

**BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

DTG OPERATIONS, INC.,

AND

CASE NO. 27-RC-8629

TEAMSTERS LOCAL UNION 455,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS.

EMPLOYER'S BRIEF

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INTRODUCTION

Petitioner Teamsters Local Union 455 (“Petitioner”) filed a petition in this case seeking to represent the 25 rental sales agents and six lead rental sales agents¹ at Employer DTG Operations, Inc.’s (“DTG’s”) operation at the Denver International Airport (the “Denver operation”). After a two day hearing and briefing by the parties, the Regional Director found that the record evidence established that the petitioned-for unit is not an appropriate unit because, given the functional integration and overlap and interchange of job functions at the Denver operation, rental sales agents do not enjoy a community interest that is separate and distinct from that of other hourly employees at the Denver operation. The record evidence proves that Denver employees work at a single location, work under common supervision, receive similar hourly pay and identical fringe benefits, work similar hours, work under substantially similar conditions of employment, and perform interdependent, overlapping, and interchangeable job functions. Accordingly, the Board should affirm the Regional Director’s decision that the only appropriate unit at the Denver operation is that which is presumptively appropriate as a matter of long-established Board policy – a wall-to-wall unit composed of all hourly employees at the Denver site.

FACTS

A. DTG’s Operations at the Denver International Airport.

1. Organizational Structure.

DTG is a national car rental company. (R. 20) At the Denver International Airport, DTG operates under the brands “Dollar” and “Thrifty.” (R. 14) DTG utilizes one fleet of

¹ In the original petition filed by Petitioner on December 15, 2010, Petitioner sought to exclude lead rental sales agents. However, at the hearing, Petitioner amended his petition to include the lead rental sales agents. (R. 11)

approximately 2,600 vehicles for the Dollar and Thrifty brands, and all of its managers and hourly employees jointly operate under the two brands. (R. 14, 22)

DTG's main facility in Denver is located on a single 13-acre lot located on a street near the airport known as "rental car row." (R. 13-14) On the lot stands a "Dollar" building and a "Thrifty" building approximately 100 yards apart from one another. (R. 239) Each building has separate rental counters and lots outside containing rental vehicles on a "ready line" available for pick-up by customers. (R. 21-22, 30-31, 34-35) Both buildings include offices for DTG managers and administrative staff, though most administrative offices are located on the second story of the "Dollar" building. (R. 204) The remainder of the property is operated jointly by both brands, including the return lanes, the maintenance building, the car wash building, the employee parking lot, and the exit booths. (R. 16-20, Ex. E-1)

The DTG operation in Denver employs 119 employees, including 109 hourly employees and ten management employees. (R. 14) The hourly employees at the DTG Denver operation include four assistant mechanics, one building maintenance technician, 21 courtesy bus drivers, nine exit booth agents, one fleet agent, two lead courtesy bus drivers, six lead rental sales agents, four lead service agents, two lead staff assistants, six lot agents, three mechanics, two bus mechanics, 25 rental sales agents, nine return agents, nine service agents, two shuttlers, two staff assistants, and one staff assistant II. (R. 292-94, Ex. E-3) All of these employees work for both the "Dollar" and "Thrifty" brands. (R. 14-15) The DTG operation in Denver is a 24-hour operation that runs on three shifts. (R. 227-31)

DTG also operates a counter at the airport terminal, which is staffed by a lot agent. (R. 65) The employee at the counter provides customers with information regarding Dollar and/or Thrifty and directs them to the pick-up area where buses transport customers to the Dollar and

Thrifty rental buildings. (R. 16) DTG staffs the counter at the airport from 9:00 a.m. to 5:00 p.m., Tuesday through Saturday. (R. 16)

2. Managerial/Supervisory Structure.

The hourly employees at the DTG operation in Denver work under common management. The entire DTG Denver operation is managed by General Manager Rick Klier (“Klier”). (R. 23, Ex. E-2) All managers report directly to Klier, including City Fleet Manager Seth Spaulding, Fleet Maintenance Manager Charlene Duran, Senior Operations Manager Todd Trueblood, Senior Operations Manager Keith Johnson, Operations Manager Kirsten Sloan, Operations Manager Jeff Pitts, Operations Manager Margaret Savelio, Operations Manager Mark Peters, and Operations Manager Tammy Birkedahl. (R. 23, Ex. E-2) These managers supervise all the hourly employees. (R. 64-65)

The reporting structure at the DTG Denver operation is not rigid. (R. 24) Essentially, all hourly employees report to all managers. (R. 24) The management team holds two meetings a day – one in the morning and one in the afternoon – with representatives from each work group (e.g., rental sales agents, return agents, etc.)² to discuss every facet of the operation necessary to make sure the company can provide a product for customers. (R. 62-63) As a group, the managers discuss scheduling, staffing, breaks, rate structure, reservations, vehicle needs/demands, etc. (R. 63-64, 73) The meetings typically are run by the operations managers who are on duty at the time of the meetings. (R. 64)

The Denver operation is managed on a shift basis. Certain managers have primary responsibility over certain work groups for purposes of scheduling, timekeeping, and attendance.

² Generally, the “leads” for each work group attend the daily meetings. However, several groups, such as return agents, lot agents, and exit booth agents do not have leads, so representatives from these groups attend the meetings. (R. 61-62, 128, 178)

(R. 64-65) However, aside from that, operations managers on duty for a particular shift manage every aspect of the hourly function of the business during their shift. (R. 65) During any given shift, DTG has two to three operations managers on duty. (R. 64)

Hourly employees at the Denver operation are not subject to periodic performance reviews. (R. 234) Rather, all managers meet to discuss the job performance of all hourly employees. (R. 235-36) Hourly employees may raise issues or concerns with any member of the management team. (R. 24) In fact, it is not uncommon for hourly employees to take issues directly to General Manager Klier. (R. 24) Any manager can discipline or discharge any hourly employee with guidance from the DTG human resources department. (R. 236)

3. Labor/Employee Relations and Conditions of Employment.

All employees at the DTG operation are subject to the same employment and labor relations policies, which are contained in a company-wide employee handbook. (R. 100, Ex. E-18) The human resources function for the Denver operation is handled by the human resources department located at DTG's corporate offices in Tulsa, Oklahoma. (R. 101) Personnel files for Denver employees are maintained together in the administrative offices at the Denver location and by the human resources department in Tulsa. (R. 101)

