

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

JOE McPHERSON FORD, INC.,
d/b/a POWER FORD OF TUSTIN¹

Employer

and

Case 21-RC-20688

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

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

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

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, lead automotive technicians, asset technicians, and helpers employed by the Employer at its facility located at 2 Auto Center Drive, Tustin, California; excluding all other employees, service advisors, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

ISSUES:

The Petitioner seeks an election in a unit comprised of automotive technicians, lead automotive technicians, asset technicians, and helpers.³ The Petitioner contends that this group of employees constitutes an appropriate craft unit under the Act. The Employer asserts that such a group of employees does not constitute an appropriate craft unit because under traditional community-of-interest standards, the appropriate unit must also include service advisors.

CONCLUSION:

For the reasons discussed in detail below, I conclude that automotive technicians, lead automotive technicians, asset technicians, and helpers constitute a craft unit appropriate for the purposes of collective bargaining.

FACTS:

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

Service Advisors⁴

³ The parties stipulated to the inclusion of all full-time and part-time automotive technicians, lead automotive

The service advisor is the person that a customer initially speaks to at the Employer's dealership when the customer visits for vehicle service. 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 service team it is assigned.

Service advisors receive training through Ford Motor Company in customer handling, customer relations, and some technical training in various components of automobiles, trucks, vans, and sports utility vehicles. There are a total of 6 service advisors. Two service advisors are assigned to each of three teams comprised of service advisors, automotive technicians, asset technicians, and helpers.

The service advisor visually inspects belts, hoses, and tires on the customer's vehicle. He is also capable of performing some minor work on the vehicle such as replacing a light bulb, replacing wiper blades, filling fluids, or replacing a faulty electronic door lock control with a screwdriver. The Employer issues each service advisor a small

technicians, asset technicians, and helpers in any unit found appropriate by the Regional Director.

⁴ The parties stipulated that service advisors are not supervisors within the meaning of Section 2(11) of the Act.

basic tool kit with which the service advisor can perform this minor repair work.

After the vehicle is given over to the automotive technician to perform the repair, the automotive technician will perform diagnostic routines and report his findings on the repair order form. 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 to perform the work. The service advisor estimates the repair time and then periodically checks with the automotive technician regarding progress on the repair.

Once the repair is completed, the automotive technician, the service advisor, or sometimes both, may complete a test drive of the vehicle. The service advisor will also get back the completed repair order form, and he may discuss the repairs with the automotive technician if he needs clarification. Or the service advisor may take a look at the vehicle himself to better understand the repair before speaking to the customer. Ultimately, the service advisor discusses the completed repairs with the customer.

Carl Slates is the Employer's service director.⁵ He testified that he supervises the overall operations of the service department at the dealership. He oversees all of the service advisors, automotive technicians, porters, cashiers, and customer relations people—a total of about 65 employees.⁶ Slates has worked for the Employer for 14 months, and has been the service director that entire time. He has worked for the parent company, Auto Nation, in various capacities since 1997.

Slates testified that about 50 percent of the work of service advisors is administrative paperwork, and that service advisors have enough understanding and training to interface with technicians and customers. He also stated that service advisors can take any study course available through Ford Motor Company.

Slates also testified that out of the six service advisors currently employed by the Employer, only one of them was previously a technician, and that person was a technician at a different employer.

Michael Van Dyke is an automotive technician for the Employer and is also the group leader of a team comprised of ten automotive technicians and two helpers. He has worked for

⁵ Slates has previously worked as a service advisor but has never worked as an automotive technician.

⁶ It also appears that Slates supervises the helpers and asset technicians as well, given that he oversees the Employer's entire service department.

the Employer and its predecessors for over 17 years. The group leader takes the repair orders as they are handed over from the service advisor, and assigns the repairs to technicians on his team. Van Dyke testified that he has never seen a service advisor in a repair bay assisting an automotive technician with a repair, but that the service advisor is usually the person pressuring the technicians to finish repairs on a vehicle.

