

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**UAG-STEVENSON CREEK II, INC.
d/b/a AUDI STEVENSON CREEK¹**

(San Jose, CA)

Employer

and

**MACHINISTS AUTOMOTIVE TRADES
LOCAL 1101, DISTRICT LODGE 190,
INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS, AFL-CIO**

Case 32-RC-108320

Petitioner

**REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION**

UAG-Stevens Creek II, Inc. d/b/a Audi Stevens Creek, (the Employer), is engaged in the retail sale and service of automobiles at its facility in San Jose, California. By its petition, Machinists Automotive Trades, Local 1101, District Lodge 190, International Association of Machinists & Aerospace Workers, AFL-CIO, (the Petitioner), seeks an *Armour-Globe*² self-determination election for service advisors to vote whether or not they desire to be included in a recognized unit of service technicians employed by the Employer at its San Jose, California facility. At the hearing in this matter, the parties stipulated that a unit of the Employer's service advisors only is appropriate for the purposes of collective-bargaining. Having entered into that stipulation, however, the

¹ The name of the Employer appears as stipulated at the hearing in Board Exhibit 2.

² *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 297 (1937).

Petitioner has not sought to represent the service advisors in a separate unit, nor has it indicated that it would seek to represent the service advisors in a separate unit in the event its request for an *Armour-Globe* self-determination election were denied. There are approximately seven service advisors employed by the Employer and the recognized unit includes approximately 31 service technicians.

A hearing officer of the Board held a hearing in this matter on July 12, 2013. Petitioner and the Employer appeared at the hearing, and the parties filed post-hearing briefs with me, which I have duly considered.

As evidenced at the hearing and on brief, the sole issue before me is whether the service advisors should be allowed to vote in an *Armour-Globe* election to determine if they wish to be included in the existing unit of the Employer's service technicians already represented by the Union. The Petitioner contends that the service advisors and service technicians share a community of interest and should be represented jointly in a single bargaining unit. The Employer claims that the service technicians are a craft unit and do not share a community of interest with the service advisors and therefore the service advisors should only be permitted to vote in an election for representation as a separate bargaining unit.

I have carefully considered the evidence and the arguments presented by the parties on this issue. For the reasons set forth below, I find, contrary to the Employer's position, that the service technicians and service advisors share a community of interest, and that the service advisors constitute an identifiable, distinct segment so as to constitute an appropriate voting group and, therefore, they shall be permitted to vote in an *Armour-*

Globe self-determination election to determine if they wish to be included in the existing unit of service technicians represented by the Petitioner.

THE EMPLOYER'S OPERATION

The Employer is engaged in the sale and service of new and used automobiles at its facility located at 3350 Stevens Creek Boulevard in San Jose, California. The Employer employs approximately 100 employees and its operations are divided into separate sales, finance, parts, and service departments. The sales and finance departments are located in the front of the facility and the parts and service departments are located in the rear of the facility. The service department contains several work areas for the Employer's service department employees, including a service drive where customers drive their cars into the department, a service writers' area where customer concerns are documented into repair orders, and the shop where service technicians perform maintenance and repairs on vehicles. The Employer also utilizes a used car showroom across the street from its main facility that contains a smaller service and repair shop.

Tony Newell is the General Manager and he oversees the Employer's entire operation. The Employer's sales department has four managers, two each for new and used car sales, and one manager in the finance department. Director of Parts and Service John Ferguson oversees the entire operation of the Employer's parts and service departments. Larry Brusaw manages the parts department and directly supervises four parts employees who are responsible for providing parts to the service department for internal repairs and the sale of parts to wholesale and retail customers. Brusaw reports directly to Ferguson.

In addition to overseeing the entire service department, Ferguson directly supervises all of the service department employees, including approximately 31 service technicians, seven service advisors, four greeter/porters, who greet and deliver repaired vehicles to customers, one dispatcher, who is responsible for the intake and dispatch of work, one warranty clerk, who is responsible for coding warranty work for submission to the manufacturer, four or five car washer/detailers, who are responsible for preparing cars for sale, and two shuttle drivers, who are responsible for transporting customers to and from the dealership. Service Manager Sandee Jacobs works in the service department and is primarily responsible for completing reports and paperwork. Jacobs only directly supervises the service department employees when Ferguson is not available.³

SERVICE ADVISORS

The Employer's seven service advisors are responsible for interfacing with the customers regarding services performed on their vehicles. The service advisors meet directly with customers to discuss their concerns and the services or repairs required for their automobile. Based upon those discussions, the service advisors draft repair orders regarding the repairs needed on the vehicles and the customer concerns that need to be investigated by the service technicians. The repair orders are authorized by the customers and given to the dispatcher, who assigns the work to a technician according to his or her skill level and expertise for service, repair and/or diagnosis of repairs needed. Service advisors communicate with both the service technicians and the customers regarding any issues discovered by the technicians and their recommendations regarding additional repairs needed on the vehicles. Service advisors may communicate directly with the

