

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

HALL CHEVROLET, LLC

Employer¹

and

Case 05-RC-126386

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board. International Association of Machinists & Aerospace Workers, AFL-CIO, herein the Petitioner or the Union, filed the petition seeking to represent a unit of “[a]ll regular full time & part time body technicians, body helpers, body prep technicians, estimators, paint prep, & painter’s employees” employed by Hall Chevrolet, LLC, herein the Employer, excluding office clerical employees, managerial employees, professional employees, guards, and supervisors as defined in the Act. The petition asserts there are approximately 16 employees in the proposed unit. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and that there is no history of collective bargaining between the parties for the petitioned-for employees.

¹ The petition was amended at the hearing to reflect the Employer’s correct legal name.

I. ISSUE & POSITIONS OF THE PARTIES

The sole issue is whether the petitioned-for unit is appropriate. The Petitioner contends that the petitioned-for unit is an appropriate craft unit. The Employer argues that the unit sought by the Petitioner is not a craft unit, and that the appropriate bargaining unit includes all employees working in its “fixed operations” – its service department, body shop, parts department, cashiers, and a clerical employee. At the hearing, the parties stipulated that the body shop clerical employee should be included in any unit found appropriate.² The Petitioner did not take a position on whether it would proceed to an election in any alternate unit that I found to be appropriate.

Based on the record as a whole, and careful consideration of the arguments of the parties at hearing and in brief, I find the petitioned-for unit is not a craft unit. However, I find that the petitioned-for unit, with the above-described stipulation concerning the body shop clerical employee, is an appropriate unit, and I direct that an election be held for a bargaining unit consisting of all employees working in the Employer’s body shop department.

II. FACTS

The Employer operates a new and used car dealership in Chesapeake, Virginia, selling and servicing Chevrolet automobiles. The Employer’s operation is broadly divided into two halves: sales and “fixed operations.” Only the fixed operations side of the Employer’s business is at issue in this case. Fixed operations consists of three departments: 1) body shop; 2) service;

² In its post-hearing brief, the Petitioner asks me to direct an election in its petitioned-for unit without mentioning the body-shop clerical employee. To any extent Petitioner’s brief amounts to an indirect request to escape this stipulation, I deny that request. I conclude that the Employer would be unfairly prejudiced if I permitted the Petitioner to raise this issue after the hearing has closed and the parties have filed their briefs.

and 3) parts. All three departments are part of the same corporate entity. Evan Seltzer is the general manager of the Employer's fixed operations, and each department has its own department manager, each of which reports directly to the general manager. The manager of the body shop also reports indirectly to the Employer's director of body shop operations, who oversees the body shop operation at two additional locations operated by Hall Automotive. There is no evidence concerning any intermediate supervision between the department managers and the employees in their respective departments.

The body shop consists of body technicians, helpers, painters, estimators, and a clerical employee.³ There are approximately 19 employees in the body shop: 10 body technicians, 2 helpers, 2 painters, 4 estimators, and 1 clerical.⁴ The service department consists of approximately 40 employees: 24 service technicians, 6 service writers, 4 detailers, 4 lot attendants, and 2 cashiers.⁵ There are approximately 10 employees in the parts department: 4 drivers, 5 counter employees, and 1 assistant manager.⁶

All of the fixed operations departments are under one roof, though there are interior walls both between and within each department. Nearly all of the fixed operations departments work in a climate-controlled environment. There is one employee lounge for all fixed operations employees.

³ There is one employee in the body shop who performs the duties of both helper and detailer.

⁴ The parties disagree about whether one of these estimators, who recently was assigned to work remotely from the Newport News, Virginia area, should be included in the unit.

⁵ In addition to these 40 employees, there is also a quality control employee.

⁶ The assistant manager has the same job duties as the counter employees, except that he occasionally substitutes for the department manager when the parts department manager is not present.

The Employer has a central human resources office, payroll department, and employee handbook that cover all employees in the fixed operations department. All of these employees' personnel files are maintained at the Employer's corporate office. All fixed operations employees are paid bi-weekly on the same day and have the option of receiving a paper check or direct deposit. They have common holidays, paid time off, extended sick time, a common drug and alcohol policy, and equal access to the same health, dental, and life insurance programs, the same flexible spending account program, 401(k) retirement plan, and the same employee discount program. The parties stipulated that there are no benefits offered to any of the fixed operations departments that are not offered to any of the other fixed operations departments. All new hires, regardless of department, go through the same employee orientation, which is performed by the Employer's centralized human resources department. These new employee orientations are conducted monthly, and are usually done on-site.