Service advisors have access to computers, with their own individual passwords, and are trained on how to enter data into the computer. One of the service advisors on a team must be available from 7 a.m. to 7 p.m. to cover any administrative tasks, and they are capable of receiving overtime. The service advisors have their own uniforms, which consist of a polo shirt bearing the Employer's logo. Like the technicians, service advisors are trained on Ford specialty products.

The record reveals that aside from the minor repair work occasionally performed by service advisors, as described above, it is the service advisor's job to generate the paperwork for the repairs, which describes the problem as relayed by the customer. It is then the technician's job to identify the specific cause of the problem and to repair the problem.

Automotive Technicians

Automotive technicians carry out the repairs listed on the repair order form and they are certified to perform their duties. There are different types of automotive repair certifications covering different subject areas or specialties. They must be specifically certified with Ford on various specialties in order to perform warranty work.

Slates testified that for every hour that a technician receives work, an advisor is also compensated for that hour. Thus, if the advisor does not sell hours of work, the technicians do not get hours of work. Slates also testified that there is a wide spread in the relative compensation of technicians and service advisors, but that service advisors can make as much money as automotive technicians.

Service advisors and technicians communicate throughout the day in regard to repair orders, and they often enter into one another's work areas. Technicians tell service advisors what repairs are needed or recommended, and the service advisors in turn relay that information to the customers. Technicians can call a tech hot line for research assistance on a repair, and to get prior approval for a

repair. The service advisor calls the tech hot line for the final prior approval for a repair.

Slates stated that a technician could move to the "administrative" side by becoming a service advisor, and that he would consider a technician to fill a job opening for service advisor.

Once the automotive technician has finished the repair, he completes the repair order form documenting the repairs he performed on the vehicle, and sends it back to the service advisor to discuss with the customer. Sometimes, at the customer's request, the technician will speak directly with the customer about the repair.

The automotive technicians report to the group leader of their assigned team, who is also an automotive technician. Slates said that in an 8-hour shift, a group leader could have an hour of paperwork to complete. Each team also has a lead technician, who Slates testified fills in for the group leader when the group leader is not present. When the group leader is present, the lead technician works in the same capacity as the other automotive technicians.

Slates testified that some of the technicians use and store their own tools at the Employer.⁷ Due to a recent

⁷ The record does not establish how many of the technicians use their own tools while working for the Employer.

change a few months ago, technicians are no longer required to have their own tools at work. None of the technicians who have their own tools at work have taken those tools home. Slates further testified that several of the technicians have even created their own specialized tools to use at the Employer, which cannot be purchased anywhere, and that the tools were created to make certain repairs easier to perform. In addition, Ford sends a specific set of tools to the dealership every year for use by the automotive technicians on new vehicle models.

Both service advisors and automotive technicians have access to computers, with their own individual passwords. They are both trained on how to enter data into the computer, although Slates said that technicians probably receive less training on computers than the service advisors.

The automotive technicians work staggered 8-hour shifts, to cover all hours from opening to closing at the Employer. Both automotive technicians and service advisors are capable of receiving overtime. They both receive the same benefits and use the same employee common areas. The technicians wear different uniforms from the service advisors. Instead of a polo shirt, they wear a striped shirt bearing the Employer's logo, and dark blue pants. Some of them have purchased their own shop coats to wear over their uniforms.

Both technicians and service advisors are trained on Ford specialty products.

Asset Technicians

Asset technicians are in training, and are not assigned to a specific service team. Instead, they float from one type of automotive repair work to another. Slates testified that asset technicians are assigned to work in one type of automotive repair work for several weeks, then they go back to school for several weeks, and then they are assigned to work in another type of automotive repair work for several weeks. Thus, they are alternating between hands-on work at the Employer and schooling. Slates said that by going through this process, the asset technicians can eventually pick a particular repair specialty to work in. Slates also testified that asset technicians have more technical training than do service advisors.

