

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 21**

**PHCV, LLC D/B/A PENSKE HONDA  
CHULA VISTA**

**Employer**

**and**

**Case 21-RC-262840**

**INTERNATIONAL ASSOCIATION OF  
MACHINISTS & AEROSPACE  
WORKERS LOCAL LODGE  
NO. 1484, DISTRICT LODGE 190,  
AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

International Association of Machinists & Aerospace Workers Local Lodge No. 1484, District Lodge 190, AFL-CIO (Petitioner) seeks, by the original petition, to represent a bargaining unit of service technicians and lube technicians, and by the current petition, as amended, to represent a bargaining unit of employees employed in the service department and the parts department of PHCV, LLC d/b/a Penske Honda Chula Vista (Employer). More specifically, Petitioner seeks a unit consisting of employees in five of the eight classifications employed in the service department and all four classifications of employees employed in the parts department.

The Employer opposes the unit sought by Petitioner on the basis that it is too broad, including both service department and parts department employees, and asserts that only a unit limited to six of the eight classifications in the service department, and none of the parts department employees, is appropriate. Alternatively, the Employer argues that a craft unit of the technicians in the service department is appropriate. Petitioner maintains that the petitioned-for unit of “skilled, non-sales” employees is an appropriate unit because the employees it seeks to include share a community of interest.

A Hearing Officer of the National Labor Relations Board (Board) held a hearing in this matter on July 30, 2020, and August 3, 2020, in this matter.<sup>1</sup> The Petitioner and the Employer submitted post-hearing briefs. Having considered the record evidence, the

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<sup>1</sup> All dates 2020 unless otherwise indicated.

relevant Board law, and the positions of the parties, I find that the current petitioned-for unit is not an appropriate unit. Although the Board has historically found a unit including an auto dealership service and parts department employees as appropriate, that is not what Petitioner seeks here. Instead, the Petitioner seeks to include five classifications in the service department and exclude three others on the basis that the included classifications are “skilled,” but this fractures the service department without a compelling basis in the record evidence. The Employer’s proposed unit of six classifications in the service department shares the same defect, in that it only includes some of the service department employees, and excludes others without a sufficient basis.

However, the parties agree that the technicians in the service department share a community of interest among themselves, and the Employer argues that a unit of technicians alone is an appropriate unit. I find this distinction, between the technicians and the other employees in the service department, is supported by the record evidence and by Board law. Because this is an appropriate unit, and because Petitioner has stated a willingness to go to election in an alternative unit, I have directed an election accordingly.<sup>2</sup>

## ***RECORD EVIDENCE***

### **A. The Employer’s Operations**

The Employer operates a Honda dealership in Chula Vista, California. In addition to new Honda vehicles, the dealership also sells pre-owned vehicles, and operates a service center for the maintenance and repair of customers’ vehicles. Operations at the Chula Vista facility are separated into five departments: new car, used car, finance, service, and parts. Each department has a supervisor that reports to the general manager of the dealership, who in turn reports to others in the Penske corporate hierarchy. At the corporate level Penske provides some support services, such as human resources. Honda also provides some support services to its dealerships, such as training.

#### **1. The Service Department**

The Employer’s service department carries out two roles: service work for customers and internal work for the Employer. Regarding the first role, when a customer arrives at the Employer’s facility, service work can either be done in an express capacity or following the Employer’s standard procedure. Services offered on an express basis are “light” maintenance, such as an oil changes, or other fluid and filter changes, and

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<sup>2</sup> On brief the Employer states its position that a bargaining unit limited to technicians is an appropriate unit, and there is no dispute between the parties that the technicians have a community of interest among themselves. While this is not the unit sought by Petitioner at hearing, Petitioner does appear to agree that a bargaining unit of technicians is also an appropriate unit, in its initial petition, and in its responsive statement of position, as an alternative to the unit sought.

tire balancing, and are performed by the employees in the express lube technician classification.

