

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

RENTAL SERVICE CORPORATION¹,

Employer,

and

Case 27-RC-8315

TEAMSTERS LOCAL UNION NO. 435²,

Petitioner.

DECISION AND DIRECTION OF ELECTION

On March 19, 2004, Teamsters, Local No. 435 filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent certain employees of the Employer employed at Store Nos. 585 and 290,³ both located at 11250 East 40th Avenue, Denver, Colorado. Daniel L. Robles, a hearing officer of the National Labor Relations Board, conducted a hearing on April 2, 2004. Following the hearing, the parties filed briefs.

The sole issue to be resolved in this case relates to the appropriate scope of the unit. The Petitioner seeks to represent a unit consisting solely of the mechanics employed at the Employer's facility. The Employer contends that,

¹ The name of the Employer appears as amended at the hearing.

² The name of the Union appears as amended at the hearing.

³ At hearing it was stipulated that the store numbers refer to cost center designations. The two cost center designations, which occupy a single premises, will be referred to as the "Employer's facility."

because of alleged functional integration, common working conditions and common supervision, the petitioned-for unit is not appropriate and that an election must be directed in a unit that includes the mechanics, drivers, rental techs, parts employees and warehouse employee working at the Employer's facility. I conclude for the reasons fully enunciated below that the petitioned-for unit is appropriate.⁴

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing on April 2, 2004 are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of section 2(6) and (7) of the Act and that it is subject to the jurisdiction of the Board. Specifically, the Employer is a Delaware corporation engaged in the business of renting and servicing construction and industrial equipment from various facilities in a number of Colorado cities, including Denver. During the past 12 months, the Employer purchased and received at its Colorado facilities goods and services valued in excess of \$50,000 directly from suppliers located outside the State of Colorado.

3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

⁴ In the event the petitioned for unit was determined to not be appropriate, the Petitioner indicated a willingness to proceed to an election in an alternative unit that included the mechanics, one of the rental techs, the parts employees and the warehouse employee. Because I have determined that the petitioned-for unit is appropriate, it is unnecessary to discuss the alternative unit.

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, and it will effectuate the purposes of the Act to assert jurisdiction herein.

5. It is appropriate to direct an election in the following unit of employees:

INCLUDED: All full and regular part time mechanics employed by the Employer at its facility located at 11250 East 40th Avenue in Denver, Colorado.

EXCLUDED: All drivers, rental techs, parts employees, warehouse employees, professional employees, office clerical employees, guards, and supervisors as defined by the Act.

STATEMENT OF THE CASE

1. Facts

A. Background:

The Employer, Rental Service Corporation, rents small hand tools up to very large equipment, including large man lifts, front-end loaders, dump trucks, water trucks, generators, and air compressors. The Employer currently has 46 employees at its Denver facility that are the subject of this decision. Of those 46 employees, 22 of these are mechanics; 19 are drivers, 2 are rental techs, 2 are parts employees⁵ and 1 is a warehouse employee. The mechanics perform

⁵ The parties agreed that the term “parts employee”, “parts coordinator” and “parts clerk” all referred to the same job title. For purposes of simplicity, I will refer to the position as “parts employee.” Similarly, in the record and in the briefs, the warehouse employee is sometimes referred to as the “warehouse coordinator,” and the rental techs are also referred to as “rental technicians”. I will refer to these employees as “warehouse employee” and “rental techs”.

maintenance and repair work on the “rental fleet,” which is the equipment that is rented out to customers. The mechanics do not perform maintenance and repair on the “delivery fleet,” which is composed of small, medium and semi-trailer trucks. The drivers use the delivery fleet to deliver the rented equipment to the customers and later to retrieve this same equipment.

The employees all work in or out of the Employer’s facility. It is a large building with several different work areas. In the northwest area is the administrative area, which contains the offices of the various managers. On the west side of the building is the rental counter, the sales floor, access to the parts window, the storage area of the small equipment rented by Store 290, and the area in which the rental tech area for Store 290 works. Moving from west to east, there is the wash bay, where the equipment is cleaned after being repaired, then three individual stalls for small tool and electrical repair. The shop mechanics’ bays are dispersed through the middle main portion of the facility. The east side of the building is the dispatch area, where three dispatchers work.

B. Mechanics:

The mechanics are divided into four basic classifications: field mechanics, Level I, Level II, and Level III mechanics.⁶ There are three field mechanics, who

⁶ These mechanics are also referred to in the record as Field Service Mechanic, Mechanic I, Mechanic II and Senior Mechanic.

all report directly to Tom Carter, their dispatcher. Carter reports to James Hagan, the Service Shop Supervisor.⁷

Field mechanics perform their work at the location of the rented equipment at the time it requires servicing or repair. If the equipment breaks down or otherwise requires maintenance or if a customer does not know how to operate it, a field mechanic will be dispatched to repair the equipment or to provide instruction. If the field mechanic cannot get a piece of equipment repaired in less than about an hour or if it turns out to need major repair, the field mechanic will contact dispatch, who will send a driver out to take the equipment into the shop. The field mechanic is called upon to work on every piece of equipment that the Employer rents. Thus, the field mechanic is required to have a broad range of knowledge and expertise.

A field mechanic normally simply calls the Employer's facility each morning from his home and is dispatched directly to a job site. After that particular job is completed, the field mechanic will call his dispatcher (Carter) again and typically be dispatched directly to another job. If a field mechanic does not have any jobs to report to, either first thing in the morning or during the day, he will report to the Employer's facility. While field mechanics are not required to report to the Employer's facility each day, they are required to keep track of their

⁷ The parties stipulated that Tom Carter, Dispatcher; Justo Lopez, Dispatcher; Perry Johnson, Dispatcher; James Hagan, Service Shop Supervisor; Brian Kuchynka, General Manager of Store 585; Jeff Rusan, Operations Manager of Store 290; and Tom Glover, District Manager, all possess supervisory authority within the meaning of Section 2(11) of the Act. As the record supports this stipulation, I find that these individuals are supervisors within the meaning of Section 2(11) of the Act and shall exclude them from the unit found appropriate.

hours on the job. Field mechanics take lunches and breaks on the jobsite or on the road.

