BEFORE THE NATIONAL LABOR RELATIONS BOARD

DTG OPERATIONS, INC. **Employer**	)	
AND	)	**CASE NO. 27-RC-8629**
TEAMSTERS LOCAL UNION NO. 455, INTERNATIONAL BROTHERHOOD OF TEAMSTERS **Petitioner**	)	

EMPLOYER'S OPPOSITION TO PETITIONER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND ORDER

I.
INTRODUCTION

This case presents a situation in which a petitioning Union seeks to represent a relatively small number of employees that are part of a larger, functionally integrated operation. The Regional Director found the small group the Union seeks is not an appropriate unit and ordered that, under the facts presented, a wall-to-wall unit was the only appropriate unit for the operation in question.

There is nothing unusual about this case. It is simple and straight-forward. The Regional Director analyzed the facts according to established Board law regarding the community of interest doctrine. The Regional Director's decision does not raise substantial questions of law or policy. Nor does the Regional Director's decision represent a departure from Board precedent and there are no erroneous factual findings. Petitioner simply disagrees with the outcome. This case is not worthy of the Board's review.

II.
STATEMENT OF CASE

On December 15, 2010, Petitioner Teamsters Local Union No. 455, International Brotherhood of Teamsters ("Petitioner" or "Union") filed a petition with Region 27 of the National Labor Relations Board seeking to represent twenty-four (24) Rental Sales Agents ("RSA's") at Employer DTG Operations, Inc.'s Denver, Colorado car rental agency. DTG Operations, Inc. ("Employer" or "DTG") objected to the composition of the unit and took the position that a wall-to-wall unit was the only appropriate unit given the community of interests shared by all the hourly employees at the Denver operation.

A hearing was convened on January 3, 2011, in the Region 27 offices and was presided over by Hearing officer Kristyn A. Myers. The hearing carried over to the following day, January 4, 2011. An extensive record was developed. During the hearing, the Union amended its petition to add six (6) Lead RSA's to the unit. The Union also unequivocally stated during the hearing that it would not participate in an election involving a wall-to-wall unit. (Rec. 295).

Following the hearing, both parties submitted briefs in support of their respective positions. On January 28, 2011, the Regional Director issued her Decision and Order. In her Decision and Order, the Regional Director concluded the petitioned-for unit was not an appropriate unit for collective-bargaining and that the Employer met its burden of establishing that its Denver operation was so functionally integrated that the smallest appropriate unit must consist of all hourly employees (Decision and Order at 2).

The Union now seeks review of the Regional Director's Decision and Order.

III.
EMPLOYER'S POSITION

The Regional Director was presented with a 297 page Record (not including an additional 700 pages of exhibits) that took one and one-half (1½) days of testimony and numerous documents to create. The Regional Director's Decision and Order reflects careful attention to the detailed evidence contained in the record as well as its cumulative entirety. Petitioner now takes issue with the findings and conclusions reached in the Decision and Order and seeks the Board's review. Petitioner first complains that the Regional Director applied incorrect legal standards to her analysis, and then takes issue with some of her factual findings.

The Employer will discuss the Union's complaints below.

A. The Regional Director Correctly Applied Established Board Law and Did Not Depart from Reported Board Precedent

Petitioner's principle contention in its Request for Review is that the Regional Director inappropriately "relied solely upon an inapposite case that did not involve the car rental industry, *United Rentals, Inc.* 341 NLRB 540 (2004)." (Petitioner's Request at 9). With all due respect to Petitioner, this argument has no merit whatsoever and is an attempt to create an issue where none exists.

The Regional Director did not rely solely upon the *United Rentals* decision in making her decision. The Regional Director mentions *United Rentals* as part of a string cite on page 29 of her Decision and Order and in three sentences on page 31 of her 37 page Decision and Order. The reliance placed on *United Rentals* by the Regional Director was as follows:

> In *United Rentals, Inc.*, 341 NLRB 540, the Board based its decision on strong and undisputed evidence of common terms and conditions of employment, overlapping duties and interchange between the excluded employees and the petitioned-for employees, finding that those factors mandated a determination that a wall-to-wall unit was the only appropriate unit. The Board found it particularly significant that the employees "all 'pitch-in' and

> perform the functions of different classifications when necessary." *Id.* at 541.
>
> Much like in *United Rentals*, the record evidence establishes that due to the functional integration of the Employer's operations because of the demand for flexibility and efficiency related to the CHOICE business model, the duties of all classifications resulting in significant amounts of interaction, interchange and overlap in job duties during the daily operation of the facility.

