

In the Matter of WM. J. SILVA COMPANY, EMPLOYER and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE No. 41, PETITIONER

Case No. 20-RC-552.—Decided August 5, 1949

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Robert V. Magor, hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Gray].

Upon the entire record in this case, the Board finds:

1. The Employer operates a Studebaker sales and service establishment in Modesto, California, under a franchise from Studebaker Pacific Corporation, Vernon, California, an assembly plant subsidiary of Studebaker Corporation, South Bend, Indiana.

In 1948 the Employer purchased, from Studebaker Pacific Corporation, new cars, trucks, and parts worth more than \$60,000. Of this amount, \$20,000 represents purchases of trucks, shipped directly to the Employer from without the State; the remainder represents purchases of automobiles, shipped prior to assembly from without the State, and parts, originally supplied to Studebaker Pacific Corporation by dealers within and without the State. During 1948, the Employer sold automotive equipment and parts worth more than \$70,000 and performed services worth more than \$10,000. None of the sales occurred outside the State and none of the services were performed on automobiles or trucks engaged in the transportation of goods in commerce.

We find, contrary to the Employer's contention, that its operations affect commerce within the meaning of the Act.¹

¹ *Matter of Harrys Cadillac-Pontiac Company, Incorporated, et al.*, 81 N. L. R. B. 1. and cases cited therein.

85 N. L. R. B., No. 103.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks a "craft" unit of "mechanics, their helpers, and apprentices," including the partsman, at the Employer's automotive sales and service establishment. In the alternative, the Petitioner seeks to represent any unit of mechanics which the Board may find appropriate. The Employer has no classification of helpers or apprentices. It employs mechanics, a partsman, service floormen, a wash rack employee, an assistant manager, a mechanic foreman, and a service manager. The Employer contends that any unit appropriate for its mechanics should include service floormen, the wash rack employee, and the service manager. There is no past history of collective bargaining among the Employer's employees.

The Employer's operations are housed in one building, with an office and a salesroom in the front, a combined storage room and service floor behind the salesroom, and a garage in the rear. Supervision of all departments is in the assistant manager; under him is a mechanic foreman, who supervises both the mechanics and the service floormen. Both the assistant manager and the mechanic foreman have authority to hire and discharge. Assisting the mechanic foreman is the service manager, who is directly in charge of the service floormen and the wash rack employee.

Service floormen usually lubricate cars, change spark plugs, adjust brakes, put on fan belts, change wheel bearings, and perform ordinary emergency repairs on the service floor; mechanics, on the other hand, do the finer machine tune-ups and valve and bearing jobs in the garage. Service floormen at times work alongside the mechanics, either on the service floor or in the garage. Service floormen receive less pay than mechanics. Service floormen with sufficient qualifications and ability are advanced to the status of mechanics; five service floormen have already been so advanced. The wash rack employee washes cars and at other times performs light service jobs on the service floor, under the direction of the service manager. The record does not disclose that the automotive mechanics employed at the Employer's shop are craftsmen. We have, however, established units of auto service employees such as those employed in the Employer's plant.² The service floormen and the wash rack employee have employment interests and

² *Matter of Harrys Cadillac-Pontiac Company, Incorporated, et al., supra; Matter of Liddon White Truck Company, Inc., 76 N. L. R. B. 1181.*

job functions closely related to those of the mechanics; we shall therefore include them with mechanics in the unit herein found appropriate.

The service manager spends from 20 to 25 percent of his time assigning work to the service floormen; the remainder of the time he performs the same work as the service floormen. He has no power to hire, discharge, or promote employees, or to effectively recommend the same. In the absence of the mechanic foreman, he assumes none of the latter's authority. We find that the service manager is not a supervisor and shall include him in the unit herein found appropriate.

We find that all auto service, repair, and maintenance employees at the Employer's sales and service establishment in Modesto, California, including mechanics, service floormen, the wash rack employee, the partsman, and the service manager, but excluding salesmen, office and clerical employees, and the mechanic foreman, the assistant manager, and other supervisors constitute a unit appropriate for the purposes of collective bargaining.³

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by International Association of Machinists, District Lodge No. 41.

³ See *Matter of Harrys Cadillac-Pontiac Company, Incorporated, et al., supra.*