Level I, Level II and Level III mechanics are all referred to as “shop” mechanics, because they work solely in the Employer’s facility. They receive work assignments either directly from Service Shop Supervisor Hagan or by simply working on the next piece of equipment in line in the yard. They use a work-order system in the computer to open new orders, enter the maintenance and repairs done by each mechanic, the time spent on each repair, and, if necessary, pass a more complex job from a Level I or Level II mechanic to a higher level mechanic. Level I mechanics do normal maintenance on equipment and prepare the equipment for rental. For example, Level I mechanics grease and oil the equipment, check the operations, do oil changes, and ensure that the equipment is operating safely. If Level I mechanics find any major problems with the equipment, then they will send it down to Level II. Level II mechanics do intermediate repairs on the equipment, such as replacing starters and alternators and doing engine tune-ups. Level II mechanics can also take apart a major portion of the equipment to repair or rebuild it. Level III mechanics engage in heavy repairs of equipment, such as engine replacements, transmission replacements, and axel replacements on the forklifts or booms.

Most shop mechanics work from 7:00 a.m. to 3:30 p.m., Monday through Friday. A second shift consisting of mechanics work weekdays from 10:00 a.m. to 6:30 p.m. The second shift mechanics primarily do maintenance work to prepare equipment for check-out. Shop mechanics have scheduled lunches and

breaks with the other employees working at the Employer's facility. All shop mechanics are directly supervised by Service Shop Supervisor Hagan. All mechanics wear either a two-piece gray outfit or coveralls, both of which are provided by the Employer. All mechanics are required to provide their own tools, although the Employer provides certain larger tools, such as wrenches over an inch and a half in size, large sockets, lifting floor jacks, and jack stands, to repair the larger equipment.

C. Drivers:

The drivers report to work at 6:00 a.m. and normally work until 2:30 p.m. The drivers use small trucks, medium trucks, or semi-trailer trucks to deliver rented equipment to customers. Drivers check in and out of the shop each day and take their lunches and breaks on the road. Drivers wear the two-piece gray outfit worn by mechanics. Drivers are dispatched by and report to Justo Lopez and Perry Johnson, dispatchers. These dispatchers report to Brian Kuchynka, General Manager of Store 585.

D. Rental Techs

The rental techs, parts employees, and warehouse employee all work in the Employer's facility. There are two rental techs: one who is assigned to Store 290, the retail operation; and one who is assigned to Store 585, the repair operation.⁸ The Store 585 rental tech has one responsibility; washing the equipment after it has been inspected or repaired by the mechanics. He has a

⁸ In this decision, I will refer to the Store 290 rental tech as such and the Store 585 rental tech as such.

separate area in which to perform his duties, he has similar hours to the other shop employees, and he is supervised directly by Service Shop Supervisor Hagan. The Store 585 rental tech wears the same coveralls provided by the Employer that are worn by the mechanics and drivers.

The Store 290 rental tech works in the retail operation. He does checkouts of the small equipment. For example, the Store 290 rental tech will ensure that the electrical hand tools are working properly and that the cords are not cut. He also does oil changes on small single-cylinder engine power equipment. In addition, he takes orders from customers and helps customers load and unload rented equipment. The Store 290 rental tech works adjacent to the retail area for Store 290. Like the managers' offices and parts department, the retail area is partitioned off from the rest of the shop area. The Store 290 rental tech work area has a dock door with a lift dock to load and unload equipment out of customers' trucks and it has a small metal bench with a tool box provided by the Employer on it. The Store 290 rental tech also has his own tools, although the Employer does not require him to provide them. The Store 290 rental tech wears either the two-piece gray outfit or the coveralls provided by the Employer. The Store 290 rental tech reports directly to Jeff Rusan, Operations Manager for Store 290. Rusan supervises the other employees of the retail store and reports directly to Tom Glover, District Manager for the Employer.

E. Parts Employees:

One of the parts employees works from 7:00 a.m. to 3:30 p.m., while the other works from 8:00 a.m. to 4:30 p.m. The parts employees both work at the

parts counter, a small area separate from the shop, but still within the Employer's facility. When a mechanic needs parts, he will go to the parts counter and tell the parts employee what is needed. If the part is in stock, the parts employee will retrieve it for the mechanic. If the part needs to be ordered, the parts employee will enter the order on a computer and ensure that the part is ordered. Parts employees are not provided with uniforms. Parts employees report to Service Shop Supervisor Hagan.

F. Warehouse Employee:

The warehouse employee works in the shop from 7:00 a.m. to 3:30 p.m. As his title suggests, the warehouse employee's job is to work with the parts department, where he ships, receives, inventories, and oversees the storage and maintenance of all the parts. The warehouse employee wears coveralls provided by the Employer and reports to Service Shop Supervisor Hagan.