³ The record reflects that Jacobs works Monday through Friday from 6:00-6:30 a.m. to 5:00-5:30 p.m. and Ferguson works Monday through Friday from 7:00-7:30 a.m. to 5:30-6:00 p.m.

service technicians regarding these issues or electronically through NPI, the multipoint inspection system utilized in the Employer's service department. Service advisors occasionally perform small repairs, using shop tools, to customer vehicles in the service drive, such as replacing a light bulb, checking brake and tire tread measurements, and resetting a service light. Six service advisors work in the main service department and one service advisor works in the shop located across the street. Service advisors receive online training through Audi, work with office equipment provided by the Employer, and wear Employer-provided uniforms consisting of blue oxford shirts and grey slacks.

Service advisors are paid according to a commission system based upon work orders they prepare and earn nine percent of gross profits from parts and repairs paid for by customers and five percent of gross profits from warranty and internal parts and labor. Service advisors are paid a \$4,000 draw on commissions on the first day of each month, followed by a check for the previous month's commissions (minus the initial \$4,000 payment) on the 15th of the month.⁴ Service advisors are eligible for two departmental \$500 bonuses, one if they individually meet or exceed the national Audi customer service index and another if the service department as a whole meets or exceeds the same index. Service advisors are eligible to participate in Employer provided 401K and health benefits plans. Service advisors work on two shifts, 7:00 a.m. to 5:30 p.m. and 7:30 p.m. to 6:00 p.m., Mondays through Friday. One service advisor who writes internal service orders works occasional Saturdays to complete paperwork. The record reflects that there

⁴ The record reveals that experienced service advisors do not earn less than \$4,000 per month and that new service advisors start out earning a guaranteed minimum pay, though the record does not reveal how much the guarantee is, how it is calculated or for how long the guarantee is in place for new service advisors. The Union takes the position that the \$4,000 draw on commission is a guaranteed salary for senior service advisors, a contention that is confirmed by former Employer Chief Negotiator Scott Moss, currently the Senior Vice-President of Human Resources and Administration for Penske Automotive, the Employer's parent company, who testified that the draw is a monthly payment designed to ensure that an employee earns a certain amount in the event that commissions fall short of that amount.

have been no incidents of temporary or permanent interchange between service advisors and service technicians in the last five years.

SERVICE TECHNICIANS

The Employer's 31 service technicians are responsible for maintaining, diagnosing and repairing customers' automobiles. The Petitioner has represented the Employer's service technicians since before the Employer took over the San Jose, California Facility in October 2005, and the service technicians are covered by the November 1, 2010 to October 31, 2013 collective-bargaining agreement between the Petitioner and Employer (the Agreement).

The Employer employs technicians of varying skill sets, including some veteran or journeymen technicians who are able to perform all types of automobile maintenance and repair work and apprentices and utility technicians who perform less complicated maintenance and repair work. Service technicians work out of individual work bays, with 26 technicians working in bays located in the main shop and five working in bays in the shop across the street. Service technicians have their own toolboxes and own some of their own tools, but can also use tools provided by the Employer. The Employer provides computer workstations in both shops, with each workstation being shared by two service technicians.

The Agreement sets the hourly rate for journeyman technicians at \$31.25, with apprentices and "utility technicians" earning between 60-90% of the basic hourly rate depending upon their years of service. However, the record does not reflect how many of the service technicians are considered journeymen and how many are considered apprentices or utility technicians. Service technicians are paid according to a modified

flat rate pay plan in which they will earn their hourly wage rate for every hour charged for repairs that they perform, regardless as to how many hours it actually takes the technician to complete the work. For example, if a job is allocated to be completed in 4 hours, the technician will be paid for four hours of work, even if the job actually takes two hours or six hours to complete. The Employer guarantees service technicians a minimum pay of 36 hours per week at their individual wage level, and service technicians are eligible for the same \$500 bonus enjoyed by the service advisors if the service department as a whole meets or exceeds the national Audi customer service index.

Service technicians work staggered eight-hour shifts beginning at 7:30, 8:00, 8:30, and 9:30 a.m., Mondays through Fridays and are eligible to work voluntary overtime on Saturdays to complete an ongoing job or pre-delivery inspections of new vehicles. Service technicians receive training through an Audi self-study program, wear uniforms consisting of grey shirts and cargo pants, and are eligible to participate in the Employer's health plan and the Agreement's 401K plan.

