

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 17**

TULSA, OKLAHOMA

HERTZ TRANSPORTING, INC.<sup>1</sup>

Employer

and

Case 17-RC-12530

TRANSPORT WORKERS UNION,  
AIR TRANSPORT DIVISION

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on February 19, 2008, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine if the petitioned-for unit comprised solely of on-lot transporters<sup>2</sup> employed by the Employer at its Tulsa, Oklahoma facilities constitutes an appropriate unit for the purposes of collective bargaining.<sup>3</sup> No other issues were raised in this matter.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> During the course of the hearing the terms transporter and hiker were used interchangeably.

<sup>3</sup> Upon review of the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. Commerce Facts: Hertz Transporting, Inc., the Employer, is incorporated in the State of Delaware and is engaged in the car rental industry at its locations at 7727 East Young Place and 2110 North 73<sup>rd</sup> East Avenue, Tulsa, Oklahoma, the only locations involved herein. During the past 12 months, a representative period, the Employer, in the course and conduct of its business operations, derived gross annual revenue in excess of \$500,000. During the same period, the Employer purchased and received goods, supplies, and materials valued in excess of \$50,000 directly from sources located outside the State of Oklahoma.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

For reasons discussed in detail below, it is concluded that the Petitioner has failed to demonstrate that a unit comprised solely of on-lot transporters is an appropriate unit for the purposes of collective bargaining. Instead, it is determined that the appropriate unit should include both on-lot and off-lot transporters employed by the Employer.

Accordingly, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time transporters, including on-lot and off-lot transporters, employed by the Employer at its 7727 East Young Place and 2110 North 73<sup>rd</sup> East Avenue, Tulsa, Oklahoma locations, but EXCLUDING counter sales representatives, instant return representatives, vehicle service attendants, mechanics, secretaries, office clerical employees, guards and supervisors as defined in the act and all other employees.

There are approximately thirty-one employees employed in the appropriate unit; nineteen on-lot transporters and twelve off-lot transporters. The Petitioner has stated its desire to proceed to an election in a broader unit if the petitioned-for unit was found not appropriate and has a sufficient showing of interest to support proceeding in the unit found appropriate herein.

## **I. ISSUE**

The Petitioner seeks an election in a unit which would consist of all full-time and regular-part time on-lot transporters employed by the Employer, at its Tulsa, Oklahoma locations. Contrary to the Petitioner, the Employer asserts that the only appropriate unit would include both on-lot and off-lot transporters.

## II. STATEMENT OF FACTS

### A. Operations Overview

The Employer is a Delaware corporation engaged in the car rental industry from its 7727 East Young Place and 2110 North 73<sup>rd</sup> East Avenue, Tulsa, Oklahoma locations. The Employer, in the course of its operations employs counter service sales representatives, instant return representatives, vehicles service attendants, mechanics, on-lot transporters and off-lot transporters. The counter service sales representatives, instant return representatives, vehicles service attendants, and mechanics are represented for the purposes of collective bargaining by the Transport Workers Union AFL-CIO, Local Union No. 516. As a consequence, it appears that the on-lot and off-lot transporters are the Employer's only non-supervisory employees not currently represented by a labor organization.

The Employer's facilities are made up of distinct areas including a parking lot, instant return area, quick turnaround area and service center. The parking lot, instant return area, and quick turnaround area are located at the 7727 East Young Place location, also referred to as the airport location. The service center is located at 2110 North 73<sup>rd</sup> East Avenue, approximately one mile from the airport location, and consists of a maintenance area and a car wash.

After the customer returns their vehicle to the instant return area, it is the responsibility of the on-lot transporter to shuttle that vehicle to either the quick turnaround area or the service center, depending on the servicing needs of the vehicle. Vehicles requiring more extensive servicing are taken to the service center. After

servicing, the on-lot transporter shuttles the vehicle to the parking lot where it awaits further rental.

Like the on-lot transporters, off-lot transporters are required to shuttle vehicles from various locations to either the quick turnaround area or the service center. The off-lot transporter obtains their vehicles from sites, that as their name suggests, are not located at the Employer's Tulsa facilities. Typically, off-lot transporters obtain their vehicles from licensee locations such as those located in Arkansas. Two off-lot transporters, Charlie Faulkner and Lester Gulley also shuttle vehicles to and from Tulsa area body shops for more extensive servicing and repair needs.

