

Jerry's Chevrolet, Cadillac, Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 16-RC-10571

May 23, 2005

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS
LIEBMAN AND SCHAUMBER

On May 5, 2004, the Regional Director for Region 16 issued a Decision and Direction of Election in this proceeding. The Regional Director found appropriate the petitioned-for unit of service technicians, apprentices, and lube rack technicians at the Employer's Chevrolet/Cadillac dealership in Hudson Oaks, Texas.

Thereafter, pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's Decision and Direction of Election. The Employer argued that a unit limited to service employees at the Chevrolet/Cadillac dealership was not appropriate.¹ The Employer asserted that the appropriate unit should include all of the service technicians, apprentices, and lube rack technicians employed at its neighboring Buick, GMC, Pontiac (Buick/GMC); Nissan (Nissan); and Durant Toyota (Toyota) dealerships. On June 3, 2004, the Board granted the Employer's request for review.

After careful consideration of the entire record, we find, contrary to our dissenting colleague and the Regional Director, that the Employer rebutted the single-facility presumption and that an appropriate unit must include service technicians, apprentices, and lube rack technicians working at all four of the Employer's Hudson Oaks dealerships.

I. FACTS

The Employer operates sales, service, and repair facilities for new and used automobiles at its dealerships in Hudson Oaks, Texas. The franchises, although independently incorporated, are advertised as "Jerry's Family of Dealerships." The Chevrolet/Cadillac, Buick/GMC, and Nissan facilities lie contiguously within 1000 feet of each other at the corner of State Highway 80 and Interstate Highway 20. The Toyota dealership is situated directly across the state highway from the Chevrolet/Cadillac location.

The Employer's central office is located at the Toyota dealership, where its President Jerry Durant, Vice President Donald Ray Allen, and Human Resources Manager Dan Patton, oversee the operations and administration of

¹ As indicated below, the term "service employees" includes service technicians, apprentices, and lube rack technicians.

the business.² The central office performs accounting, payroll, billing, and title work for all four dealerships. Personnel files for all of the dealerships' employees are kept at the central Toyota location.

Durant owns virtually all of the stock of the four dealerships.³ He is on their premises 4 out of 5 days a week. Allen handles the day-to-day operations for the facilities. He also holds mandatory monthly management team meetings for all managers. Patton is involved in the hiring, firing, and disciplinary processes for employees at all of the dealerships. He also conducts safety and sexual harassment training for employees.

The dealerships share one parts facility, where one parts manager oversees that department's operation. The four facilities use one onsite collision center for body shop repair work. Cars to be sold at any of the four dealerships are initially dropped off at the Nissan facility, washed at a common car wash, and then delivered to the proper dealership. The dealerships also share two lot attendants who are responsible for the vehicles in the lots. There is one preowned (used) car dealership where all car lines sit on a common lot. All cars getting state inspections pass through the Buick/GMC premises, because it is the only facility that has a special piece of equipment for measuring emission outputs. In addition, all of the facilities utilize the same phone system, computer system, employment applications, and job descriptions.

There is a sales manager and service manager at each dealership,⁴ and they report to President Durant and Vice President Allen. Service managers operate their respective service centers. They do not have the authority to hire employees, but conduct the initial interviews with applicants. If service managers wish to hire an applicant, they contact Human Resources Manager Patton, who does a second interview with the prospective applicant and a background check. Service managers have no authority to terminate or discipline employees, but they can recommend such action, and Patton, Durant, or Allen generally accept these recommendations.

Service managers at one dealership do not have the authority to go to another dealership and manage employees there. When service technicians have a question concerning their job or job performance, they first go to their service manager. Service managers from the four dealerships attend monthly service management meetings with Allen. As noted above, every month Allen

² Patton's office is actually located on the Chevrolet/Cadillac premises.

³ Allen is 10-percent owner of the Buick/GMC and Nissan franchises.

⁴ The Chevrolet/Cadillac and Buick/GMC dealerships also employ shop foremen.

conducts an all-managers meeting where, among other things, the managers go over the monthly expenditures for each dealership and review each individual department's profit or loss.