G. Common Policies

Certain policies and working conditions apply equally to all of the Employer's employees. As noted previously, shop employees, a term that excludes the field mechanics and drivers, work all day in the Employer's facility. All shop employees and drivers report to the Employer's facility each day and "punch in" and "punch out" at one of the many computer terminals located throughout the building. It does not matter which job classification uses which terminal. Field mechanics, as discussed above, often do not come to the Employer's facility each day, but will instead proceed directly to a job site each morning. All employees park in the same employee parking lot, use the same

locker room and have access to the same break room for lunches and breaks. All employees are provided with free coffee and free popcorn. All employees are subject to the same rules and policies in the employee handbook and in other various written policies that are disseminated periodically by the Employer. All employees receive the same safety training. All employees have the same paid holidays, vacation policies, 401(k) retirement plan, health benefits and life insurance. All employees are paid hourly and the pay ranges are all comparable, i.e. the top rates for all classifications are higher than the low rates for all other classifications at issue. Specifically, the highest rate of pay for a field mechanic is \$24.57 per hour, and the highest rate of pay for a classification excluded from the unit found appropriate (semi-trailer driver) is \$20.31 per hour.

All job classifications have the same application procedure and all employees receive the same notice for internal job postings. Any employee is free to apply for any other job classification, although, in order to be awarded the position, the employee must meet the requirements of the new classification. As discussed above, most of the employees are issued a uniform by the Employer. They are also issued gloves, as needed, and harnesses, as needed, and all employees in the shop are required to wear safety boots.

2. Analysis

In **Overnite Transportation Company**, 322 NLRB 723 (1996), the Board stated:

Section 9(b) of the Act provides that the Board 'shall decide in each case whether...the unit appropriate for the purposes of collective bargaining shall be the employee unit, the craft unit, plant unit, or subdivision thereof.

'The plain language of the Act clearly indicated that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit. For example, under Section 9(b), the same employees who may constitute an appropriate employer wide unit may also constitute an appropriate unit if they are a craft unit or a plantwide unit. The statute further provides that units different from these three or 'subdivisions thereof,' also may be appropriate. It is well settled then that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. (Citations omitted.)

In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. If a petitioner's unit is found to be inappropriate, the Board may consider an alternative proposal for an appropriate unit. See **Overnite Transportation Company**, at 817, citing **P.J. Dick**, 290 NLRB 150 (1988). In defining the appropriate bargaining unit, the Board's focus is on whether the employees share a community of interest. A number of factors are important in analyzing community of interest, including bargaining history, work contacts among the several groups of employees, extent of interchange of employees, differences in product, skills or type of work required, centralization of management and supervision, functional integration of the employer's operation and geographic locations. **Overnite Transportation Company**; **Kalamazoo Paper Box**, 136 NLRB 134 (1962).

The Board does not compel a petitioner to seek any particular unit. The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. **Black & Decker Mfg. Co.**, 147 NLRB 825 (1964).

"There is nothing in the statute which requires that the unit for bargaining be the

only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be 'appropriate.'" **Overnite Transportation**, at 723 citing **Morand Bros. Beverage Co.**, 91 NLRB 409, 418 (1950). See also, **Omni International Hotel**, 283 NLRB 475 (1987).

Based on the record evidence, I find that the petitioned for unit of mechanics is an appropriate unit and that the Employer has failed to meet its burden of establishing that the unit is inappropriate. To reach this conclusion, I will discuss below the community of interest factors between the mechanics and the other job classifications, as well as any additional applicable case law. I note at the outset that the record shows that the parties have no bargaining history.

A. Mechanics and Drivers:

As previously stated, the Employer employs two groups of mechanics, and the parties are in agreement that both groups of mechanics are to be included in any unit found appropriate. Shop mechanics work all day in the shop, at their work bays, repairing and maintaining the equipment, while field mechanics spend their days out in the field on customer job sites. Since drivers also spend virtually all of their workdays outside of the shop, shop mechanics usually only see drivers when the drivers check in and out or walk through the shop.

To establish community of interest, the Employer relies heavily on work related contact and interchange of employees. The Employer specifically asserts that drivers speak directly to the shop mechanics to advise them when equipment has been returned to the "down line" for repair or the drivers directly communicate with shop mechanics to advise them when the operation of

equipment is incorrect and if there is a mechanical problem. However, the record does not support this assertion. Rather the evidence shows that drivers typically do not speak with shop mechanics concerning equipment repairs. In that regard, a Level III mechanic described work contact between shop mechanics and drivers as “very limited.” He testified that “occasionally” a driver will come in and tell a mechanic that the driver parked a machine on his “down line”. The record shows that that is the only work related contact between the drivers and the shop mechanics. The Employer also asserts there is social interaction between the drivers and the mechanics; however, I find social interaction to be a relatively unimportant, if not irrelevant, consideration.

The evidence does establish that the field mechanics sometimes see drivers at job sites when a driver is picking up or delivering equipment and a field mechanic is fixing either that or other equipment. However, this contact appears to be limited, as field mechanics are dispatched to specific job sites all day, where they remain to either fix the equipment or make the determination that it needs more intensive work, while drivers are on the road all day transporting equipment from the shop to the customer’s job site and back.

On brief, the Employer also cited the testimony of a Petitioner witness to show that there are “many” occasions when a field mechanic will be at a job site with the Employer’s equipment at the same time as a driver. The witness, who has not been a field mechanic for 10 years, actually testified that this happened “occasionally.” The Petitioner’s other witness, who is currently a field mechanic, testified that drivers and field mechanics interact on a job site approximately once

a month for a “re-rent.” A re-rent occurs when a piece of equipment has been rented out for only a short period, and the Employer would like the driver to move the equipment from one customer to the next, without the equipment having to come into the shop for servicing. In this situation, the field mechanic witness testified that he will go to the job site and check the equipment, just as a Level I mechanic would do in the shop. The field mechanic will take approximately 15-30 minutes to check out the equipment, including making certain that the equipment is not due for an oil change. However, the record evidence indicates that the driver does not assist the field mechanic in any way in this circumstance. At the end of the check, the field mechanic will either give the driver the thumbs up, in which case the driver will drive off or the field mechanic will inform the driver that the equipment is broken, in which case the driver will then call his dispatcher to find out what needs to be done, and the field mechanic will leave the job.