All hourly employees are subject to the same timekeeping practices. All hourly employees record their time using the Kronos time system. (R. 105) Payroll at the Denver DTG operation is centralized and all employees receive identical paychecks, which contain the name "DTG Operations, Inc." as the employer on the paycheck. (R. 112)

All non-management employees at the Denver operation are paid hourly according to a "step schedule." (R. 102, Ex. E-19, 107) Rental sales agents (and those who perform rental sales agent functions) and exit booth agents also receive incentive pay based on the sale of rental car products and upgrades. (R. 107-12, 157, Ex. U-2, 212, Ex. E-20) Return/lot agents, service

agents, mechanics, and assistant mechanics also are eligible to receive incentive pay based on job performance. (R. 107-12, 211-214, Exs. E-6 to E-30) Courtesy bus drivers receive hourly wages plus tips. (R. 108) These various incentive plans are set at a corporate level and apply to all employees in these positions throughout the United States. (R. 112)

Employees in all classifications typically work approximately 40 hours per week, five days per week, and have one 30-minute break and two 15-minute breaks per day. (R. 62, 227-31) All hourly employees receive identical fringe benefits. (R. 113)

All hourly employees are required to wear uniforms. Employees wear generic uniforms that do not contain a Dollar or Thrifty logo; the uniforms are color specific depending on the employee's primary job. (R. 15) Rental sales agents wear "classier" shirts; courtesy bus drivers wear more "solid, rugged" shirts. (R. 242) All hourly employees are expected to work inside and outside depending on the needs of the company. For that reason, all employees are issued winter coats. (R. 113-14)

B. Job Duties.

The record reflects that DTG operates a highly coordinated and functionally integrated business at the Denver airport. All job classifications work under a common management team. (See Ex. E-2) Each job position is heavily dependent on the others, employees frequently interact with one another, employees often provide assistance to other employees and/or cover functions outside of their primary job classification to meet customer needs, and there is a

significant amount of overlap and interchange in various job functions.³ The following is a summary of the job positions at the Denver operation:

1. Rental Sales Agents.

Rental sales agents are responsible for greeting customers, processing rentals, selling optional services, answering and receiving telephone calls, responding to customer questions and complaints, servicing vehicles for customer rentals, and performing other duties as assigned. (R. 26-28, Ex. E-4) Rental sales agents work primarily behind the counter in the Dollar and Thrifty buildings.⁴ (R. 28-29)

As part of their job duties, rental sales agents interact with other hourly employees in various classifications. Rental sales agents may contact the service department to make sure certain vehicles are ready to meet demands. (R. 90) Rental sales agents communicate with the maintenance area (mechanics) if a customer claims that something is wrong with their vehicle and requests a discount. (R. 91, 96) Rental sales agents interact with return agents to authorize discounts above the discount authority levels granted to return agents. (R. 92) Rental sales agents have day-to-day communication and contact with lot agents. (R. 93) From time-to-time, lot agents communicate with rental sales agents regarding what types of vehicles are available on the ready line (because rental sales agents cannot see what is available from the counter). (R. 93)

³ The Denver operation is a "CHOICE" location. (R. 21) At a CHOICE location, customers reserve the vehicle by class and are permitted to select the particular vehicle they wish to rent from what is available in the lot. (R. 21) At a non-CHOICE location, specific cars are reserved in advance and are prepared and placed on the ready line for customers in advance of their arrival. (R. 22) A CHOICE location puts more pressure on the operation and requires more teamwork and inclusion among employees in various job classifications. (R. 21-22) Only 22 DTG operations in the United States are CHOICE locations. (R. 21) The Denver operation became a CHOICE location in January 2010. (R. 22)

⁴ Rental sales agents interchange between the Dollar and Thrifty counters on a regular basis and are normally scheduled at each location on and off for a month at a time. (R. 246)

Rental sales agents and lot agents also communicate regarding accommodating customers with disabilities. (R. 277)

Rental sales agents frequently fill in for other employees when necessary due to the demands of the business. At times, rental sales agents will “perform return agent duties, exit gate booth duties, [and] lot agents [duties]” when staffing needs dictate. (R. 73; see also 253, 274, 280-82) Petitioner’s witnesses confirmed that rental sales agents regularly perform the duties of return agents and lot agents. (R. 252-53, 274-76, 280-83) According to one of Petitioner’s witnesses, rental sales agents cover breaks for lot agents “multiple times a week” (R. 274), and cover for lot agents when they leave work early. (R. 275) In fact, during the midnight shift, rental sales agents assume all the functions of the return agents and lot agents as the operation does not schedule any return or lot agents during that time. (R. 69-70, 72, 281) Additionally, rental sales agents sometimes are required to move and park cars on the ready line, a function normally performed by service agents and shuttlers. (R. 76, 80, 82) Rental sales agents also have served as exit booth agents. (R. 76)

Employees in other job classifications perform rental sales agent functions on an as-needed basis, including staff assistants, return agents, a lead service agent, and exit booth agents. (R. 77-78) The frequency within which other employees perform rental sales agent duties varies widely based on business needs – it could happen anywhere from five times a week to zero times a week. (R. 79) The 2010 Dollar and Thrifty Peer Ranking Reports in the record reflect that three staff assistants (Mark Chiara, Tiara Wright, Desiree Newell), a lead service agent (Herman Moss), a return agent (April Deberry), and an exit booth agent (Belinda Tremble) regularly performed rental sales agent functions throughout 2010. (R. 210, Exs. E-24 and E-25)

2. Return Agents.

Return agents are responsible for greeting customers and going through the procedures required at vehicle check in. (R. 28-30, Ex. E-5) They check the mileage on the vehicles, determine fuel recovery, close out customer contracts, and provide customer service by directing customers to the courtesy bus drivers. (R. 28-30, Ex. E-5) Return agents inspect the returned vehicles for damage and prepare accident reports if appropriate. (R. 29) Return agents typically work outside in and around the Dollar/Thrifty return lanes. (R. 30)

Return agents communicate with service agents regarding the priority order in which vehicles should be sidelined in the preparation area. (R. 98) They communicate with rental sales agents regarding customer accidents and accident paperwork, and regarding requests for discounts above the authority level of the return agents. (R. 98) Additionally, return agents communicate with mechanics regarding recalled vehicles and regarding vehicles flagged for inspection/repair. (R. 95-96)