ANALYSIS

An *Armour-Globe* self-determination election, such as the one sought by the Petitioner in this case, permits employees sharing a community of interest with an already represented unit of employees to vote whether they wish to be added to the existing unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990). The Board has held that the proper analysis in these circumstances is whether the employees in the proposed voting group share a community of interest with the currently represented employees and whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group. *St. Vincent Charity Medical Center*, 357 NLRB

No. 79 (2011); *Warner-Lambert Company*, 298 NLRB 993, 995 (1990).

While the petitioned-for employees need not constitute a separate appropriate unit by themselves in order to be added to an existing unit, as noted above, the parties stipulated at the hearing that the service advisors constitute an appropriate unit. In light of this stipulation, which I find to be fully supported by the record evidence, it is clear that the service advisors constitute an identifiable, distinct segment so as to constitute an appropriate voting group. See *Warner-Lambert Company*, *supra*. Thus, the only remaining inquiry is whether the service advisors share a community of interest with the currently represented service technicians. Such an analysis involves reviewing several factors and comparing the disputed employees to determine whether they share a sufficient community of interest to be included in the same unit. Typical factors to be considered include the degree of functional integration, common supervision, the nature of employee skills and functions, interchange and contact among employees, the work situs, commonality of wages, hours and working conditions, and the bargaining history and extent of organization. *Specialty Healthcare & Rehabilitation Center of Mobile*, 356 NLRB No. 56 (2010); see also *Overnite Transportation*, 322 NLRB 723, 724 (1996); *Canal Carting*, 339 NLRB 969 (2003). In making unit determinations, it is well settled that the resulting unit need only be “an appropriate unit,” and not the most appropriate unit. *Overnight Transportation Co.*, *supra*.

The record herein establishes a substantial community of interest between the service advisors and the service technicians in the recognized unit. Most notably, employees in both positions work in the Employer’s Service Department, under the same immediate supervision, and are simultaneously engaged in providing the essential

product of the Employer's service department, namely, the service and repair of customer vehicles. While employees in each position perform a different facet of the service and repair of customers' vehicles, I find that these employees comprise a functionally integrated group engaged in a singular pursuit.

The record reflects that each position is dependent upon the work of the other position to fulfill its essential job function. In this regard, the service advisors meet with each customer to go over potential issues and repairs of their vehicles and prepare repair orders documenting the work authorized by the customer. Service technicians perform the work outlined on the repair order. Any variations to the repair order, questions about the repair order, or additional repairs found necessary by the technicians, must be communicated to the service writers, who are then tasked with contacting the customer to discuss the issue and obtain authorization from the customer before the technician can perform the needed repairs. Thus, the positions must communicate with each other regularly throughout the course of their work and each is dependent upon the work of the other in order to fulfill their own responsibilities.

There is also some overlap in duties to the extent that service advisors occasionally perform minor repair work or adjustments to customers' vehicles, and both positions use the same computer system and have knowledge of the vehicle repairs and services provided by the Employer. While employees in other positions in the service department perform ancillary duties related to the service of customer vehicles, I note that the service advisors and technicians are the only employees in the department that are paid according to the work produced and rewarded for increasing the productivity of

the department; all other positions in the department are paid a flat hourly rate.⁵ I also note that both positions share in the service department customer service bonus.

While employees employed in each position work in a distinct area of the Employer's main facility, they all work in the Employer's Service Department at the rear of the facility, their work areas are connected by the main service drive, and the customer vehicles are moved from one area to the other as their work progresses. There is a similar complement of employees employed in each position working in the shop across the street from the main facility. Even though employees employed in each position work different shift configurations, the shifts available to those employees overlap so that there is coverage from both positions during each regular work day. The record reflects that service technicians can work voluntary hours on Saturdays. However, the Saturday work is comprised primarily of pre-delivery inspections of new vehicles for the sales departments and the occasional completion of an ongoing service job, not the intake and performance of new service department work. Moreover, the record reflects that at least one service writer also works occasionally on Saturdays to complete paperwork.

While the service technicians are covered under the Agreement, employees employed in both positions share common benefits and working conditions: employees employed in each position are free to use the two available break rooms; employees employed in each position wear Employer-provided uniforms; they use the same time clock; they are eligible for Employer-provided health benefits (albeit with different premium payments); employees employed in both positions utilize Employer provided

⁵ Neither party contends that any of the other service department employees, such as the dispatcher, the warranty administrator, greeter/porters, car washers, and shuttle drivers should be included in any unit found appropriate herein. I also note that the record does not reflect the average or range of salaries for the department's employees for purposes of comparing each position's earnings or earnings potential.

training through its parent company, Audi; they attend joint customer relations trainings and share in departmental customer service bonuses; they may attend weekly department meetings, even though the meetings may be primarily addressed to technicians; employees employed in both positions work with Employer-provided computer workstations and use the Employer's computerized multipoint inspection system; and employees employed in both positions are subject to the terms of the employee handbook, including the service technicians to the extent that those terms do not conflict with terms in the Agreement.

