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**EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS**

dated April 15, 1970 . . . . .S.A. 1



**SUPPLEMENTAL APPENDIX**

**EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS**

\* \* \* \* \*

Freeport, Illinois

Wednesday, April 15, 1970

\* \* \* \* \*

12 **MR. HICKEY:** I am trying to give you the information.

**TRIAL EXAMINER:** Right.

Now, to the extent you say Mr. Frakes was with the predecessor employers, or the present employer, from March of '64 – from May of '64 to March 31st, 1970, and to the extent you say that Clark was with either the predecessor or yourself – I guess it would only be yourself – the predecessor or yourself, between October 23rd, 1969 to February 21st, 1970, I would regard that as a concession.

Your statement that they quit on certain indicated dates, I would regard that as a proposed stipulation. Do you have any reason to believe otherwise, Mr. Ruyle?

**MR. RUYLE:** No, your Honor. We would stipulate to those facts.

**TRIAL EXAMINER:** Now, on the dates prior to the termination by quitting Bachrodt, Frakes and Clark, do you concede that they were or are, as the case may be, agents of Respondent at the Freeport, Illinois facility, acting on its behalf, and are supervisors and hold positions indicated alongside their names?

**MR. HICKEY:** On and after November 10th, 1969, yes. I don't know what they were before.

**TRIAL EXAMINER:** All right. I'll accept that.

13 **General Counsel,** with respect to paragraph 5(a) in the Complaint, I assume you are indicating that the period ended in July of 1960.

**MR. RUYLE:** That's right.

14 **TRIAL EXAMINER:** The period which Monroe Chevrolet Sales ran the business?

MR. RUYLE: Yes.

TRIAL EXAMINER: Do you know at this time what the date was in July?

MR. RUYLE: I don't know the exact date, no, sir.

TRIAL EXAMINER: Do you know how long prior to July 1960 they were in business?

MR. RUYLE: No. The evidence will indicate at least a five-year bargaining relationship, so it is at least that many years, but I don't know how long before that Monroe actually went into business.

TRIAL EXAMINER: Do you know, Mr. Hickey?

MR. HICKEY: No, I don't, your Honor.

I can tell you that I understand Monroe has been around a long time, but I don't know whether he has been in the Chevrolet business. He is an old-time resident of Freeport.

\* \* \* \* \*

14 MR. RUYLE: I understand those to be the facts, your Honor. I have no reason to believe otherwise.

TRIAL EXAMINER: And you don't intend to controvert it?

MR. RUYLE: No, sir, I don't intend to controvert those facts.

TRIAL EXAMINER: I'll take it as a stipulation, with permission for you, if you should find the contrary to be the fact, to withdraw from the stipulation.

MR. HICKEY: Your Honor, our evidence will demonstrate that Mr. Zimmerman procured that Ford franchise on either August 8th or 11th, 1969, at Cedar Rapids.

TRIAL EXAMINER: It may well be that you will get a concession to that effect by General Counsel when you are ready to present it.

\* \* \* \* \*

15 TRIAL EXAMINER: Have efforts to settle this case been exhausted?

MR. RUYLE: Yes, your Honor, they have.

16 MR. HICKEY: Your Honor, the evidence will indicate that by letter we advised the union that we took the position — we didn't know whether these men were represented by a union or not — but we pointed out there is an orderly procedure under the Act to have an election and so forth, and we, in effect, offered to do that. The General Counsel has advised me this morning that that is not enough, that they want automatic recognition, which we cannot do.

TRIAL EXAMINER: Proceed, Mr. Ruyle.

MR. RUYLE: I have no planned opening statement, but I think it might be wise for General Counsel to state his position, that we are attempting to prove that the Respondent is a successor corporation and thereby succeeded to the bargaining obligations of the predecessor, but that we are going to urge through the evidence and the briefs that Respondent, in addition to being obligated to the bargaining, to assume the terms and conditions of the contract in effect at the time of the business changing hands, and that is under the theory of *John Wiley & Sons vs. Livingston*, 376, U.S. 543.

TRIAL EXAMINER: Which was not a Labor Board case, right?

MR. RUYLE: That's right, your Honor.

MR. HICKEY: Right.

MR. RUYLE: There are other cases which I could cite in which General Counsel is urging that are before the Board at this time, if you would be interested in those; otherwise I will cite them in the brief.

TRIAL EXAMINER: You are not trying the matter of breach of contract here, are you?

MR. HICKEY: There is no such allegation.

MR. RUYLE: No, your Honor, absolutely not.