The Employer has a uniform/laundry program for all fixed operations employees. Nearly all fixed operations employees wear a similar uniform, with some minor differences based on job classification and gender. There is a single uniform/locker room where the Employer's laundry service drops off the employees' laundered uniforms for the fixed operations employees.⁷

Each fixed operations department has its own safety manual, though this manual may be the same or very similar to the manuals kept in the other departments. This manual is updated monthly, and each department manager is responsible for conducting safety training for his department's employees on a monthly basis. These trainings are usually conducted separately

⁷ The only exception to the uniform policy concerns the body shop estimators. These employees have the option of wearing the same Employer uniform as the service writers, parts employees, and cashiers, or they may be professionally dressed with an Employer nametag.

from the other departments because each department keeps its own book that employees sign to signify they have completed that month's training.

The Employer has one computer system called ADP that all departments use, and this computer system is linked between the departments. The Employer has an additional software program for collision estimating called CCC that is unique to the body shop. This software is limited to the body shop because only the estimators write collision estimates and the Employer must pay for a license for each user of this software. The estimators and the body shop clerical use this software.

All of the fixed operations departments are open Monday through Saturday. The body shop is open from 8:00 a.m. to 6:00 p.m. Monday through Friday, and on Saturdays from 8:00 a.m. to 12:00 p.m. The body technicians and painters work from 8:00 a.m. to 5:00 p.m., Monday through Friday.⁸ The estimators work 8:00 a.m. to 5:00 p.m., Monday through Friday, and rotate who stays until 6:00 p.m. during the week and who works on Saturdays.

The service department is open from 7:30 a.m. to 7:00 p.m. Monday through Friday, and 8:00 a.m. to 5:00 p.m. on Saturday. The service technicians generally work from 7:00 a.m. to 5:00 p.m. during the week, with two technicians staying until 7:00 p.m. The technicians work every other Saturday. The service writers work similar hours to the estimators and work every other Saturday. The detailers work from 7:30 a.m. to 9:00 p.m. on staggered schedules. The detailers' hours extend until 9:00 p.m. to ensure there is someone present to support new car sales. The two cashiers work from 7:30 a.m. to 7:00 p.m., Monday through Friday, on staggered shifts (7:30 a.m. to 1:00 p.m. and 11 a.m. to 7:00 p.m.) They rotate the Saturday shift. In the service department, the technicians, service writers, and detailers all take a lunch break from

⁸ The record does not reflect when, or if, the body technicians or painters work on Saturdays. The body shop clerical employee hours are not in the record.

12:00 p.m. to 1:00 p.m., with the exception of one service writer who remains on duty to cover the lunch hour.

The parts department is open the same hours as the service department, with at least one person working when either the body or service departments are open. The record shows employees in the parts department rotate the Saturday shift, working every fourth Saturday.

The Employer's body shop primarily performs repairs to the exterior panels of vehicles and collision damage. The service department primarily performs mechanical repairs, maintenance, and modifications on vehicles. These repairs cover every system of a vehicle, including engine, transmission, drivetrain/axles, brakes, tires, fuel system, suspension and alignment, electrical system, and ignition system. The parts department supplies vehicle parts and shop supplies to both the body shop and the service department.

There is a significant amount of work that moves between the body shop and the service department. Approximately 50% to 60% of vehicles that start in the body shop end up having work performed by the service department's technicians before being returned to the customer. On any given day, there are multiple vehicles being worked on by the service department that have come in through the body shop, where body shop employees worked on the vehicle. For example, if a vehicle suffers collision damage affecting its suspension system, the service technicians will remove the vehicle's suspension components, the body shop employees will repair the collision damage to the vehicle's body, and the vehicle will return to the service department to have the suspension components reinstalled and the wheels aligned by service department employees. Another example is when a collision has caused frame damage to a vehicle. The service department's technicians will remove the vehicle's engine so the body shop technicians can access the vehicle's frame. After the body shop employees complete the frame

repairs, the vehicle will return to the service department to have its engine reinstalled by the service department employees. Other examples include the service department technicians repairing or replacing brake system components, tires, air conditioning, and other mechanical repairs affected by a collision.

Occasionally, the body shop technicians will perform light mechanical repairs that are related to a larger body repair.⁹ Examples of these repairs include removing and reinstalling a radiator or air conditioning condenser damaged in a front-end collision, or minor wiring repairs to headlights, a dome light switch damaged in a side impact, or repairs to the vehicle's power windows. When body shop technicians perform these mechanical repairs, they use the same types of tools, repair procedures, and standards that the service technicians use.