For anything other than an oil change and a few other routine procedures performed in an express capacity, a customer arriving in the service department will meet with an assistant service manager. The assistant service manager is responsible for discussing the vehicle's problem with the customer and identifying what work that the service department will be performing. If the customer's problem is focused on a vehicle noise or vibration, the assistant service manager may drive along with the customer to verify that they understand the problem. Once the scope of the work has been identified, the assistant service manager begins the repair order, the paperwork that documents the work of the service department. If the work to be performed is known, the assistant service manager will provide a price quote to the customer, and if the problem has not yet been identified, they will provide their best estimate on the diagnostic work that will be necessary for a technician to identify the problem. The assistant service manager will then stamp the repair order with some information, such as if the customer is waiting for the work to be completed, and the repair order then goes to the service technicians.

The Employer has two teams of service technicians, with four technicians on each team. Work is divided between the two teams at the first level by a simple distribution, one team receives repair orders with even numbers and the other odd numbers. However, once a repair order is assigned to a team, the two senior service technicians on the team assess who is best positioned to perform the work and arrange the schedule of the team accordingly. If the work to be performed has already been identified, the service technician completes the task and reports back to the assistant service manager, who will notify the customer that their vehicle is ready. If diagnostic work is necessary, the service technician will assess the situation and provide a recommended repair to the assistant service manager. The assistant service manager or service technician will obtain the price of the part or parts necessary from the parts department, add the labor cost, and then the assistant service manager conveys the estimate to the customer.<sup>3</sup> After the customer approves the repair the assistant service manager notifies the service technician, who performs the repair. Once the work is completed, the assistant service manager completes the repair order paperwork and collects payment from the customer.

Internal work is work performed by the service department on any vehicles in the possession of the dealership, not possessed by customers. This is almost always work on pre-owned vehicles before they can be offered for sale, work performed by employees classified as pre-owned service technicians. The parties stipulated that the service technicians, the pre-owned service technicians, and the express lube

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<sup>3</sup> The Employer has a database of "flag hours," an industry standard amount of time allocated for a given repair.

technicians share a community of interest and are properly included in any unit found appropriate.<sup>4</sup>

The service department is not limited to only the technicians. The department also includes the assistant service managers addressed previously, as well as an express assistant service manager, a service drive manager, detailers, and lot porters. The service drive manager completes paperwork for internal repair orders on used vehicles, and can answer customer questions and address issues that may be beyond the ability of the assistant service managers. The express assistant service manager classification is primarily an administrative position whose duties involve submitting paperwork to receive payment for service work covered by warranty. These three classifications in the service department – the assistant service managers, the express assistant service manager, and service drive manager – are referred to collectively as “service advisors.”

Petitioner seeks to include the assistant service managers and service drive manager in the petitioned-for bargaining unit, but not the express assistant service manager. The Employer maintains that the express assistant service manager should also be included. Both parties argue that the additional two classifications in the service department, detailers and lot porters, should be excluded from any unit found appropriate.<sup>5</sup> All of the service-department employees, the technicians, service advisors, detailers, and lot porters, report to the service manager.

## **2. The Parts Department**

The Employer’s parts department consists of “back counter” employees, “front counter” employees, a shipping-and-receiving clerk, and a delivery driver. The parts department is the single destination for parts arriving at the dealership. The back-counter employees provide parts to the service department, while the front-counter employees provide parts to outside parties, retail customers, and the sales department.

When a repair order is created by an assistant service manager, in addition to being sent to the service technicians, a copy is also printed at the back counter. A back-counter employee will then take the repair order, retrieve the part, and ready it for the technician. If a repair order requires a diagnostic step, the back counter holds the repair order, and the assistant service manager responsible for the repair order will update the repair order once parts have been identified and the customer has approved the work. Service technicians and assistant service managers also rely on the back-counter employees to provide pricing information on parts when completing estimates. A back-counter employee will occasionally accompany a service technician to a vehicle to help

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<sup>4</sup> The 15 employees in the service technician, pre-owned service technician, and express lube technician classifications would commonly be understood to be “mechanics.” However, consistent with the usage of the parties, that term is not used here, and “technician” is used to refer to these classifications collectively.

<sup>5</sup> Lot porters are also referred to as “valets,” “service valets,” or “service porters” at different points in the record.

visually identify what part is needed, but the back-counter employees do not perform service on vehicles.

