

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10

UNITED RENTALS (NORTH AMERICA), INC.

Employer

and

Case 10-RC-15446

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 474

Petitioner

REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION

United Rentals (North America), Inc. is a Delaware corporation engaged in the rental and sale of construction equipment, contractor supplies, and tools to individuals and companies at various locations in the United States, including a facility located at 1312 Highway 80 West, in Garden City, Georgia. The Petitioner, International Union of Operating Engineers, Local 474, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit consisting of all mechanics, tractor-trailer drivers, truck drivers, customer service associates, and parts associates employed by the Employer at the Garden City facility; excluding all inside sales coordinators, the branch associate, commissioned sales representatives, office clerical employees, professional employees, guards and supervisors as defined in the Act.<sup>1</sup> A hearing officer of the Board held a hearing, the parties made oral argument and filed post-hearing briefs, which have been duly considered.

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<sup>1</sup> The unit description appears as amended at the hearing.

The Petitioner seeks to represent a unit of 10 of the 17 employees at the Employer's Garden City location. The Employer raises two issues herein, both of which involve unit composition: First, the Employer, contrary to the Petitioner, would include the three "inside" sales coordinators. Second, the Employer, contrary to the Petitioner, would include the branch associate. The Petitioner argues that none of these four employees<sup>2</sup> shares a community of interest with the other 10 employees in the unit sought.

I have considered the evidence and the arguments presented by the parties on each of the issues. As discussed below, I have concluded that the three sales coordinators do not have a sufficiently separate community of interest to warrant their exclusion from the unit sought by the Petitioner. In view of the substantial community of employment interests they share with unit employees, I shall include them. As to the branch associate, I have concluded that she is an office clerical employee, and therefore is excluded from the unit.<sup>3</sup>

To provide a context for my discussion of these issues, I will first provide an overview of the Employer's operations. I will then present in detail the facts and reasoning that support each of my conclusions on the issues.

### **I. OVERVIEW OF THE EMPLOYER'S OPERATIONS**

As is described above, the Employer is engaged in the rental and sale of construction equipment, contractor supplies, and tools to individuals and to construction contractors at various locations, including the facility located in Garden City, Georgia. Equipment available for rental at the facility includes track loaders, backhoes, dump

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<sup>2</sup> The three inside sales coordinators are: Dale Kermit Dover, Jr.; Christopher T. Sasser; and Michael Earl Weatherly. The one branch associate is Bertha Violet Martin.

<sup>3</sup> The Petitioner stated at the hearing that it will proceed to an election in any unit found appropriate.

trucks, excavators, compaction equipment, and various types of lifts, generators and compressors. Also available are smaller items, such as handheld power tools, gloves, and boots. About 80% of the revenue generated at the Garden City facility is derived from rentals, the balance from sales. More than 90% of the rental customers are construction contractors (as opposed to private individuals).

The Garden City facility is entered through two gates, and contains a building and a large yard. The building measures 175 feet by 50 feet, and contains two floors. The work areas are on the first floor, including the shop, the showroom, four offices, the counter area (opening out from the offices to the showroom), breakroom, and restroom. The second floor contains a large storage area. All but three employees (the branch associate; the parts associate, and the customer service associate, also called the yardman) have keys to the outer gates, and two employees (the parts associate and the senior sales coordinator) have keys to the upper storage area. Branch Manager Samuel Burns and Service Manager Scott Flint have keys to all areas. The facility is open on weekdays from 7 AM to 5 PM, with employees reporting at staggered times. During the warmer weather months beginning in the springtime, the facility is open during some weekend hours.

## **II. THE COMPOSITION OF THE UNIT**

As is stated above, the Employer employs 17 employees at the Garden City facility. These employees are supervised by Branch Manager Burns and Service Manager Flint.<sup>4</sup> The Petitioner seeks to represent 10 of these employees, including five mechanics; three tractor-trailer drivers; one customer service associate (also called the

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<sup>4</sup> The parties stipulated and I find that Burns and Flint are supervisors within the meaning of Section 2(11) and are therefore excluded from the unit.

yardman); and one parts associate. The Employer would include four more employees: the three sales coordinators; and one branch associate. The remaining three employees are “outside” sales or commissioned sales representatives whom the parties stipulated should be excluded from the unit.

