

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE
SUBREGION THIRTY-THREE

CROSS IMPLEMENT, INC.
Employer

and

25-RC-100457

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 536
CHANGE TO WIN COALITION
Petitioner

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 on March 25, 2013, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.¹

I. ISSUE

The Petitioner seeks an election within a unit comprised of the approximately 5-6 individuals employed by the Employer in its detailing department at its Minier, Illinois, facility. The Employer contends that the petitioned-for unit is not appropriate since it is based solely upon the extent of organizing and that the smallest appropriate unit consists of the approximately 31 individuals employed by the Employer in its service department.

II. DECISION

For the reasons discussed in detail below, including the fact that the petitioned-for unit constitutes an appropriate unit for purposes of collective bargaining and the Employer has failed

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

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. 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.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. 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.

to show that its suggested larger unit shares an overwhelming community of interest with the smaller petitioned-for unit, it is concluded that the detail employees employed at the Employer's facility located in Minier, Illinois, constitute a unit appropriate for purposes of collective bargaining.

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time detailing employees employed by the Employer at its facility located at 703 S. Minier Avenue, Minier, Illinois, BUT EXCLUDING all other service department employees, sales department employees, parts department employees, office administration employees, office clerical employees, guards and supervisors as defined in the Act.

The unit found appropriate herein consists of approximately 6 employees for whom no history of collective bargaining exists.

III. STATEMENT OF FACTS

The Employer is a family-owned John Deere authorized dealership located in Minier, Illinois. While selling agricultural equipment and implements, the Employer operates much like a traditional car dealership, with a sales department for new and used equipment and a service department that performs warranty and other repair work for customers. In selling new equipment, the Employer will often accept trade-ins of used equipment that must be reconditioned before being placed on the lot for sale to the public as used equipment. The Employer has approximately 50 employees at its dealership in Minier. Brad Cross is the Store Manager and is responsible for the overall day-to-day operations of the dealership.

A. The Service Department

The Employer's service department consists of approximately 31 "service technicians"² who report directly or indirectly to one of the three people: Shop Manager Jim Peasley, Service Coordinator Tami Whiteman, and Mobile Services and Warranty Manager Russ Farnsworth. While Peasley has overall responsibility for the service department, Whiteman will coordinate and track the work that is being performed, and Farnsworth is responsible for overseeing warranty work and work that is performed out in the field by technicians. The Employer's use of the term "service technician" covers a broad array of employee skills and abilities, from trainees who may have little or no technical experience, to technicians who perhaps have received training through a local technical school, to senior or mobile technicians who have many years of

² The term "service technician" is reflected in the organizational chart that was presented by the Employer at hearing and includes the six employees at issue here, the "detailers." However, it is not clear that the detailers have been referred to as service technicians until shortly before the hearing. Further, a recent paycheck for one of the detailers entered into evidence does indicate that he worked in the "Detail" department.

experience and are entrusted with performing repairs on their own out in the field at the customer's location (typically during the busy planting and harvesting seasons). There is also a line of progression within the service department from trainee up to senior technician based upon the employee's skills and development, but employees may also transfer to other departments such as sales or parts. Employees are provided ongoing training opportunities, either through a local technical school or through distance learning available over the internet from John Deere.

The service technicians perform a wide array of repairs on farm equipment, from oil changes and work on tires to painting and bodywork to more complex engine, transmission, and hydraulic repairs. As a piece of equipment is repaired or reconditioned, any number of different service technicians may perform different tasks on that piece of equipment. Of the 31 service technicians, the vast majority are located in the Employer's "main" building, which has been expanded over the years. However, two painters and five detailers work in a separate building on the Employer's property, sometimes referred to as the "green building."³ When equipment is not being serviced, it is stored outside on the lot or in a separate combine shed on the property.

The hourly pay rates for the service technicians vary from \$9.00 for a service technician trainee up to \$24.50 for a senior service technician, with the average being approximately \$16.69. All of the employees are subject to the same employee handbook, and are eligible for the same benefits based on length of service with Employer, including vacation time, profit sharing, and insurance.