On brief the Employer further asserts that “starts for pick-ups” also constitute work related contact. “Starts for pick-ups” occur when a driver goes out to pick up the equipment from a customer’s job site. If the driver is unable to get the equipment to operate, he will call dispatch and a field mechanic will be dispatched to the area. The field mechanic witness who testified as to this procedure stated that this occurs on the average of once a week and that, typically, the driver is not present. This witness also testified that even if the driver is present, there is usually no contact between the two because the driver

just waits for the repair to be done, then the driver takes over once the field mechanic tells him the equipment is ready to go.

The Employer also cites an occasion two months before the hearing when the Petitioner's field mechanic witness repaired both the equipment that was being rented and the hydraulic line on the delivery truck at the same time. However, the witness also testified that he did this on a "very emergency basis" only, about one or two times per year. I find that the above examples do not constitute any substantial or meaningful work related contact that would compel the inclusion of the drivers in the unit.

The Employer also contends that there is interchange of duties between mechanics and drivers. Specifically, the Employer asserts that drivers may perform their own independent, mechanical work and repairs on equipment to ready it for transfer. The record shows, however, that the testimony on this issue was that there are two types of drivers: "there are some that will do things, open the panel, see if any breakers are blown and just generally look around and make sure something is not hanging down or there aren't a bunch of wires cut and the other type of driver will simply not touch it any further if they push a button and nothing runs." The witness further testified that the drivers who looked around were not doing any "real mechanical" work. The witness testified that, although he had never personally observed drivers attempt to repair the vehicles they operate, sometimes drivers had approached him to indicate that they opened the doors (to the engine area) and that they did not see anything wrong or he had had drivers tell him that there was a huge plug hanging down

and they do not know where it goes. Thus, I find that there is no evidence to show that the drivers make a realistic or meaningful attempt to fix rental equipment that is not functioning properly. Instead, the record establishes that the drivers' function is simply to load and unload the equipment.

The Employer asserts that a field mechanic sometimes physically works with the drivers to winch a piece of equipment and load it onto a truck. However, the field mechanic witness who testified as to this circumstance indicated that it happened only approximately once every six months. On those occasions, the truck driver operates the winch, while the field mechanic steers the winch to get it onto the truck to be taken in and repaired. I find that this occasional loading a piece of equipment does not constitute "repairing" the equipment and, thus, the driver is not truly performing mechanic's work.

To further show work interchange, the Employer asserts that some drivers use their company-provided telephones to contact field mechanics who are not yet at the job site to obtain instructions on how the drivers can make mechanical repairs necessary to get equipment up and running. However, the record testimony was merely that a field mechanic witness had been contacted by a driver who "seemed to like calling him directly," even though the drivers were not supposed to do so. The record does establish that Carter, the field mechanic's dispatcher, frequently takes calls from drivers seeking to ensure that they are operating the equipment correctly, since there are many variations of machinery and there are subtle differences in what is required to get each one started. Thus, the evidence shows that, if equipment needs to be repaired, a driver will

not usually contact a mechanic directly. Rather, the driver will normally contact the field mechanic dispatcher, who will either assist the driver or dispatch a field mechanic to the site to start the equipment, while the driver waits to load the equipment.

The Employer also contends on brief that field mechanics sometimes fill in for drivers by picking up parts from vendors and delivering these parts to different shops, thereby illustrating that field mechanics are engaged in delivery work just like the drivers. However, the record does not support this contention. Instead, the record reflects only that, occasionally, if a field mechanic has spare time, Service Shop Superintendent Hagan may have him pick up a part from a vendor on the way back to the shop. The witness testimony is that this happens “once every two weeks or once a month.” Thus, there is no evidence that the field mechanics are normally engaged in any sort of delivery function. Moreover, this delivery function involves the transfer of parts from a vendor, not the transfer of rented equipment, which is the job function of the drivers.

As a further example of alleged interchange of duties between mechanics and drivers, the Employer cites the fact that shop mechanic Andrew Hoblit, assisted drivers on two consecutive days in March 2004 in moving certain rental equipment that was being taken out to service to an auction facility. Hoblit, apparently, holds a Class A Commercial Driver’s License (CDL), and the Employer was short-handed with respect to drivers at the time. The Employer witness who testified in regard to this incident, indicated that normally drivers would have moved the equipment and that this was the only occasion he was

aware of in which something like this had occurred. Hoblit is apparently the only mechanic to hold a CDL.

Finally as to alleged interchange of duties between mechanics and drivers, the Employer asserts that the Employer once employed a driver who also worked as a mechanic repairing the Employer's vehicles. However, the record merely reflects that this driver temporarily performed small mechanical repair work on the delivery trucks, while the remainder of the repair work performed on the employer's delivery fleet was done by outside vendors. Currently, all the mechanical repairs on the Employer's delivery trucks (which are not part of its inventory of rental equipment) are outsourced to vendors, and Employer's mechanics do not make any repairs on the Employer's delivery vehicles.

Other than the isolated examples discussed above, the records contains no evidence of alleged interchange of drivers and mechanics. While Employer did establish that it was possible for mechanics to apply for drivers' positions and vice versa, the potential exists for any employee to apply for a position in any different job classification and this potential does not demonstrate actual interchange between positions. The critical consideration is that the drivers possess different skills and perform different duties than the other employees, as evidenced by the requirement that most of them must have a CDL to perform their jobs.⁹ The other job classifications are not required to have a CDL and,

⁹ The record shows that drivers of the medium trucks and semi-trucks must have CDLs. However it is not known how many drivers are employed to drive each particular kind of truck—small, medium or semi—or if the drivers simply must be licensed to drive any truck at any given time.

thus, would not as a part of their job responsibilities be qualified to drive the medium and semi-trailer trucks.