The 10 employees the Petitioner seeks to represent work in the following areas and perform the following duties: The five mechanics spend about 70% of their work time on the shop floor, and about 30% in the showroom or the yard. The direct supervisor in the shop is Service Manager Flint, who “signs off” on all returned and repaired equipment. The mechanics are required to check every piece of returned equipment (located in the yard, the shop, or elsewhere at the facility). They decide whether any repair is needed and perform most of the repair work, particularly on heavy equipment. They also assist in loading and unloading equipment, and are responsible for keeping the shop clean. There is always one mechanic “on-call” with two other designated employees (one driver and one sales coordinator) during off-hours on a weekly rotating basis, for customer calls in the case of breakdowns or requests to swap equipment.<sup>5</sup>

The three tractor-trailer drivers spend most of their time on the road making deliveries to customers. They make deliveries in semi-trucks and trailers and they occasionally make deliveries of smaller items in the Employer’s pick-up trucks on an as-needed basis, usually about once a month. From time to time, they also quote prices to customers, usually at a job site or in the showroom. They are permitted to negotiate within pre-set price ranges listed in Employer rate sheets. The drivers also spend a

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<sup>5</sup> All employees are provided a radio and a cellphone. The Employer provides its answering service each night with the names and telephone numbers of the three on-call employees.

portion of the work day at the facility, assisting as needed throughout the branch, including loading and unloading equipment in the yard, suggesting equipment or supplies to customers, and making minor equipment repairs. They are dispatched to customers or job sites by one of the sales coordinators.

The last two of ten employees in the unit urged by the Petitioner are the parts associate and the customer service associate (also called the yardman). Both report to work at around 7 AM. The parts associate shares one of the offices adjacent to the showroom with Service Manager Flint. She uses the computer terminal in that office and she has password access to the Employer's internal corporate software program (called Rental Man).<sup>6</sup> She spends the majority of her work day working at the computer terminal, keying in work orders, ordering parts, checking inventories, doing credit memos, and equipment searches. She will occasionally fill in a standard form contract for a customer. She also spends part of the work day in the shop or the showroom adjacent to her work area. The customer service associate (or yardman) works throughout the Employer's facility, loading, unloading or washing equipment, assisting with customer inquiries, and performing minor equipment repair. He assists as needed throughout the branch.

The three disputed insides sales coordinators share an office adjacent to the showroom floor with the three "outsides" sales representatives the latter of whom both parties agree should be excluded. (This office is next to the branch manager's office.)

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<sup>6</sup> Others with password access to this program are the branch manager, the service manager, the branch associate, the inside sales coordinators, and the outside sales representatives.

The inside sales coordinators spend about 70% of their time in the showroom<sup>7</sup>, and the balance in the shop area and the yard. They are responsible for customer counter sales, servicing walk-ins and phone inquiries. They have primary responsibility to type in customer information on the Employer's standard form contracts, and to negotiate within the pre-set price range established by the Employer, listed in rate sheets.<sup>8</sup> They also ensure that the showroom is clean and presentable, and is sufficiently stocked with proper merchandise and inventory. They usually walk the yard in the early morning, to see what equipment is available. They spend the balance of the day checking or demonstrating equipment, speaking to the mechanics, and otherwise assisting customers. They also assist in loading and unloading equipment, as circumstances warrant. About once every week or so, the sales coordinators make small equipment deliveries to customers, using the Employer's pick-up trucks. They make these deliveries on an as-needed basis.

The last of the four disputed employees whom the Employer would include is the branch associate. She works in another office located off the showroom floor (opening out to the counter area), next to the office of the inside sales coordinators on one side, and to the breakroom, on the other. Her duties include receiving mail, UPS orders, office supplies (and sometimes merchandise), arranging displays in the showroom, processing accounts receivable, and entering hours worked by employees for payroll preparation purposes. She has a computer terminal in her office and has password access to the Employer's software system. She answers the phones, takes rental calls, service calls and sales calls. She calls customers if payment is more than 30 days overdue, though a

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<sup>7</sup> The Petitioner argues in its post-hearing brief that the sales coordinators spend far less time outside the showroom. However, the only evidence on this point was the testimony of Branch Manager Burns, who testified that the sales coordinators spend 70% of their work time in the showroom.

<sup>8</sup> Most customers are billed by the Employer's corporate credit department, though the inside sales coordinators are also authorized to do cash, personal check, and credit card transactions.

corporate collection analyst is responsible for collections in the corporate district in which the branch is located. She distributes employment forms to employees, and enters some employee data (e.g., results of drug tests) in the Employer's computer system.<sup>9</sup> She apparently does not spend any time at all in the shop or the yard.<sup>10</sup> She and the service manager are the only two individuals who have keys to the Branch Manager's office.