There is a high degree of interchange among employees classified as return agents and lot agents. Lot agents are regularly scheduled shifts as return agents and are eligible for the same incentive compensation that return agents may earn. (R. 81) Return agents also regularly assist in moving cars around the lot (a shuttler duty), and park cars on the ready line (a service agent duty). (R. 80-81)

Additionally, as referenced above, rental sales agents frequently perform return agent duties. The rental sales agents regularly fill in for return agents when they are on break or when the return agents leave for the day. (R. 76, 253, 274, 280-82) Also, rental sales agents perform all the functions of return agents during the midnight shift. (R. 274, 280-82)

3. Lot Agents.

Lot agents are responsible for monitoring vehicle supplies and cleanliness, maintaining adequate vehicle model mixes, and providing customer service by informing customers of the vehicles they may select and by directing the customer to the exit booths. (R. 31-33, Ex. E-6) Lot agents also perform a sales function in that they are able to upgrade a customer to a larger or different vehicle in the lot. (R. 32) Lot agents generally work near the exits of the Dollar and Thrifty buildings. (R. 32-33) One lot agent works behind the Dollar/Thrifty counter at the airport terminal. (R. 65)

Lot agents are in constant contact with service agents by two-way radio to make sure the service agents are transporting the right vehicles to the ready line. (R. 94) Lot agents also frequently communicate with return agents and the maintenance area (mechanics) regarding the status of vehicles being returned from undergoing repairs. (R. 95)

As mentioned, there is a high degree of interchange among employees classified as return agents and lot agents. Lot agents are regularly scheduled shifts as return agents and are eligible for the same incentive compensation that return agents may earn. (R. 81) And, as mentioned, return agents also regularly assist in moving cars around the lot (a shuttler duty), and park cars on the ready line (a service agent duty). (R. 80-81)

Rental sales agents frequently perform lot agent duties. (R. 76, 274) The rental sales agents regularly fill in for lot agents when they are on break or when the lot agents leave for the day. (R. 280-82) Also, rental sales agents perform all the functions of lot agents during the midnight shift. (R. 280-82)

4. Service Agents.

Service agents are responsible for servicing and inspecting rental vehicles for customer use and for transporting vehicles from the servicing area to the customer pick-up area where the

lot agents work. (R. 34-36, Ex. E-7) In servicing a vehicle, the service agents perform a process where they check fuel, oil condition, and fluids. (R. 34-36, Ex. E-7) They clean and vacuum the vehicles, run them through the car wash, and park them in the ready lines for customer pick-up or take them to the maintenance building. (R. 34) Service agents regularly communicate with mechanics regarding vehicle repairs. (R. 96) Service agents typically work in and around the Car Wash QTA area located on the southwest area of the DTG property. (R. 34-35)

One of the lead service agents, Herman Moss, worked from time-to-time as a courtesy bus driver and as a rental sales agent. (R. 82-83) A number of employees perform service agent duties, including return agents and rental sales agents who pitch in to move cars to the ready line. (R. 76, 80-82) Moreover, in times of peak demand, the DTG Denver operation may use mechanics and assistant mechanics to perform service agent functions and increase productivity in that area. (R. 82)

5. Exit Booth Agents.

Exit booth agents are responsible for greeting customers and ensuring all rental information is complete and accurate. (R. 37, Ex. E-8) Exit booth agents also perform a sales function in that they utilize approved sales techniques to capture additional revenue for optional services. (R. 37-38, Ex. E-8) Exit booth agents “soft sell” the same optional services that rental sales agents sell to customers at the counter. (R. 70-71) Exit booth agents also perform customer service function in providing customers with directions. (R. 38)

Exit booth agents send a representative to the daily operations manager “game plan” meetings to report to them on important information related to the day’s operation. (R. 97) Exit booth agents also interact with the maintenance department if they identify a vehicle about to leave the gate that is in need of repair. (R. 97)

On occasion, exit booth agents have covered the rental sales agent counter on the midnight shift. (R. 84) According to the Peer Ranking Report, during 2010, one exit booth agent (Belinda Trimble) periodically performed the function of a rental sales agent. (R. 210, Exs. E-24 and E-25) One exit booth agent, Tesfaye Workneh, also serves as a courtesy bus driver. (R. 84) When the business is slow, exit booth agents help out in the service production area. (R. 84)

6. Fleet Agent.

The DTG operation in Denver employs one fleet agent. The fleet agent is responsible for in-fleeting and disposing of rental vehicles. (R. 39, Ex. E-9) In-fleeting entails following a specific identification process, checking oil, checking fluids, and making sure the vehicle is ready for the rental process. (R. 40) Disposing of the vehicles means transporting vehicles to sales lots or returning them to a manufacturer. (R. 40) The fleet agent works around the whole DTG lot, including the maintenance area, the return lanes, and the ready lines. (R. 40-41) He constantly communicates with return agents to make sure that certain vehicles are being grounded; he regularly communicates with mechanics regarding repairs of fleet vehicles. (R. 98)

The work of the fleet agent in Denver is somewhat seasonal in that the workload fluctuates in peaks and valleys, so when he is not performing fleet agent duties, he helps out as an assistant mechanic, assists the service agents in the service area, or assists the building maintenance technician with odd jobs. (R. 84) At times, the fleet agent will help move cars to dealerships or auctions, which is a function performed by the shuttlers. (R. 85)

7. Courtesy Bus Drivers.

Courtesy bus drivers are responsible for transporting customers to and from the airport and Dollar and Thrifty rental centers. (R. 41-42, Ex. E-10) Courtesy bus drivers operate large buses (over 15 passengers) and maintain a CDL (Commercial Driver's License). (Ex. E-10) Courtesy bus drivers perform general preventive maintenance checks on the buses. (R. 42)

Courtesy bus drivers perform a sales function in that they inform customers of products available at the rental counter, though they are not paid incentive compensation for any sales they contribute to. (R. 44-45) Courtesy bus drivers provide a speech to customers regarding options such as GPS systems, toll passes, etc. (R. 44) The primary purpose is to speed up the rental process when the customer reaches the rental counter. (R. 44-45) Also, courtesy bus drivers perform a customer service function in that they assist customers with their luggage. (R. 176-77)