It is well established that drivers are not required to be included in a unit of nondrivers, such as mechanics. **Mc-Mor-Han Trucking Co., Inc.**, 166 NLRB 700 (1967), (holding that it was not necessary to combine drivers and mechanics into one bargaining unit unless there was evidence of substantial functional integration, interchange, similarity of skills and functions, and other traditional community of interest criteria); **Lonergan Corporation**, 194 NLRB 742 (1971), (holding that certain factors may support the conclusion that a unit including the drivers is appropriate, however, the petitioned for unit, which excluded the drivers, was also an appropriate unit, therefore it was irrelevant that a larger unit might also be appropriate). See also, **Overnite Transportation Co.**, 322 NLRB 347 (1996).

Despite several common work conditions and limited work related contact, the facts of this case do not reveal such a community of interest or degree of integration between the mechanics and drivers as would render the requested unit inappropriate. Accordingly, I find that the Employer has not shown that mechanics and drivers share a sufficient community of interest to require the inclusion of the drivers in the petitioned-for unit.

B. Mechanics and the Rental Techs, Parts, and Warehouse Employees:

In **Huer International Trucks, Inc.**, 273 NLRB 361 (1984), the Board addressed the issue of whether a unit of mechanics should include parts department employees, holding that "...it cannot be disputed that there exists a

conflict in Board law regarding the appropriate service department unit.” In that case, the Board cited several cases to illustrate the conflict and to show that each determination is fact-specific. For example, in **International Harvester**, 119 NLRB 1709 (1958), the Board held that “partsmen,” although working with “craftsmen,” should be excluded from the bargaining unit, because they did not exercise the craft skills of the mechanics. The Board applied **International Harvester** in **Taylor Bros.**, 230 NLRB 861 (1977), to also exclude partsmen from the mechanics unit. Both of these cases turned on the fact that the mechanics were found to be a craft unit and the parts employees did not and could not perform the same work as the mechanics. However, in **Austin Ford**, 136 NLRB 1398 (1962), the Board found the petitioned for line mechanics were not an appropriate unit and stated that all service and parts department employees should be included in the same bargaining unit. The Board based its decision in **Austin Ford** on the fact that all the employees in the automotive service and parts department had, and exercised in various degrees, the skills of automotive mechanics. *Id.* at 1400. Similarly, in **Gregory Chevrolet**, 258 NLRB 233 (1981), the Board included the parts department with mechanics, because the union’s petition sought to include them, and the Board held that the petitioned for unit was an appropriate unit. See also **Safair Flying Service, Inc.**, 207 NLRB 119 (1973), for a similar analysis and result.

Applying the above case law to the situation at hand, I find that that rental techs, parts employees, and warehouse employees are properly excluded from the petitioned for unit, because the unit sought by the Petitioner is an appropriate

unit. If the Union had petitioned for a unit that included these job classifications, I would likely have included them. However, the Petitioner made clear on the record that its first preference is for a mechanics only unit, and I find that the shared community of interest factors between the mechanics, rental techs, parts employees and warehouse employee is not so overwhelming as to compel the conclusion that they constitute the only appropriate unit.

1. Mechanics and the Store 290 Rental Tech

The Employer asserts that the Store 290 rental tech belongs in the unit, because the Store 290 rental tech allegedly maintains and repairs the equipment. Specifically, the Employer notes that the Store 290 rental tech makes sure the electrical hand tools are working properly, and he services single-cylinder engine power tools. The Employer further asserts that the Store 290 rental tech interacts regularly with the shop mechanics and confers with the shop mechanics concerning whether he has correctly made repairs. However, the shop mechanic who testified in this proceeding stated that the work related contact with the Store 290 rental tech was “very limited”. The witness testified only that the Store 290 rental tech might ask a mechanic his opinion concerning whether a particular piece of equipment was operating correctly or whether the Store 290 rental tech should enter it into the computer to be repaired by a mechanic. While the shop mechanic who testified, confirmed that he saw the Store 290 rental tech speaking with one particular Level I mechanic approximately twice a week, and the record indicates that this Level I mechanic works on the same equipment that the Store 290 rental tech checks in and out, there was no evidence as to the exact content

of those discussions. Additionally, the record establishes that the Store 290 rental tech has never filled in for a mechanic on even a temporary basis.

I find that the Store 290 rental tech does not share a sufficient community of interest to require his inclusion in the bargaining unit found appropriate. The record shows that the Store 290 rental tech is allocated to a different cost center designation (the retail operation) than the rest of the employees in the shop, who are all allocated to Store 585. As such, the Store 290 rental tech has a different supervisor, Operations Manager Rusan, than the other shop employees. The Store 290 rental tech's work area is near the other retail employees (who all parties agree should not be included in any unit that may be directed), which is separated from the mechanics' work bays by the wash bay. Finally, there is insufficient evidence on the record to support the Employer's contention that the Store 290 rental tech performs the same work functions as the shop mechanics. Once a labor organization petitions for a presumptively appropriate unit, the burden is on the employer to show that the unit is not appropriate and that a job classification has been improperly excluded. I find that the Employer has not met its burden here and note that the Employer failed to call the Store 290 rental tech to testify as to his daily job responsibilities. I find that the record evidence does not conclusively establish that the Store 290 rental tech shares a sufficient community of interest to require his inclusion in the petitioned for unit of mechanics.

2. Mechanics and the Store 585 Rental Tech

The Store 585 rental tech is responsible solely for washing the equipment after the shop mechanics repair it. It is undisputed that he does no mechanical work and that he has his own work area. While the Store 585 rental tech shares the same supervisor, hours, and other terms of employment as the mechanics, the record shows that the Store 585 rental tech has never filled in for a mechanic even temporarily.