All 14 employees, including the four whom the Employer would include, share many terms and conditions of employment in common. All are paid at an hourly rate.<sup>11</sup> On an annualized basis, current rates as of April 1, 2004 yield, for the five mechanics, between \$28,000 and \$38,000; the three tractor-trailer drivers earn between \$27,000 and \$32,000; the remaining two the Petitioner would include, the parts associate and the customer service associate, earn between \$23,000 and \$24,000. The three sales coordinators whom the Employer would include earn between \$31,000 and \$37,000, similar in range to the mechanics and the tractor-trailer drivers. The branch associate whom the Employer would include is at the bottom end of the scale, in the same range as the parts associate and the customer service associate. All employees punch a timeclock and are eligible for overtime.

As to benefits, all employees at the branch are subject to the same Employer policies regarding holidays, vacations, sick leave, health care plans, awards programs, and 401(k) plan. All are eligible for profit-sharing, though there are separate plans for

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<sup>9</sup> The Branch Manager testified he considered the drug test results data to be confidential. He pointed out, however, that the branch associate does not have access to other computerized employee files used by management which contain information related to merit increases, profit sharing, or other employee information used by higher management.

<sup>10</sup> She is the only employee not required to wear steel-toed safety shoes; all employees who drive or who work in the shop, yard, or storage areas are required to wear safety shoes.

<sup>11</sup> The Petitioner states in its post-hearing brief that the "sales coordinators were paid on a commission basis until the company received knowledge the union was around then the sales coordinators were paid salary as of April 1, 2004." There is no evidence in the record to support this assertion.

three different groups of employees: (1) salaried and outside sales; (2) mechanics and drivers (8 of the 10 the Petitioner seeks to represent); and (3) all other employees who are not mechanics or drivers. Most employees wear some kind of uniform: the mechanics, drivers, and the customer service associate (the yardman) wear a full uniform; and the other employees wear a polo-type shirt bearing corporate logo and khaki pants. All employees are subject to the same company-wide hiring procedures, rules and regulations, and handbooks. All are subject to the same corporate policies covering: safety; business ethics; intranet mail and electronic communications; anti-harassment; drug and alcohol; and dispute resolution.

There is regular daily contact and coordination among this small group of 14 employees, including the 10 sought by the Petitioner. For example, the mechanics regularly come into the showroom, to the counter, to see what equipment is scheduled to be delivered. The sales coordinators regularly visit the shop, to ask technical questions, to view equipment, and to demonstrate and show equipment to customers. There is also overlap in job functions: Drivers and sales coordinators perform minor equipment repairs. Mechanics, drivers, the customer service associate, and the sales coordinators assist in loading and unloading equipment. Mechanics and sales coordinators demonstrate equipment to customers. A few times a month, sales coordinators make deliveries of small equipment. Drivers, like sales coordinators, are authorized to negotiate rates with customers within a pre-set range.

I turn now to the question of unit composition. It is well settled that a petitioning union's desire as to unit, though relevant, cannot be dispositive. Airco, Inc., 273 NLRB 348 (1984). Regardless of the petitioner's desire, the unit sought must be appropriate –

not the *only* appropriate unit, or the ultimate unit, or the *most* appropriate unit; the Act requires only that the unit be *an* appropriate one. Bartlett Collins Co., 334 NLRB 484 (2001). The appropriateness of a unit such as that sought by the Petitioner herein is determined by application of traditional community of interest analysis. United Rentals, Inc., 341 NLRB No. 72 (2004); see also Schafer Brewing Co., 198 NLRB 323, 324-5 (1972); U.S. Plywood-Champion Papers, 174 NLRB 292 (1960); Sears, Roebuck and Co., 319 NLRB 607 (1995); and Esco Corp., 298 NLRB 837 (1990). Applying this analysis, I find that the three inside sales coordinators do not have a separate community of interest apart from the ten employees sought by the Petitioner such as to warrant their exclusion from the unit herein. In reaching this conclusion, I note the following:

The three sales coordinators are subject to the same supervision as unit employees, and work in the same small work area, in close proximity to the ten employees the Petitioner seeks to represent. They are subject to identical terms and conditions in many respects, including corporate policies relating to health plans, vacations, sick leave, awards program, safety, and employee rules and regulations. Further, the three sales coordinators have regular daily contact with other employees the Petitioner seeks to represent, including the five mechanics, and the parts associate who works in the same work area, just off the showroom floor. Though the coordinators are primarily responsible for customer sales, there is functional overlap in their job duties. The record shows they regularly load and unload equipment, make repairs (albeit minor ones), demonstrate equipment and make deliveries to customers, all of which are duties regularly performed by other unit employees. In sum, the foregoing establishes that the three sales coordinators do not have a sufficient separate community of interest to

warrant their exclusion. Rather, the record establishes that they share a strong community of interest with other employees the Petitioner seeks to represent. I shall, therefore, include them in the unit.

