

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

ASTORIA CAR WASH AND HI-TEK 10 MINUTE LUBE, INC.

Employer¹

and

Case No. 29-RC-85638

RETAIL, WHOLESALE AND DEPARTMENT STORE UNION,
UNITED FOOD AND COMMERCIAL WORKERS (RWDSU)

Petitioner²

DECISION AND DIRECTION OF ELECTION

Astoria Car Wash and Hi-Tek 10 Minute Lube, Inc., herein called the Employer, operates a car wash and oil change facility. On July 19, 2012, Retail, Wholesale and Department Store Union, United Food and Commercial Workers, herein called the Petitioner, filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent all full-time and regular part-time car washers and oil changers employed by the Employer at its 8303 24th Avenue, East Elmhurst, New York facility.³ There is no dispute between that parties that an appropriate unit should exclude all cashiers, managers, guards and supervisors as defined by the Act. However, the Employer contends that the petitioned-for unit is inappropriate inasmuch as oil changers have a

¹ The Employer's name appears as corrected at the hearing.

² The Petitioner's name appears as corrected at the hearing.

³ The petitioned-for unit includes "All full-time and regular part-time car washers, dryers, cleaners, drivers, brushers and oil changers," excluding "all car wash and lube managers, assistant car wash manager, assistant lube manager, cashiers, office clerical employees, security employees, guards and supervisors as defined by the Act."

separate community of interest and a separate identity from car washers. The Petitioner disagrees with the Employer, contending that the petitioned-for wall to wall unit is presumptively appropriate. There is no record evidence that additional classifications exist.

A hearing was held before Ashok Bokde, a Hearing Officer of the National Labor Relations Board. The parties were given the opportunity to argue orally. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

I have considered the evidence, stipulations and the positions of the parties. For the reasons noted herein, I have concluded that the plant-wide unit sought by the Petitioner, which includes oil changers, is an appropriate unit.

FACTS⁴

The Employer operates a car wash and oil change facility. The Employer's employees have never been represented by any labor organization.

Owner/President Gregory Pinkus manages the entire facility.⁵ Pinkus is present at the Employer's facility seven days a week. He spends most of his time in the operations area of both the car wash and oil changing areas. There are no other managers or supervisors. Pinkus performs hiring and firing of car washers and oil changers. Pinkus sets the wages of the car washers and oil changers.

⁴ The summary of the facts is almost entirely based on the testimony of the Employer's Owner, Gregory Pinkus.

⁵ Pinkus testified that he has been the Employer's owner for 20 years.

The Employer's facility is open from 7:00 a.m. to 7:00 p.m. Employees work one of two shifts either 7:00 a.m. to 4:00 or 5:00 p.m. or 10:00 a.m. or 11:00 a.m. to 7:00 p.m. Most car washers and oil changers work five days a week.⁶

The Employer employs 17 car washers,⁷ 10 oil changers⁸ and one cashier. There are no other employees. Car washers work outside and oil changers work inside. Duties of car washers include asking the customer what service they want, giving the customer a ticket indicating the service to be performed and performing the car wash service. In performing the car wash service, car washers vacuum inside the car, drive the car to the tunnel, brush the car/ tires with soap water before it proceeds through the tunnel, drive the car to the drying area when it comes out of the tunnel, dry the car off, clean the windows, and collect the paid ticket from the customer. One car washer may follow the car through the entire process or multiple car washers may work on one car. Car washers receive an hourly wage of \$5.65 and they equally divide all tips received from customers.⁹ With regard to oil changers, oil changers drive the car into the shop. Two oil changers work on a car at a time; one oil changer is "on top" (s/he looks under the hood of the car) and one oil changer is "on bottom" (under the vehicle). The oil changer "on bottom" changes the oil; the oil changer "on top" checks all the fluids and adds fluids as needed. Oil changers receive an hourly wage of \$7.25, \$8.00 or \$9.00 plus commissions.¹⁰ Oil changers do not

⁶ Car washers have the option to work 6 days a week.

⁷ Car washers are also referred to on the record as car wash employees.

⁸ Oil changers are also referred to on the record as oil change employees or oil change technicians.

⁹ Pinkus testified that each car washer receives an average of \$30 in tips per day, or roughly \$2.50 per hour. Tips are reported to the Employer.