Helpers

Slates testified that helpers are assigned to specific technicians and work hand-in-hand directly with their assigned technician. Helpers are in training through an apprenticeship program. A technician can give a repair job to

a helper, and the technician will then check the helper's work upon completion of the task.

ANALYSIS:

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." See also NLRB v. Action Automotive, Inc., 469 U.S. 490 (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 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 noted how mechanics are distinguished from other employees in the service department of a car dealership:

[W]e find that the training and skills that must be and are possessed by the Employer's mechanics set them apart from the rest of the service department employees as craftsmen who appropriately may be represented in a separate unit. Dodge City, 282 NLRB at 460.

Thus, the automotive technicians have a community of interest apart from other employees in the service department. Fletcher Jones Chevrolet, 300 NLRB at 876.

One of the cases that the Employer relies on in seeking a broader unit is Phoenix Resort Corp., 308 NLRB 826 (1992). However, that case is readily distinguishable from the present case. Phoenix Resort did not arise in the automotive service industry, but instead involved a golf course. In Phoenix Resort, the Board reversed the Regional Director's determination to exclude landscaping employees from a unit of golf course maintenance employees. In that case, unlike the present case, the two groups of employees performed essentially the same work. Golf course maintenance employees maintained the landscaping of the actual golf course while the landscaping employees maintained the landscaping other than the golf course. But both groups of employees performed essentially the same type of work.

Here, service advisors do not perform the same type of work as the technicians. The automotive technicians at the Employer are required to be certified to perform their duties. They also perform the diagnostic tests on the vehicles and actually perform the repairs. The Employer argues that the service advisors also perform some mechanical type work. But the evidence in that regard shows, at best, that the repair work they perform is simple and minor. Examples include occasionally filling fluids, replacing light bulbs, and replacing wiper blades, the type of work that can be performed with a small basic tool kit that the Employer assigns to each service advisor.

In Fletcher Jones Chevrolet, the Board found that although other employees of an automobile service employer may, on occasion, assist a customer in minor repairs such as installing wiper blades or fuses, those tasks are not sufficient to compel their inclusion in a unit of technicians.

The Employer also argues that Board precedent provides that all employees in the service and parts department should be included in one unit, citing Worthington Chevrolet, Inc., 271 NLRB 365. That case cites to and relies on two earlier Board cases also referenced by the Employer, W.R. Shadoff, 154 NLRB 992 (1965), and Austin Ford, Inc., 136 NLRB 1398 (1962).

The Employer's reliance on these cases is misplaced. Initially, the Employer does not seek a unit that encompasses all employees in the service department or that includes any employees in the parts department. Instead, it seeks only to include service advisors in the craft unit of technicians.

Further, the Board has disavowed the language about a broader bargaining unit in Shadoff, as adopted in Worthington Chevrolet, finding such statements as "overbroad and not entirely accurate." Dodge City, 282 NLRB at 460 n.6. See, also, a discussion of this issue about the appropriate unit in Country Ford Trucks, Inc. v. NLRB, 229 F.3d 1184 (D.C. Cir. 2000).

Finally, the Employer cites to R.H. Peters Chevrolet, Inc., 303 NLRB 791 (1991), in support of its argument that a broader unit is appropriate. That case is factually distinguishable from the current case. In Peters Chevrolet, the parties reached a stipulated election agreement on a unit that included body-shop employees and parts department employees, along with the mechanics; the agreement was silent on the unit placement of service advisors. Due to determinative challenges, the Board was left with the task of ascertaining the intent of the parties in the ambiguous stipulation regarding the disputed employees.

In the present case, there is no stipulated election agreement or stipulated unit. Rather, the Regional Director is here asked to determine the appropriate unit. Further, the petitioned-for unit is a traditional craft unit, not a broader unit that includes body-shop employees and parts department employees. Nor does the Employer seek to include these latter groups of employees in the unit. Therefore, Peters Chevrolet is inapplicable to the present case.

There are approximately 23 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 whom 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 December 15, 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 December 22, 2003.

DATED at Los Angeles, California, this 8th day of December, 2003.

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

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