The front-counter employees are responsible for sales to outside parties such as wholesale customers and body shops, and the parts department driver delivers the parts to these institutional customers. The front counter is also responsible for any part sales to individuals, accessory sales to retail customers, and internal sales to the new and used departments when accessories are included in a sale transaction.

The Employer employs six employees in the parts department: four counter employees, the shipping-and-receiving clerk, and a driver. Two of the counter employees work at the back counter and two work at the front counter, but the record indicates that one of the front-counter employees functions as a "float" and will at times be scheduled to work at the back counter. All the parts department employees are supervised by the parts department manager.

## **B. Community-of-Interest Factors**

### **a) Departmental Organization**

As noted previously the Employer's operations are separated into five departments: new car, used car, finance, service, and parts. Each department, including the service and parts departments at issue here, has a supervisor that reports to the Employer's general manager.

### **b) Distinct Skills and Training**

Service technicians and pre-owned service technicians, in their ability to diagnose and repair any system on a vehicle, have a distinct set of skills. Because of this the Employer requires these employees to have completed an automotive program at a vocational school or have an associate degree in mechanical technology. Although the express lube technicians perform only light maintenance, they too are required to have completed an automotive program at a vocational school or have an associate degree in mechanical technology. There is no dispute that, because of this training, the technicians can use specialized tools and equipment that no other employees of the Employer use.

The Employer requires employees in the service advisor classifications to have some experience in the automotive industry, but does not require any degree or certification. The record does not include any information related to the skills and training of the detailers or the lot porters. All employees in the service department are required to take certain safety courses and Honda training.

Parts-department employees are not required to have completed any degree program or training, and the Employer does not necessarily require automotive

experience. As with the service department, parts-department employees take certain Employer-required safety courses and job-specific Honda training.

**c) Distinct Job Functions and Distinct Work**

The roles played by the employees in the service and parts departments are addressed in the prior description of how each department functions. To summarize, technicians in the service department use specialized tools and equipment, along with their training and experience, to maintain vehicles, while the service advisors and others in the service department provide support, ranging from completing paperwork to interacting with customers. The parts department supports the service department and the sales department, and has an independent sales function related to wholesalers and body shops.

**d) Function Integration, Contact, and Interchange**

The service-department employees and the back-counter parts department employees work together in a system designed to account for all parts and all repairs. At hearing, a parts-department employee testified that not a single part will leave the back counter without a repair order prepared by the service department. The record indicates that service technicians and the assistant service managers are in regular contact throughout the day with the back-counter employees, as they receive parts, update and modify repair orders, and obtain pricing information. The record establishes that this type of contact occurs regularly every day. Less frequently, a back-counter employee may accompany a service technician into the service area to a vehicle to clarify a part in question. The parts department also stores certain large tools that the service technicians utilize, and the service technicians will occasionally retrieve these tools. The front-counter employees do not have regular interaction with the service department employees, and are more likely to have contact with the sales department.

The shipping-and-receiving clerk generally does not have contact with the service department, but may deliver a part directly to the service area if it is particularly large or unwieldy, such as an engine or transmission. The shipping-and-receiving clerk is also responsible for returning parts covered by warranty to Honda, and at times these parts are not returned to the back counter. In these instances, the shipping-and-receiving clerk must locate the part in the service area, which may involve talking to the service technician that removed the part. The parts-department driver similarly has specific responsibilities that brings them into the service area, collecting battery and alternator cores three times a week. The service and parts department employees also have a shared breakroom in the vicinity of their departments, although this breakroom is open to all employees.

The record contains several examples of temporary and permanent interchange between positions in the service department, and between employees in the parts department, but there is almost no evidence of interchange between these two

departments. The only reference in the record to this type of work is a lot porter transporting some parts when the parts department driver was unavailable.

### **e) Terms and Conditions of Employment**

The employees at issue are all covered by the same Employer policies and handbook, and generally work the same hours. All of the Employer's employees are provided the same fringe benefits, including health insurance and retirement benefits.

The employees at issue are paid on an hourly basis, but the Employer utilizes a wide variety of bonus systems depending on department and classification. Service technicians, pre-owned service technicians, and express lube technicians are paid an hourly rate, with a bonus system tied to productivity, although the specifics of how the bonus is calculated is different for the different technician classifications.