Service technicians diagnose and repair cars; lube technicians change oil and wiper blades; and apprentices are trainees. Cross-warranty work takes place between the Chevrolet/Cadillac dealership and the Buick/GMC dealership. Thus, for example, a Chevrolet technician may perform repair work on a Buick, and vice-versa. However, Nissan and Toyota technicians do not work on any other car lines because of, among other things, the specialized tools utilized.

All service employees work a standard 8 a.m. to 5 p.m. day. They park their cars in a common employee parking lot, where they take a shuttle bus to their respective service centers. They also wear uniforms, albeit separately designed ones for designated dealerships (i.e., pinstripes, short sleeves, etc.). In addition, all service employees are paid a flat-hour rate based on their ability and training. All service employees have similar pay, shifts, and benefits, and receive the same employee handbook, adhere to the same personnel policies, participate in the same 401(K) plan, are eligible for the same "SPIF" bonuses,⁵ and attend sexual harassment/safety training sessions with employees from companion dealerships.

With respect to temporary transfers, Vice President Allen testified about one instance where a lube technician temporarily transferred from the Chevrolet/Cadillac dealership to the Toyota dealership for a period of 3 weeks, and about two Chevrolet/Cadillac service technicians who transferred to a neighboring dealership for a period of 6–7 months in 2000. In addition, Allen provided examples of service writers (not included in the unit) who transferred from one dealership to another on various occasions. Allen also provided examples of a used car manager at the Toyota dealership who once worked at the Chevrolet/Cadillac dealership; a used car manager at the "combined stores" who used to work as a used car manager at Nissan; a service manager at Nissan who was a service writer at Toyota; and a finance and insurance manager at Chevrolet/Cadillac who transferred to Toyota as the sales manager. According to Allen, permanent transfers take place one or two times a year. Furthermore, Allen testified of one instance where a Chevrolet transmission technician asked a GMC technician for advice on a vehicle.⁶

⁵ The record does not explain what "SPIF" stands for, but indicates that SPIF bonuses could be based on any number of factors, such as if a technician logged over his required number of work hours.

⁶ Allen testified that there are occasions where a technician at one dealership asks a technician at another location for advice on a car.

There is no history of collective bargaining at any of the four dealerships.

II. ANALYSIS

The Board has long held that a single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *J&L Plate*, 310 NLRB 429 (1993). The party opposing the single-facility unit has the burden of rebutting its presumptive appropriateness. To determine whether the single-facility presumption has been rebutted, the Board examines a number of factors, including: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history, if any. *Rental Uniform Service*, 330 NLRB 334, 335 (1999); *J&L Plate*, supra at 429.

In finding the single-facility unit appropriate, the Regional Director relied on the lack of employee interchange among the dealerships, and the fact that the service managers operated with "some autonomy." Furthermore, the Regional Director found that while the adjacency of the dealerships was a factor weighing in favor of a multifacility unit, its significance was diminished by the minimal employee interchange. Therefore, he directed an election in the petitioned-for unit of employees. We disagree.

We start with a salient factor favoring the multifacility unit—geography. The four dealerships operate within extremely close proximity to one another. The Chevrolet/Cadillac, Buick/GMC, and Nissan facilities are contiguously located at the corner of Highway 80 and I-20, and the Toyota dealership is directly across from the Chevrolet/Cadillac building, also on Highway 80. There are no fences or barriers that separate the three contiguous facilities from one another. Customers can walk from one dealership to the next. Thus, it is clear that the petitioned-for dealership here is located within feet of its companion dealerships that are not the subject of the petition. Thus, geographic proximity is a factor that clearly supports a finding that the Employer has rebutted the single-facility presumption.⁷

According to Allen, the technicians will ride in the car together to diagnose the problem. If a technician at one dealership calls in sick or is out for the day, Allen stated that it is more common to move the technician's car elsewhere for servicing, rather than to bring in a technician from a neighboring dealership to service the car.

