



## NLRB Issues Landmark Decision for Auto Dealers

Insights

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In a 2 to 1 decision, the National Labor Relations Board recently ruled in favor of an automotive dealer represented by Fisher Phillips, resulting in the dismissal of a representation petition filed by the Machinists Union. This landmark decision has broad ramifications for union-free dealerships that operate multiple service departments in a defined location.

The employer in *Jerry's Chevrolet, Cadillac, Inc.*, 344 NLRB 87 (May 23, 2005), was petitioned in the spring of 2004. At that time, the union sought to confine the bargaining unit to a small group of service technicians assigned to a single store, despite the fact that the same dealer operated two other franchises next door, and a third franchise across the street from the petitioned location. The agency acceded to the union's request, and an election was scheduled among the service technicians at the petitioned location. The Employer appealed, and the ballots were impounded pending the outcome.

In a case of first impression for auto dealers, the Board found that the Employer had rebutted the long-standing presumption in favor of a single facility unit, finding that the only appropriate unit in this case must also include those technicians assigned to the other three stores. In the absence of a request to proceed in the broader unit, the union's petition was subsequently dismissed, and the dealer's union-free status maintained.

Unions like the Machinists have stepped up their efforts to organize service departments in recent years. This decision has broad ramifications for those dealerships that seek to reduce their vulnerability going forward. A review of the decision reveals that certain factors emerged, including: (1) centralized control over daily operations and labor relations; (2) similarity of employee skills, functions and working conditions; (3) degree of employee interchange; and, (4) distance between locations. Evaluating these factors, the Board placed significant emphasis upon the proximity of the four stores, as well as the lack of any physical barrier separating them.

The Board was willing to overlook the fact that service technicians worked in separate buildings under separate service managers, as well as the fact that there was little if any employee transfer between operations. Instead, the Board took note of the highly integrated nature of the Employer's operations, which included common advertising as well as centralized accounting, billing, and title functions. The Board also focused upon numerous shared facilities, including a common parts department, car wash, collision center, parking lot, and centralized phone and computer systems. Lastly, the Board emphasized the lack of significant autonomy with respect to the authority of

Lastly, the Board emphasized the lack of significant autonomy with respect to the authority of individual service managers, who possessed a limited amount of authority over day-to-day employee relations matters.

Prior to this decision, there was a dearth of industry-specific case law providing for the extension of bargaining units to include multiple service departments. It is now clear that dealerships can take meaningful steps to reduce their exposure to single-site organizing attempts by centralizing their labor relations, and by functionally integrating their operations among various service departments.

This can be a powerful tool in the arsenal of any dealer's arsenal that is prepared to use it. If you have more than one operation within a defined geographic location, you need to explore every opportunity to take advantage of this decision. As this case showed, a successful showing could pave the way for continued union free service operations.

Here are just a few steps to consider as you set out to take advantage of this decision:

1. Take steps to integrate all service functions;
2. Insure that all labor relations are centrally administered and controlled;
3. Review pay, benefits, skills, and job functions among service employees at all locations to insure similarity; and,
4. When feasible, look for opportunities to provide for temporary and permanent transfer among and between service employees at various locations.

These steps may not eliminate the possibility of a union petition, but they will go a long way toward minimizing your exposure in the event that one is filed. We urge you to contact your FP attorney for specific advice in these areas, and to arrange for an operational audit to assess your current status in light of this sweeping decision.

If you would like a copy of the NLRB decision itself so you can see the factors that helped Jerry's win this case or if you would just like more information about the threat that unions pose to dealers, please contact any Fisher Phillips office and ask for a member of the Dealership Practice Group.

### ***Related People***





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