B. The Detailers

The Employer has a total of six employees who perform detail work: Mike Bacon, Mike Doolin, Rick Doolin, James Fronz, John Gordon, and Briana Wiker. Up until a little more than a month before the hearing, all six were classified by the Employer as independent contractors and not employees. However, effective about February 18, 2013, the six were hired by the Employer as employees, although there is little evidence in the record to indicate that anything actually changed with regard to the work performed by the six once they became employees. The detailers are not required to have any particular training or experience at the time they are hired, nor have they been offered any training opportunities in the short period of time that they have been employees. There is no evidence of any transfers between the detailer position and other service technician positions.

Five of the detailers work out of the separate "green building," and their duties consist primarily of pressure washing, sanding, and painting the equipment that is sold by the Employer. Wiker's work area is in the main shop area, and her duties are focused more on cleaning up the cabs of the equipment, installing some insulation in the cabs, and performing a final rinse and touch-up. Most of the detailers wear safety glasses and respirators when painting and rain gear with chest waders provided by the Employer when power washing the equipment; Wiker wears a lighter pair of rain pants for her washing duties. Two of the detailers will also perform welding

³ The "green building" is divided with a wall across the middle between the area where the painters work and the detailers work, such that a painter would have to walk outside of the building to then re-enter the detailers' side of the building.

on occasion, borrowing equipment from the painters who work on the other side of the “green building.” In contrast to the six detailers, while the Employer’s painters may also do some power washing, their work is better described as more fine detail and auto body work.

The hourly pay rates for the detailers range from \$13.00 up to \$23.00, with the average being approximately \$16.50. The detailers are subject to the same employee handbook as the other employees. However, as newly hired employees, the detailers are not yet eligible for some benefits such as insurance and profit sharing; Store Manager Brad Cross did provide the detailers with one week of vacation when they became employees (instead of having to wait a year like other new hires).

IV. DISCUSSION

The Union seeks to represent the six detailers employed by the Employer,⁴ while the employer counters that the only appropriate unit includes all 31 of the service technician employees (including the detailers). Since the petitioned-for unit is smaller than the Employer’s proposed expanded unit, the Board’s decision in Specialty Healthcare is controlling. Under the analysis clarified in that case, the petitioner bears the burden of showing that the petitioned-for unit is identifiable and shares a community of interest; the burden then shifts to the party seeking the expanded unit to show that that such an expanded unit shares “an overwhelming community of interest” with the petitioned-for unit. Specialty Healthcare & Rehabilitation Ctr., 357 NLRB No. 83, slip op. at 12-13 (2011). Here, the Union has demonstrated that the detailers are an identifiable group that share a community of interest while the Employer has failed to show the “overwhelming” community of interest with the rest of the service technicians to require an expanded unit.

As to whether or not the detailers constitute an identifiable group, the evidence is sufficient to show that the six detailers do constitute such a group. For example, the detailers are, in several instances, referred to as being in the “Detail” department on the Employer’s own records like employee paystubs and internal documents that were prepared within days of the hearing to track the current status of invoices. Although some of the tasks that the detailers perform may also be performed by other service technicians such as the painters, it is clear from the record that the bulk of the work performed by the detailers is distinct from that performed by the other employees in the service department. Thus, it is the detailers that have the overall responsibility of “detailing” the equipment that is being repaired or prepared for sale by cleaning the equipment, repainting it, and attaching labels as necessary. In contrast, the painters have the specific duties of doing more body-type work on the machinery while the other service technicians are performing more traditional repairs such as working on the engines and transmissions of the equipment. With the exception of Briana Wiker, who has her own area to perform her duties, the detailers perform their work isolated in their own half of a building divided off from any of the other employees. The detailers also have minimal (if any) training or

⁴ The Union’s petition identified 5 employees in the proposed detailers bargaining unit. However, in their post-hearing brief the Union identifies six detailers, including Briana Wiker, and therefore it is presumed that they are seeking to represent all six detailers and not the exclusion of Wiker.

experience required to perform their job, while the record shows that most of the other service technicians not only have past experience or trade school training before starting or advancing within their jobs, but they also receive ongoing training to improve their skills or learn about new equipment.

