

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
TWENTY-SEVENTH REGION

**DTG OPERATIONS, INC.**

Employer,

and

Case **27-RC-8629**

**TEAMSTERS LOCAL UNION NO. 455,  
INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS**

Petitioner.

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**PETITIONER'S REQUEST FOR REVIEW  
OF REGIONAL DIRECTOR'S DECISION AND ORDER**

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International Brotherhood of Teamsters, Local Union No. 455 (the "Petitioner" or "Union"), by its attorney, Michael J. Belo of Berenbaum Weinshienk PC, submits this Request for review of the Regional Director's Decision and Order ("Decision").

**I. Introductory Statement**

The Employer, DTG Operations, Inc. ("DTG"), operates a car rental facility at Denver International Airport ("DIA"), where it rents cars, sport utility vehicles, and similar light-duty vehicles under the trade names Dollar Rent-A-Car ("Dollar") and Thrifty Car Rental ("Thrifty"). Both brands are located at the same thirteen-acre facility along "rental car row" near DIA, with separate Dollar and Thrifty rental buildings, but a common maintenance garage and a common carwash building each located several hundred yards away from the rental buildings (Employer Ex. 1; Tr. 14-15).<sup>1</sup>

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<sup>1</sup> References to the transcript will be in the form "Tr. \_\_\_\_."

Petitioner seeks to represent a bargaining unit consisting of all full-time and regular part-time rental sales agents (25 employees) and lead rental sales agents (6 leads) employed by the Employer at the DIA facility, excluding all other employees, office clerical employees, supervisors, and guards as defined in the Act. The Employer asserts that the only appropriate unit consists of all employees at the facility, including service agents, return agents, lot agents, exit gate agents, the fleet agent, courtesy bus drivers, mechanics, assistant mechanics, staff assistants, the building maintenance technician, and certain lead employees in the above classifications. The unit proposed by the Employer consists of 109 employees.

The Regional Director agreed with the Employer, relying primarily on a case that does not involve the car rental industry, *United Rentals, Inc.*, 341 NLRB 540 (2004). The Regional Director gave little or no weight to the cases that **have** involved the car rental industry, where separate units of “service” employees, excluding rental agents, have regularly been found appropriate. As provided by Section 102.67(c) of the Board’s Rules and Regulations, compelling reasons exist for review on two grounds: (1) a substantial question of law or policy is raised because of a departure from officially reported Board precedent, and (2) the Regional Director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the Petitioner. Even more important, the Decision prejudicially affects the opportunity of the employees of DTG to have “the fullest freedom in exercising the rights guaranteed by the Act.” *Overnite Transportation Co.*, 322 NLRB 723 (1996).

## **II. Summary of Pertinent Facts**

The duties of the rental sales agent (“RSA”) are to meet customers upon their arrival at either the Dollar or the Thrifty rental building, depending upon the customer’s reservation or preference for brand. The RSAs are assigned to either Dollar or Thrifty, alternating on a

monthly basis, but may be assigned to either brand whenever necessary. The RSA works primarily behind the customer service counter (unlike nearly all other employees, who either work outside or in a different building such as the maintenance building or exit booths). They utilize a computer to enter information about the customer, car rental, upgrades, and other extras into the Employer's database. The basic duty of the RSA is to rent the vehicle in the classification reserved by the customer, but the Employer strongly encourages RSAs to sell or rent additional products to the customer, *e.g.*, upgrades to a more expensive vehicle class, different types of insurance coverage, purchasing prepaid fuel, and rental of GPS navigation units. (Tr. 246-51; 272-76, 289-91.)

A. Rental sales agents are the only employees subject to an incentive plan that provides disciplinary penalties for noncompliance.

RSAs are subject to a unique "Incentive Compensation Plan" that provides certain credits for each of the extra products under the plan (Union Ex. 2 and 3). They do not make any incentive pay for simply renting the vehicle to the customer as reserved by the customer. The company calculates a minimum requirement or "threshold" for each month at the Denver location—if the RSA does not reach the threshold, he or she does not receive incentive pay even if he or she has sold extra products (Union Ex. 4 and 5; Tr. 260-64).

Unlike all other employees, if RSAs do not meet certain incentive goals established by the company, they are subject to disciplinary action and discharge, as they are placed into what the Employer euphemistically calls the "Core Model for Sales" (Union Ex. 1). If the RSA fails to achieve a certain yield for any month, his or her performance is deemed unacceptable and the employee is placed into a five-step disciplinary process culminating in either discharge or reassignment to a different job (Union Ex. 1, p. 2).

The Regional Director briefly described the Core Model program in a passing reference (Decision at 13). In deciding the issue, however, she failed even to mention, let alone give any weight to, this crucial distinction (Decision at 32)—RSAs are the only employees subject to discipline and discharge under their incentive program, as the Employer’s witness admitted (Tr. 226-27), whereas incentive programs for other employees simply are a means to receive a little extra pay if they wish.