17 There is two allegations of a unilateral change, but they are strictly under the 8(a)(5) theory of unilateral modification or failure to recognize an existing contract, but not under a breach of contract theory at all.

TRIAL EXAMINER: Do you have any kind of an opening statement?

MR. HICKEY: I think we will pass the opening statement, your Honor.

\* \* \* \* \*

40 Q. (By Mr. Hickey) I am asking you, did you negotiate a contract for the period which is February 8, 1968 to February 8, 1969 – and I ask you to look at General Counsel's Exhibit 2, and – A. Yes.

Q. – and the termination clause on page 9. A. Right, yes, sir.

Q. So you did negotiate a new contract for that period? A. Yes.

\* \* \* \* \*

49 Q (By Mr. Hickey) Mr. Miller, I want you to look at GC-7, the ter-  
50 mination page. Apparently that contract was in effect until February of '62, but I find no contract covering the period from February 8, 1962 to February 8, 1963.

TRIAL EXAMINER: Did you look at the supplement in the same exhibit?

MR. HICKEY: I see, your Honor.

Q. (By Mr. Hickey) Would that supplement cover the period from '62 to '63? A. It went from February, 1962, to February 9th, 1963.

Q. But there is no indication of what period it covers on that supplemental agreement. A. It was always assumed and agreed that it would be for one year.

Q. That was an oral understanding between you – A. Yes.

MR. HICKEY: That's all.

TRIAL EXAMINER: And the same thing is true of Exhibit 6; the date

of the contract purports to be February 8, 1963, and it was amended on February 8, 1964.

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Any further questions?

Thank you very much.

[Witness excused.]

\* \* \* \* \*

52 MR. RUYLE: Again, I ask leave to substitute a copy for the original.

TRIAL EXAMINER: All right.

MR. HICKEY: Can you tell me if this was held under the NLRB?

MR. RUYLE: No, it wasn't.

MR. HICKEY: As long as the Trial Examiner understands that it was not an NLRB election —

53 TRAIL EXAMINER: Yes, I understood that when the original statement was made.

\* \* \* \* \*

54 TRIAL EXAMINER: Let me ask the parties something.

General Counsel described an appropriate unit, but attached certain phraseology to the description which more or less said that the appropriate unit of the Respondent for bargaining purposes, and also said at all times material herein, and there was a denial of the appropriateness of the unit under those conditions.

55 But in the interest of narrowing the issues, I would like to ask the parties this: Is the unit as thus described in that paragraph, leaving aside the phraseology that I mentioned, tie in to Respondent and tie in to all times pertinent? Would you say the unit thus described was an appropriate bargaining unit for the election conducted by the mayor for Monroe and for Zimmerman, while those two respective employers were in business?

Now, you may say "How do I know?" But I am asking you whether you, to your knowledge of the automobile sales and service business, if that indicates to you that that was. It is not a concession as far as you are con-



cerned.

MR. HICKEY: Your Honor, I think you see our problem, that usually when an election is conducted by the Board they name the appropriate unit; they specify it in the order. Of course, this was not a Board conducted election.

TRIAL EXAMINER: But these contracts must have described the unit.

MR. HICKEY: Yes, they do. And for the information of the Trial Examiner, I would say that in my experience, limited as it is, with automobile dealerships, a service department usually includes the mechanics, the car washers, the body people if the company has a body department, and I think that's about it.

56 TRIAL EXAMINER: How about the parts attendants?

MR. HICKEY: No, that's not necessarily an appropriate unit. That was not in this unit.

TRIAL EXAMINER: Let me ask you this: If in fact they were the majority representative of your people, of your clients, and if in fact you had an obligation to bargain for an appropriate unit, would this be the appropriate description, or would it now be changed since you mentioned the body shop is no longer —

MR. HICKEY: We could not agree it would be appropriate, your Honor, because there are no body men there.

\* \* \* \* \*

57 TRIAL EXAMINER: You didn't name King as a successor, did you?

MR. RUYLE: No, sir.

TRIAL EXAMINER: How would Respondent bargain for the body shop employees if you were successful?

MR. RUYLE: I think as you guessed correctly, the unit was taken from the most recent contract, and I say I understand that the body shop as an entity was sold, but I don't know whether or not they still do body work, so —

TRIAL EXAMINER: What you're saying is, to the extent they may still have body employees, you feel they would be in the bargaining unit?

MR. RUYLE: Yes, sir. I think the unit refers to them as employees, not as a department or shop.

MR. HICKEY: For the enlightenment of both General Counsel and the Trial Examiner, we have no body shop, never have had, except for that —

TRIAL EXAMINER: Do you ship out the body work?

