

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
(Kahului, Island of Maui, Hawaii)

JIM FALK MOTORS OF MAUI

Employer

and

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION,
LOCAL 142, AFL-CIO

Petitioner

37-RC-4074

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 held 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.

Upon the entire record in this proceeding, the undersigned finds: 1/

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. 2/
3. The labor organization involved claims to represent the employees of the Employer. 3/
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. 4/
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: 5/

All full-time and regular part-time first class auto technicians, second class auto technicians, third class auto technicians, leaderman auto technicians, apprentice auto technicians, auto technician helpers, traffic controllers, first class parts employees, second class parts employees, third class parts employees, apprentice parts employees, parts counter employees, parts helper employees and detailers employed by the Employer at its 260 Hana Highway, Kahului, Maui, Hawaii location; excluding all other employees, salespersons, outside salespersons, dispatchers, service writers, cashiers, warranty clerks, managerial employees, guards and supervisors 6/ as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) 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(s) who were 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

(OVER)

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, 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 LONGSHORE AND WAREHOUSE UNION, LOCAL 142, AFL-CIO.**

LIST OF VOTERS

In order to insure 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. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an 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 No. 50 (1994). In order to be timely filed, such list must be received in the Subregion 37 Office, 300 Ala Moana Boulevard, Room 7-245, Post Office Box 50208, Honolulu, Hawaii 96850, on or before June 14, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by June 21, 2004.

Dated June 7, 2004

at San Francisco, California

/s/ Robert H. Miller

Regional Director, Region 20

1/ The Petitioner has filed a motion requesting that I strike the Employer's brief on the basis that it was not timely filed. The Employer has also filed a post-hearing motion requesting that I strike the Union's brief on the same basis. Section 102.111(b) provides in pertinent part that the Board will accept as timely filed a document postmarked on the day before the due date. The brief filed by the Employer with the Regional office is postmarked May 27, 2004. The brief filed by the Union with the Regional office is postmarked May 17, 2004 and was received on May 18. As the due date for filing briefs was extended from May 18 to May 28, the briefs filed by the Union and the Employer were both timely filed. In these circumstances, I decline to strike either brief.

I also reject the Employer's contention that the Union's post-hearing brief should be stricken because it contains inaccurate and misleading citations to the record and the transcript of the proceedings. In this regard, I have carefully reviewed the transcript and exhibits of the hearing in this matter and have based my decision on the record evidence adduced therein.

At the hearing, the Petitioner's counsel asked the Employer's witness, General Manager Paul Kaiser, to name the individuals in the classification of leaderman auto technician. The Employer's counsel objected to this question asserting that the Petitioner's representatives had engaged in intimidating conduct on the Employer's premises and she was concerned about making the names of the employees public. Although the Hearing Officer overruled this objection, the Employer's counsel refused to allow Kaiser to identify these individuals by name on the record. At the hearing, and in its post-hearing brief, the Petitioner's counsel characterized the conduct of the Employer's counsel in this regard as "contemptuous" and urged that an inference be drawn that the witness did not know the names of such individuals with regard to the Employer's burden to establish that these individuals should be excluded from the unit.

Although the witness should have provided the names of the employees at issue when the Hearing Officer, after overruling the objection of the Employer's counsel, instructed him to do so, I find that the record herein is sufficient to allow my determination in this case. Thus, I find that the absence of this evidence in the record does not require this matter to be remanded for further hearing or any other action with regard to the identity of these individuals. I also note that this information will be furnished by the Employer as part of the *Excelsior* list referred to below. Finally, in making my decision herein, I have drawn no adverse inference based upon the refusal of the Employer to provide such evidence at the hearing.

2/ The parties stipulated, and I find, that the Employer is a Hawaii corporation with a facility located at 260 Hana Highway, Kahului, Maui, Hawaii, where it is engaged in the retail sale and repair of automobiles. During the 12-month period preceding the hearing, the Employer derived gross revenue valued in excess of \$500,000 and purchased and received products, goods and supplies valued in excess of \$50,000 directly from

suppliers located outside the State of Hawaii. Based on the parties' stipulation to such facts, I find that the Employer is engaged in commerce and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.

- 3/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 4/ The parties stipulated, and I find, that there is no collective-bargaining agreement covering any of the employees in the unit sought herein.
- 5/ The Petitioner, by its amended petition, seeks to represent the following unit of employees of the Employer: All first class, second class, third class, apprentice and leaderman auto technicians, auto technician service helpers, traffic controllers, first class parts person, third class parts person, parts department apprentice, parts counter person, traffic controllers and detailers; and excluding all automobile sales, outside salespersons, dispatchers, service writers, office clericals, confidential employees, managers guards and supervisors as defined in the Act. The record reflects that there are approximately 27 employees in the petitioned-for unit.