There are occasions when a vehicle originally comes in to the body shop, is moved to the service department, and returns to the body shop again. An example of this is where a vehicle is repaired in the body shop and then moved to the service department for an alignment. While the service technician is performing the alignment, he or she may discover previously unnoticed damage to the vehicle's steering or suspension system, as this damage will prevent the technician from bringing the vehicle's alignment back within the manufacturer's specifications. In these circumstances, the body shop technicians and/or estimators will come over to the service department to determine whether any additional repairs are necessary.

Finally, there are several circumstances where a vehicle will originate in the service department, and have to move to the body shop to complete some portion of the overall service to the vehicle. One example, which occurs on a weekly basis, is where a service technician is

⁹ The record does not show that body shop technicians perform mechanical repairs where they are the sole repairs being performed (i.e. performing the job of a service technician). Similarly, there is no evidence that service technicians perform body or paint work.

replacing a component (e.g., an outside mirror) that must be painted before it is installed. Another example is where the body shop employees will make repairs to vehicles that are accidentally damaged while in the service department. Other times, a customer may bring a vehicle in for service (such as an oil change), and the service writer will notice a “ding” or scratch in the vehicle, and offer to obtain an estimate for repairing that damage. Finally, there are instances where the Employer has taken in a used vehicle and needs to determine whether it will keep and re-sell the vehicle or wholesale it. In this situation, the service department employees will review the vehicle’s mechanical systems, and any body work will be referred to the body shop employees.

Regardless of whether the vehicle originates in the body shop or the service department, all work performed on the vehicle, and all charges for that work (both parts and labor) are documented on a single repair order.¹⁰ The cashiers collect customer payments for all repair orders and retail parts sales.

Vehicles that Originate in the Body Shop

When a vehicle comes into the body shop, the estimator will greet the customer, assess the customer’s concerns and damage to the vehicle, gather information about the vehicle (VIN#, etc.), and write an estimate for the repair. Where the estimator determines that parts or mechanical service are required for the anticipated repair, he or she will contact the parts department and/or the service department to get any information necessary to complete the estimate. Sometimes the estimator can obtain information from the Employer’s computer system, such as the cost of parts and their availability. Where information is not available

¹⁰ The Employer also documents repairs for any vehicle damage incurred while the vehicle was being serviced, though the customer is not charged for these repairs.

through the computer system, the estimator will contact the service department or parts department by telephone or by walking over to those departments. In the service and parts departments, the Employer has designated one service writer and one counterperson with primary responsibility for handling these interdepartmental requests, though other service writers or counterpersons can fill in if the primary service writer or counterperson is unavailable.

After the estimate is prepared, the estimator will get the customer and, if applicable, an insurance company to approve the estimate. Once the estimate is approved, the estimator will schedule the work and “task” the parts department to order any necessary parts.¹¹ Throughout the repair process, one of the estimator’s essential job duties is to keep the customer and the insurance company informed of any developments with the vehicle’s repair.

The parts department counterperson is responsible for delivering the required parts to the body technician, and for ensuring that any parts are added to the vehicle’s repair order. Technicians cannot get parts themselves; a parts department employee must pull the part for a technician. After receiving the necessary parts, the body technician is responsible for repairing the vehicle according to industry and manufacturer standards, and according to the estimate prepared by the estimator.

After the body work is completed, the vehicle is sent for painting. The paint helper prepares the vehicle for paint work, which is performed by the painter. After the vehicle comes out of the paint booth, it is moved to an inspection area. Following an inspection by the body shop manager, the vehicle is moved to the detail area in the service department for cleaning.

Nearly every car is cleaned after the body work is complete, and approximately 50% of vehicles need a full detailing – a more thorough cleaning – after body work. Every day, there are

¹¹ For repairs involving State Farm insurance, a different procedure is used to obtain parts, and the estimator may order the parts directly from the supplier.

several vehicles that come from the body shop to the service department for detailing. The exact number depends on the workload at the time, but there can be five to ten cars per day that the service department employees detail for the body shop. The service department detailers wash and vacuum the vehicles, then return them to the body shop. Because body repairs generate a lot of dust, if a vehicle has been in the body shop for some time, the body technician helper will perform a more-thorough cleaning of the vehicle, such as wiping down the door jambs, engine compartment, truck area, etc.

