

an intervening union by placing it in a much more favorable position than it would have been in if it were a participant in a representation proceeding instituted by another union. In my opinion, as the Petitioner has neither a showing of interest adequate for a cross-petitioner on the Employer's petition nor a sufficient showing to sustain its own petition, there is no basis for directing an election in this case. Accordingly, I would dismiss the petition.

A. E. ROGERS, D/B/A A. E. ROGERS CO.;* ALFRED R. OLSTAD, D/B/A OLSTAD MOTORS;* McGRATH BUICK, INC.; T. R. LITCHFIELD AND DONALD D. LITCHFIELD, COPARTNERS, D/B/A T. R. LITCHFIELD AUTO SALES;* J. FRED KAPPUS, JR., D/B/A EAU CLAIRE MOTOR COMPANY;* EAU CLAIRE LINCOLN MERCURY CO. ;* McDONALD MOTORS, INC., AND GEORGE DOUGLAS McDONALD, MICHAEL McDONALD AND BRUCE McDONALD, D/B/A McDONALD BROTHERS;* GEORGE S. GRINSEL AND GERALD S. PIERCY, COPARTNERS, D/B/A GRINSEL NASH COMPANY;* WOOD MOTOR COMPANY and LODGE No. 173, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, PETITIONER. *Cases Nos. 18-RC-1797, 18-RC-1798, 18-RC-1799, 18-RC-1800, 18-RC-1801, 18-RC-1802, 18-RC-1807, 18-RC-1808, and 18-RC-1809. March 30, 1953*

Decision and Direction of Elections

Upon separate petitions duly filed, a consolidated¹ hearing was held in this case on February 10, 1953, at Eau Claire, Wisconsin, before Clarence A. Meter, hearing officer. 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 Murdock and Peterson].

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

1. The business of the Employers:

The Employers are separate automobile dealers, each having a franchise agreement with a nationwide manufacturer of automobiles. These Employers each sell new and used automobiles and other automotive equipment and perform service operations in Eau Claire, Wisconsin, and vicinity. Other than Grinsel and Wood, each Employer purchases motor vehicles and parts amounting to over \$250,000 annually, more than 50 percent of which represents out-of-State purchases.

*The names of these Employers appear as amended at the hearing.

¹ All the captioned cases were consolidated for hearing by order of the Regional Director dated February 3, 1953.

Each Employer's sales exceed \$250,000 annually, less than 1 percent of which represents out-of-State sales. Grinsel purchases more than \$250,000 annually, no part of which represents out-of-State purchases;² while Wood purchases more than \$500,000 annually, 10 percent of which crosses States lines.³

The Employers contend that the Board should not assert jurisdiction herein,⁴ especially with regard to Grinsel and Wood as the latter two Employers make neither sales nor purchases in substantial amounts across State lines. We do not agree with the Employers' contention that the decision in *N. L. R. B. v. Bill Daniels, Inc., et al.*,⁵ controls the disposition of the commerce aspect of this case. Even assuming the applicability of that decision to this matter, the Board, with due respect to the opinion of the Court of Appeals for the Sixth Circuit, and particularly in view of contrary opinions voiced by other courts of appeals,⁶ is disposed to adhere to its original determination in the *Bill Daniels, Inc.*⁷ case until the Supreme Court of the United States decides against the Board on such an issue. In that case as in prior Board cases,⁸ the franchises which associate an employer with a nationwide producer and distributor of automobiles are held to be the controlling factor in the Board's jurisdictional findings. Accordingly, we find that each Employer is engaged in commerce within the meaning of the Act.⁹ We further find that it will effectuate the policies of the Act to assert jurisdiction in the several proceedings involving these Employers.

In Case No. 18-RC-1807, McDonald Motors, Inc., a corporation, and McDonald Brothers, a partnership, contend that they are not a single employer within the meaning of the Act and that, accordingly, absent a franchise agreement between the partnership and a nationwide producer of automobiles, the Board should not assert jurisdiction over the partnership. The controlling stockholder in the corporation is George D. McDonald, while the partnership, engaged in

² Grinsel's cars are purchased from a Nash manufacturing and assembly plant located in the State of Wisconsin.

³ Wood purchases only parts and accessories from outside the State. However, it has a sales franchise from General Motors Corporation, Chevrolet Motor Division.