Courtesy bus drivers regularly communicate with the bus mechanic regarding maintenance and repairs on the buses. (R. 96) Courtesy bus drivers interact with rental sales agents and return agents when they carry luggage into the rental center for customers or when they are determining whether to hold the bus for customers returning to the airport. (R. 74-75)

Some employees outside the courtesy bus driver classification perform courtesy bus driver duties from time-to-time. A lead service agent (Herman Moss), an assistant mechanic (Bantegz Lulseged), and an exit booth agent (Tesfaye Workneh) periodically worked shifts as courtesy bus drivers and filled in for courtesy bus drivers on an as-needed basis. (R. 83-84)

In circumstances where the company does not have enough buses operating to handle the amount of courtesy bus drivers on shift, the Denver operation will assign courtesy bus drivers to wash cars (service agent function), pull cars out of the return lanes (service agent/shuttler function), or move cars to an auction (shuttler function). (R. 86)

8. Mechanics, Assistant Mechanics, and Bus Mechanics.

Mechanics and assistant mechanics are responsible for performing preventive maintenance and repairs on fleet vehicles. (R. 45-49, Exs. E-11 and E-12) Bus mechanics perform preventive maintenance and repairs on the fleet of 12 buses driven by the courtesy bus drivers. (R. 49-50, Ex. E-13) Mechanics and bus mechanics are ASE (Automotive Service

Excellence) certified. (See E-12 and E-13) Assistant mechanics have no certification; they assist mechanics, and perform more limited repairs, such as oil changes, tire rotations, fluid checks, and light repair work. (R. 48; see E-12) At the Denver operation, mechanics (including the assistant mechanics, mechanics, and bus mechanics) perform basic repairs and preventive maintenance work; they do not perform any “heavy” mechanical work on transmissions or engines. (R. 46)

Mechanics and assistant mechanics work mainly in and around the maintenance building located in the southeast area of the DTG lot. (R. 46) However, they also obtain vehicles from the return lane area or wherever a mechanical vehicle happens to be on the lot. (R. 47)

Mechanics regularly interact with other employees in the Denver operation. Mechanics interact with return agents, service agents, and courtesy bus drivers regarding vehicle repairs. (R. 95-96) They also interact with exit booth agents when the exit booth agent identifies a vehicle leaving the gate that is in need of repair. (R. 96) Occasionally, rental sales agents communicate with mechanics regarding problems with vehicles where a customer seeks a discount. (R. 92-93)

The mechanics at the Denver operation interchange with other job functions. Specifically, one assistant mechanic is periodically scheduled to work as courtesy bus driver and regularly fills in for courtesy bus drivers on an as-needed basis. (R. 83-84) Also, they will transport vehicles off site to auctions or for repairs (a shuttler function). (R. 87) The mechanics will move cars from the return area to the service area if the return area gets completely full of cars (service agent/shuttler function). (R. 87) Additionally, as stated above, the fleet agent sometimes will assist as an assistant mechanic when needed. (R. 85)

9. Shuttlers.

The main responsibility of the two shuttlers at the Denver operation is to transport vehicles around the operation. (R. 51) Shuttlers also transport vehicles to outside mechanical

shops, dealerships, and auctions. (R. 51, Ex. E-14) Shuttlers work in almost every area of DTG's 13-acre lot at the Denver airport. (R. 51) Rental sales agents, return agents, fleet agents, courtesy bus drivers, mechanics, staff assistants, and the building maintenance technician frequently help out by performing "shuttler" duties in moving cars around the lot or off site to auctions, dealerships, or mechanic shops. See Sections A.1-8, above, and A.10-11, below.

10. Staff Assistants (Lead Staff Assistant, Staff Assistant I, and Staff Assistant II).

DTG employs five staff assistants at the Denver operation, including two lead staff assistants, two staff assistants, and a staff assistant II. All the staff assistants are responsible for receiving, verifying, and entering information into computer databases, preparing and filing reports, and receiving and responding to customer and location telephone calls. (See Exs. E-15, E-16 and E-23) The reports prepared and filed by lead staff assistants and staff assistants relate to the operations of the business, including non-revenue reports and discount reports. (R. 56) These staff assistants are responsible for monitoring the lost and found function in the entire operation. (R. 55-57) The staff assistant II handles registration and title information and keying in repair orders for the mechanics. (R. 57) None of the staff assistants operate as secretaries or confidential executive assistants for DTG managers; they do not answer phones, make travel arrangements, type letters, prepare expense reports, or otherwise handle confidential information for management. (R. 57-58, 214-15)

The staff assistant II works mainly in the maintenance building where the mechanics work and regularly communicates with the employees in that area. (R. 57) The other staff assistants primarily work in the administrative offices in the Dollar building and regularly interface with other employees in dealing with customer issues and lost and found items. (R. 53, 55-57)

The lead staff assistants and the staff assistants also regularly perform the rental sales agent function. The record reflects that in every month in 2010 two to four lead staff assistants and staff assistants worked at the rental counters in the Dollar and Thrifty buildings. (See R. 210, Exs. E-24 and E-25) Staff assistants also help out when it is busy in the return lane area by moving cars or by moving cars to the ready line to meet demands (service agent/shuttler functions). (R. 88-89)

11. Building Maintenance Technician.

The building maintenance technician at DTG's Denver operation is responsible for performing general maintenance and repairs on the property to ensure that the property is functional for customers who enter the property. (R. 59, Ex. E-17) The building maintenance technician performs minor structural and electrical repairs; major repairs are performed by outside contractors. (R. 60) The building maintenance technician works all over the 13-acre lot and regularly interfaces with other employees who contact him when repairs are needed. (R. 60, 100) Employees who need the building maintenance technician usually use the company's wide-ranging pager system to reach him. (R. 100)

The building maintenance technician also assists in other functions as necessary. For instance, he will assist with cleaning cars and parking cars on the ready line (service agent function). (R. 89, 100)⁵

⁵ DTG also employs "lead" rental sales agents, "lead" service agents, and "lead" courtesy bus drivers at the Denver operation. These lead positions have duties and responsibilities identical to their corresponding non-lead positions (except that they hold additional administrative duties and are paid a slightly higher hourly wage). (R. 127-35, Ex. E-20 to E-23; see also R. 102, Ex. E-19) Since Petitioner has stipulated to the inclusion of lead rental sales agents in the unit, DTG does not separately address these positions in this brief. The record reflects that leads attend daily "game plan" meetings twice a day in which they interact with other leads and employee representatives for all job classifications at the Denver operation. (R. 61-62, 128,178) Thus, the regular interaction among the leads of various groups only serves to strengthen the substantial community of interest that exists among all hourly employees at the Denver operation.