The Employer asserts that the Store 585 rental tech personally reports mechanical issues to the shop mechanics if he discovers any problems while washing the equipment. In support of this assertion, the Employer relies on the following testimony from the record, which I find to be insufficient to support this argument: Q: "Does he [the Store 585 rental tech] ever report any mechanical issues that he identifies as part of going over the equipment when it returns from rental?" A: "It is only washed after repairs, not prior to repairs."

The Employer also asserts on brief that the shop mechanics directly instruct the Store 585 rental tech in the performance of his job. However, the record merely indicates that, most of the time, the mechanics put equipment in an area to be washed after it is repaired and that the Store 585 rental tech simply goes to the area and retrieves the equipment, as necessary. The record does show that, approximately once a week, a mechanic may tell the Store 585 rental tech to focus on a specific area of the equipment when washing it because that area is especially dirty from an oil leak. I find this limited evidence is insufficient

to show the community of interest necessary to require his inclusion in the unit sought.

3. Mechanics and Parts Employees

The record shows that there is substantial contact between the shop mechanics and parts employees on a daily basis. It is undisputed that throughout the day shop mechanics come to the parts counter to request parts, and a parts employee will either provide the part or order the part for the shop mechanic. To accomplish this, the parts employees must have some familiarity with the parts themselves. However, it is also undisputed that the parts employees do no mechanic work. The record shows that parts employees have never filled in temporarily for a mechanic, nor has a parts employee ever been permanently transferred into a mechanic's position. I find that this limited contact does not compel inclusion of the parts employees in the unit, since the two job classifications are engaged in separate job functions. Cf, **Austin Ford**, 136 NLRB 1398 (1962).

4. Mechanics and Warehouse Employees

The record shows that the warehouse employee has frequent daily contact with the parts employees, in order to perform his shipping and receiving duties. The warehouse employee also has contact with the mechanics, as the warehouse employee may personally deliver ordered parts to mechanics, and the mechanics, in turn, occasionally go to the warehouse employee to return a part that needs to then be sent back to the manufacturer. Notwithstanding this contact, there is no record evidence that the warehouse employee and

mechanics ever substitute for one another on even a temporary basis. Thus, I find that, although the warehouse employee and the shop mechanics have some frequency of contact, because they perform entirely separate job functions, this contact is an insufficient basis to require the inclusion of the warehouse employee into the unit found appropriate in this case.

C. Supervision Overlap

The Employer places great emphasis on the common supervision that certain employees share in arguing that the petitioned for unit is not appropriate. The record establishes that District Manager Tom Glover has overall control over both Store 585 and Store 290, the Employer's facility.¹⁰ Reporting directly to Glover are General Manager Brian Kuchynka and Operations Manager Jeff Rusan. Kuchynka oversees Service Shop Supervisor James Hagan who supervises all shop employees with the exception of the Store 290 rental tech. Dispatcher Tom Carter, who directly supervises the three field mechanics, works alongside the two dispatchers for the drivers. Carter reports indirectly to Hagan. The dispatchers for the drivers, as well as the medium and semi-trailer drivers themselves report to Kuchynka. The Store 290 rental tech and the small truck drivers report to Rusan. It is clear that the petitioned for unit (the mechanics), all report either directly or indirectly to one supervisor, Hagan. The other job classifications—the drivers, the parts employees, the warehouse employee and the rental techs—report to either Hagan (who reports to Kuchynka), report to their dispatchers (who report to Kuchynka), or report to Rusan. Of course all

¹⁰ Joint Exhibit 3 was created solely for the purposes of this hearing and includes only the pertinent job classifications.

employees ultimately report to District Manager Glover. While shared supervision is one factor in determining the community of interest, I find that this chain of supervision, though confusing, does not conclusively establish a sufficient community of interest to find the petitioned for unit inappropriate.

Novato Disposal Services, Inc., 330 NLRB 632 (2000); **Institutional Food Services**, 258 NLRB 650 (1981).

D. Skills

As described above, the mechanics possess different skills than the other job classifications in issue. Although the Employer requires no formal certification to be a mechanic, the skills that are required are specialized skills. In that regard, the job description for a Level I mechanic requires the employee to have a minimum of one to two years' experience in repairing and maintaining equipment, tools, and vehicles, and the ability to diagnose and successfully repair deficient equipment or tools. The job descriptions for Level II mechanic, Level III mechanic and field mechanic, which were entered as exhibits, are correspondingly higher.

As noted, two mechanics testified at the hearing, a Level III mechanic and a field mechanic. The Level III mechanic had worked for the Employer as a field mechanic for ten years before moving into the shop. Before being hired by the Employer, this witness had worked for nine and a half years as a heavy equipment mechanic as part of an airport maintenance crew. In addition, he had received training provided by various manufacturers of large equipment. The

field mechanic who testified was originally hired as a lube technician¹¹ and then moved to the field mechanic position after approximately three months. This witness' previous experience included four years of repairing weapons for the military. The record indicates that manufacturers of various equipment periodically provided one-day training to the mechanics. Reflective of the mechanics' greater skill is the fact that there is no evidence of interchange between mechanics and the other employees. In fact, there is no evidence in the record that any other job classification has ever performed a mechanic's duties on either a temporary or permanent basis.

3. Analysis

In assessing the relevant factors as they relate to community of interest, I note that there is some functional integration between the five job classifications at issue - the mechanics, the drivers, the rental techs, the parts employees, and the warehouse employee. I find, however, that this integration does not destroy the separate identity and distinct function of the mechanics. In reaching this conclusion, I rely in particular on the fact that the daily job duties that the mechanics perform are unique to that classification. Mechanics repair and build machines and equipment all day, unlike any of the other job classifications. I find, therefore, that the Employer has failed to establish that there is a community of interest sufficient to require the inclusion of other job classifications in the petitioned for unit.