⁴ The issue as to whether McDonald Motors, Inc. and McDonald Brothers constitute a single employer and whether the Board should assert jurisdiction as to the latter is considered separately herein.

⁵ 202 F. 2d 579 (C. A. 6), denying enft. 96 NLRB 1255 and 97 NLRB 98. Board's petition for rehearing pending.

⁶ *N. L. R. B. v. Howell Chevrolet Company*, 204 F. 2d 79 (C. A. 9) enfg. 95 NLRB 410; *N. L. R. B. v. Ken Rose Motors, Inc.*, 193 F. 2d 769 (C. A. 1), enfg. 94 NLRB 868.

⁷ 96 NLRB 1255; *Gilbert Motor Sales, Inc.*, 97 NLRB 98.

⁸ *Harbor Chevrolet Co.*, 93 NLRB 1326; *Kelly A. Scott*, 93 NLRB 654.

⁹ See cases cited in footnote 6, *supra*. See also *N. L. R. B. v. Conover Motor Co.*, 192 F. 2d 779 (C. A. 10), enfg. 93 NLRB 867; *N. L. R. B. v. Davis Motors, Inc.*, 192 F. 2d 782 (C. A. 10), enfg. 93 NLRB 206; *N. L. R. B. v. M. L. Townsend*, 185 F. 2d 378 (C. A. 9), enfg. 81 NLRB 739, cert. den. 341 U. S. 909; *Baxter Brothers*, 91 NLRB 1480.

body conditioning of automobiles, is composed of George D. McDonald and his 2 sons, Michael McDonald and Bruce McDonald, only 1 of whom is active in the business. The 2 body-shop employees employed by the partnership work in a shop adjacent to, but separate from, the corporation's main building. For bookkeeping purposes, billings and paychecks to the partnership's employees appear in the name of the corporation. Both the corporation and the partnership use the same office and clerical employees, and general overhead costs are allocated between them. The partnership apparently uses the parts department facilities of the corporation. Although the partnership's services are open to the public, in practice the corporation accepts and estimates costs on body-service jobs, such work being thereafter turned over to the partnership. Although the Employers' counsel denied that a contractual relationship existed between the corporation and the partnership, there apparently is, in practice, a service relationship between them. Moreover, the fact that both concerns have common ownership and common counsel indicates that they share common labor policies. Under all the circumstances, we are of the opinion that the corporation and partnership constitute a single employer within the meaning of the Act.¹⁰ In view of this Employer's operations as a whole, we find that it is engaged in commerce within the meaning of the Act.¹¹ Accordingly, we find that it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization claiming to represent employees of the Employers.

3. Questions affecting commerce exist concerning the representation of the employees of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.¹²

4. We find that the following units are appropriate for collective-bargaining purposes within the meaning of Section 9 (b) of the Act:¹³

(a) All mechanics, helpers, and service department employees at A. E. Rogers Company's sales and service agency, Eau Claire, Wisconsin, excluding office employees, automobile salesmen, and supervisors as defined in the Act.

(b) All mechanics, helpers, and service department employees at Olstad Motors' sales and service agency, Eau Claire, Wisconsin, ex-

¹⁰ *Lloyd A. Fry Roofing Company*, 94 NLRB 62; *Vulcan Tin Can Company*, 94 NLRB 10; *L. W. Hayes, Inc., et al.*, 91 NLRB 1408.

¹¹ See *Goar's Service and Supply*, 85 NLRB 219.

¹² The Employers attack the validity and sufficiency of the Petitioner's showing of interest and further claim that the Petitioner must produce evidence of its interest at the hearing. As a showing of interest is an administrative matter not subject to collateral attack and not litigable at the hearing, we reject the Employers' contentions. *W. F. Schrafft & Sons Corp.*, 86 NLRB 77; *Tennessee Packers, Inc.*, 87 NLRB 90.

¹³ Except for the unit placement of certain employees hereinafter referred to, the Petitioner and the Employers agree upon the appropriateness of the separate employer units herein.

cluding the service manager (working foreman), parts man, office employees, automobile salesmen, and supervisors as defined in the Act.

(c) All mechanics, helpers, and service department employees at McGrath Buick, Inc.'s sales and service agency, Eau Claire, Wisconsin, excluding the service manager, parts department manager, part-time janitor, part-time general service man,¹⁴ office employees, automobile salesmen, and supervisors as defined in the Act.