The Employer contends that traffic controllers and dispatchers should be excluded from the unit because they lack a community of interest with the employees in the petitioned-for unit. The Employer also contends that the master technician position and the leaderman technician position are statutory supervisors and should be excluded from the unit on this basis.

History Of Collective Bargaining at This Location. The Employer has operated a car dealership at 260 Hana Highway, since April 1, 2003, when it purchased the dealership at that location from Cutter of Maui (herein called Cutter). I take administrative notice of the fact that the Petitioner herein previously represented employees of Cutter at this location in the following unit, which was certified by the Board on January 21, 2003, in Case 37-RC-4033:

All maintenance, parts and service employees employed by the Employer, excluding automobile salesperson, outside parts salesperson, dispatchers, service writers, office clerical employees, guards and supervisors as defined in the Act.

As reflected in the record herein, the Employer hired some of the former Cutter employees, including approximately three of the auto technicians employed at the time of the hearing, at least one detailer, and two parts employees. The parties do not contend and the record contains no evidence that the Employer is a single or joint employer with Cutter.

The Employer's Operation. The Employer sells and services General Motors and Nissan vehicles, as well as other used cars and trucks. It has five departments

including sales, used car, business office, service, and parts. Each department is located in a different area of the Employer's facility and has its own manager. The sales showroom, which includes an upstairs business office, is located in one building; used cars are sold in another building; and the service facility, where the auto technicians work, is located in another building where the parts department is also located. The Employer employs a total of about 67 individuals in these five departments. From the record, it appears that with the exception of salespersons who are paid on a commission basis, all of the Employer's employees are hourly paid. All employees receive similar fringe benefits, which include vacation and sick leave.

The Service Department. The service department operates Monday through Friday, from 7 a.m. to 4 p.m. Service Manager Ray Whener heads the department and he reports directly to General Manager Paul Kaiser. The service department performs work on the lines of automobiles sold by the Employer as well on other vehicles. The Employer employs approximately 15 auto technicians, all of whom perform diagnostic repair and maintenance work. All of the auto technicians work in service bays in the Employer's service department. They are divided into three classes (first, second and third) and a leaderman and master technician classification. First class auto technicians must have four years of experience and possess four ASE certifications. Second class auto technicians must have three years of experience and possess three ASE certifications. Third class auto technicians must have two years of experience and possess two ASE certifications. The record reflects that at the time of the hearing, the Employer employed about four first class auto technicians, three second class auto technicians, and two third class auto technicians.

Although the Employer has a master technician classification which requires eight years of experience and the possession of eight ASE certifications, at the time of the hearing, it employed no individuals in this classification. While the record does not disclose whether the Employer has ever employed anyone at its 260 Hana Highway facility in this classification, it does reflect that the Employer has no immediate plans to hire a master technician in the future.

The service department also includes the classifications of apprentice technician and service helper. Individuals in these classifications perform work requiring less skill than that performed by the auto technicians and/or assist the auto technicians with their work. The apprentice technicians are working toward becoming regular auto technicians. All of the auto technicians and apprentices are full-time employees. At the time of the hearing, the Employer employed one apprentice technician and had no service helpers. However, General Manager Kaiser testified that it was "very possible" that the Employer would fill the vacant service helper position within the next three months. No party contests the appropriateness of including the apprentice technician and service helper classifications in the unit.

Leaderman Technicians. At the time of the hearing, the Employer employed six leaderman technicians in its service department. As noted above, the Petitioner would

include leaderman technicians in the unit while the Employer would exclude them as statutory supervisors. Individuals in the leaderman classification must have six years of experience and possess six ASE certifications. At the time of the hearing, the six technicians in the leaderman classification were the most experienced and possessed the highest number of ASE certifications of any employees in the Employer's service department. The leaderman technicians perform diagnostic and repair work as do the other auto technicians.

General Manager Kaiser testified that the service department has no foreman and that the Employer and its service manager rely on the leaderman technicians to share their technical knowledge with other auto technicians and to assist other auto technicians in their work as needed. According to Kaiser's general testimony, the leaderman technicians are expected to ensure that shop procedures and policies are enforced and to give feedback to management regarding their observations of the performance of other auto technicians. Kaiser further testified that the leaderman technicians have the responsibility to give "effective" recommendations to the Employer regarding hires and transfers of employees. According to Kaiser, the leaderman technicians make suggestions to the service manager regarding disciplinary actions and their opinions about service performance, interaction among employees and/or problems with employees is given greater weight than that of other employees because of their position and experience. However, the record contains no specific example of any recommendation or opinion given by a leaderman technician that has affected any Employer hiring, disciplinary or promotional decision regarding any employee. Nor does the record contain any evidence or example of a leaderman technician giving work assignments or directions to service department employees.