Turning to the branch associate, the Employer, contrary to the Petitioner, contends that she shares a community of interests with other unit employees, that she “regularly performs manual labor and is no more a clerical employee than . . . the parts associate,” and that she should therefore be included. However, based on the record herein and applicable law, I find that the branch associate is an office clerical employee and is therefore excluded from the unit. In reaching this conclusion, I note the following:

The distinction between office clerical employees, who are generally excluded from production and maintenance units, and plant clerical employees, is not always clear. Hamilton Halter Co., 270 NLRB 331 (1984). A key focus in the analysis is whether the employee’s functions are related to the production process or related to general office operations. An “office clerical” typically performs billing, payroll, phone, mail, and accounting functions. Dunham’s Athleisure Corp., 311 NLRB 175 (1993); Brown & Root, Inc., 314 NLRB 19, 24 (1994). Typical “plant clerical” duties include timecard collection, transcription of sales orders, maintenance of inventory and ordering supplies, and other clerical work to facilitate production. Oftentimes, an employee may share characteristics of both categories, making the distinction more difficult to draw. Hamilton Halter, *supra*, 270 NLRB at 331.

On the basis of the record as a whole, I find that the branch associate’s tasks are more closely akin to those performed by office clericals rather than those performed by plant clericals. Though she performs some functions related to production, such as

sometimes receiving merchandise<sup>12</sup>, the bulk of her time is apparently spent in the performance of typical office clerical functions, such as receiving mail, office supplies and UPS orders, answering phones, processing accounts receivable (including calling customers regarding payment), maintaining computer payroll information and entering other employee data (such as drug test results, considered to be confidential by Branch Manager Burns). The more traditional plant clerical functions are performed by the parts associate (included in the unit herein) who keys in work orders, orders parts, checks inventory, does credit memos, and performs equipment searches. Though the branch associate enjoys the same fringe benefits and is subject to the same Employer policies as unit employees, the record shows that she spends very little, if any, time in the shop or the yard<sup>13</sup>, where most of the unit employees spend at least part of the work day. In view of the foregoing, I find that the branch associate is an office clerical employee and is therefore excluded from the unit.<sup>14</sup>

### **III. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>12</sup> The record shows she recently spent about a day or so helping to reconfigure the showroom.

<sup>13</sup> She is the only employee not required to wear safety shoes, mandatory for employees who work in the shop or the yard.

<sup>14</sup> In United Rentals, *supra*, at fn. 11, a recent case involving a different facility of the same employer herein, the Board included the branch associate in a facility-wide unit because otherwise, she would have been the only unrepresented employee at the facility. In its post-hearing brief, the Employer cites this recent case, arguing that the branch associate “**must** be included in the unit so that she is not left isolated, without even the possibility of representation.” [Emphasis in original.] However, the branch associate is not left “isolated,” as there are three other employees not included in the unit, the three outside sales commissioned representatives whom the Employer and the Petitioner stipulated should be excluded.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer employed at the Employer's facility located in Garden City, Georgia.

4. 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.

5. 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 mechanics; tractor-trailer drivers; drivers; customer service associates; parts associates; and inside sales coordinators employed by the Employer at its facility located at 1312 Highway 80 West, Garden City, Georgia; excluding commissioned sales representatives; office clerical employees (including branch associate); professional employees; guards and supervisors as defined by the Act.

#### **IV. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union of Operating Engineers, Local 474. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

**A. Voting Eligibility**

Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately before 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. Unit employees in the military Services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began; and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure 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, which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon

Company, 394 U.S. 759 (1969). Accordingly it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I shall make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303, on or before April 22, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (404) 331-2858. Since the list will 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. If you have any questions, please contact the Regional Office.

### **C. Notice Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to

the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**V. 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, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 P.M., (EDT) on April 29th, 2004. The request may **not** be filed by facsimile.

Dated at Atlanta, Georgia, on this 15th day of April, 2004.

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