



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Appeal of Kriete Truck
Centers, Petitioner

Case No: DOT-24-0042

FINAL DECISION

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Kriete Truck Centers, by:
Attorney Emily Logan Stedman
Husch Blackwell, LLP
511 North Broadway, Suite 1100
Milwaukee, WI 53202

Wisconsin Department of Transportation
No appearance

PRELIMINARY RECITALS

On November 19, 2024, the Division of Hearings and Appeals (DHA), by Administrative Law Judge Andrea Brauer, issued a Proposed Decision denying Kriete Truck Centers' petition for an exemption from the "factory store rule" under Wis. Stat. § 218.0121(3m)(c). Pursuant to the process described in Wis. Stat. § 227.46(2m), Kriete Truck Centers timely filed an objection to the Proposed Decision. The objection includes a memorandum of law, a supporting affidavit of [REDACTED] and a proposed alternative order (the "Kriete Proposed Order").

For the reasons described below, the Administrator hereby adopts the Conclusions of Law and Order set forth in the Proposed Decision as DHA's Final Decision in this matter. Minor changes to the Findings of Fact have been made based on the Petitioner's objection.

PROCEDURAL HISTORY

On September 12, 2024, Kriete Truck Centers filed a request for hearing with the Division of Hearings and Appeals seeking an exemption from the "factory store rule" under Wis. Stat. § 218.0121(3m)(c). Administrative Law Judge (ALJ) Andrea Brauer was assigned to preside over the matter. A telephone prehearing conference was held on September 25, 2024, at which time the issue for hearing was confirmed and the hearing was scheduled. The hearing was held on October

24, 2024 at the Milwaukee State Office Building. The Department of Transportation did not participate. The hearing was digitally recorded. Testimony was heard from [REDACTED] and John Walsh. The record includes the hearing recording and the Petitioner's Exhibits 1 through 7.

ISSUE FOR HEARING

As set forth in the Prehearing Conference Report, the only issue for hearing is whether the Petitioner qualifies for an exemption to the factory store rule under Wis. Stat. § 218.0121(3m)(c).

FINDINGS OF FACT

1. Kriete Truck Centers (hereinafter referred to as "Kriete"), a Wisconsin-based company headquartered in Milwaukee, operates several licensed dealerships across the state. Its dealerships are located in Milwaukee, Fond du Lac, Racine, Madison, Green Bay, Mauston, La Crosse, Sheboygan, Stevens Point, and Tomahawk. ([REDACTED] Hearing Testimony)
2. Kriete's dealerships sell heavy duty and medium duty trucks, including Hino, Mack, Volvo, Isuzu, and a brand of specialized vehicles from Autocar. Kriete has dealership agreements with Mack and Volvo, under which Kriete has the exclusive right to sell their products in each of the territories in which Kriete's dealerships are located. As a result, there are no other dealerships that sell these manufacturers' products within Kriete's territory. (*Id.*)
3. Kriete has periodically received requests from customers who are seeking to purchase a truck assembled with parts from more than one Original Equipment Manufacturer (OEM) – for example, a Mack or Volvo truck chassis upfitted with another OEM's dump body. Previously, Kriete referred these customers to third-party upfitters who assembled the parts as requested, and Kriete then sold the completed vehicle to the customers. However, Kriete found the work performed by these upfitters to be too slow and lacking in quality. (*Id.*)
4. As a result, Kriete recently began providing a new service, which it refers to as "Body by Kriete." It describes Body by Kriete as an "upfitting" service whereby Kriete assembles vehicles for customers by installing the dump truck body from one OEM onto the chassis of a different OEM. Kriete has already begun offering upfitting services for Mack and Volvo trucks, by installing a different OEM's dump truck body onto a Mack or Volvo chassis. In performing this work, Kriete uses completed truck bodies and chassis and then assembles the vehicle, which involves welding, painting, and some electrical work. Kriete's dealerships then sell the newly assembled vehicles directly to customers. Kriete claims that it is able to provide better quality vehicles in a shorter period of time than other third-party upfitters, in part because it is able to source truck chassis and dump bodies equipment directly from the manufacturer. (*Id.*; Ex. 1-7)