All of the Employer's auto technicians, including the leaderman technicians, are hourly paid and receive the same benefits (i.e., vacation and sick leave). All of the auto technicians are also paid bonuses based on any production work that they perform in less than the allotted time for types of work set forth in a reference manual utilized by the Employer. The record does not disclose the hourly pay rates or bonuses of any of the auto technicians or other service department employees. However, General Manager Kaiser testified generally that the leaderman technicians are paid more per hour than the next highest paid auto technicians because of their knowledge and possession of additional ASE certifications.

Service Writers. The service department also has service writers. The service writers share an office with the service manager. Their job is to greet customers, fill out work orders, try to sell additional work to customers in order to increase the Employer's profit, follow up with customers when service work is completed, and explain to customers the type of work performed and the charges on their bill. According to General Manager Kaiser, the service writers also have some degree of authority in adjusting bills for customers and in lending complimentary rental cars to customers while work is being done on their cars. The service writers turn the work orders that they write over to the dispatcher for assignment to the auto technicians, direct customers to the cashier for

payment, and direct the traffic controllers to take cars to the service area and to retrieve them for customers when work has been completed. No party contends that the service writers should be included in the unit

Dispatcher. No party contends that the dispatcher should be included in the unit. According to Kaiser, the dispatcher's job is to assign the work orders to the auto technicians in a manner that ensures the service work is evenly divided among them and that work requiring a special skill is assigned to an auto technician who has the necessary experience and/or certification.

Traffic Controllers. The Employer employs approximately three full time traffic controllers in the service department. The Petitioner would include the traffic controllers in the unit while the Employer would exclude them on the basis that they are unskilled and lack a community of interest with other employees in the petitioned-for unit.

The traffic controllers work under the direction of the service writers, shuttling cars to and from the service area for customers. They also drive an Employer van to provide a shuttle service for customers. The traffic controllers do not take any instruction from or have any interaction with anyone in the service department or in any other department, except for the service writers. The traffic controllers work from 8 a.m. to 4 p.m. They are hourly paid and receive the same benefits as other petitioned-for employees. The record does not disclose their pay rates.

Cashiers and Warranty Clerks. The record reflects that the service department also includes cashiers and warranty clerks, which neither the Employer nor the Petitioner seek to include in the unit. They work at the other end of the service department from the service writers and they handle the billing and payments for the service work written up by the service writers.

The Parts Department. No party disputes the inclusion of the parts department employees in the unit. The Employer's parts department is open during the same hours as the service department and is located adjacent to it. It supports the service department and handles retail sales to outside customers. Parts Manager Jim Beasley heads the department. Beasley's job is to oversee the entire department and its employees, to ensure that the ordering of parts is done properly and that obsolescence is kept to a minimum, and that all employees receive proper training. At the time of the hearing, there were four parts department employees. The parts department employees are divided into first class, second class, third class, apprentices and helpers, as are the employees in the service department. At the time of the hearing, the Employer employed two first class parts employees, no second class parts employees, one third class parts employee, one apprentice parts employee, and no parts department helper employees. The record does not disclose whether the Employer intends to hire a parts department helper in the immediate future. However, no party appears to dispute the inclusion of this classification in the unit. The record further indicates that the parts department has no foremen or leaderman positions and that the

Employer has no intention of hiring anyone in these positions within the next six months to a year. Parts department employees are hourly paid and receive the same benefits as other petitioned-for employees. The record does not disclose the pay rate of the parts department employees.

Sales Department. The sales department is open seven days a week from 8 a.m. to 8 p.m. It is headed by Sales Manager James Marcum. The Employer employs approximately 24 or 25 individuals in this department, including Sales Manager Beasley, two finance managers, a used car manager, about 15 salespersons and about three or four detailers. The salespersons are paid on a commission basis. Managers in the department are paid both a salary and a commission. No party contends that salespersons should be included in the unit.

The Detailers In the Sales Department. The Petitioner seeks to include the detailers in the unit while the Employer would exclude them on the basis that they lack of community of interest with the other employees in the petitioned-for unit. The record reflects that three or four detailers are employed within the Sales Department. Their work is scheduled and directed by the sales manager. The detailers wash and vacuum new and used cars that are sold by the Employer. They work seven days a week on staggered schedules to cover the hours of the service department. The detailers are paid on an hourly basis and occasionally receive bonuses based on the result of customer satisfaction surveys conducted by the sales department.