⁷ *AVI Foodsystems*, 328 NLRB 426 (1999), relied on by our dissenting colleague, is readily distinguishable. There, the Board found a single-facility unit of cafeteria workers appropriate, excluding employ-

The cohesiveness of the dealerships is also reflected in other factors, such as the highly integrated and administratively centralized nature, and the functional integration, of the Employer's operations, including common advertising. All accounting, billing, and title functions take place at the central office at the Toyota dealership. All dealerships share a common parts facility, car wash, collision center, new car dropoff location, state inspection device, and phone/computer system.⁸ Chevrolet/Cadillac service employees occasionally work on Buick/GMC car lines, and vice-versa. Employees share uniform wages and benefits, and also use a common employee parking lot. Furthermore, personnel matters are centralized, inasmuch as ultimate responsibility for hire, discharge, and discipline rests with Durant, Allen, or Patton.

Moreover, we find, contrary to the dissent, that the individual service manager's authority with respect to labor relations evinces only minimal local autonomy. While the local service managers possess authority over some day-to-day matters of the service centers they manage, they lack substantial autonomy over labor relations and personnel policies and procedures. All policies regarding wages, hours, and terms and conditions of employment, as well as personnel rules, are uniform throughout the four dealerships. While service managers conduct initial screenings for applicants, final authority with respect to hiring rests with Patton, who conducts a second interview and a background check on the applicant. Furthermore, service managers can only recommend discipline and/or discharge—final authority on these issues rests with upper management. Thus, we find that control of labor relations is centralized under the authority of Durant, Allen, and Patton.⁹

ees who worked at a cafeteria about a mile away on the same campus, because of the substantial local autonomy exhibited by cafeteria managers and the lack of employee interchange. The cafeteria managers there had overall financial and operational responsibility for the cafeteria; determined the level of staffing and whether overtime was necessary; evaluated employees semiannually and recommended wage increases; and resolved employee complaints. This significant autonomy, coupled with the lack of employee interchange, outweighed any factors that militated towards a multifacility finding. Here, by contrast, there is no evidence that service managers have similar responsibilities. Further, the facilities here are mostly contiguous, unlike the separated facilities in *AVI Foodsystems*, supra.

⁸ The dissent faults our reliance on the fact that the dealerships share a common dropoff location. The common dropoff location is merely one example of several that provides us with insight into the highly integrated nature of the Employer's business. There are several additional examples, such as the shared collision center, phone/computer system, car wash, and state inspection device, which the dissent does not dispute as evidencing high functional integration.

⁹ Our dissenting colleague cites *New Britain Transportation Co.*, 330 NLRB 397, 397-398 (1999), to support her finding that the service

Furthermore, there is no dispute that the service employees at all four dealerships share similar wages, vacation benefits, holidays, and retirement. They also perform identical functions at their respective dealerships, albeit on separate car lines, and with tools made specifically for those car lines. Thus, while the petitioned-for Chevrolet/Cadillac service technicians utilize the skills of their trade, so do technicians from their sister locations. Thus, there is little distinction between the Chevrolet/Cadillac technicians when compared to the Buick/GMC, Nissan, and Toyota technicians. In addition, the petitioned-for employees receive the same employee handbook, adhere to the same personnel policies, and attend sexual harassment/safety training sessions with employees from companion dealerships.

We recognize that the service employees work in separate buildings under their respective service center managers. We also acknowledge that, despite the close geography of the four dealerships, there is little employee interchange.¹⁰ We find, however, that these factors are overcome by the close proximity of the dealerships, the centralization of labor relations, the high functional integration of the dealerships, and the similarity of skills, pay, and job functions at all locations.

Accordingly, we find, contrary to the Regional Director, that the only appropriate unit must include service employees employed at all four of the Employer's Hudson Oaks dealerships. Because the Petitioner has not indicated a willingness to proceed to an election in the broader unit found appropriate, we shall dismiss the petition.

ORDER

The petition is dismissed.

MEMBER LIEBMAN, dissenting.