Decision and Order at 31.

There is no other mention of *United Rentals* in the Regional Director's 37 page Decision and Order, nor is there any further effort to analyze the record evidence in accordance with the *United Rentals* opinion. Certainly, the Regional Director considered the teachings of *United Rentals* and noted the Board's finding that a wall-to-wall unit was the appropriate unit when the employer's employees "pitched in" to perform the functions of different classifications when necessary. But, to suggest the Regional Director relied exclusively on *United Rentals* in making her decision is disingenuous.

The legal framework on which the Regional Director focused her analysis was the traditional community of interest test set forth in the Board's decision in *Overnite Transportation Co.*, 322 NLRB 723 (1996). The Regional Director quoted from *Overnite Transportation* on page 28 of her Decision and Order and listed the relevant factors properly considered in unit determinations citing *Overnite Transportation* again on page 30. On page 29 of her Decision and Order, the Regional Director cited to and highlights the factors the Board considered relevant in four different cases involving rental car agencies, including *Avis Rent-A-Car System, Inc.*, 132 NLRB 1136 (1961); *Budget Rent-A-Car of New Orleans, Inc.*, 220 NLRB 1264 (1975); *Alamo Rent-A-Car*, 330 NLRB 897 (2000); and *Budget Rent A Car Systems, Inc.*, 337 NLRB 884 (2000). The Regional Director noted the Board has not established any presumptively appropriate units in the vehicle rental industry. "Rather, the Board has employed traditional

community of interest analysis and has determined that various combinations of employees constitute appropriate units." Decision and Order at 29. On this point, the Regional Director is absolutely correct.

It is worth noting that of the automobile rental industry cases cited by the Regional Director and seized upon by the Union, one is fifty (50) years old, one is thirty-six (36) years old and the other two are eleven (11) years old. None of the cases involve the CHOICE business model utilized by the Employer at its Denver Operation. And, all of the cases determined a different unit was the appropriate unit for collective bargaining. Given these factors, the Regional Director was imminently correct in applying the *Overnite Transportation* factors and analysis to the facts in the record before her.

If the Regional Director relied on any case as a basis for her decision, it was *Overnite Transporation*. Her reliance on *Overnite Transportation* was sound. Petitioner's contention that the Regional Director inappropriately relied exclusively on the Board's decision in *United Rentals* is simply incorrect. In any event, *United Rentals* is correctly decided.

B. The Regional Director's Factual Findings are Correct

Petitioner next complains that the Regional Director made certain incorrect factual findings. First, Petitioner contends the Regional Director found the hourly employees have "identical terms and conditions of employer." Request for Review at 13. The Regional Director found that, overall, the hourly employees enjoyed identical benefits and were subject to the same employment policies, shared the same break rooms and utilized the same time system and same time clocks. Petitioner does not dispute these findings. The Regional Director specifically discussed the fact that the incentive pay plans varied from position to position, but also noted the similarities in the plans. The fact is the Regional Director considered the differences between the various incentive plans, but held that, overall, the benefits, policies and working conditions were

very similar throughout the hourly work force. Petitioner does not point to any "clearly erroneous" fact findings made by the Regional Director. Rather, Petitioner disagrees with the Regional Director's application of the facts to the community of interest test. The mere fact the Petitioner disagrees with the Regional Director's findings does not warrant the Board's review, otherwise every decision would automatically be subject to Board review.

Petitioner next complains the Regional Director erred by finding the RSA's work under common supervision. Apparently, Petitioner argues that although all employees report generally to the General Manager and the Operations Manager on duty, Senior Operations Manager Todd Trueblood and Operations Manager Margaret Savelio are responsible for scheduling, granting time off and handling other administrative tasks for RSA's. Request for Review at 14. Petitioner seems to contend that the Regional Director placed too much emphasis on common supervision. It is important to focus on what the Regional Director actually wrote about the subject, rather than Petitioner's interpretation of what she held. The Regional Director engaged in a lengthy discourse regarding how supervision operated, specifically considering the points mentioned by the Petitioner, but once again, concluded on the facts in the record before her that the employees, over all, worked under common supervision. Decision and Order at 32-33. Once again, Petitioner merely disagrees with the Regional Director's application of the facts.