In light of the above evidence, I do not find that the different 401K benefit plans and other contractual benefits enjoyed by service technicians, or the lack of transfer or promotion between the two positions is sufficient to overcome the substantial community of interest between the service advisors and the unit employees established by the record. Moreover, the record contains no evidence that the service advisors have an "overwhelming" community of interest with employees in any classification outside the recognized unit as to preclude a finding that they may properly be included in the recognized unit if they so choose. See *Specialty Healthcare, supra*.

I find unavailing the Employer's argument that it is inappropriate to include the service technicians in a unit with the service advisors because, as the Employer asserts, the service technicians comprise a craft unit. I note, as an initial matter, that there is no evidence in the record regarding whether the original service technician unit was organized as a craft unit, nor evidence sufficient to establish the basic criteria for a craft unit, such as the level of training, certification, specialization and/or expertise of the service technicians employed by the Employer. That aside, however, the craft unit cases

on which the Employer relies, namely, *Dodge City of Wauwatosa*, 282 NLRB 459 (1986); and *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990), address a situation not involved here of a union petitioning to exclusively represent a craft unit. In such circumstances, as the Board determined, a group of craft employees within an automotive department “*may, if requested*, be represented in a separate unit, excluding other service department employees.” *Dodge of Wauwatosa*, 282 NLRB at 460 n. 6 (emphasis added). Neither of the cases cited by the Employer support the Employer’s contention that the petitioned-for service advisors in this case should not be added to the unit of service technicians where the record establishes that they share a community of interest with the service technicians. See e.g. *R.H. Peters Chevrolet*, 303 NLRB 791 (1991) (Board found sufficient community of interest between service advisors and mechanics and ordered service advisors to be included in a bargaining unit of mechanics, body shop, and parts department employees); *Sacramento Automotive Association*, 193 NLRB 745 (1971) (Board found a community of interest between service writers and mechanics and ordered a self-determination election for potential inclusion of service writers in an already represented unit of service department employees).

In addition to the foregoing community of interest factors, I have also considered that there is no evidence of a history of collective-bargaining for service advisors in a different unit and that no union seeks to represent them separately or in a different unit. See *Specialty Healthcare, supra*. Contrary to the Employer's contention that the Petitioner failed to bargain about the inclusion of the advisors in the existing bargaining unit or should have done so prior to filing this petition, the Board has held that a self-determination election is the proper method by which an incumbent union, such as the

Petitioner here, may add unrepresented employees to its existing unit. *Warner-Lambert Co., supra* at 995.

Accordingly, I find that the service advisors may vote whether to be represented by the Petitioner as part of the existing unit. Further, I find that should the service advisors vote to be included in the existing unit, the resulting unit would constitute an appropriate unit for collective-bargaining purposes.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer, and 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.
4. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. I find that the following employees of the Employer, if added to the existing recognized unit, would constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

Voting Group

All full-time and regular part-time service advisors employed by the Employer at its facility located at 3350 Stevens Creek Boulevard, San Jose, California 95117; excluding all other employees, office clerical employees, guards, and supervisors as defined in the National Labor Relations Act.

There are approximately 7 employees in the Voting Group.

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 ballot for the Voting Group will ask:

Do you wish to be included in a single unit for the purposes of collective-bargaining with the bargaining unit of automotive technicians and apprentices currently represented by Machinists Automotive Trades Local 1101, District Lodge 190, International Association of Machinists & Aerospace Workers, AFL-CIO at the Employer's San Jose, California facility.

If a majority of the valid ballots of the voters in the Voting Group vote "Yes," they will be taken to have indicated their desire to be included in the unit currently represented by the Petitioner. If a majority of the valid ballots of the voters in the Voting Group vote "No," they will be taken to have indicated their desire to remain unrepresented. 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. 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.

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.). This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224, on or before **August 5, 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's website, www.nlr.gov,⁶ by mail, by hand or courier delivery, or by facsimile transmission at (510) 637-3315. The burden of establishing the timely filing and receipt of this 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 **three** copies, unless the list is submitted by facsimile or e-mail, 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 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper

⁶ To file the eligibility list electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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., EDT on **August 12, 2013**. This request may be filed electronically through E-Gov on the Agency's web site, www.nlr.gov,⁷ but may not be filed by facsimile.

Dated: July 29, 2013

/s/William A. Baudler
William A. Baudler, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

⁷ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. Guidance for electronic filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter, and is also located on the Agency's website, www.nlr.gov.