LEGAL STANDARDS

Under Section 9(b) of the National Labor Relations Act, the Board is empowered to “decide in each case whether, in order to assure employees the fullest freedom in exercising rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.” “The selection of the appropriate bargaining unit lies largely within the discretion of the Board whose decision, if not final, is rarely disturbed.” *So. Prairie Construction v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976).

Whether or not a unit is appropriate depends on whether the employees at issue share a “community of interest.” In *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962), the Board explained that the degree to which employees share a community of interest depends on the following factors: (1) similarity in method and payment of wages; (2) hours of work; (3) employee benefits; (4) nature of supervision; (5) difference in training and skills; (6) interchange or contact with other employees; (6) functional integration; and (7) the extent to which they have historically been part of a distinct bargaining unit. Moreover, “the manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination.” *International Paper Co.*, 96 NLRB 295, 298 n.7 (1951).

The Board’s policy is to determine whether the petitioned-for unit is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. *Overnite Transportation Co.*, 322 NLRB 723 (1996). A single location unit – that is, a unit including all hourly employees at a particular operation – is presumed to be appropriate. *Hegins Corp.*, 255 NLRB 1236 (1981); *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980); *Marks Oxygen*

Co., 147 NLRB 228, 230 (1964); *see also Huckleberry Youth Programs*, 326 NLRB 1272 (1998); *Haag Drug Co.*, 169 NLRB 877 (1968) (single-store units are presumptively appropriate in retail merchandizing). Similarly, when all employees at a location work under similar working conditions, are under common supervision, and interchange jobs frequently, a unit including only part of the group is *inappropriate*. *See United Rentals, Inc.* 341 NLRB 540 (2004); *U.S. Steel Corp.*, 192 NLRB 58 (1971). When the proposed unit is not presumptively appropriate, as is the case here, the burden is on the petitioner to show that the petitioned-for unit is “an appropriate unit.” *Allen Health Care Services*, 332 NLRB 1308 (2000).

If a petitioned for-unit is deemed not appropriate, “the Board may examine alternative units proposed by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties.” *Boeing Co.*, 337 NLRB 152, 153 (2001).

ARGUMENT

A. The Regional Director Correctly Found that the Appropriate Unit Should Include All Hourly Employees at the DTG Denver Operation.

The petitioned-for unit of rental sales agents clearly is inappropriate because the rental sales agents do not have a community of interest distinct from other work groups at the Denver operation. Any appropriate unit should include all 109 hourly employees because, given the high level of coordination and functional integration of the operation, all the employees share a close community of interest. *See United Rentals, Inc.*, 341 NLRB 540 (2004) (holding that facility-wide unit of rental equipment company was the smallest appropriate unit where there was functional integration of the operation and, as a result, an overwhelming community of interest among the various job classifications; the facility-wide unit included drivers, mechanics, yard employees, counter employees, parts associate, and branch associate); *Levitz Furniture Co.*, 192 NLRB 61 (1971) (holding that a less-than-storewide unit in a retail store of 105 employees was inappropriate due, among other things, to the small size and functional integration of the store

and the community of interest shared by all store employees); *Sears, Roebuck & Co.*, 182 NLRB 777 (1970) (dismissing petition for unit of only non-selling employees at Sears store where all 105 employees worked at the same store, enjoyed the same fringe benefits, regularly had contact with one another, and were encouraged to perform a variety of selling and non-selling functions).

Numerous factors considered by the Board in unit determinations support DTG's position that a facility-wide unit is the only appropriate unit in this case:

1. The high degree of functional integration at the Denver operation supports a wall-to-wall unit.

In order to meet customer demands and to effectively compete in the rental car business, DTG's Denver "CHOICE" operation requires a high degree of coordination, cooperation, and integration among the various work groups at the operation. Employees in all job positions depend on employees in other job classifications to successfully perform their jobs. Courtesy bus drivers transport customers from the airport to the rental building and begin conditioning customers regarding the products that will be offered to them by rental sales agents. Rental sales agents and lot agents must have a stable fleet of vehicles cleaned, serviced, and repaired (if necessary) in order to rent and upgrade cars to customers.

Exit booth agents conduct a final inspection of the vehicle and "soft sell" the same products that rental sales agents offer at the rental counter and assist customers with directions. They may need to interact with mechanics if a damaged vehicle is about to leave the property. Return agents greet customers, address customer issues, address vehicle issues (with the service agents and/or mechanics), and coordinate the customer's departure with the courtesy bus drivers. In short, the movement of product at the Denver operation consists of a cycle where all positions rely on one another and have many overlapping and interchangeable job functions.

2. Denver employees work under common supervision.

The functional integration of the Denver operation is evident by its “flat line” management organizational structure. All managers and employees ultimately report to one General Manager. And, while operations managers are assigned certain tasks with request to specific job groups, such as scheduling and attendance, all hourly employees report to all the operations managers. In fact, the Denver operation manages its employees on a “shift basis.” It staffs each shift with two to three operations managers who are responsible for supervising all employees on the shift. The management team holds two daily meetings that include leads and/or representatives of all work groups to plan the work for each day. Moreover, all managers are involved in assessing the performance of all hourly employees.

3. Denver employees have similar skills, qualifications, and job functions.

Hourly employees at the Denver operation have “primary” job duties and functions that are contained in corporate job descriptions. These job descriptions reveal a tremendous amount of overlap and interrelation of job duties, which require most of the employees to have similar skills and qualifications. A number of positions have among their primary duties greeting customers (courtesy bus drivers, rental sales agents, lot agents, exit booth agents, return agents); inspecting and/or servicing vehicles (lot agents, exit booth agents, service agents, fleet agents, mechanics); selling, or suggesting, rental products or upgrades (courtesy bus drivers, rental sales agents, lot agents, exit booth agents); providing customer service (courtesy bus drivers, rental sales agents, staff assistants, lot agents, exit booth agents, return agents); and driving vehicles (all hourly employees).

As the record reflects, employees frequently work in other job classifications when needed. All employees are required to move vehicles to the service area, the ready lines, or off site when demands dictate. For this reason, all employees are required to have at least a high school education and a valid driver’s license.