The Regional Director correctly decided that the Employer failed to rebut the presumptive appropriateness of the petitioned-for, single-facility unit of automotive service technicians at its Chevrolet/Cadillac car dealership. In finding to the contrary, the majority exaggerates the

manager's authority may not be dismissed as routine or insubstantial. However, inasmuch as the service managers are supervisors, we do not suggest that their authority is routine or insubstantial. However, their authority is far less than that shown in *New Britain*. In *New Britain*, supra, the dispatchers determined the need for and made decisions regarding employee schedules and assignments, including temporary transfers. Additionally, they approved time off, short-term vacation, and sick leave, and also addressed minor disciplinary problems and carried out the formal discipline. Here, the service managers lack similar authority.

¹⁰ The interchange between the four service centers is not regular or substantial. The primary interaction between employees of the four dealerships takes place at social events or on the shuttle bus that transports employees to and from the employee parking lot.

significance of certain factors, particularly the geographic proximity of the dealerships. And it unduly minimizes the significance of other factors, such as the lack of interchange, differences in skills and duties, and significant local autonomy, which support the Regional Director's finding that the Employer has not met its heavy burden of rebutting the presumption that the technicians at this single facility constitute an appropriate unit. Accordingly, I dissent.

The applicable law is settled. A single facility is presumptively appropriate. The party opposing such a unit bears a heavy burden of establishing that the unit has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. The Board examines: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history, if any. *J&L Plate*, 310 NLRB 429 (1993). The majority correctly recites these factors, but errs in applying them.

(1) Central control over operations and labor relations

The Employer's daily operations and labor relations are centralized and integrated to a degree. However, it is settled that centralization of operations and labor relations alone is insufficient to rebut the presumptive appropriateness of a single-facility unit where there is evidence of significant local autonomy. See *New Britain Transportation Co.*, 330 NLRB 397 (1999). Here, the majority has both overestimated the degree of centralization and integration of the Employer's operations and underestimated the degree of local autonomy at the Chevrolet/Cadillac dealership's service department.

The majority observes that the Employer's central office performs payroll functions for all four dealerships. However, as the Regional Director found, each dealership has its own office manager stationed within the central office. Each office manager performs the payroll only for his dealership. If a Chevrolet/Cadillac technician has a payroll issue, he must contact the dealership's office manager. The office managers also process new employee paperwork and benefits enrollment for their respective dealerships. Each employee's paycheck bears a dealership-specific insignia.

The majority also points out that the Employer's dealerships share one parts facility, which is run by a single parts manager. But the Regional Director further found that each dealership houses its own parts department counter, which is staffed by a parts counter person. In addition, the Chevrolet/Cadillac dealership, alone, employs an assistant parts manager.

Similarly, the majority erroneously relies on evidence that the Employer's dealerships share a common dropoff location for new cars coming from the manufacturer. The petitioned-for employees are service technicians, not new car salesmen. Accordingly, the more significant fact is that customers needing service work bring their cars directly to the service drive of a specific dealership. A service writer at the dealership obtains the necessary information from the customer and then a dispatcher at the dealership dispatches the job to a technician at the dealership.

These examples show that the Employer's operations are not as highly centralized and integrated as the majority suggests. At the same time, the majority has unduly discounted the degree of local autonomy at the Chevrolet/Cadillac dealership.

Each dealership has its own service manager, who supervises the service technicians at the dealership. The majority dismisses the service managers' authority as limited to "routine day-to-day operations" and lacking "substantial autonomy." However, the Regional Director found that Chevrolet/Cadillac Service Manager Charlie Pace is a statutory supervisor, and the Employer has not challenged this finding. By definition, then, Pace's authority may not be dismissed as routine or insubstantial. See Section 2(11) of the Act; see also *New Britain Transportation Co.*, supra at 398 (finding that employer's characterization of local managers as "supervisors" and "in charge" was a "significant indicator of their responsibility").