The record reflects that that the Employer employs no facility maintenance employees and that it contracts out such work.

Analysis. As indicated above, the Petitioner seeks a unit comprised of all parts and service employees employed by the Employer, including first class technicians, second class technicians, third class technicians, apprentices, leaderman, service technician helpers, traffic controllers, first class parts persons, third class parts persons, parts apprentice persons and detailers; and excluding all other employees, automobile sales persons, outside salespersons, dispatchers, service writers, office clericals, confidential employees, managers, guards and supervisors as defined in the Act. The Employer contends that the traffic controllers and detailers should be excluded from this unit.

Section 9(b) of the Act provides that the Board “shall decide in each case whether the unit appropriate for the purposes of collective-bargaining shall be the employer unit, craft unit, plant unit, or a subdivision thereof.” The test applied by the Board to determine whether employees share a community of interest with other unit employees is whether the employees at issue have: (1) differences or similarities in wages, compensation and benefits; (2) whether they share common supervision; (3) whether they have similar hours of work; (4) whether they have differences or similarities in their qualifications, training and job skills; (5) whether they have frequent contact; (6) whether they are functionally integrated and have frequent interchange and contact; and (7)

collective bargaining history. See *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988); *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962).

Traffic Controllers. I find that the traffic controllers share a sufficient community of interest with the petitioned-for employees to warrant their inclusion in the unit. First, the traffic controllers are included in the service department as are the auto technicians and apprentice auto technicians and auto technician helpers whose inclusion in the unit is not disputed. Second, the manager of the traffic controllers is the same manager as that of the auto technicians, apprentice technicians and auto technician helpers. Third, the traffic controllers work in the same area as the auto technicians since they move the cars to and from the areas where the auto technicians work on them. Fourth, they are hourly paid as are the employees in the petitioned-for unit and they have similar benefits. While their work hours are slightly different (Monday through Friday, 8 a.m. to 4 p.m. versus Monday through Friday, 7 a.m. to 4 p.m. for the auto technicians) their hours are similar enough to include this as a factor supporting their inclusion in the same unit with the auto technicians. Fifth, the work of the traffic controllers is integrated with the work of the auto technicians since they basically shuttle cars to and from the auto technicians work areas. While the traffic controllers are not skilled employees like the auto technicians and parts employees, the unit petitioned-for also includes auto technician helpers who are also unskilled. Accordingly, for the foregoing reasons, I find that the traffic controllers share a sufficient community of interest to support their inclusion in the unit.

The Detailers. I also find that the detailers share a sufficient community of interest with the petitioned-for unit employees to warrant their inclusion in the unit. Although the detailers work in the sales department under the supervision of the sales manager, have little contact with employees in the petitioned-for unit, and work a different schedule, I find that they may nevertheless be included in the unit based on their performance of manual labor, which is also performed by all the unit employees and which differentiates them from the sales persons in their own department, and the fact that like employees in the petitioned-for unit and unlike the sales persons in their department who are paid on a commission basis, the detailers are paid an hourly wage. The detailers also receive the same benefits as other unit employees. Although the detailers are unskilled, I note that the unit also includes unskilled auto technician helpers and traffic controllers who are also unskilled employees. For these reasons, I find that the detailers share a sufficient community of interest with the petitioned-for employees to be included in the unit.

In conclusion, I find that the petitioned-for unit, as modified herein, is an appropriate unit for collective bargaining purposes.

- 6/ As noted above, the Employer contends that the master technician and the leaderman technicians are statutory supervisors who should be excluded from the unit. With regard to the master technician position, the Petitioner asserts that the issue of whether the master technician should be excluded from the unit as a statutory supervisor should

not be resolved in this proceeding inasmuch as this position is vacant and the Employer has no intention to fill it in the immediate future. With regard to the leaderman technician position, the Petitioner asserts that the individuals in this position are not statutory supervisors and should be included in the unit.

Master Technician. With regard to the issue of whether the master technician should be excluded as a supervisor, the record reflects that this position was vacant at the time of the hearing and that the Employer had no plans to hire anyone for this position in the immediate future. As the record contains no evidence from which any determination could be made as to whether this position possesses the authority of a statutory supervisor, I decline to make any determination as to the supervisory status or inclusion or exclusion of this position from the unit. However, if this issue arises in the future, it can be raised in an appropriate proceeding.

Leaderman Technicians. With regard to whether the leaderman technicians should be excluded as statutory supervisors, Section 2(11) of the Act defines a supervisor as:

[A]ny 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.