After the vehicle is cleaned and inspected by the body shop manager, it is ready for the customer to take delivery. The cashiers handle the payment of any insurance deductible or other charges the customer is responsible for. The Employer's preferred practice is for the estimator to take the customer to the cashier so the estimator can answer any questions the customer may have about the repair order. Depending on the time of day when the customer picks up the vehicle, the customer could receive their vehicle from the estimator, a lot attendant, detailer, or a service writer.

Throughout the body-repair process, there is a clerical employee who manages paperwork associated with the repair. This clerical employee's job includes consolidating the repair estimate and any supplemental estimates, ensuring that these estimates match what is billed on the repair order, collects and reconciles the body technicians' time slips with the repair order, and transmits any checks received from insurance companies to the cashier. In performing her duties, this clerical employee has daily interaction with the estimators, body technicians, and at least one service writer. Approximately twice a week, the body shop clerical employee will interact with the cashiers by delivering the insurance checks.

Vehicles that Originate in the Service Department

Vehicles that originate in the service department follow a similar process to those that enter the body shop. A service writer will greet the arriving customer, gather information about the customer, the vehicle, and the customer's concern. The service writer will prepare a repair order containing a preliminary estimate and obtain the customer's approval for the work. As with the estimator, the service writer is responsible for keeping the customer informed about any developments in the vehicle's diagnosis and repairs. The service writer is also expected to offer or "up-sell" any additional repairs or maintenance services that may be required on the vehicle.

The repair order generated by the service writer is electronically communicated to the service technician, and a lot attendant will move the vehicle to a back parking lot and put the keys on the service technician's desk. The service technician will repair the vehicle according to the repair order generated by the service writer. If the service technician needs any parts to complete the service or repair, the technician will send an electronic request to the parts department. The parts department counterperson will pull the parts and deliver them to the service technician. The record is unclear about whether vehicles leaving the service department are routinely detailed and to what extent they are cleaned/detailed. The customer pays for the service repairs through the cashier. As with the estimators, it is the Employer's preferred practice that the service writer escort the customer to the cashier in case the customer has any questions about the repair order.

Job Duties, Skills, and Employee Pay

The estimators' pay is based on a combination of guaranteed salary and productivity bonuses. Productivity bonuses include a commission bonus, direct repair bonus (State Farm

insurance program), customer satisfaction (CSI scores), cycle time, and an annual bonus based on an estimator meeting monthly production goals.

Cycle time refers to the duration between the time when the vehicle is dropped off at the Employer and when it is returned to the customer. Cycle time is important because getting the vehicle back to the customer faster results in increased customer satisfaction, and reduced rental car expenses for the customer and/or insurance companies. While the record indicates that cycle time is an important consideration in the service department, there is no specific evidence about whether cycle time factors into service writers' pay. Broadly, the service writers' compensation is similar to the estimators'. Service writers receive a base salary plus commission pay. This commission pay is composed of labor dollar hours per repair order, parts sold on a repair order, and customer satisfaction.

Estimators and service writers are not required to have previous experience as technicians and do not make repairs to vehicles or work with tools. Generally, they use computers, telephones, and other office equipment to perform their duties.

Both body technicians and service technicians are paid on a system called "flat rate," which incentivizes technicians to work as efficiently as possible. Under the flat-rate system, a technician will have a set hourly rate.¹² That hourly rate is applied to a predetermined industry and/or manufacturer-determined time period that each repair should take. Therefore, if a technician is assigned to perform a repair that is listed as a five-hour job, the technician would receive their hourly rate times five, regardless of how long it took the technician to complete the repair. The record explains that experienced technicians can turn in on average somewhere between 80 to 100 billable hours in a 40-hour workweek. Technicians also receive a commission

¹² These rates are not in evidence.

on parts. Technician helpers are paid on an hourly rate while they are learning. As the helpers' skills develop, they are transitioned to the flat-rate system.

There are industry and manufacturer certification programs for both body and service technicians (I-CAR, ASE, GM, etc.), but these are not required for hire. Generally, most technicians receive on-the-job training.

Body and service technicians work with tools and equipment that are common in the trade, though each type of technician has specialized tools that the other does not typically use. The technicians supply most of their own tools, and try to select the tools that they believe will allow them to work the fastest, though the Employer does provide some specialized tools. Both body and service technicians will use hand tools such as wrenches, sockets, screwdrivers, hammers, etc. and pneumatic tools. Both body and service technicians will also use vehicle lifts and some types of diagnostic equipment. Both the body and service technicians will perform welding, but this work is primarily performed by the body technicians. In fact, the body and service departments share the welding equipment between them. Some tools are used exclusively by only one group of technicians. As examples, only the body technicians use the frame machine, body putty, sanders, dollies¹³, and have pulling devices and clamps that service technicians do not use. In contrast, service technicians use the alignment rack, brake lathe, tire machine, and have a lot more diagnostic equipment than the body technicians. Painters' pay is admittedly "very similar" to the body technicians'.