5. Based on conversation with staff from the Department of Transportation regarding the applicable licensing requirements, Kriete now seeks permission to obtain a manufacturer license for the purpose of performing upfitting services through Body by Kriete.
6. On September 12, 2024, Kriete filed a request for hearing with the Division of Hearings and Appeals seeking an exemption from the factory store rule under Wis. Stat. § 218.0121(3m)(c).

DISCUSSION

Generally, Wisconsin law prohibits a motor vehicle dealership from being owned, operated, or controlled by a “factory store,” defined to mean a licensed manufacturer, distributor, or importer or its respective agents. Wis. Stat. § 218.0121(2m). This is commonly referred to as the “factory store rule.” The statute provides for several listed exceptions. The instant case was initiated when Kriete filed a request for a hearing to obtain an exception to the factory store rule under Wis. Stat. § 218.0121(3m)(c), which states that a factory store is not prohibited from owning, operating, or controlling a motor vehicle dealership:

... if the division of hearings and appeals determines, after a hearing on the matter at the request of any party, that there is no prospective independent dealer available to own and operate the dealership in a manner consistent with the public interest and that meets the reasonable standard and uniformly applied qualifications of the factory.

As a threshold matter, Kriete argues that although the purpose of the hearing request was to obtain an exemption to the factory store rule, it does not believe that it is subject to the factory store rule because it is not manufacturing the truck bodies or chassis but is rather using already completed parts. It also disagrees with the application of the statute on policy grounds, since the purpose of the factory store rule is to address the disparity of bargaining power between manufacturers and local retailers and to address a “long history of the abuse of dealers by manufacturers,” whereas here Kriete the dealership does not need bargaining protection from itself. *Forest Home Dodge, Inc. v. Karns*, 29 Wis. 2d 78, 85, 138 N.W.2d 214 (1965) (citations omitted). First, it must be noted that the purpose of this hearing, which was filed under Wis. Stat. § 218.0121(3m)(c), is not to determine whether the factory store rule applies but is instead to determine whether an exemption to that rule applies. Further, the issue for hearing was discussed at the prehearing conference and explicitly identified in the prehearing conference report as being limited to the question of whether Kriete Trucks qualifies for the exemption under Wis. Stat. § 218.0121(3m)(c). If Kriete wished to file a different hearing request or raise additional issues during the discussion at the prehearing conference, it should have done so then. (*See* Sept. 30, 2024 Prehearing Conference Report, ¶ 3)

Moreover, the Proposed Decision correctly determined that the factory store rule does apply to Kriete because the upfitting services Kriete seeks to provide constitutes manufacturing under the statutes. As defined in Wis. Stat. § 218.0101(20), “manufacturing” means manufacturing

or assembling vehicles, as well as manufacturing or installing equipment on previously assembled truck chassis if the installation constitutes a major manufacturing alteration. Kriete's "upfitting" service includes installing a dump truck body from one OEM onto the chassis of another OEM, which [REDACTED] described as taking a finished body and mounting it onto a chassis and performing any necessary electrical work, welding and painting to complete the vehicle. Kriete is thereby assembling vehicles with parts from more than one OEM for its customers. The services it provides therefore meet the definition of manufacturer under the statute.

As a result, Kriete may not operate both its dealership and offer the proposed services under Body by Kriete unless it obtains an exemption to the factory store rule. Kriete has the burden to prove by a preponderance of the evidence that it qualifies for the exemption. Wis. Admin. Code § HA 1.12(3)(b); *see, e.g., State v. Hanson*, 98 Wis.2d 80, 295 N.W.2d 209 (Ct. App. 1980). As noted in the Proposed Decision, this hearing request is somewhat unique because prior cases before the DHA involving requests for an exemption under Wis. Stat. § 218.0121(3m)(c) have typically been filed by manufacturers seeking to operate a dealership. However, the statute provides for the same standard regardless of whether it is a dealership or manufacturer seeking the exemption.