THE WITNESS: Yes.

\* \* \* \* \*

58 TRIAL EXAMINER: On the record.

So I will know better what to listen for, the General Counsel as I gather feels that the contract continued after the change in ownership; is that right?

MR. RUYLE: Yes.

TRIAL EXAMINER: That it applies to the successor of Zimmerman?

MR. RUYLE: Yes.

TRIAL EXAMINER: And that the successor of Zimmerman is the Respondent?

MR. RUYLE: Yes.

\* \* \* \* \*

61 While you were asking questions — and maybe this is improper, and if it is, you certainly can rule me out of order — and I know there is a problem about calling anybody from the NLRB on the stand — but I suppose I could find out from the business agent if an unfair labor practice charge was filed against King, the owner-operator of the body shop, who took more men than there were mechanics.

TRIAL EXAMINER: You mean the group taken over by King?

MR. HICKEY: Yes.

TRIAL EXAMINER: The body shop employees outnumbered your men?

MR. HICKEY: Yes.

MR. RUYLE: I would like the record to show we don't in any way agree with those facts, your Honor.

MR. LINESAND: For your Honor's information — and I would check it out to be sure if you wish — (conferring.)

MR. HICKEY: It is either the same number or more, depending on the time.

MR. LIMESAND: I think it is probably a matter of which you are entitled to public notice. I am not aware of any charge against King. If your Honor desires, I will call down to the office and ask if anything has come in since then.

TRIAL EXAMINER: Obviously, if there were charges, they would be filed by the Charging Party.

MR. BLACK: We filed no charges in this case.

62 TRIAL EXAMINER: I gather there are no representation petitions filed against either King or Respondent?

MR. WHITE: May I speak here?

TRIAL EXAMINER: No, because you don't have an appearance in. Only people who have an appearance can talk.

MR. BLACK: I can state for the record that we are presently negotiating a contract with King for those body shop employees — it is Zimmerman Cadillac and Olds now, not King.

TRIAL EXAMINER: I can't hear you.

MR. BLACK: It is Zimmerman Cadillac and Olds and not King. That's the official name of the company.

TRIAL EXAMINER: Mr. Hickey, is your understanding —

MR. HICKEY: I am totally confused, your Honor. As far as we know, the evidence will indicate Mr. Zimmerman sold the body shop lock, stock and barrel to a man by the name of King. Whatever happened after that, we don't know.

TRIAL EXAMINER: Let's go off the record.

\* \* \* \* \*

74 MR. RUYLE: Please mark this General Counsel's Exhibit 15.

[The above-mentioned document was marked General Counsel's Exhibit No. 15 for identification.]

Q. (By Mr. Ruyle) I show you General Counsel's Exhibit 15 for iden-

tification. This is entitled "Body Shop Employees formerly working for Zimmerman Chevrolet who worked from November 10th, 1969 to November 15th, 1969 at which time Zimmerman sold the body shop to King."

I ask you if you have any personal knowledge as to the accuracy of that list. A. (Examining) Well, yeah. I really couldn't attest to it because I was not familiar with a lot of the names.

MR. HICKEY: I can't hear you.

THE WITNESS: I was not familiar with a lot of names of the people in the body shop. I see some names there I recognize, but I couldn't tell you all of them.

TRIAL EXAMINER: Mr. Bachrodt, did on cause this list to be prepared in response to a subpoena?

THE WITNESS: Yes.

TRIAL EXAMINER: And it was prepared from payroll records?

THE WITNESS: From Mr. Zimmerman's records.

75

TRIAL EXAMINER: I thought the title of it was a list of the body shop employees formerly employees of Zimmerman who were employed by you from 11-10 to 11-15, 1969.

THE WITNESS: I'm sorry. I misunderstood what you said.

That's correct, as far as the information on there.

TRIAL EXAMINER: Do you have some problem with this, Mr. Ruyle, some reason to doubt that this is an accurate list?

MR. RUYLE: Yes, sir, I do, at least in one respect if not more. I don't know.

TRIAL EXAMINER: Now we have a problem on preparation of a record.

Would you care off the record to discuss the differences with Mr. Hickey, perhaps also Mr. Black, and Mr. Bachrodt, and perhaps to your mutual satisfaction you can have an accurate list.

Let's go off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

\* \* \* \* \*

78 MR. HICKEY: Your Honor, I don't understand the severance of body shop employees. Mr. Zimmerman did the severance of body shop employees, we didn't.

TRIAL EXAMINER: That's a question of proof rather than anything else.