Regarding the three service-advisor classifications, the assistant service managers are paid an hourly rate with a commission system tied to sales, and a bonus system tied to customer surveys and productivity. This productivity calculation is based on the individual sales of the employee. The service drive manager is similarly paid an hourly rate with their bonus tied to customer satisfaction surveys and overall sales in the service department. The express assistant service manager is paid an hourly rate and is not eligible for a bonus. The record does not indicate how detailers and lot porters are compensated. Service technicians and pre-owned service technicians are paid weekly; all other classifications in the service department are paid twice a month.

In the parts department the driver and the shipping-and-receiving clerk are paid an hourly rate without eligibility for a bonus. The front- and back-counter clerks are compensated at a base hourly rate, but with a variable component tied to parts department sales and customer satisfaction with the department; in effect a bonus system. Parts-department employees are paid twice a month.

Technicians wear a company-issued work shirt and pants. Service advisors, parts-department employees, and lot porters and detailers wear a uniform consisting of an Employer-provided button-down shirt or polo shirt with the Penske logo, and blue or black pants.

### **f) Supervision**

Each of the Employer's five departments has a department manager that reports to the general manager. Each department manager is responsible for hiring in their respective department, as well as discipline, although in these situations they may have assistance from a corporate level human-resources department. Department managers also are responsible for many day-to-day approvals of employees in their departments, such as approving time-off requests and making any adjustments to the regular schedule.

## **ANALYSIS**

### **A. The Community-of-Interest Standard**

When examining the appropriateness of a unit, the Board need not determine whether the unit sought is the only appropriate unit or the most appropriate unit, but rather whether it is "an appropriate unit." *Wheeling Island Gaming*, 355 NLRB 637, 637 n. 2 (2010), citing *Overnite Transportation Co.*, 322 NLRB 723 (1996). If the petitioned-for unit is deemed inappropriate, the Board considers alternate unit proposals. *Overnite Transportation*, 322 NLRB at 723 ("[t]he Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining").

The Board reiterated the traditional community-of-interest factors in *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017). In making a community-of-interest determination, the Board considers whether the employees in question: (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work; (4) are functionally integrated with other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *PCC Structurals*, slip op. at 11 (citing *United Operations*, 338 NLRB 123 (2002)). The Board considers all the factors together, as no single factor is controlling. *Id.*

In *The Boeing Co.*, 368 NLRB No. 67 (2019), the Board described the three-step analysis to be applied under *PCC Structurals* when a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit. *Id.*, slip op. at 2. The first step considers the shared interests within the petitioned-for unit, examining whether the interests of the included employees are too disparate, preventing a community of interest. *Id.*, slip op. at 3. The second step considers the shared interests of the petitioned-for and excluded employees, and specifically whether the excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members. *Id.*, slip op. at 4. Third, the Board considers whether special considerations, such as guidelines for specific industries, are present. *Id.*

On brief the Employer argues for applying a modified version of the three-step test addressed in *The Boeing Co.* to the instant case. I do not find this necessary, as *The Boeing Co.* addresses situations where the unit sought is too narrow. Where, as here, the opposition is based on the petitioned-for unit being too expansive – the Employer opposes inclusion of the parts-department employees – there are no excluded employees' interests to examine. As such the only question is simply the first inquiry identified in *The Boeing Co.*, whether the interests of the included employees are too disparate, examined using the community-of-interest factors addressed in *PCC Structurals*, preventing a community of interest. In this case, whether the interests of the service and parts department employees included are too disparate.

This decision does not answer that question, however, because I find the framing of the issue by both Petitioner and the Employer is flawed in that it omits a critical issue: the proposed units exclude the lot porter and detailer classifications (and the express assistant service manager in Petitioner's formulation) without reason. For the reasons described below I find this exclusion fractures the service department without a basis in the record evidence, and in a manner contrary to Board law. As the Employer's proposed unit, including the express assistant service manager but still excluding the lot porter and detailer classifications, has the same problem. I do not find that this constitutes an appropriate unit, either.

