determined that the mechanics at issue in that case were, "a distinct and homogenous 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." 282 NLRB at 460.

The automotive technicians herein are required to be certified. At least one of them uses expensive tools in performing his job. The automotive technicians also perform the diagnostic test on the automobiles and actually perform the repairs. The Employer attempted to show that the service

advisors also perform some mechanical type work, but the evidence in that regard showed, at best, that the repair-type of work they perform is simple and minor, such as occasionally installing wiper blades or replacing light bulbs. (See, Fletcher Jones Chevrolet, supra, where the Board found that, although the service advisors at issue in that case may, on occasion, assist a customer in minor repairs such as installing wiper blades or locking wheel nuts, those tasks are not sufficient to compel their inclusion in a unit of mechanics.)

The lube men, although not as skilled as the automotive technicians, are also engaged in mechanical work and thus are akin to helpers or trainees of the automotive technicians. Fletcher Jones Chevrolet, supra. Since craft units traditionally include apprentices and helpers, lube men shall also be included in the unit.

The Employer argues that the inclusion of lube men destroys any argument that the petitioned-for unit is a "pure" craft unit. As noted above, the Board has traditionally found that it is appropriate to include in the craft unit "helper" or "apprentice" classifications, which in this instance are the lube men. Except for the case noted below, the cases cited by the Employer in support of its position are not in the automobile service industry and are inapplicable. The one

case cited by the Employer that is in the automobile industry, Worthington Chevrolet, Inc., 271 NLRB 365, 366 (1984) concerns a situation where the petitioner was seeking to represent a unit of unskilled employees, including lot persons, detailers, car washers and porters. That is not the situation in the instant case, and thus does not support the Employer's contention that it is inappropriate to include the lube men in the craft unit.

The Employer argues that the service advisors should be included in the unit because they play an integral role in the service and repair process. Although service advisors may share a community of interest with automotive technicians, it does not render the craft unit an inappropriate unit.

The Employer cites several other cases where the Board has found the appropriate unit in an automobile dealership includes a unit broader than the craft unit. However, those decisions are not inconsistent with the Board precedent that the craft unit sought herein is an appropriate unit; and does not require the inclusion of any other classification of employees.

Supervisory Status of Randy Bradley

Since I have found service advisors not to be part of the appropriate unit, it is not necessary to determine whether or not Randy Bradley is a 2(11) supervisor. However, if it is ultimately concluded that the service advisors should be included in the appropriate bargaining unit, I conclude that the Petitioner did not sustain its burden of proving that Randy Bradley is a supervisor.

The Petitioner argues that service advisor Randy Bradley is a supervisor as defined by Section 2(11) of the Act, and should, therefore be excluded from any unit containing the service advisors. In representation proceedings, the burden of proving that an individual is a statutory supervisor rests on the party making the assertion. The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989); Tucson Gas & Electric Co., 241 NLRB 181 (1979).

Section 2(11) of the Act defines "supervisor" as follows:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To qualify as a supervisor, an individual need only possess one of the indicia. Hydro Conduit Corp., 254 NLRB 433, 436

(1981). The Board noted in Hydro Conduit that an employee does not become a supervisor merely because he or she possesses an indicium of supervisory status, but he or she must exercise that indicium with "independent judgment on behalf of management, and not in a routine or clerical manner." *ID* at 437. In determining an employee's supervisor status, the Board must not construe supervisory status "too broadly" because such a construction would effectively deny those employees the protection provided under the Act. Hydro Conduit Corp, *supra* citing Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7th Cir. 1970).

Randy Bradley holds the title of service advisor and occasionally fills in for Monroe when he is not there. In this role, Bradley does not possess any of the indicia set forth in Section 2(11) of the Act. Although he may have the authority to assign overtime, this appears to be of a routine nature and one that does not require independent judgment. Based on the foregoing, I find that the Petitioner, as the party asserting supervisory status, has not met its burden in proving that Randy Bradley has the authority to carry out any of the functions set forth in Section 2(11) of the Act, or to effectively recommend such functions and utilize independent judgment in the execution of such functions. Therefore, I find that Randy Bradley is not a statutory supervisor.

There are approximately 20 employees in the appropriate unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who 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. 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. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been

discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **International Association of Machinists and Aerospace Workers, District Lodge No. 725, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties 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, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health

Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or before

November 7, 2003. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (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.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EST, on November 14, 2003.

DATED at Los Angeles, California, this 31st day of October, 2003.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

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