For many of the same reasons that make the detailers an identifiable group, the detailers also share a community of interest. All of the detailers ultimately report to Jim Peasley and it is Peasley or Tami Whiteman who are preparing the work assignments for them. The work the detailers perform is very similar, with the five in the “green building” apparently being completely interchangeable, and Wiker performing very similar duties as the other five but perhaps better classified as “light” detail work. The detailers all wear similar safety equipment, including rain gear when power washing equipment and respirators when painting. The salary range for the detailers is \$13.00 to \$23.00 per hour, with three of them making \$16 and one making \$15 per hour; Wiker is the lowest paid detailers, perhaps reflecting her “light” detail duties, while Rick Doolin’s higher salary likely reflects his experience and status as a leadman. The detailers are governed by the same employee handbook and subject to the same benefits. Plus, since all six detailers were recently converted from independent contractors to employees of the Employer, they are all subject to the same waiting periods before they can become eligible for other specified benefits such as insurance and profit sharing.

As identified by the Board in Specialty Healthcare, the Employer, as the party seeking an expanded unit, bears the burden of showing that the larger unit has an overwhelming community of interest with the smaller unit of detailers. While the Board recognized in Specialty Healthcare that it may be hard to define what constitutes an overwhelming community of interest with precision and predictability, the Employer in the present case has failed to carry that burden. Certainly the detailers share comparable wage rates with the rest of the service technicians and will ultimately be eligible for the same benefits. However, having similar wages and benefits does not alone create an overwhelming community of interest. See Northrop Grumman Shipbuilding, 357 NLRB No. 163, slip op. at 3-4 (2011) (holding that although all employees operate under the same salary structure and personnel policies, share break facilities, and enjoy the same benefits, those factors are outweighed by the facts that distinguish the smaller group from the rest of the employees).

While all of the service technicians, including the detailers, fall under the same supervision of Peasley and Whiteman, there is little evidence that those two exercise direct supervision over the detailers, with Peasley spending at most 3% of his time in the “green building” where most of the detailers work. For the most part the other service technicians have vastly different job duties than the detailers. While the three painters may have similar duties to the detailers in painting the equipment, the remaining 22 service technicians are much more focused on the repair of the equipment, including performing work on engines, transmissions, drive trains, hydraulics, and electrical systems. Similarly, most of the service technicians are expected to have a higher level of expertise and training than the detailers, with many of the technicians having completed a trade school or have a comparable level of experience while the detailers are required to have little to no experience at the time of hire. As for interchange between the detailers and the remaining service technicians, there is little evidence to show that the other service technicians regularly perform detailing work and vice-versa, nor does there

appear to be much interaction between the detailers and the other service technicians while each group is performing their particular job. Similarly, there is not much personal interchange among the service technicians, with the evidence showing that at least five of the detailers regularly eat lunch by themselves in their area of the shop. And there is no evidence of advancement opportunities for detailers into other service technician positions. It is precisely because of these differences between the detailers and the other service technicians that there is not an overwhelming community of interest between the two groups. See, e.g., DTG Operations, Inc., 357 NLRB No. 175, slip op. at 5 (2011) (directing an election in the smaller, petitioned-for unit by noting that they smaller group worked separately from other employees and performed distinct tasks with distinct qualifications).

In conclusion, the Union's petitioned-for unit of detailers is an appropriate unit for purposes of collective bargaining and the Employer has failed to carry its burden of showing that only a larger unit is appropriate.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Petitioner. 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.

A. Voting Eligibility

Eligible to vote in the election are those in the unit 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. Unit employees in the military services of the United States 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.

B. 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 Subregional 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). The 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.). This list may initially be used by the undersigned to assist in determining an adequate showing of interest. In turn, the list shall be made available to all parties to the election.

To be timely filed, the list must be received in the Subregional Office, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602-1246 **on or before April 30, 2013, 2013**. 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 to the Regional Office by electronic filing through the Agency website, www.nlr.gov,⁵ by mail, or by facsimile transmission at (309) 671-7095. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election please furnish a total of two copies of the list, unless the list is submitted by facsimile or electronically filed, in which case no copies need be submitted. If you have any questions, please contact the Subregional Office.

C. 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 at least 3 working days prior to 12:01 a.m. of the day 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.

VI. 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, DC 20570-0001.

⁵ To file the list electronically, go to the Agency's website at www.nlr.gov, select **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **May 7, 2013**, at 5:00 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁶ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

SIGNED IN Indianapolis, Indiana, this 23rd day of April 2013.



Rik Lineback
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⁶ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.