B. Supervisory Hierarchy

The Employer and Petitioner stipulated at hearing that the following employees are supervisors within the meaning of Section 2(11) of the Act, and as such possess the authority to hire, fire, transfer, suspend, layoff, recall, promote, assign, reward or discipline employees or can effectively recommend such action and utilize independent judgment to do the same:

|                  |   |                           |
|------------------|---|---------------------------|
| Richard P. Eloe  | - | Area Manager – Tulsa Area |
| Joshua Stokes    | - | Senior Location Manager   |
| Heather Caldwell | - | Senior Revenue Manager    |
| Lisa Bullard     | - | Office Manager            |
| Ed Jenen         | - | Maintenance Manager       |
| Matt Spradlin    | - | Location Manager          |
| Donna Jones      | - | Location Manager          |
| Ray Zainatieh    | - | Location Manager          |

Accordingly, the aforementioned employees are excluded from the appropriate unit as statutory supervisors. The parties further stipulated at hearing that lead off-lot transporters Lester Gulley, Rose Huibich, and Charles Faulkner do not possess the indicia of supervisory status as set forth in Section 2(11) of the Act and should be included in the appropriate unit should it be determined that off-lot transporters are included in the appropriate unit. Accordingly the aforementioned lead off-lot transporters are included in the appropriate unit.

The Senior Location Manager, Senior Revenue Manager, Office Manager, Maintenance Manager and Location Managers report directly to Area Manager Richard Elo. Senior Location Manager Joshua Stokes is in charge of the day to day operations of the airport location. Senior Revenue Manager assists with the supervision of the airport location when Stokes is unavailable.

The on-lot transporters report to the location manager on duty. Off-lot transporters report to Office Manager Lisa Bullard. During Bullard's non-working hours, off-lot transporters report to the location manager on duty.

### C. Transporter Skills, Training and Interchange

Both on-lot and off-lot transporters are not required to have any special skills, and need only possess a valid driver's license in order to transport vehicles. After hire, both on-lot and off-lot transporters receive training via an Internet program and are required to complete recurrent driving training.

Because of the on-lot and off-lot transporters similarity in skills and duties, they often perform work interchangeably. In times of high demand, off-lot transporters are required to perform on-lot transporter duties. Certain transporters,

Gene Gerlach, Stephen Hager, and K.C. Waleski, have traditionally performed both on-lot and off-lot transporter duties. Within the past few months, on-lot transporter Charlie Faulkner permanently transferred to an off-lot transporter position, and recently, transporter Stephen Hager elected to become strictly an on-lot transporter. Since his election, however, Hager has performed off-lot transporter duties on at least one occasion.

#### D. Transporter Hours and Compensation

The Employer's hours of operation are 6:30 am to 12:00 am seven days per week. All on-lot and off-lot transporters are part-time employees who work various hours between 5:30 am and 9:00 pm throughout the week. On-lot transporters have a set weekly schedule while off-lot transporters work on an as-needed basis. On-lot and off-lot transporters work a similar number of hours per week, with on-lot employees receiving a few more hours per week than their off-lot counterparts.

On-lot and off-lot employees earn \$7.00 per hour with a twenty-five cent differential for all hours worked after 1:00 pm. Lead off-lot transporters Lester Gulley, Rose Huibich, and Charlie Faulkner earn between \$7.25 and \$7.75 per hour. Neither on-lot nor off-lot transporters receive benefits.

#### E. Transporter General Working Conditions

On-lot and off-lot transporters go through the same hiring process. Applicants complete the same employment application forms and are interviewed by Senior Location Manager Joshua Stokes, Office Manager Lisa Bullard or a Location Manager, depending on who is available. Final hiring decisions are made by either Stokes or Bullard. Once hired, both on-lot and off-lot transporters are provided with

the same orientation packet and are subject to the same employer policies, procedures and safety rules including the “Transporter Safety Rules and Responsibilities.”

On-lot and off-lot transporters park their personal cars on site at 2110 North 73<sup>rd</sup> East Avenue, report to work at the service center, punch a time clock located in a common hallway of the service center, and have access to the same break room and rest rooms. Both on-lot and off-lot transporters are provided lockers at the service center. Neither on-lot nor off-lot transporters are required to wear uniform.

### **III. ANALYSIS**

#### **A. Community of Interest**

The determination of whether a unit is appropriate for the purposes of collective bargaining turns on the degree to which the employees involved share a community of interest. When the interests of a group of employees are dissimilar from those of another group a separate unit is appropriate. *Swift & Co.*, 129 NLRB 1391 (1961). When however, the interests of the group in question are not sufficiently separate from the larger group, a more comprehensive unit will be required.