For the reasons described in the following section I do find a unit limited to only the technician classifications, as the Employer argues, is an appropriate unit. Accordingly, I have directed an election in this unit.<sup>6</sup>

## **B. Community-of-Interest Factors**

A fundamental issue with the petitioned-for unit is that it seeks to include some, but not all, of the positions in the service department. While the Board does not require appropriate units to be department-wide, it has repeatedly held that combinations of employees that are too narrow in scope, or that have no rational basis, are fractured units and are not appropriate. *The Boeing Co.*, slip op. at 4, fn. 5, citing *Seaboard Marine*, 327 NLRB 556, 556 (1999) (employees have duties, skills, and other interests so similar to excluded employees that it would be arbitrary for the two groups to be represented in different units). Excluding the express assistant service manager, detailers, and lot porters as Petitioner does raises issues under many of the community-of-interest factors, the first of which is that they are included in a department with many of the petitioned-for employees, and accordingly share the same supervision.<sup>7</sup>

Skills and training are presumably the factors relied upon by Petitioner to create a distinction, as Petitioner describes its proposed unit as a "skilled" unit. The grouping of the petitioned-for employees does not reflect this, however. While the technicians have skills and training that differentiate them from the other classifications – the ability to

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<sup>6</sup> I do not find merit to the Employer's contention that Petitioner's changes in the unit sought, up to and including the petition at hearing, creates a substantive due process concern. Consistent with 29 C.F.R. § 102.66 (b) and (d), the only issue litigated at hearing was the composition of the unit, clearly identified as an issue in Petitioner's responsive statement of position. To the extent the Petitioner amended its petition to reflect the position titles utilized by the Employer, this was an attempt at clarification. I do not find that it raised a new issue. In regard to the Petitioner changing its position at the close of hearing and seeking to exclude the express assistant service manager, I find nothing in § 102.66 that prevents a party from modifying its petition in the face of evidence adduced at hearing. Again, the issue raised by the responsive statement of position is the composition of the unit; the position of a party regarding a specific inclusion or exclusion may change based on the evidence.

<sup>7</sup> I do not find that including employees from the service and parts department creates the same fractured unit issue, assuming all the employees in these departments were included. This is due in part due to the fact that the Board has historically found bargaining units consisting of service and parts department employees at dealerships appropriate. See *Graneto-Datsun*, 203 NLRB 550, 550 (1973); *Austin Ford*, 136 NLRB 1398 (1962); *W.R. Shadoff*, 154 NLRB 992 (1965).

repair vehicles, as reflected in the Employer's requirement that these employees are graduates of an automotive program at a vocational school or have an associate degree in mechanical technology—the other petitioned-for classifications do not. The Employer does require the service advisors to have some experience in the automotive industry, but this is not a "skill." Even if automotive experience is considered, a skill it is not a consideration applied consistently, as Petitioner seeks to exclude the express assistant service manager, one of the positions required to have automotive experience, while including the parts-department classifications, where this experience is not required. Further, because the record includes no evidence on the detailers' and lot porters' skills and training, it is impossible to determine if they are unskilled, as Petitioner's petitioned-for unit presumes.<sup>8</sup>

Similarly, regarding job functions and the work performed, there is no readily apparent division between the included and excluded employees. The classifications Petitioner seeks to include perform a wide range of work, from the repair work of the technicians, to the customer service of the assistant service managers, to the parts-department driver delivering parts. Outside of the technicians and their unique function of being able to service vehicles, there is no discernable distinction between included employees and the excluded employees. The excluded express assistant service manager's position largely involves handling warranty paperwork, but the record also indicates that this is also a major component of the included service drive manager position, albeit with internal repair orders instead of warranty information. If this is the distinction there is no evidence that this would justify excluding the detailers and lot porters, as there is no evidence that they have any responsibilities similar to those of the express assistant service manager.

If the issue before me were simply whether to include service and parts department employees in a single unit, functional integration and contact would be two of the community-of-interest factors that would provide the strongest support. The record shows that the service department is closely integrated with the back counter of the parts department, and to a lesser degree with the shipping-and-receiving clerk and the parts driver. However, again the record includes no basis on which to find the detailers and lot porters are absent from the integrated operation of the Employer's service function.