Detailers, like the technicians, are paid based on productivity. Some of the detailers are commissioned, while the newer employees are paid an hourly rate until they become proficient.

¹³ In this instance, a dolly is a type of anvil used for shaping metal, not a wheeled cart.

Detailers use cleaning tools such as wash buckets, sponges, hoses, and vacuum cleaners in their work.

Lot attendants and cashiers are paid an hourly wage. The lot attendant's primary job duty is to move cars around the Employer's property (specifically including moving vehicles between the body shop and service department) and taking care of customers.¹⁴ When they are not moving cars, the lot attendants are required to be in the service write-up area and within speaking distance of the cashiers. There is no evidence that lot attendants or cashiers work with tools or perform any work on vehicles. The record does not reflect how the body shop clerical employee is paid.

The parts department is composed of counter employees and drivers. There are several counters in the parts department: a customer counter; a service counter; and a body shop counter. The customer counter handles walk-in customers and sells parts to those customers. The service and body shop counters supply parts to the service department and body shop, respectively. The drivers pick up and deliver parts. Parts department employees help reduce cycle time by promptly locating parts and ensuring the parts get to the Employer quickly. On some occasions, this requires a decision about whether to order a part by overnight delivery, or to obtain it from another source. The parts department's ability to get needed parts quickly directly affect the efficiency with which the body and service departments can perform their work. The counter employees receive a salary plus commission. Their commission is based on parts sold across the employee's assigned counter. The record does not show how the drivers are paid.

¹⁴ While lot attendants' primary job is to move vehicles, the record shows that body technicians, estimators, service writers, and detailers also move vehicles between the body and service departments. On some occasions, such as when a vehicle has had the engine removed by the service department for the body shop, an employee will obtain help from anyone who is standing around and willing to push, whether they are a technician, estimator, detailer, lot attendant, etc.

III. ANALYSIS & CONCLUSIONS

A. *The Petitioned-For Unit is Not a Craft Unit.*

The Board has long held that a craft unit consists of a distinct and homogeneous group of skilled journeymen craftsmen, working as such, together with their apprentices and/or helpers. *Fletcher Jones Chevrolet*, 300 NLRB 875, 876 (1990)(citing *American Potash & Chemical Corp.*, 107 NLRB 1418, 1423 (1954)). In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages benefits, and cross-training. *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994).

I find that the petitioned-for unit¹⁵ is not a distinct and homogeneous group of skilled craftsmen, and thus does not constitute a craft. Beginning with the body technicians, the evidence indicates that the body technicians (along with their helpers) *may* constitute a craft unit, but the petitioned-for unit includes employees not within that craft. The body technicians are skilled craftsmen whose work and skills are generally distinct from those of other employees.

¹⁵ At the hearing, the Petitioner agreed to include the body shop clerical employee in any unit found appropriate, and thus, I treat this stipulated addition as part of the petitioned-for unit for the purpose of this analysis. *Odwalla, Inc.* 357 NLRB No. 132, slip op. at 4, fn. 27 (December 9, 2011).

There are industry certifications for body technicians (I-CAR and ASE “B”-series certifications); these certifications are preferred, but not required for hire. There is no formal apprenticeship program for body technicians, though the Employer maintains an informal apprenticeship/mentoring program. In this program, the Employer grooms unskilled helpers into skilled body technicians through on-the-job training in which helpers assist experienced body technicians in their duties until the helpers’ skills are sufficiently honed.