MR. HICKEY: But there has been no allegation that we severed and sold, and they haven't got any proof of that, either.

79 TRIAL EXAMINER: This is what General Counsel does allege, and I presume —

MR. HICKEY: He says so now.

TRIAL EXAMINER: He hasn't said any more specifically before now, and that's why I asked him the particulars.

\* \* \* \* \*

86 TRIAL EXAMINER: General Counsel, do you happen to have a list of the employees last employed by Zimmerman?

MR. RUYLE: Yes, General Counsel's Exhibit 13 would have some of those, and 14.

TRIAL EXAMINER: No, this doesn't — at least the title doesn't help me.

Do you have a list of the employees who were last employed by Zimmerman?

MR. RUYLE: I think, if General Counsel's 13 and 14 don't establish that, I can ask questions of the witness from these exhibits and establish whether they were immediately before November 10th employed by Zimmerman.

TRIAL EXAMINER: Well, I'm not ready to make findings of fact, and I don't know whether you should ask me to do so, but I find here entitled "employees last employed by Zimmerman who were still employed November 10th, 1969". You can do what you wish.

MR. RUYLE: Well, if your Honor would like to have a list, we could probably go off the record and write up such a list. I am not sure of Re-

spondent's knowledge.

87 TRIAL EXAMINER: Particularly in view of the last answer given me by the witness, it doesn't sound as if Exhibit 13 constitutes such a list. He said a majority of those he kept or employed.

MR. RUYLE: That's right, but I think this witness can testify as to those who he interviewed, and we can learn through these interviews who was previously there.

TRIAL EXAMINER: In view of his last answer, this is not a list of those who were last employed by Zimmerman.

MR. RUYLE: That's correct, your Honor, it does not state that these employees were employed by Zimmerman. I think we would have to elicit that through -

TRIAL EXAMINER: It doesn't say that even if they were employed by Zimmerman they were always employed.

MR. RUYLE: No, it doesn't.

\* \* \* \* \*

103 Q. I show you General Counsel's Exhibit 2 for identification and ask you to look at that.

I ask you if you have ever seen that before? A. Yes.

Q. Have you had occasion to refer to this in your job as business representative? A. Yes.

Q. I refer you to the notice provision on page 9, paragraph B. thereof, and ask you if you have ever given anyone notice pursuant to that provision.

A. No.

\* \* \* \* \*

104 Q. (By Mr. Ruyle) Did you give anyone notice to open bargaining on this agreement pursuant to paragraph B. that you are looking at? A. No, I did not.

Q. Did you receive any notice from anyone for opening bargaining pursuant to paragraph B, page 9? A. No, I did not.

TRIAL EXAMINER: Unless I open up a "Pandora's Box" with a couple

of questions, if it's not controverted that that contract remained in effect for the following year with Zimmerman, then you don't have to prove anything more on its not being terminated.

Are you going to controvert in any way that they —

MR. HICKEY: Our position is we don't have any knowledge what happened.

TRIAL EXAMINER: Well, you don't have any knowledge, but I say now I received enough proof, prima facie proof, to show that it automatically extended itself, at least from Zimmerman.  
105

MR. RUYLE: I don't plan to ask any more witnesses any questions on that subject. If there is any further question in your Honor's mind as to the motivations behind allowing that contract to renew itself, this witness could probably answer that question. As a matter of fact, a later witness can answer that question. I won't go into it for any other reason, however.

TRIAL EXAMINER: No, I don't have any further questions.

\* \* \* \* \*

114 Q. I show you General Counsel's Exhibit 15 and ask you to examine the names of the men listed thereon and tell us, if you know, whether or not all of those men are now with a body shop operation that somebody here referred to as Zimmerman Cadillac & Oldsmobile? A. No, they are not all with him.

Q. Are there other men with Zimmerman Cadillac Oldsmobile not listed on that exhibit? A. Quite a few, but not just the body shop.

Q. I am talking just about the body shop. A. I can correct the list there for you —

Q. Do you know if Mr. King is running that body shop? A. He is, as plant manager.

Q. How about Ivan Fransen? A. Ivan is assistant manager of that.

Q. Of the body shop? A. Yes.

\* \* \* \* \*

123 THE WITNESS: Elmer Clark was there a short time, although I worked also under Tom Hopkins for a much longer time. I would take orders from either of them.

TRIAL EXAMINER: Tom Hopkins was a predecessor to Elmer Clark?

THE WITNESS: Yes.

Q. (By Mr. Ruyle) Was that assistant to whom you referred, Elmer Clark, was that after some time in October, 1969? A. Elmer Clark came to work for Bachrodt Chevrolet. He did not work for Zimmerman Chevrolet. When he came, I can't answer.