I recognize that the details of compensation vary greatly across classifications, but this variation cuts against Petitioner's argument as much as it supports it. Employees included in the unit sought include those with a base hourly rate and a bonus structure based on productivity, a base hourly rate with a bonus structure based on sales or customer satisfaction, and employees that receive simply an hourly rate. While Petitioner's distinction is not supported by the compensation system, I do note

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<sup>8</sup> In this regard I do not find that the parties' agreement that the detailers and lot porters should be excluded eliminates the need for evidence that demonstrates how the excluded classifications differ from the included classifications.

that the technicians in the unit that I have found appropriate all are paid a base rate with a bonus tied to productivity.

Having considered each community-of-interest factor, in turn, I do not find that they form a basis for fracturing the service department in the manner Petitioner or the Employer suggests. While the Board has historically found a combination of service and parts employees constitute an appropriate unit, no party suggests that that unit is appropriate here; both seek the exclusion of the detailers and lot porters. In light of these positions, the only appropriate unit before me is a unit consisting of technicians: the service technicians, the pre-owned service technicians, and the express lube technicians. While this group is a subset of the service department and shares supervision with other employees, the technicians have specific skills and training, as well as a specific function, that distinguishes them from the other employees in the service department. The distinct community of interest shared between the technicians is reinforced by other considerations, such as their compensation systems being internally similar, but distinct from other employees in the service department.

On brief, the Employer cites to *Dodge City of Wauwatosa*, 282 NLRB 459 (1986); and *Fletcher Jones Chevrolet* 300 NLRB 875, 876 (1990), and I agree that these cases, where the Board found a craft unit of mechanics appropriate, are applicable. In these cases, the Board concluded that when mechanics possessed skills and training unique among other employees, it was appropriate to exclude other service department employees from the mechanics unit. Here, as in those cases, the technicians have unique training, are compensated at a rate different from the other employees, and use specialized tools and perform job duties that are distinct from those of the other employees.

## CONCLUSIONS

I have considered the record evidence and the arguments of the parties, and I conclude that it is appropriate to hold an election among the employees in the original petitioned-for unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

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 herein.<sup>9</sup>

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<sup>9</sup> During the hearing the parties stipulated to the following commerce facts:

The Employer, PHCV, LLC d/b/a Penske Honda Chula Vista, a California limited liability company with a facility located at 580 Auto Park Drive, Chula Vista, California, the only facility involved in this matter, is engaged in the business of retail automotive

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and 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 following employees of the Employer constitute an appropriate bargaining within the meaning of Section 9(b) of the Act:

**Included:** All full-time and regular part-time service technicians, pre-owned service technicians, and express lube technicians employed by the Employer at its facility, currently located at 580 Auto Park Drive, Chula Vista, California.

**Excluded:** All other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS LOCAL LODGE NO. 1484, DISTRICT LODGE 190, AFL-CIO.**

#### **A. Election Details**

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at **2:30 p.m. on Monday, September 21, 2020.** Ballots will be mailed to voters by the National Labor Relations Board, Region 21. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Monday, September 28, 2020,** as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Region 21 office at (213) 894-5254 or our national toll-free line at (844) 762-NLRB ((844) 762-6572).

The ballots will be commingled and counted by the Region 21 San Diego Resident Office at **2:00 p.m. on Tuesday, October 13, 2020.** In order to be valid and counted, the returned ballots must be received by the Region 21 San Diego Resident Office prior to the counting of the ballots. The parties will be permitted to participate in

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sales and service. During the past 12 months, a representative period, the Employer, in conducting its business operations, derived gross revenues in excess of \$500,000. During that same period, the Employer purchased and received at its San Diego, California facility goods valued in excess of \$5,000 directly from points located outside of the State of California.

the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

## **B. Voting Eligibility**

Eligible to vote are those service technicians and pre-owned service technicians who were employed during the **payroll period ending August 30, 2020**, and those express lube technicians who were employed during the **payroll period ending August 31, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an 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 that 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 by mail as described above.

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.

## **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Wednesday, September 9, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used

during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

## RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the elections on the grounds that it did not file a request for review of this Decision prior to the elections. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations. Unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden, a request for review must be E-Filed through the Agency's website. A request for review may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated at Los Angeles, California this 4<sup>th</sup> day of September, 2020.



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