Assuming for the sake of this decision that the body technicians possess sufficient characteristics to establish them as a craft unit, the petition’s inclusion of the estimators, painters, and body shop clerical defeat the possible craft identity of body technicians and helpers. The estimators and body shop clerical employees do not work with, and are not required to provide, any mechanical or specialized tools, and do not perform any repair work on vehicles. Neither the estimators nor the body shop clerical employee are required to have experience as body technicians, or to take part in any training or apprenticeship program.¹⁶ I find that the inclusion of the estimator and body shop clerical positions prevent a conclusion that the petitioned-for unit is a craft unit. Regarding the painters, the record does not show whether these employees have a craft identity. While their title suggests that they are responsible for painting vehicles or vehicle parts, there is little evidence about their training, qualifications, tools of the trade, and specific job tasks or processes. For example, the record does not show whether there is any overlap between the painters’ skills or tools and those of the body technicians, or as further examples, whether body technicians “graduate” to become painters, whether body technicians perform paint work or vice-versa, or whether painters have any specialized training or certifications that

¹⁶ While the Employer’s job description for estimators lists “[p]revious experience as a body technician or other automotive service provider” as a qualification for the estimator position, the hearing testimony shows that estimators are not required to have experience as body technicians.

are unique to their work. Nonetheless, for the purpose of this decision, the record is sufficient for me to conclude that the petitioned-for group of employees is not sufficiently homogenous or skilled to qualify as a craft unit.¹⁷

B. The Employees in the Employer's Body Shop Constitute an Appropriate Unit.

1. Legal Standard

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. *Boeing Co.*, 337 NLRB 152, 153 (2001)(citing *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000)); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, 1185 fn.2 (7th Cir. 1997). The Act requires only that the unit be "appropriate," that is, to assure to employees in each case "the fullest freedom in exercising the rights guaranteed by this Act." *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996). The Board "generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees." *Bartlett Collins Co.*, 334 NLRB at 484.

To determine whether the proposed unit is an appropriate unit, the Board's focus is whether the employees share a "community of interest." In determining whether employees in a proposed unit share a community of interest, the Board examines: whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions

¹⁷ Thus, I do not need to decide whether the body technicians' performance of mechanical work affects their craft identity.

and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 9 (August 26, 2011)(internal citations and quotations omitted). “[T]he manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination.” *International Paper Co.*, 96 NLRB 295, 298 fn.7 (1951).

When a petition seeks a unit of employees who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills or similar factors), and the Board finds that the employees in the group share a community of interest after considering the traditional criteria, the burden of proof is on the proponent of a larger unit to demonstrate that the additional employees it seeks to include share an “overwhelming community of interest” with the petitioned-for employees, such that there “is no legitimate basis upon which to exclude certain employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Odwalla, Inc.* 357 NLRB No. 132, slip op. at 4 (December 9, 2011); *Specialty Healthcare*, supra, slip op. at 11-13 and fn. 28.

2. *Application of the Legal Standard to the Hearing Record.*

Because the unit sought by the Petitioner is not a craft unit, I must now consider whether this group of employees is *an* appropriate unit. As explained below, I find that the body shop employees constitute an appropriate unit because they are a readily identifiable group and share a community of interest. Although the record shows that there is a significant amount of

functional integration, employee contact, and common terms and conditions of employment between the employees in the body shop and the employees in the other fixed operations departments, I find that this evidence falls short of showing that the community of interest factors between the body shop and other fixed operations departments “overlap almost completely.” I do not find that a unit of all of the employees in the body shop is necessarily the most appropriate unit. However, Board law requires only that the unit be an appropriate unit, which is the extent of my decision herein.¹⁸

a. Departmental organization

There can be little doubt that the petitioned-for employees are readily identifiable as a group. The Employer’s body shop is a specific department within fixed operations. The non-supervisory employees of the Employer’s body shop department consist of body shop technicians, painters, helpers, estimators, and an office clerical employee. The employees of the service and parts departments are similarly readily-identifiable groups.

b. Distinct Skills, Training, and Job Function

I conclude that the proposed unit of body shop employees possesses distinct skills, training, and job functions. Only body shop technicians perform body work, only the estimators write collision estimates, all painting is performed in the body shop, and only the body shop clerical performs her assigned duties. There may be several tasks that these employees perform that other employees outside the body shop are capable of performing; yet it is equally apparent

¹⁸ I also find that there is insufficient evidence to determine whether the estimator who works remotely is part of the Employer’s body shop. As there is only one estimator who works remotely, that employee may vote subject to challenge.

that the body shop employees have skills and use tools and equipment that are distinct from the rest of fixed operations.

There is some overlap between the tools used by employees in the body shop and service department. Both types of technicians work with common hand tools that they provide for themselves, use vehicle lifts, and perform welding. They both perform diagnostics and minor mechanical work, and are responsible for repairing vehicles according to written estimates and manufacturer/industry standards. However, the body shop employees work with tools that are unique to their department. The body technicians have specialized tools that are not used by service technicians (and vice-versa), and only the estimators and body shop clerical have access to the CCC software. While the record does not explicitly describe the painting process, I conclude that because the service department sends parts and vehicles to the body shop for painting, it logically follows that the painters possess equipment and skills that are unique to the body shop department.