Section 2(11) is interpreted in the disjunctive and the possession of any one of the authorities listed places the employee invested with this authority in the supervisory class. See *Providence Hospital*, 320 NLRB 717 (1996) enf'd 121 F.3d 548 (9th Cir. 1997).

To support a finding of supervisory status, an employee must possess at least one of the indicia of supervisory authority set out in Section 2(11) of the Act. *International Center for Integrative Studies*, 297 NLRB 601 (1990); *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). Further, the authority must be exercised with independent judgment on behalf of the employer and not in a routine, clerical or perfunctory manner. *Clark Machine Corp.*, 308 NLRB 555 (1992); *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). An individual who exercises some "supervisory authority" only in a routine, clerical, perfunctory, or sporadic manner will not be found to be a supervisor. *Id.* Further, in determining whether an individual is a supervisor, the Board has a duty to employees not to construe supervisory status too broadly because the employee who is found to be a supervisor is denied the employee rights that are protected under the Act. *Hydro Conduit Corp.*, 254 NLRB 433, 347 (1981). Secondary indicia alone, such as job titles, differences in pay and attendance at meetings, are insufficient to establish that an employee is a statutory supervisor. *Laborers Local 341 v. NLRB*, supra; *Arizona Public Service Co. v. NLRB*, 453 F.2d 228, 231 fn. 6 (9th Cir. 1971); *Waterbed World*, 286 NLRB 425, 426 (1987).

Whether an individual is a supervisor is to be determined in light of the individual's actual authority, responsibility, and relationship to management. See *Phillips v. Kennedy*, 542 F.2d 52, 55 (8th Cir. 1976). Thus, the Act requires "evidence of actual supervisory authority visibly demonstrated by tangible examples to establish the existence of such authority." *Oil Workers v. NLRB*, 445 F.2d 237, 243 (D.C. Cir. 1971). Mere conclusory statements, without supporting evidence, are not sufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Although a supervisor may have "potential powers, . . . theoretical or paper power will not suffice. Tables of organization and job descriptions do not vest [statutory supervisory] powers." *Oil Workers v. NLRB*, 445 F.2d at 243. In addition, the evidence must show that the alleged supervisor knew of his or her authority to exercise such power. *NLRB v. Tio Pepe, Inc.*, 629 F.2d 964, 969 (4th Cir. 1980). Finally, the burden of proving supervisory status is on the party who asserts that it exists. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *California Beverage Co.*, 283 NLRB 328 (1987); *Tucson Gas & Electric Company*, 241 NLRB 181 (1979).

I find that the Employer has failed to sustain its burden of establishing that the leaderman technicians are statutory supervisors. Thus, the record shows that they are the most highly experienced auto technicians in the Employer's service department. They perform auto diagnostic repair and maintenance work as do the other auto technicians in the petitioned-for unit. The Employer's General Manager Kaiser testified generally that the Employer relies on the experience and expertise of the leaderman technicians in giving recommendations and/or opinions about the work of their fellow employee. With regard to hiring, transfers and disciplinary matters, the record contains no concrete example to show any circumstance where a leaderman technician has given any specific recommendation that has been effective with regard to any personnel action taken by the Employer. Nor does the record contain any concrete example to show that the leaderman technicians possess, exercise or effectively recommend any of the other primary indicia of supervisory authority listed in Section 2(11) of the Act. With regard to secondary indicia of their status, while the Employer has testified that the leaderman technicians earn more than the next highest paid auto technicians, it has not provided any evidence to show how much more they are paid than other auto technicians.

As noted above, the Act requires "evidence of actual supervisory authority visibly demonstrated by tangible examples" to establish supervisory authority, and mere conclusory statements, without supporting evidence, are insufficient to establish such authority. *Oil Workers v. NLRB*, *supra*, 445 F.2d at 243; *Sears, Roebuck & Co.*, *supra*, 304 NLRB 193. The record herein contains nothing more than conclusory statements by the Employer's General Manager with regard to the supervisory status of the leaderman auto technicians. The General Manager testified that he leaves decisions regarding hiring and firing to the managers of the various departments who consult with him before taking any final action. The record is devoid of evidence to establish that the Employer's General Manager possess first-hand knowledge regarding whether the leaderman technicians effectively recommend any personnel actions regarding any other employees. In these circumstances, I find that the Employer has failed to sustain its burden of establishing that the leaderman technicians possess or exercise the

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authority of a statutory supervisor. In view of the foregoing, I find that the leaderman technicians are not supervisors. Accordingly, they will be **included in the unit**.