TRIAL EXAMINER: Are you sure he wasn't there from October 23rd, and Bachrodt took over on November 10th, two-and-a-half weeks later?

124 THE WITNESS: You're right. Tom Hopkins left before Bachrodt Chevrolet took over. The reason I can recall that is because I talked to Mr. Bachrodt and I mentioned that a good man had left, and that's how I remember.

Now, I still can't tell you when Elmer Clark started.

TRIAL EXAMINER: But if it was before they came in, it was a very short period?

THE WITNESS: Yes.

\* \* \* \* \*

131 CROSS EXAMINATION

Q. (By Mr. Hickey) Mr. Bocker, where did either Wayne or Roy Frakes go as far as you know? A. -He is now employed with Zimmerman Ford Sales in Cedar Rapids, Iowa.

Q. He left Bachrodt of his own volition and went back with his former employer? A. So far as I know.

Q. Is he a service manager there? A. I'm not sure of that.

\* \* \* \* \*

132 Q. Who is there now who was there on December 1st, 1960? A. I believe Mr. Tedman.



Q. As a matter of fact, Mr. Tedman probably goes back to Monroe, doesn't he? A. Yes.

Q. He is the only one? A. As far as I can remember, he is.

MR. RUYLE: I think I would have to object, your Honor, on the basis that going back this far would be more a matter of record. I think the best evidence rule would require reference to the payroll records.

MR. HICKEY: I'm not concerned about who was with Monroe. I am only concerned about the turnover since he came to work.

TRIAL EXAMINER: Isn't the turnover reflected in the records, these exhibits?

MR. HICKEY: Yes.

TRIAL EXAMINER: The exhibits indicate to me that there has been a contraction, that there was a separation of the body employees, that there has been one man hired and a number of people leaving.

Is that an accurate picture, Mr. Bocker?

THE WITNESS: What you said now, one man has been hired into our department and many have left?

133 TRIAL EXAMINER: Yes, and maybe a few have been let go and placed elsewhere?

THE WITNESS: That's right.

As far as who was hired in, I'm trying to think.

TRIAL EXAMINER: I may be wrong about that. Am I misinterpreting when I say it looks as if one man was hired?

MR. HICKEY: You mean since November 10th?

TRIAL EXAMINER: Yes.

THE WITNESS: I can't recall of any mechanic being hired since November 10th. But our car jockeys and lot boys, I can't remember when they came.

TRIAL EXAMINER: Car jockeys and lot boys are in what you call the appropriate bargaining unit?

MR. RUYLE: I believe they are.

MR. HICKEY: They're not. They are part time.

MR. RUYLE: I'll say they are.

MR. HICKEY: We don't know.

TRIAL EXAMINER: Does the list include them, these lists which you put in as exhibits?

MR. RUYLE: I don't think they are listed as such.

MR. HICKEY: Your Honor, I can tell you about the car jockeys. They are junior college boys who come and go. They may work two hours, three hours, another one four hours.

134 MR. LIMESAND: Looking at General Counsel's Exhibit 14, there is at least one name, Dave Klipping, listed as car jockey. That's all I see.

TRIAL EXAMINER: It is your contention that at least the regularly employed car jockeys are in the unit, right?

MR. RUYLE: Yes.

MR. HICKEY: We have no objection to regular car jockeys. What my questions concern —

\* \* \* \* \*

155 TRIAL EXAMINER: Were you still on that basis in November?

THE WITNESS: No, no. Mr. Bachrodt changed this.

\* \* \* \* \*

158 TRIAL EXAMINER: When were you told this?

THE WITNESS: This is only what I seem to remember, what Mr. Bachrodt told us. I am quite sure that's what he said.

TRIAL EXAMINER: Any questions arising out of mine?

MR. HICKEY: Yes.

\* \* \* \* \*

174 TRIAL EXAMINER: Is your service department open to the public on Saturday morning?

THE WITNESS: Yes. The difference between the way I do it and the way it was done under the previous Chevrolet dealer in Freeport, he was open on Saturday morning and people volunteered to come in, in which half the people would come in. That's all that's doing it now.

But they didn't make it public. I want the customers to know I am in business on Saturday morning, and that's the difference between he and I. For him it was just kind of a convenience thing, but I wanted to do business on Saturday morning.

\* \* \* \* \*

181 Q. Now, I believe you testified you were shown or received no documents showing that the employees were represented by a union; is that correct? A. That's correct, other than what has been put into evidence.

\* \* \* \* \*