Petitioner also complains about the Regional Director's findings with regard to the amount of interchange between job classifications. Although admitting the record demonstrates the RSA's perform lot agent and service agent functions regularly during late-night and early morning hours (Request for Review at 15) (Rec. 69-70, 72, 281), Petitioner chooses to ignore the Record's many references to the fact that RSA duties are regularly performed by lead staff agents, staff agents, a return agent, a lead service agent and an exit booth agent (Rec. 77-79, 210,

Exs. E-24 and E-25). In turn, RSA's frequently cover for lot agents and return agents and may cover for exit booth agents, if needed. (Rec. 73, 253, 274, 280-282). When needed, all employees, including RSA's, move vehicles to the service area, the ready line or off site. (Rec. 75-76, 86-89).

Of course, the record also reflects a high degree of interchange among lot agents and return agents (Rec. 81), as well as interchange between mechanics and courtesy bus drivers, service agents and courtesy bus drivers, bus drivers, mechanics and service agents, service agents and return agents, as well as exit booth agents and service agents (Rec. 83-84). All employees perform the work of shuttlers and fleet agents in moving vehicles when needed. (Rec. 75-76, 80-82). A prime example of this interchange is Herman Moss, a lead service agent, who also works regularly as an RSA and a courtesy bus driver (Rec. 83).

Consequently, there is a great deal of regular interchange, not just at the RSA level, but throughout the entire Denver operation. This argument, like all of Petitioner's arguments, are simply disagreements with the Regional Director's findings. Petitioner continually focuses on only part of the record and utilizes that portion of the record to trivialize the Regional Director's findings while ignoring the entirety of the record. The Board need not get bogged down in the detail and minutae of this Record. The Regional Director conducted a very detailed analysis of the record and considered it in its entirety, unlike Petitioner which chooses only to view those portions that support its view and ignore the rest.

Finally, Petitioner complains that the Regional Director erred by finding that the two Staff Assistant I employees should be included as plant clericals. As with the Petitioner's other arguments, it is not contending that erroneous factual findings were made, but that it disagrees

with the Regional Director's application of legal principles to the factual record. And, once again, Petitioner focuses on isolated testimony and ignores the Record as a whole.

The Regional Director, however, appropriate reviewed the entire record and correctly concluded the Staff Assistant Is were indeed plant clerical employees. The Regional Director found that the Staff Assistants dealt with customer complaints and inquiries, handled the lost and found items system for the operation and compiled reports used by the Employer to monitor rental operations. In addition, the Regional Director found that the Staff Assistants regularly performed RSA duties and moved vehicles around the lot in emergency operations. At least one Staff Assistant I primarily worked in the maintenance area performing computer functions to assist mechanics, titling and registering new vehicles and moving cars to the ready lines when necessary. (Decision and Order at 20-21).

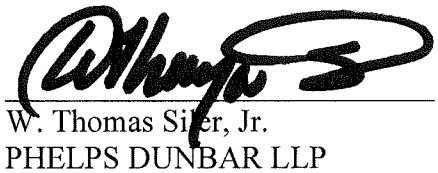
As in most cases, one party or the other can pick and choose portions of the testimony to support their position. In this case, there is certainly generalized testimony from which one could conclude the Staff Assistants performed office clerical duties. But, when considering the testimony as a whole (see generally Rec. 53-58, 88-89, 214-218 and 258-259), it is apparent that the Staff Assistants performed work, maintained reports and otherwise performed functions closely allied to the production process or to the daily operations of the production facilities. Such employees are properly classified as plant clericals and should be included within the bargaining unit. *See Desert Palace, Inc.* 337 NLRB 1096, 1098 (2002).

The Regional Director correctly concluded the Staff Assistants should be included in the unit.

IV.
CONCLUSION

As stated in the introduction, this is a simple, straight-forward case accompanied by an extensive record. The Regional Director applied the correct legal analysis and considered the record in its entirety. The conclusions reached are substantially supported by the record and the mere fact Petitioner focuses on isolated portions of the Record, ignores the Record as a whole and disagrees with the Regional Director's conclusions does not warrant the Board's review.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Employer's Opposition to Petitioner's Request for Review of Regional Director's Decision and Order has been served on the following via First Class United States Mail, facsimile and e-mail:

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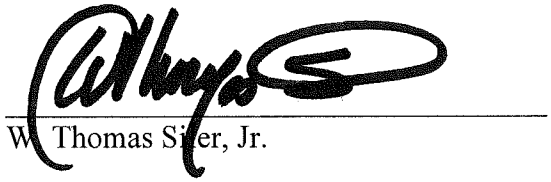
this the 1st day of March, 2011 .



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