

Motor City Dodge, Inc. and Mechanics Motor City Lodge 698, of the International Association of Machinists and Aerospace Workers, AFL-CIO.¹
Cases 7-AC-98 and 7-RM-785

September 11, 1970

DECISION, ORDER, AND AMENDMENT OF CERTIFICATION

BY MEMBERS FANNING, BROWN, AND JENKINS

Upon separate petitions duly filed pursuant to Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before Hearing Officer Stephen M. Glasser. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, these cases were transferred to the National Labor Relations Board for decision by direction of the Regional Director for Region 7. No briefs were filed by the parties.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they were free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in these cases, the Board finds:

1. 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.
2. The labor organization involved claims to represent certain employees of the Employer.
3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons.

In November 1964, the Employer opened an automobile dealership operation in Detroit, Michigan, where it engaged in the sale of new Dodge cars and trucks, used cars, parts, and servicing. The physical setup included a salesroom, an adjoining service department, and a bump and paint shop about a block away. The service department, including the bump and paint employees, were not represented by any labor organization.

About June 1969, the Employer contacted the Dodge regional office concerning the possibility of

obtaining another dealership because its Detroit location was to be taken over by a new expressway. The Employer was advised that Spartan Dodge, Inc., Pontiac, Michigan, about 30 miles from Detroit, was closing and was for sale. The Employer was also advised that it could retain the Detroit location through 1970. On July 21, 1969, the Employer signed a purchase agreement whereby it purchased the assets, furniture, fixtures, new and used-car inventory, and parts inventory from Spartan Dodge, Inc. This transaction was handled by the Chrysler Real Estate Corporation, which also employed an interim manager of the business until the Employer commenced operations on its own.

At the time of the above purchase, Spartan Dodge, Inc., employed some 26 employees. Included in this overall number were four mechanics and two bump and paint employees, all of whom were represented by the Union which was certified by the Board for a service department unit on June 29, 1967, in Case 7-RC-8042. A 3-year contract covering these service department employees was executed on October 2, 1968, by Spartan Dodge, Inc., and the Union.

Sometime during the middle part of July 1969, the Employer requested the interim manager to give employment applications to the employees at this Pontiac location. By letter, dated July 21, 1969, the Employer notified 21 of the 26 employees that they were accepted, which number included all of the service department employees. Four of the remaining five employees were deemed unacceptable and the fifth employee was transferred to the Detroit location.

On August 4, 1969, the Employer commenced operations at the Pontiac location. At the outset, the Employer transferred the new-car manager, the used-car manager, service manager, and assistant parts manager to the Pontiac location. Also transferred at this time were two office employees, two used-car salesmen, a parts driver, and one mechanic. The new-car manager employed by Spartan Dodge, Inc., was retained as fleet and truck manager. Some minor changes were made in the Pontiac service department, such as repainting the whole area, installing three additional lifts, and expanding the parts inventory.

During the latter part of October 1969, the Employer decided to close down the Detroit location as it was then operating at a loss. Although the Employer had intended to retain the separate bump and paint shop because it was operating at a profit, the closing down of the Detroit salesroom had an adverse effect on this shop and a few months later the Employer also decided to close down this operation. The closing down of the Detroit location resulted in the transfer of the parts manager, assistant service manager, and three mechanics to the Pontiac location.

¹ The name of the Union-Petitioner appears as amended at the hearing.

The Employer contends that its takeover of the Spartan Dodge, Inc., facility was limited only to the purchase of assets, inventory, and related equipment; and that an election should be directed among the service department employees because they represent a substantially different complement of employees and are employed by an employer other than the one to which the contract applies.

The Union contends that the Employer's relocation of operations from Detroit to Pontiac represents nothing more than a legal successorship with concurrent accretion to the former Spartan Dodge, Inc., bargaining unit; and that the Board should make an appropriate amendment of certification issued in Case 7-RC-8042.

It would appear that the record establishes that the Employer is a "successor employer" within the meaning of existing Board law.² A crucial question in such determinations is whether the employing industry, as here, remains essentially the same after a transfer. We find Employer's contention that it purchased no accounts receivable, liabilities, nor assumed the existing contract to be without merit. It is not the form of transfer which controls, but rather, it is whether or not the employing industry remains essentially the same. As indicated above, the Employer's operation of the Spartan Dodge, Inc., facility appears to have remained substantially the

same. Accordingly, we find that the Employer is a successor to Spartan Dodge, Inc. In these circumstances, we find that no question concerning representation exists. Accordingly, we shall dismiss the Employer's petition.

As to the Union's petition, we find that the amendment of the certification involved herein would insure to employees the continuity of their present organization and representation. Accordingly, we shall amend the certification by substituting the name of the Employer, and further, by changing the name of the Union to that as amended at the hearing herein.

ORDER

It is hereby ordered that the Employer's petition filed herein be, and it hereby is, dismissed.

It is hereby further ordered that the Union's petition to amend the certification be, and it hereby is, granted, and that the Certification of Representative issued in Case 7-RC-8042 be amended by substituting the name of "Motor City Dodge, Inc." for "Spartan Dodge, Inc." and by adding "of the" following "698," wherever appropriate.

² *Valleydale Packers, Inc.*, 162 NLRB 1486, 1490, and cases cited in fn 3.