Further, two of the more advanced classifications in the body shop (technicians; painters) receive unique training through time served as a helper in the body shop (technician helper; painter helper). These helpers (like the service technician helpers) train under the supervision of experienced journeymen for that particular job. Certainly the helper *system* is common throughout the Employer's fixed operations, but body technician helpers or painter helpers, as examples, are not in training to become service technicians. It is also clear that body technicians have parallel, but nonetheless distinct, certification programs (ASE B-series; I-CAR) from the those applicable to technicians in the service department.

The body shop employees have job functions that are unique to the body shop. The body shop technicians primarily perform work to a vehicle's sheet metal and structural components,

while the service technicians primarily perform repairs and maintenance on mechanical systems. These distinct job functions are evidenced by the frequent movement of vehicles between the body shop and service department, which allows each department to perform its distinct work.¹⁹ Though the record is not explicit that only painters perform paint work, it is clear that only body shop employees perform paint work, and for the purpose of this decision, this further shows that the body shop employees have distinct job functions.

As for the estimators and service writers, both classifications have a primary job duty of interacting with customers and providing customer service. The estimators and the service writers are both responsible for greeting customers, documenting their concerns, recording the vehicle's information, preparing estimates, getting those estimates approved, keeping the customer informed about the repair's status, and ensuring that work on the vehicle is complete within the quoted price and timeframe. However, there is a clear distinction between the work performed by the estimators and service writers. Only the estimators write collision estimates (using the CCC software unique to the body shop), and only the service writers write service estimates. Similar to the technicians, the distinction in skills and job functions between estimators and service writers is demonstrated by how work moves between the body shop and service departments. All repair orders must pass through, and be coordinated with, either the estimators or service writers while the vehicle is in their respective departments. Because it is necessary to involve either an estimator or service writer whenever work is being performed in their departments, this shows that their duties are unique to their classifications and are not interchangeable. Finally, while there are no apparent distinctions between the body shop clerical's skills and training and those of the cashiers, they have distinct job functions. The body

¹⁹ Similarly, the body shop employees have distinct job functions from the parts department employees, as only parts department employees can pull parts.

shop clerical employee handles paperwork and other clerical tasks within the body shop department, but does not process any payments for body shop work; these payments are processed exclusively by the cashiers.

I conclude that the body shop employees have skills, training, and job functions that are distinct from the other fixed operations departments. While there are some service department classifications that have parallel skills, training, and functions to body shop classifications, any such similarities across departmental lines do not so overwhelm the body shop's distinct identity as to require that other fixed operations employees be included in the unit.

c. Functional Integration

The hearing record demonstrates that efficiency is the common theme of the Employer's fixed operations department, and that employees' terms and conditions of employment are directly affected by not only their own productivity, but also by how well other fixed operations employees perform their jobs. The body shop is dependent on the service and parts departments to complete its work; in virtually all cases, any vehicle repairs performed in the Employer's body shop will involve employees from either or both of the service and parts departments before the vehicle is delivered to the customer. Specifically, for each vehicle repaired in the body shop:

- All, or nearly all of them will be cleaned by a detailer in the service department;
- Fifty to sixty percent will be worked on by a service technician, which means that fifty to sixty percent of body shop repairs will also involve a service writer;
- Most of them will be moved by a lot attendant from the service department;
- Most of them will use parts or supplies from the parts department; and
- All of them will be processed through the service department cashiers.

Thus, I find that the Employer's body shop is, to a considerable extent, functionally integrated with the other fixed operations departments. Every body shop repair will require the participation of another fixed operations department employee (e.g., cashier, detailer, lot attendant). At least half of the work for the body shop requires the involvement of most of the classifications in the service department. More significantly, some body shop employees' pay is directly affected by how well these other department's employees perform their duties. The estimator's pay is directly affected by cycle time and customer satisfaction scores. Thus, the estimators have a significant interest in ensuring that any vehicle work performed in the service department, or that any parts needed from the parts department happen as quickly as possible to keep the vehicle's cycle time within the Employer's goals. On a related point, the estimators have an interest in the other departments' efficiency and quality because these affect customer satisfaction. A customer's satisfaction depends on their satisfaction with the overall repair experience. Further, because the estimators serve as the customer's sole point of contact for body shop repairs, it is the estimators that are the face of the body shop, not the individual cogs of the Employer's internal organization with which the customer does not interact. Thus, if parts are mishandled, a service technician fails to complete a repair, a detailer forgets to vacuum the car, the customer's satisfaction will decrease, and the estimator's pay is impacted.