The community of interest analysis considers functional integration, frequency of contact with other employees, common supervision, degree of skill and common functions, employee interchange, and commonality of wages, hours and other working conditions. *Engineered Storage Products Co.*, 334 NLRB 1063, 1065 (2001) and *Publix Super Markets, Inc.*, 343 NLRB 1023 (2004). Application of the community of interest factors demonstrates that on-lot transporters do not share a

separate community of interest significantly distinct from off-lot transporters, and as a consequence a unit consisting solely of on-lot transporters is not appropriate.

B. Review of Community of Interest Factors

1. *Functional Integration and Employee Contact*

All of the Employer's employees are involved in a highly integrated enterprise. Cars are received from the Employer's customers and it is then the function on the on-lot and off lot transporters to move those cars through the Employer's system of maintenance and finally to transfer those cars to a position where they can be put back into rental service.

While there is scant evidence in the record of contact among on-lot and off-lot transporters on a daily basis, there is evidence that off-lot transporters perform on-lot duties from time to time, which would certainly put them in contact with other on-lot transporters. In addition both on-lot and off-lot transporters have extensive contact with employees throughout the rental system.

2. *Common Supervision*

As a group, transporters are on duty for 15.5 hours per day (5:30 am to 9:00 pm), seven days per week, consequently, assuming that Office Manager Lisa Bullard works a standard 40-hour work week, on-lot and off-lot transporters share the common supervision of the Location Manager for a majority of their collective-working hours.

3. *Employee Skill, Function, and Interchangeability*

On-lot and off-lot transporters possess the same skills and training and perform the same function -- transporting cars throughout the Employer's rental and



service system. As a result, on-lot and off-lot transporters perform work interchangeably. Several employees have worked as both on-lot and off-lot transporters, and have transferred between the two classifications. In addition, off-lot transporters are called on to perform on-lot work during times of need.

#### *4. Commonality of Wages and Hours*

On-lot and off-lot transporters receive the same wages and benefits. While on-lot transporters may receive on average a few more hours per week, both on-lot and off-lot transporters work a part-time schedule, with varying hours throughout the Employer's work week.

#### *5. Commonality of Working Conditions*

On-lot and off-lot transporters are subject to the same hiring procedures, employer policies, regulations and safety rules. On-lot and off-lot transporters report to the same work situs, punch a time clock, and have access to the same break and restroom facilities. Neither on-lot nor off-lot transporters are required to wear a uniform.

An analysis of the foregoing factors demonstrates that on-lot transporters and off-lot transporters share an overwhelming community of interest and that a unit comprised solely of on-lot transporters is inappropriate. The interests of on-lot transporters are merged with the interests of off-lot transporters. As a result the only appropriate unit includes both on-lot and off-lot transporters.

#### C. Residual Unit

The Employer raises an additional argument that off-lot transporters should be included in the appropriate unit with on-lot transporters as a residual unit to the

Employer's other employees. In regards to residual units the Board has stated that when a portion of an Employer's workforce is already represented then the proper analysis is to evaluate petitions to represent remaining employees "first to determine whether the petitioned-for employees share a separate and distinct community of interest apart from the represented unit." *Carl Budding and Company*, 328 NLRB 929, 930 (1999). However, no evidence was adduced at hearing regarding the community of interest factors vis-à-vis the unit already represented. Moreover, since I have concluded that the on-lot and off-lot transporters are both included in the appropriate unit for community of interest reasons, it is unnecessary to address the Employer's residual unit argument.

#### **IV. CONCLUSION**

Because the record fails to establish that the petitioned-for unit consisting of solely on-lot transporters is an appropriate unit for the purposes of collective bargaining, I find that off-lot transporters will be included in the appropriate unit and direct an election therein.

#### **V. DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the TRANSPORT WORKERS UNION, AIR TRANSPORT DIVISION.

## **VI. ELECTION NOTICES**

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received

copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

## **VII. LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 17 within 7 days from the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, Suite 100, 8600 Farley, Overland Park, Kansas 66212, on or before **March 10, 2008**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of

such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.)

If you have any questions, please contact the Regional Office.

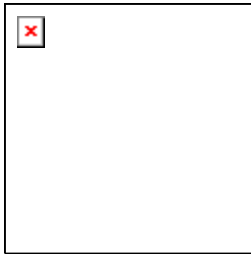
#### **VIII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m. (ET) on **March 17, 2008**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlrb.gov](http://www.nlrb.gov). On the home page of the website, select the E-Gov tab and click E-Filing. Then select the NLRB office for which you wish to E-File your

documents. Detailed E-filing instructions explaining how to file documents electronically will be displayed. The request for review may not be filed by facsimile.

SIGNED at Overland Park, Kansas, this 3<sup>rd</sup> day of March 2008.



/s/ Daniel L. Hubbel  
Daniel L. Hubbel, Regional Director  
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