Board case law provides for separate units based on job classification without finding craft status. In **Airco, Inc.**, 273 NLRB 348 (1984), the Board held

¹¹ There is no current job with that title.

“...there are no per se rules to include or exclude any classification of employees in any unit. Rather, we examine the community of interest of the particular employees involved, considering their skills, duties, and working conditions, the employer’s organization and supervision, and bargaining history, if any, but no one factor has controlling weight.” See also, **E.H. Koester Bakery, Co.**, 136 NLRB 1006 (1962), and **Kalamazoo Paper Company**, 136 NLRB 134 (1962). In **American Cyanamid Company**, 131 NLRB 909 (1961), the Board found a petitioned for unit of maintenance employees to be appropriate, holding that the maintenance employees were readily identifiable as a group whose similarity of function and skills created a community of interest such as would warrant separate representation. Similarly, in **Crown Simpson Pulp Company**, 163 NLRB 796 (1967), the Board found a petitioned for unit of maintenance employees to be appropriate holding “...in accordance with longstanding Board policy concerning initial organization and based on the record here made concerning the separate function of these [employees], we find that they may constitute a separate unit if they so desire.” In **American Cyanamid Company** and **Crown Simpson Pulp Company**, which both concerned maintenance and production employees working at the same plant, the Board found that, even though the two job classifications shared other community of interest factors, the employer in both cases had failed to establish that the operation was so integrated that the maintenance employees were not separately identifiable. See also, **Oscar Mayer & Co.**, 172 NLRB 1471 (1968), and **Ore-Ida Foods, Inc.**, 313 NLRB 1016 (1994).

In finding that the mechanics constitute an appropriate unit as determined by their separate job function, I specifically note that I am not finding that the mechanics constitute a true craft unit, as defined by the Board.¹² I find it unnecessary to do so.

¹² The Board has long held that a craft unit consists of a distinct and homogeneous group of skilled journeymen craftsman who, together with helpers or apprentices, are primarily engaged in the tasks that are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. **Burns & Roe Services Corp.**, 313 NLRB 1307 (1994). See also, **American Potash & Chemical Corporation**, 107 NLRB 1418 (1954). To be a journeymen craftsman, an individual must have a kind and degree of skill that is normally acquired only by undergoing a substantial period of apprenticeship or comparable training. **American Potash** at 1423. Thus, while the Employer's job descriptions in the record indicate that entry level mechanics are required to have one to two years of experience in repairing and maintaining equipment, and higher level mechanics are required to have even greater experience and training, the evidence does not show that any certification is required, nor is there any sort of apprenticeship program. Further, the Petitioner's field mechanic witness specifically testified that he considered himself and the other field mechanics to be "self-trained."

The cases cited by the Petitioner in support of finding the mechanics to be a craft unit are distinguishable. In **Dodge City of Wauwatosa**, 282 NLRB 459 (1986), the Board found that the mechanics in a retail store engaged in the sale and servicing of new and used automobiles were an appropriate unit, excluding the other employees in the service department, parts department, and body shop. In that matter, the Board found the mechanics to be a distinct and homogeneous group of highly trained and skilled craftsman who were primarily engaged in the performance of tasks that were not only different from work performed by other service department employees, but that required the use of substantial specific craft skills, as well as specialized tools and equipment. **Id.** at 460. To reach this decision, the Board relied on the fact that all mechanics had either extensive training or experience before being hired by the employer (all but two were certified and the two that were not had 34 years and 10-12 years of experience), who thereafter requires them to attend periodic training on a regular basis. The record herein does not show that the mechanics have the required skills or experience or training that would elevate them to the craft status present in **Dodge City of Wauwatosa**.

Similarly, in **Fletcher Jones Chevrolet**, 300 NLRB 875 (1990), the Board found that a unit of service technicians, including "quick" service technicians to be appropriate. The Board found that the service technicians performed duties that were distinct from the other service department employees, such as the dispatchers, warranty clerks, service porters, courtesy driver, cashiers and secretaries. The Board also found that none of the other job classifications performed mechanical work and there was little or no work related contact between the service technicians and the other employees. However, 85% of the service technicians were certified by Automotive Service Excellence or a vehicle manufacturer and 65-70% of them were considered journeymen technicians. Such facts are not present in the case at hand.

I also find the cases cited by the Employer, urging a unit consisting of all mechanics, drivers, parts employees, rental techs, and the warehouse employee, to be distinguishable. The Employer argues that there is an overwhelming community of interest between all the employees in dispute that a finding that the petitioned for unit is inappropriate is required. While the employees in the unit argued by the Employer share many community of interest factors, such as common supervision (with the exception of the Store 290 rental tech), common hours, a common building, wages, hours, benefits and so forth, these factors are not so overwhelming as to render the petitioned for unit inappropriate. Moreover, contrary to the Employer's argument, there is no evidence in the record to demonstrate that the job classifications urged by the Employer perform overlapping or identical job functions. Rather, the evidence shows that the mechanics' job duties are to maintain, repair, and rebuild the equipment; the drivers' sole function is to move equipment from one place to another; the parts and warehouse employees duties are to provide parts to the mechanics; the Store 585 rental tech simply washes the equipment before it is re-rented; and the Store 290 rental tech works in the retail operation checking equipment in and out (while he has tools and regularly communicates with at least one of the shop mechanics, there is insufficient record evidence to show that he regularly performs the same duties as the shop mechanics). With the exception of testimony that a parts employee will fill in for the warehouse employee in his absence, all other testimony showed that there is no overlap, no

assistance provided from one job classification to the next, and the job classifications are not engaged in identical functions.