In any event, the record fully supports the Regional Director's finding that the service managers' activities demonstrate significant local autonomy. The service managers participate in hiring and evaluating technicians, and effectively recommend discipline and discharge of technicians. This authority evinces significant local autonomy even though the Employer's higher-ranking management officials retain final authority over such matters. See *Rental Uniform Service*, 330 NLRB 334, 335-336 (1999); *Executive Resources Associates*, 301 NLRB 400, 402 (1991); see also *Renzetti's Market*, 238 NLRB 174, 175-176 (1978) (emphasizing local supervision).

(2) Similarity of skills, functions, and working conditions

The majority's finding that there is "little distinction" between the technicians at the Employer's respective dealerships is also problematic. Generally speaking, the technicians are all engaged in automotive service work, but they are not interchangeable. The technicians at each dealership work on vehicles made by different manufacturers; they complete manufacturer-specific training, and

each technician owns a personal set of tools, which may be manufacturer specific as well. Moreover, as discussed below, the Employer in fact does not regularly interchange technicians between different dealerships. See *Rental Uniform Service*, supra at 336 (1999) (unit employees maintained separate identity, despite similarity of skills, pay, and job function with other employees, where there was no interchange or interaction between the groups). Further, the technicians are separately supervised,¹ they receive their work assignments from dispatchers at their respective dealerships, they report for work and clock-in at their respective dealerships, and they wear distinct uniforms. In sum, although the technicians are all performing the same general work, the Chevrolet/Cadillac dealership technicians remain easily identifiable as a separate contingent of employees.

(3) Interchange and interaction

As indicated, there is little evidence of interchange and interaction between the technicians at the Employer's dealerships, a circumstance conceded but minimized by the majority. Lack of significant employee interchange between groups of employees is actually a "strong indicator" that employees enjoy a separate community of interest. *Executive Resources Associates*, 301 NLRB 400, 401 (1991).

In addition to a lack of interchange, the Chevrolet/Cadillac technicians are not even in regular contact with the technicians at the other dealerships during the workday. As the majority points out, the Employer's dealerships share phone and computer systems. However, the Regional Director specifically found that the technicians do not engage in daily work-related interaction by phone or electronic mail.

(4) Geographic proximity

Given the lack of interchange and interaction, the majority has vastly overemphasized the geographic proximity of the Employer's dealerships. The Board does not place great emphasis on geography, particularly where

¹ The service manager at each dealership has no authority to supervise technicians at other dealerships.

there is separate local supervision and an absence of interchange. For instance, in *AVI Foodsystems*, 328 NLRB 426 (1999), the Board found appropriate a single-facility unit of cafeteria workers located on the employer's campus, excluding cafeteria workers at a restaurant on the same campus, observing that "each operation [was] located in a separate building with a significant degree of autonomy." Id. at 429. See also, e.g., *Gordon Mills*, 145 NLRB 771 (1963) (finding single-facility unit of production employees appropriate, excluding similar employees located 500 feet away in a separate building, given local autonomy and a lack of interchange and bargaining history). Similarly, the geographic proximity of the Employer's dealerships carries less weight because the technicians work for separate dealerships, housed in separate buildings, under separate supervisors, and without regular interchange or interaction with one another.

(5) Absence of bargaining history

Finally, the majority acknowledges that there is no history of bargaining at the Employer's dealerships, but then ignores this fact in its analysis. Our cases, however, establish that the absence of a bargaining history weighs in favor of the single-facility presumption where, as here, no union seeks to represent the employees on a broader basis. See *New Britain Transportation Co.*, supra at 398.

Conclusion

In sum, the record as a whole supports the Regional Director's finding that the Employer failed to establish that the Chevrolet/Cadillac technicians lack a separate identity from the technicians at the Employer's other dealerships. The evidence of substantial autonomy, differences in skills and duties, and lack of interchange, clearly outweighs other factors which might suggest that the Employer has met its burden of rebutting the single-facility presumption in this case. Arguably, a unit covering the technicians at all four of the Employer's dealerships would constitute an appropriate unit as well. That possibility, however, does not alter the fact that the petitioned-for single-facility unit of technicians is an appropriate unit in this case.