4. There is regular interchange and contact among Denver employees.

The record is replete with evidence that Denver operation employees regularly interchange and have contact with each other. Rental sales agent duties are regularly performed by other job classifications, including lead staff assistants, staff assistants, a return agent, a lead service agent, and an exit booth agent.⁶ In turn, rental sales agents frequently cover for lot agents and return agents, and may cover for exit booth agents if needed. Rental sales agents perform the functions of lot agents and return agents on a regular basis (“multiple times a week”) to cover breaks and *every night* when these employees leave early and *during the entire midnight shift*.⁷ When needed, all employees, *including rental sales agents*, move vehicles to the service area, the ready line, or off site.

Of course, the record also reflects a high degree of interchange among lot agents and return agents, as well as interchange between mechanics and courtesy bus drivers, return agents and courtesy bus drivers, service agents and courtesy bus drivers, mechanics and service agents,

⁶ Petitioner argues that it is rare for other job classifications to perform the functions of rental sales agents; in doing so, Petitioner self-servingly cites to exaggerated examples, including pointing to the relatively few number of rental agreements handled by Herman Moss (service agent) in November and December 2010. Petitioner fails to mention, however, that Moss handled more rental agreements in other months throughout the year, including in March 2010, where he handled 99 rental agreements at the Dollar and Thrifty counters. (R. 210, Exs. E-24 and E-25) The record reflects that Moss regularly pitched in and performed duties as a rental sales agent in addition to his other duties. (*Id.*) Moreover, the Regional Director correctly found that staff assistants regularly perform rental sales agent functions. As the Regional Director observed, “[t]he peer reports entered into the record establish that certain staff assistants process as many contracts as employees officially classified as RSAs.” (Decision and Order, p. 13) Thus, Petitioner cannot credibly deny that employees in other classifications at the Denver operation regularly perform the duties of rental sales agents.

⁷ Petitioner’s two rental sales agent witnesses testified that they had little or no contact with other classifications, including the return agents and lot agents with whom they work in close proximity and perform interchanging and overlapping functions daily. (R. 253-58, 276-79) These self-serving accounts suggest that they operate in silos and do not speak to anyone at work. Their accounts, of course, are inconsistent with the overall record regarding the high level of coordination that occurs at the Denver operation on a day-to-day basis. It is disingenuous for Petitioner to argue that rental sales agents have little or no contact with return agents and lot agents when they replace these employees multiple times a week to cover their breaks and cover the evening shifts for them *every night*. Logic also dictates that, when performing lot agent and return agent duties, rental sales agents interact with the other work groups in the same fashion regular return and lot agents do.

service agents and return agents, and exit booth agents and service agents. All employees perform the work of shuttlers and fleet agents in moving vehicles when needed.

A prime example of the flexibility of the Denver operation is the many roles covered by employee Herman Moss (“Moss”). Moss was classified as a lead service agent, but he also regularly worked as a rental sales agent and as a courtesy bus driver.

The record further shows that employees in all work groups have regular contact with one another through daily planning meetings; in determining the condition, status, and availability of vehicles; and in providing customer service. Employees work as a team and constantly interact with one another to make sure the right product is available and customer service standards are met.

5. Denver employees share the same work situs.

All the Denver employees work on the same 13-acre lot near the Denver location. Rental sales agents, return agents, lot agents, and staff assistants work in close proximity with each other in or near the Dollar and Thrifty rental buildings. Service agents and mechanics share work space with return agents when they inspect and pull vehicles to the service area. The fleet agent and the two shuttlers work all over the lot depending on the locations of the vehicles they need to handle. Courtesy bus drivers transport customers to and from the airport terminal building and regularly make pick ups and drop offs at the Dollar and Thrifty rental buildings. The building technician works all over the property.

Time clocks, employee policies and postings, and personnel files are all maintained at the site where the employees perform their work. All work meetings occur at the Denver location.

6. Denver employees have similar working conditions.

All hourly employees at the Denver operation work under similar working conditions. All are subject to DTG’s corporate employee policies contained in the company-wide employee

handbook. All are paid hourly according to the same “step schedule” published for the Denver operation hourly employees. All hourly employees are subject to the same timekeeping system. All hourly employees receive the same fringe benefits. All hourly paid employees work similar hours with a similar break schedule. And all hourly paid employees are required to wear uniforms and are expected to work inside and outside (all are issued coats).

Most job classifications receive incentive pay in addition to hourly pay, including rental sales agents, lot agents, return agents, service agents, exit booth agents, mechanics, assistant mechanics, and courtesy bus drivers (in the form of tips). The only distinction between rental sales agents and other employees is that rental sales agents are subject to a sales-related performance improvement plan policy (known as the Core Model) that other employees generally are not subject to. This single distinction, in and of itself, is insufficient to cause the rental sales agents to enjoy a community of interest separate and distinct from the other employees. *See, e.g., K.G. Knitting Mills*, 320 NLRB 374 (1995) (holding that fact that employees received a salary, did not punch time clocks, received health benefits different from unit employees, and were able to adjust their own hours was not an adequate basis for excluding them from the unit); *Sears Roebuck, and Co.*, 319 NLRB 607 (1995) (holding that sales employees did not have separate community of interest from all other employees at the store); *Levitz Furniture Co.*, 192 NLRB 61 (1971) (finding that sales employees paid on commission basis shared community of interest with other non-selling employees paid only on an hourly basis).