I find that the Employer's reliance on **Brand Precision Services**, 313 NLRB 657 (1994) and **Transerv Systems, Inc.** 311 NLRB 766 (1993) is misplaced. In **Brand Precision Services**, the Board rejected a union's petitioned for unit of 16 operators in an employer's industrial cleaning services company, finding that the appropriate unit consisted of the operators, 32 laborers, 13 leadmen, 2 mechanics, and a warehouseman. In reaching this conclusion, the Board relied upon evidence that the employer's work was highly integrated and required constant contact among all the job classifications. The employees worked in crews, consisting of a mixture of operators, leadmen and laborers, depending on the customers' needs. In **Brand Precision Services**, the Board found that the crews assisted one another with job functions, performed limited functions in the areas where other crews normally worked, and that portions of all three jobs overlapped. This is simply not the situation in the case at hand. Unlike **Brand Precision Services**, there is insufficient evidence in the current record to support a finding that the mechanics are so highly integrated with the other classifications as to render the petitioned for unit inappropriate.

In **TranServ Systems**, the employer provided document and small package delivery services, using both bicycle messengers and drivers. The Board held that the petitioned for unit of only bicycle messengers was not appropriate because the employer's operations evidenced a high degree of functional integration. The Board based its decision on the fact that the bicycle

messengers and drivers performed essentially the same functions and approximately 60-70 percent of the deliveries required a combination of bicycle messenger and driver. Again, such facts are readily distinguishable from those in the case at hand.

I also find that **Seaboard Marine Ltd.**, 327 NLRB 556 (1999), (holding that employees in a petitioned-for unit must share a sufficiently distinct community of interest to warrant a separate unit) and **Colorado National Bank of Denver**, 204 NLRB 243 (1973), (holding that a petition should be dismissed if the unit sought is too narrow in scope in that it excludes employees who share a substantial community of interest with employees in the unit sought) are both distinguishable from the instant matter. In **Seaboard Marine**, the union sought 17 employees in three job classifications and sought to exclude the other 181 employees in 12 additional job classifications, some of which had similar to or the same job duties as the three petitioned for job classifications. In **Colorado National Bank**, the union petitioned for 23 employees who comprised the Computer Operations section and sought to exclude the Technical Support Department and Systems and Programming Department employees. The Board found that this unit was not appropriate, because all three of these sections regularly worked with each other on similar or the same tasks. **Id.** at 243. In the current case, the high degree of functional integration, such as seen in these cases cited by Employer has not been established.

The Employer cites **Bridgeport Jai Alai, Inc.**, 227 NLRB 1519 (1997), **John N. Hansen**, 293 NLRB 63 (1989), and **Proctor and Gamble Paper**

Products Company, 251 NLRB 492 (1980), for the proposition that, where an operation is highly integrated such that all employees are performing duties to bring about one common goal, then one common bargaining unit is appropriate. However, these cases all expanded the union's petitioned for unit because in each case the excluded employees were found to be so highly integrated with the petitioned for unit that to separate them would destroy the flow of the operation. While it is true, as the Employer herein points out, that all the job functions are integrated to some degree, it is not shown in the record that operations would fail if one job classification were missing. I find that this level of integration does not rise to the highly integrated level demonstrated by the cases cited on brief by the Employer,.

In part, the Employer cites **Proctor and Gamble**, 251 NLRB 492 (1980), in which the Board found that the petitioned for a unit of 34 electrical support technicians (which excluded more than 200 other production technicians) was inappropriate to show why the Petitioner's unit argument must fail. **Proctor and Gamble** stands for the proposition that a highly integrated operation requires the inclusion of all employees who are a part of that operation, however, the facts of that case are distinguishable from those in the instant case. Specifically, **Proctor and Gamble** involved a highly integrated operation that ran continuously on a three-shift schedule. In fact, the product was prepared "assembly line" in a single building, which meant that if a work stoppage occurred at any point, it would adversely affect the entire operation. Additionally, in **Proctor and Gamble**, the Board found that, "although these electrical support technicians are the most

highly skilled electricians at the plant, are engaged in the performance of electrical work virtually 100 percent of the time, are separately supervised, have their own work area and separate promotion criteria, it is clear from the record evidence that a substantial amount of electrical work is also performed by more than 200 other technicians.....although the electrical support technician is clearly the most expert electrician present, he performs as part of a team effort and not as a separate craftsman.” **Id.** at 494. Thus, a fundamental part of the Board’s analysis in **Proctor and Gamble** related to the fact that the same electrical work performed by the petitioned for employees was performed by other employees. This is not the situation in the case at hand, as the record evidence indicates that only the mechanics perform mechanical repairs on the equipment that the Employer rents to customers.

4. Conclusion

I find that the skills that the mechanics both possess and routinely use set them apart from the rest of the employees, who perform separate and distinct job duties, and that the mechanics may be properly represented in a separate unit.

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 issue subsequently, subject to the Board's Rules and

Regulations.¹³ Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of the 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 a 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 Government 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:

TEAMSTERS LOCAL NO. 435

¹³ Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed. Please see the attachment regarding the posting of election notice.

LIST OF VOTERS

In order 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 in 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); **North Macon Health Care Facility**, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the *full* names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall 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, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-54533 on or before **May 18, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision 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, DC 20570. This request must be received by the Board in Washington by **May 25, 2004**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 11th day of May 2004.

/s/ B. Allan Benson

B. Allan Benson, Regional Director
National Labor Relations Board, Region 27
600 Seventeenth Street
700 North Tower, Dominion Plaza
Denver, Colorado 80202-5433