The Proposed Decision further correctly determined that Kriete does not qualify for the requested exemption because it did not meet its burden to establish that there is no prospective independent dealer available that could provide upfitting services in a manner that meets the standards and qualifications of Body by Kriete. The ALJ considered the testimony of [REDACTED] who acknowledged there are other manufacturers who currently perform the upfitting services provided by Body by Kriete, and that Kriete could continue to work with its customers to use those third-party upfitters. Kriete argued that the exemption should be granted because Body by Kriete fills a market need, since no existing company can upfit the vehicles to the same standard as Kriete. [REDACTED] explained that Kriete believes it can perform better quality work in a shorter time, in part because Kriete can "eliminate the middleman" by sourcing parts directly from the manufacturers rather than purchasing them from dealers. Kriete also argues that because it has exclusive dealership contracts with the brands it sells, there is no business incentive for other dealers in the area to provide the upfitting services for Kriete's brands because, under the dealership contracts, only Kriete can source parts directly from the OEMs and only Kriete can sell those brands directly to customers. However, there is no evidence showing that another truck dealership could not expand its business to include the upfitting services proposed by Kriete if it wished to do so. There is, for example, no evidence to indicate that the work Kriete seeks to perform requires any specialized skills or equipment to which other dealerships would not have access. In fact, at the hearing, [REDACTED] indicated that if Kriete is granted the requested exemption to the factory store rule it would begin upfitting vehicles from other OEMs with which it does not currently have dealership agreements. (Hrg. recording at 10:00) In effect, Kriete has established that no other dealership is currently performing the upfitting services it offers, but it has not established that no other dealership could do so if it was authorized to by obtaining its own exemption to the factory store rule. Therefore, Kriete has not met its burden of proof and does not qualify for the exemption under Wis. Stat. § 218.0121(3m)(c).

In support of its objection to the Proposed Decision, Kriete provided an affidavit from [REDACTED] and a competing draft Proposed Decision. Based upon Kriete's Proposed Decision and a review of the hearing recording, a few minor changes have been made to the findings of fact as

proposed by the ALJ. None of those changes have a material impact on the outcome in this case. Regarding the affidavit of [REDACTED] it is too late for Kriete to introduce new evidence not provided at the hearing. The affidavit also largely restates [REDACTED] testimony, and to the extent that it provides any additional context it is still insufficient to establish that the exemption criteria have been met.

Based on the above, the Petitioner has not satisfied its burden to establish that it is entitled to an exemption from the factory store rule under Wis. Stat. § 218.0121(3m)(c). Therefore, the Proposed Decision's Conclusions of Law and Order are hereby adopted as set forth below.

CONCLUSIONS OF LAW

1. The upfitting services that Kriete seeks to provide through Body by Kriete constitute manufacturing as that term is defined under Wis. Stat. § 218.0101(20). Therefore, Kriete may not operate both its dealership and offer upfitting services under Body by Kriete unless it obtains an exemption to the factory store rule under Wis. Stat. § 218.0121.
2. Kriete has not satisfied the burden of showing that no prospective independent dealers are available to own and operate its dealership in a manner consistent with the public interest and that meets the reasonable standards and uniformly applied qualifications of Body by Kriete.
3. The Division of Hearings and Appeals has authority pursuant to Wis. Stat. § 218.0121(3m)(c) to issue the following order.

ORDER

Based upon the evidence in the record, Kriete Truck Centers' petition is denied as it has not established by a preponderance of the evidence that it is entitled to an exemption from the Factory Store rule pursuant to Wis. Stat. § 218.0121(3m)(c).

Dated at Madison, Wisconsin on February 3, 2025.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
Brian Hayes | Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, Fifth Floor
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.