B. A Unit of Rental Sales Agents Without Other Job Classifications Included Is Inappropriate.

The Regional Director properly found that a wall-to-wall unit is the only appropriate unit given the managerial approach, overlapping and interchanging job functions, and overall

functional integration at the Denver operation. It is abundantly clear that rental sales agents do not share a community of interest distinct from those other classifications whose duties they regularly perform on a daily basis (return agents and lot agents) and those classifications that regularly perform rental sales agent duties when needed (lead staff assistant, staff assistant, lead service agent, return agent, and exit booth agent). Indeed, the close proximity and shared duties would make it inappropriate and impractical for one group to collectively bargain without the others. By extension, the overlap and interchange among the return/lot agents, service agents, mechanics, and courtesy bus drivers dictate that these groups also should be included any unit at the Denver operation.⁸

United Rentals, Inc., 341 NLRB 540 (2004), is instructive. In *United Rentals*, the petitioned-for unit included mechanics, yard employees, and drivers, but *excluded* counter employees, a parts associate, and a branch associate. The regional director found that the petitioned-for unit was appropriate. However, on review, the Board reversed the regional director's decision and found that the petitioned-for unit was inappropriate and that the smallest appropriate unit was a facility-wide unit. The Board reasoned:

⁸ Petitioner argues that the petitioned-for unit of rental sales agents is supported by two antiquated Board decisions involving rental car companies that held that "service" employees may be in units separate from "rental" employees. See *Budget Rent-A-Car of New Orleans, Inc.*, 220 NLRB 1264 (1975); *Avis Rent-A-Car System, Inc.*, 132 NLRB 1136 (1961). These cases are inapposite. In *Budget*, which is a 36 year old case, the two classifications were separately supervised at the airport location and there was no evidence of interchange between classifications. In *Avis*, which is a 50 year old case, the facts suggest that the operations of the rental car company in 1961 were vastly different from the record developed regarding the DTG CHOICE operation in Denver in 2010. The *Avis* operation 50 years ago did not have the level of functional integration, overlapping duties, interaction, and interchange of job functions demonstrated by the record in this case. Accordingly, these decisions should have little precedential value as applied to the extensive record developed in this case.

Indeed, more recent Board decisions involving rental car companies recognize the functional integration, interaction, and coordination among job classifications and locations in modern day rental car operations. See *Budget Rent A Car Systems, Inc.*, 337 NLRB 884 (2002) (finding five Detroit area rental car stores to be functionally integrated so as to overcome the presumption that a single-site unit is appropriate); *Alamo Rent-A-Car*, 330 NLRB 897 (2000) (finding four locations in San Francisco area to be the appropriate unit); see also *DTG Operations, Inc.*, 28-RC-6704 (Mar. 23, 2010) (recognizing community of interest shared by rental sales agents, greeters, service agents, check point representatives, shuttlers, dispatchers, staff assistants, and turn back prep agents).

We find, contrary to the Regional Director, that the overwhelming and undisputed evidence of overlapping duties and interchange between the excluded employees and the petitioned-for employees, and of their common terms and conditions of employment, demonstrates that the petitioned-for unit is not an appropriate unit. We find therefore that the counter employees, parts associate, and branch associate must be included in the petitioned-for unit and that only an overall unit of employees of at the Employer's San Leandro facility is appropriate.

Although the employees in each classification at this facility have a designated function, they all "pitch in" and perform the functions of different classifications when necessary. This method of operation has resulted in excluded employees regularly and frequently performing duties in the petitioned-for unit.

* * *

The excluded employees also share common terms and conditions of employment with the employees in the petitioned-for unit. The excluded employees work similar hours and are subject to the same attendance policy as the petitioned-for employees. Furthermore, all employees at the facility are subject to common labor relations authority and oversight by [the branch manager]... All employees receive the same medical and leave benefits. The wages of excluded counter employees are comparable to the wages of drivers and most mechanics.

* * *

Accordingly, based on significant overlapping duties and interchange, common labor relations control, common oversight and assignment of work, and similar wages and benefits, we find that the excluded employees ... share such a substantial community of interest with the petitioned-for employees that they must be included in the unit.

Id. at 541-42.

Like in *United Rentals*, the excluded employees in the instant case share a substantial community of interest with the rental sales agents. As the Regional Director correctly found in this case, hourly employees at the Denver operation enjoy identical benefits, have very similar terms and conditions of employment, share common supervision, have significant daily interaction, and have regular interchange among job classifications. (Decision and Order, p. 31) Moreover, as the Regional Director succinctly noted, "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 overlap with other classifications resulting in significant amounts of interaction, interchange, and overlap in job duties during the daily operation of the facility.” (*Id.*) The well reasoned decision of the Regional Director should be affirmed.

Aside from the general premise that a wall-to-wall unit is the only appropriate unit in this case, further discussion regarding certain unique aspects of some of the work groups is warranted.

1. Staff assistants should not be excluded from the Unit.

Petitioner contends that staff assistants and lead staff assistants are “office clerical” employees who should be excluded from the unit. However, as the Regional Director correctly found, an examination of the record shows that their duties, in fact, are in the nature of “plant clerical” duties related to the production process and customer service at the Denver operation.

The record is clear that the staff assistants prepare reports, handle customer inquiries, manage the lost and found, and assist in other sales and production functions at the Denver operation. The staff assistant II who works in the maintenance building is responsible for obtaining registrations and titles for the vehicles DTG rents to customers. Staff assistants do not serve as secretaries for managers in terms of answering telephone calls, making travel arrangements, typing letters, preparing expense reports, and handling confidential information. Accordingly, the staff assistants’ duties relate to the production process and customer service and are thus “plant clerical” duties that enable them to be a part of the unit with the other employees with whom they interact. *See Extencicare Health Services, Inc.*, 347 NLRB, 544, 547 (2006); *Kroger Co.*, 341 NLRB 202 (2004); *Desert Palace Inc., d/b/a Caesars Tahoe*, 337 NLRB 1096 (2002); *Fisher Controls Co.*, 192 NLRB 514 (1971).

The staff assistants in the instant case are similar to the staff assistants analyzed in *DTG Operations, Inc.*, 28-RC-6704 (Mar. 23, 2010). In *DTG Operations*, the regional director for Region 28 found that staff assistants should not be excluded from a unit of DTG employees at DTG's Las Vegas airport location. In that case, DTG contended that staff assistants enjoyed a community of interest with the other employees at the Las Vegas operation, including rental sales agents, service agents, checkpoint representatives, courtesy bus drivers, shuttlers, and a dispatcher. After finding the DTG staff assistants to be "plant clerical" employees, the regional director concluded that staff assistants must be included in the unit of airport employees. The regional director reasoned:

[T]he staff assistants' work is integral to the Employer's car rental operations, insofar as they are responsible for ensuring an adequate supply of properly-equipped cars is available for customers at each location, that customer requests and complaints are resolved, and that the fleet is properly accounted for. In performing these duties, the staff assistants have significant direct contact with rental sales agents, courtesy bus drivers, check point representatives, and the dispatcher. Further, the staff assistants are engaged in the preparation of the vehicles themselves for rental, which includes preparing rental contracts, and, like rental sales agents, have direct contact with the public. As such, I find a functional integration of their duties with the Employer's production process.