(d) All mechanics, helpers, and service department employees at T. R. Litchfield Auto Sales' sales and service agency, Eau Claire, Wisconsin, excluding the parts man, working shop foreman,¹⁵ office employees, automobile salesmen, and supervisors as defined in the Act.

(e) All mechanics, helpers, and service department employees at Eau Claire Motor Company's sales and service agency, Eau Claire, Wisconsin, including the assistant foreman-mechanic, but excluding the working shop foreman, office employees, automobile salesmen, and supervisors as defined in the Act.

(f) All mechanics, helpers, and service department employees at Eau Claire Lincoln Mercury Co.'s sales and service agency, Eau Claire, Wisconsin, excluding the service manager, assistant service manager, parts manager, parts runner-janitor, office employees, automobile salesmen, and supervisors as defined in the Act.

(g) All mechanics, helpers, and service department employees at McDonald Motors, Inc.'s sales and service agency and McDonald Brothers' body shop, Eau Claire, Wisconsin, including body men,¹⁶ the used car salesman-serviceman, and partsman-salesman, but excluding the parts manager, inventory clerk-partsman, office employees, automobile salesmen, and supervisors as defined in the Act.

(h) All mechanics, helpers, and service department employees at Grinsel Nash Company's sales and service agency, Eau Claire, Wisconsin, excluding the shop foreman, office employees, automobile salesmen, and supervisors as defined in the Act.

(i) All mechanics, helpers, and service department employees at Wood Motor Company's sales and service agency, Eau Claire, Wisconsin, including the part-time parts department employees, parts counterman, service salesman, part-time wash and grease employee,

¹⁴ This employee is a college student who works part time intermittently. Because of the casual and irregular character of his employment, we shall, in agreement with the parties, exclude him from this unit. *Lundahl Motors, Inc.*, 85 NLRB 224.

¹⁵ There is a question as to whether the working shop foreman is a supervisor. The Employer concedes that, in the absence of one of the partners, the working foreman assigns work to employees and responsibly directs them in their work. About 20 percent of his time is spent in such supervisory duties. We find that he is a supervisor as defined in the Act and exclude him as such from the unit found appropriate herein. *Snively Groves, Inc.*, 98 NLRB 1146; *Reade Manufacturing Company, Inc.*, 100 NLRB 87.

¹⁶ See paragraph 1, *supra*, wherein the Board found McDonald Motors, Inc., and McDonald Brothers to be a single employer within the meaning of the Act. In view of that finding and the fact that body men are essentially service employees, they are included in the unit.

and part-time used car lot man,¹⁷ but excluding the working foreman, office employees, automobile salesmen, and supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication in this volume.]

¹⁷ The part-time wash and grease employee and the part-time used car lot man are both high school students who work primarily as washers. In the 2 weeks before the hearing, each averaged more than 15 hours work per week. Both work regularly every afternoon from 2:30 to 5 p. m. and Saturday morning. As these employees are "washers," which job classification is normally included within a service or garage unit (see *Wm. J. Silva Company*, 85 NLRB 573), and as it is our usual policy to include regular part-time employees in a unit (see *Worden-Allen Company*, 99 NLRB 410), we shall, despite the agreement of the parties, include both employees in the unit. See *Vevoda Motor Sales*, 86 NLRB 573.

H. F. BYRD, INC. *and* AMERICAN FEDERATION OF LABOR, PETITIONER.
Case No. 5-RC-1135. March 30, 1953

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Henry L. Segal, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

Upon the entire record in this case,² the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

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

3. The question concerning representation:

The Employer moved to dismiss this proceeding on the ground that the cannery involved herein is incident to its farming operations, and therefore its cannery employees are agricultural laborers within the meaning of the Act. At its cannery, which is in the same "area of production" as its farms or orchards, the Employer is engaged in an extensive operation of processing apples, grown almost entirely by it, into sauce, juice, butter, cider, and related products, and warehousing and shipping these products throughout the year. The cannery occupies 3 buildings containing 70,000 square feet and represents

¹ The Employer's motion to dismiss because the record fails to show the Petitioner's interest is denied, as the showing of interest is an administrative matter that is not litigable. *P. J. Mallory & Co., Inc.*, 101 NLRB No. 10. Moreover, we are administratively satisfied of the adequacy of that showing.

² The Employer's request for oral argument is denied, as the record and briefs adequately present the issues and positions of the parties.