Similarly, the body technicians are paid based on how efficiently they can complete their work, and on many occasions they rely on the service and parts departments to get that work done. As examples, the faster the lot attendants move a car to and from the service department, or the faster a service technician can remove a vehicle's suspension or engine, the faster the body technician can perform their repairs to the vehicle, and in turn, the sooner the technician can take on another assignment.

Furthermore, the parts department is functionally integrated with both the body shop and the service department. With the exception of customers whose work is covered by a State Farm insurance policy, the parts department is the exclusive supplier of parts that are necessary for work in the body shop and the service department. In short, it is a vital cog in the Employer's internal operation. Finally, a single group of cashiers process payments for all of fixed operations, and when the customer picks up the vehicle, all the work performed by the fixed operations departments are reflected on a single repair order.

d. Contact with Other Employees

I find that there is significant interaction between body shop employees and other fixed operations employees on a daily basis. Multiple times per day, detailers, lot attendants, service writers, cashiers, parts counterpersons, and service technicians communicate and work with employees in the body shop department.

e. Interchange with Other Employees

While the record shows that fixed operations employees work together on a daily basis, and that the fixed operations departments are functionally integrated, there is little evidence that employees in the body shop transfer classifications in either the service or parts departments, on either a permanent or temporary basis. Likewise, there is little evidence that employees in either the service or parts department transfer to classifications in the body shop.

f. Distinct Terms and Conditions of Employment

I conclude that there are common terms and conditions of employment between the petitioned-for unit and the overall fixed operations department. While individual classifications can have different compensation plans, the employees in the petitioned-for unit have

compensation plans that are representative of the rest of the fixed operations department. Both the body shop and the other fixed operations departments have a mixture of commissioned/incentive-based pay, flat-rate, and hourly employees. All fixed operations employees have access to the same insurance and retirement benefits, holidays, paid time off benefits, uniform/laundry program, and employee discount program. All fixed operations employees attend the same new employee orientation, are all covered under the same handbook and related policies, and are all serviced by the same human resources and payroll departments. Finally, all are supervised by a common general manager. There are no benefits offered to any of the body, service, or parts department employees that are not offered to all employees in fixed operations.

g. Separate Supervision

The body, service, and parts departments each have their own supervisor, and each of these department supervisors reports directly to the Employer's general manager, Evan Seltzer. There is no evidence of any intermediate supervision by a Section 2(11) supervisor in any of the three departments. There is no evidence that any employees report to, or are directly supervised by supervisors outside of their departmental chain, and there is no evidence that the body shop supervisor supervises employees outside of the body shop. I conclude that the petitioned-for employees have a distinct and readily-identifiable chain of supervision. While the body shop employees have a common supervisor at the second level of supervision, I conclude that this fact does not make the petitioned-for unit inappropriate, or otherwise require the inclusion of all other fixed operations employees.

IV. CONCLUSIONS AND FINDINGS

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. 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.
5. The Employer, a Virginia limited liability corporation, with an office and place of business in Chesapeake, Virginia, has been engaged in the business of the retail sale of automobiles and associated services. During the past 12 months, a representative period, the Employer, in conducting its business operations described herein, derived gross revenue in excess of \$500,000, and sold and shipped from its Chesapeake, Virginia location, goods valued in excess of \$5,000 directly to points located outside the state of Virginia. The parties stipulated, and I find, that the Employer is an employer engaged in commerce within the meaning of the Act.
6. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Employer's body shop department (including technicians, helpers, painters, estimators, and clerical) located in Chesapeake, Virginia, excluding all service department employees, parts department employees, office clerical employees, managerial employees,

professional employees, guards, and supervisors as defined in the Act.

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 International Association of Machinists & Aerospace Workers, AFL-CIO. The date, time, and manner 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 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 strikes, 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 seven 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, National Labor Relations Board, Region 5, Bank of America Center -Tower II, 100 South Charles Street, Suite 600, Baltimore, Maryland 21201, on or before May 29, 2014. 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 (410) 962-2198. 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 non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

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 June 5, 2014 at 5 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.²⁰ 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, select **File Case 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.

²⁰ 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.

(SEAL)

/s/ Charles L. Posner

Dated: May 22, 2014

Charles L. Posner, Regional Director
National Labor Relations Board, Region 5
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