DTG Operations, Inc., 28-RC-6704 (Mar. 23, 2010) (citations omitted).

In the instant case, the Regional Director likewise found that staff assistants at the DTG Denver operation have principal functions and duties that relate the production process. The Regional Director relied on the undisputed fact that, while the staff assistants perform some office clerical work, such as running routine reports, ordering supplies, and keeping track of accounts payable, a substantial portion of their duties involve direct interaction with the same customers served by rental sales agents, lot agents, return agents, and bus drivers. The inclusion of staff assistants in the unit in this case is especially appropriate because the record shows that

the staff assistants regularly perform the work of rental sales agents at both the Dollar and Thrifty rental counters.

2. Mechanics should not be excluded from the Unit.

DTG recognizes that mechanics often are considered to be a part of “craft units” that may have a distinct community of interest separate from other employee work groups. However, the record in this case demonstrates that the DTG Denver mechanics should be included in a wall-to-wall unit because the mechanics receive similar pay, work similar hours, have similar working conditions, and are functionally integrated with the other employee groups at the Denver operation.

To begin with, the four assistant mechanics hold no certification and all of the mechanics perform only light repair work (no engine or transmission work). Much of the maintenance work they perform on vehicles, including checking oil, fluids, etc., is similar to work performed by service agents, courtesy bus drivers, and the fleet agent.

More importantly, all of the mechanics perform other functions at the Denver operation on an as-needed basis. Specifically, all of the mechanics assist by working in the service area to increase production in that area when needed (service agent duty) and all of the mechanics assist in moving vehicles in the operation or off property when needed (shuttler duty). One assistant mechanic serves as a courtesy bus driver when needed. Finally, the fleet agent works as an assistant mechanic (a position that requires no certification) when needed.⁹

Additionally, though mechanics received an hourly wage that is higher than the other positions, their overall pay structure is similar to other employees. They receive an hourly wage

⁹ In this respect, it is clear that the record in this case differs from the record in the *DTG Operations, Inc.* case involving the Las Vegas airport employees. In that case, the Regional Director specifically noted that there was “no evidence” of interchange between mechanics and other positions. *DTG Operations*, 28-RC-6704, at 11. That is not the case in Denver.

according to the same “step schedule” as the other employees and mechanics and assistant mechanics (not bus mechanics) are eligible for incentive compensation for production (similar to rental sales agents, return agents, service agents, and exit booth agents). Moreover, mechanics are subject to the same labor/employment policies as the other employees, utilize the same timekeeping system as the rest of the employees, and receive fringe benefits identical to the other work groups. In short, given these similarities, coupled with the functional integration and interchange with other job classifications, these employees share a community of interest with the other Denver employees and should be included in an appropriate wall-to-wall unit. *See United Rentals, Inc.*, 341 NLRB 540 (2004) (holding that mechanics who worked for rental equipment company should be part of a facility-wide unit that also included drivers, yard employees, and counter employees, among others); *Sears, Roebuck & Co.*, 182 NLRB at 777 (electrical and mechanical technicians found to be part of appropriate store-wide unit of 105 employees that also included service clerks and a telephone sales solicitor).

3. The two shuttlers, the fleet agent, and the building technician should not be excluded from the Unit.

The Denver operation includes three classifications that include only one or two employees who should not be excluded from an appropriate wall-to-wall unit. The two shuttlers clearly share a community of interest with the other employees because every hourly employee in the Denver location performs shuttler duties from time-to-time. Similarly, because the fleet agent’s workload has been described as “somewhat seasonal,” the fleet agent helps out as an assistant mechanic, assists the service agents in the service area, and assists the building maintenance technician with odd jobs. At times, the fleet agent will help move cars to dealerships or auctions, which is a function performed by the shuttlers.

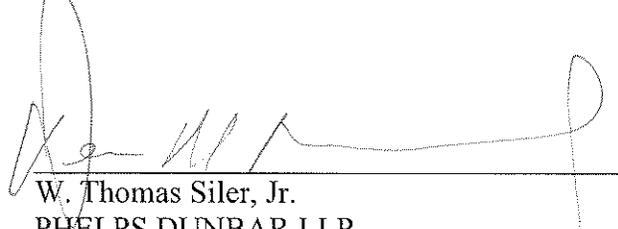
Additionally, the shuttlers, fleet agent, and building technician are paid hourly according to the “step schedule,” receive the same fringe benefits, utilize the same timekeeping procedures, report to the same group of supervisors, and are subject to the same employment policies as the other hourly employees at the Denver location. Thus, the shuttlers, the fleet agent, and the building technician clearly share a community of interest with the other job classifications.

Moreover, it is contrary to Board policy for there to be bargaining units consisting of only one employee. *Roman Catholic Orphan Asylum*, 229 NLRB 251 (1977); *Sonoma-Marin Publishing Co.*, 172 NLRB 625 (1968); *Griffin Wheel Co.*, 80 NLRB 1471 (1947). Likewise, it is unlikely that any union would ever be interested in organizing a group of one or two employees. Thus, excluding the shuttlers, the fleet agent, and the building technician from the unit would deprive them of their freedom of choice in exercising their rights under the NLRA. As such, for this reason alone, they should be included in the wall-to-wall unit that is appropriate in this case.

CONCLUSION

For the foregoing reasons, DTG respectfully requests the Board to affirm the decision of the Regional Director and find that the petitioned-for unit consisting of only lead rental sales agents and rental sales agents is not an appropriate unit and that the only appropriate unit at the DTG Denver operation is a facility-wide unit consisting of all hourly employees.

Respectfully submitted,



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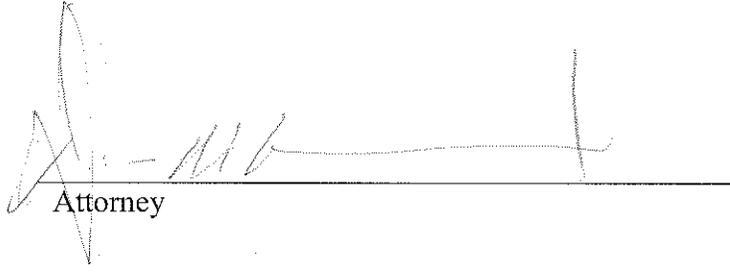
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Employer's Brief has been served on the following via electronic mail and/or facsimile:

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