¹⁰ Each service has a separate commission rate. For example, if an oil changer sells power steering fluid, the commission is \$10. The commission for selling differential oil is \$5; the commission for selling wiper blades is \$1 per blade.

split tips received from customers. The Employer provides a free car wash for every oil change. The oil change is performed first and then the car wash is performed.

With regard to schedules, the cashier, Lana, drafts employees' schedules for the approval of Owner Pinkus. A change in the schedule can only be obtained from Owner Pinkus.

Car washers have the option to wear an Employer provided T-shirt and oil changers are required to wear an Employer provided uniform which consists of a shirt and pants, and a jacket in cooler weather.

On occasion, an oil changer will come to repair equipment in the car wash area or unlock a car door of a customer.

DISCUSSION

The Board has held that a plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees. *Airco, Inc.*, 273 NLRB 348; *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962). The Board's task is not to determine the most appropriate unit, but simply to determine whether the unit sought is an appropriate unit. *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011); *Overnite Transportation Co.*, 322 NLRB 723 (1996). Therefore, the Board first looks to the unit sought in the petition because "...it is enough that the unit sought is an appropriate unit. *Newington Children's Hospital*, 217 NLRB 793, 794 (1975).

Here, the Employer presented evidence that the oil changers and car washers work in different areas and that the Employer has not transferred employees between departments temporarily or permanently. The evidence also shows differences in wage

rates, the handling of tips and uniforms. However, I find such differences insufficient to rebut the presumptive appropriateness of the plant-wide unit. In this regard, the evidence shows that there is a relatively small employee complement, a total of 27 car washers and oil changers. The oil changers work under the same supervision, work essentially the same hours and their duties are part of an integrated operation of the Employer, who offers a free car wash with every oil change. In the circumstances of this case, where the Petitioner seeks to represent oil changers as part of a plant-wide unit and their interests are not so disparate from the car wash employees that they cannot be represented in the same unit, I find the petitioned-for unit appropriate. See e.g., *Airco., Inc., supra*. Accordingly, I find it unnecessary to scrutinize the Employer's proposals regarding the unit. See e.g. *Dezcon, Inc.*, 295 NLRB 109, 111 (1089).

I hereby find that the presumption that this plant-wide unit is appropriate has not been rebutted. Inasmuch as there is no evidence of any other classifications of employees, I direct that an election be conducted in a plant-wide voting group described below.

CONCLUSIONS AND FINDINGS

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 hereby are affirmed.

2. The parties stipulated that the Employer, a domestic corporation, with its principal office and place of business located at 8303 24th Avenue, East Elmhurst, New York, is engaged in the operation of a car wash and oil change facility. During the past year, which period is representative of its annual operations generally, the Employer, in

the course and conduct of its business operations, derived gross annual revenues in excess of \$500,000 and purchased and received at its East Elmhurst facility, goods and materials valued in excess of \$5,000 directly from points located outside the State of New York.

Based on the parties' stipulation, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated that the Petitioner is a labor organization as defined in Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer.

4. A question concerning 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. I hereby find that the following employees constitute a voting group appropriate for the purposes of collective bargaining:

All full-time and regular part-time car washers and oil changers employed by the Employer at its facility located at 8303 24th Avenue, East Elmhurst, New York, but excluding all cashiers, managers, guards and supervisors as defined in the Act.¹¹

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Retail,

¹¹ Although the parties would also exclude other employees, the record established that there are no other employee classifications.

Wholesale and Department Store Union, United Food and Commercial Workers (RWDSU).¹² The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the voting group who were employed during the payroll period ending immediately before 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 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 who are employed in the voting group may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

¹² During the hearing, the Petitioner requested that the use of its shortened name, RWDSU, after its full and complete name. See National Labor Relations Board Casehandling Manual Part Two Representation Proceedings, Section 11306.3.

Employer to Submit List of Eligible Voters

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, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **August 22, 2012**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 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.

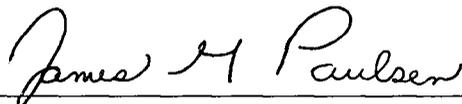
RIGHT TO REQUEST REVIEW

Under the 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, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **August 29, 2012**. The request may **not** be filed by facsimile.

The parties are advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described Request for Review electronically, please refer to the

guidance which can be found under "E-Gov" on the National Labor Relations Board
website: www.nlr.gov.

Dated: August 15, 2012.

A handwritten signature in cursive script that reads "James G. Paulsen". The signature is written in black ink and is positioned above a horizontal line.

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201