B. There is almost no interchange between RSAs and other classifications, and their daily interaction is limited.

The other major classifications included by the Regional Director in the unit are building maintenance tech (1 employee), courtesy bus drivers (21 employees), lead courtesy bus drivers (2), exit gate booth agents (9), fleet agent (1), lot agents (6), mechanics and assistant mechanics (9), return agents (9), service agents (9), lead service agents (4), shuttlers (2), staff assistant I (2), staff assistant II (1), and lead staff assistants (2), for a total of 78 employees excluding RSAs.

The Regional Director found that there is allegedly an “overwhelming community of interest” between RSAs and other employees and an “extensive amount of interchange between classifications of employees” (Decision at 30, 34). As the examples provided by the Regional Director demonstrate on their face, however, the “interchange” is predominantly among classifications of employees **other than RSAs**, the employees in the requested unit.

The only classifications with which the RSAs have any significant regular interaction, interchange, or overlap are (1) the two staff assistant I employees, who primarily engage in clerical functions upstairs in the supervisory offices except when they assist at the rental counter when needed (as do excluded supervisory personnel); (2) the day shift RSAs cover breaks of lot

agents—but not vice versa, because the work of RSAs requires technical expertise with the computerized rental system that other employees do not possess; and (3) the evening and night shift RSAs perform some of the duties of lot agents and return agents after approximately 9:00 to 10:00 p.m. at night, because the Employer does not schedule lot agents or return agents after that time.

Aside from these limited examples, the evidence from two RSAs who testified—a day-shift RSA and a swing-shift RSA—shows that during the course of their daily duties, the RSAs have little or no job-related contact with nearly all of the classifications included by the Regional Director in the unit. They have little or no contact with bus drivers; exit booth agents, who work in exit booths on the extreme southeastern corner of the property, which is about as far away from the rental buildings as possible on the thirteen-acre premises; service agents; the fleet agent; shuttlers; mechanics, who work in a separate building under separate supervision by the maintenance manager; the staff assistant II, who works in the maintenance building with the maintenance department; lead staff assistants; and the building maintenance technician (Tr. 57-58, 253-56, 277-78). In short, RSAs have little or no daily contact, no interchange, and no overlap with 61 employees in the unit found appropriate.

Other than the day shift RSAs covering the breaks of lot agents, or rare occasions when an RSA has a disabled customer and requests a lot agent to get the customer's rental car and bring it to the customer, RSAs have little job-related contact with lot agents. (Tr. 252-53; 276-77.) Despite the alleged duty listed in the lot agent description that lot agents “coordinate” with RSAs on “fleet availability” (Employer Ex. 6), there is no regular practice at the DIA facility of lot agents communicating with RSAs about availability of cars. Instead, the RSAs either check out the vehicle supply themselves or assume that vehicles are available in all classifications, or

they receive information from management when there is limited availability of certain classifications. (Tr. 252-53; 275-77.)

Similarly, RSAs have little or no work-related contact with return agents, except occasionally when a return agent goes to the rental counter to get a blank accident report form. The swing-shift RSA testified that his contact with return agents is “pretty much none.” He testified that there is so little communication that sometimes return agents will leave without notification to the RSAs, with the result that customers will come into the rental building to check in their rental cars because no return agent is available. Formerly, the Employer provided two-way radios to facilitate communications between RSAs and return agents, but the Employer took away the radios. In sum, although evening and night shift RSAs may need to handle some of the duties of return agents or lot agents simply because none of those employees are scheduled after approximately 9:00 p.m., RSAs do not interchange with those classifications or have substantial work-related contact with them except when day RSAs cover breaks of lot agents. (Tr. 253-54, 276, 281-84.)

None of the above classifications regularly assist or perform the work functions of RSAs at the rental counters, except the two staff assistant I employees and a very limited number of employees with special circumstances, such as one of the lead service agents, Herman Moss, who formerly worked as an RSA and has assisted in the past at the rental counter on a very limited basis (Tr. 237, 268). The Regional Director found that he “occasionally fills in for absent RSAs” (Decision at 16), but the indisputable documentary evidence shows that such substitution is increasingly rare. The RSA Peer Ranking for October 2010 shows that Moss did only seven rental agreements for Dollar and zero agreements for Thrifty, whereas a typical RSA does hundreds of rental agreements during a one-month period (Union Ex. 6, p.20, and Ex. 7). By

December 2010, Moss did **no** work at all at either the Dollar or the Thrifty rental counter (Employer Ex. 24 and 25). Similarly, a return agent, April DeBerry—who asked to be trained at the rental counter, rather than being required by the Employer as part of its organizational structure—did five rental agreements at Dollar and zero agreements at Thrifty in October 2010; she did not work at either counter in December 2010 (Tr. 161, 167). The lead staff assistant, Taira Wright, did one rental agreement at Dollar in October and one in December 2010, and did two agreements at Thrifty in October and none in December 2010. (Union Ex. 6 and 7, Employer Ex. 24 and 25.)

The evidence shows that the only nonsupervisory employees who perform RSA functions with any frequency are the two staff assistant I employees, Mark Chiara and Desiree Newell (Employer Ex. 3, 15; Tr. 54-57). Their primary duties are clerical, such as preparing reports for management, answering phone calls, and handling lost and found items for customers. Their primary offices are located in the Dollar rental building on the second floor, which houses administrative and management offices (the Dollar rental counter is on the first floor).

The Peer Rankings for October and December 2010 show that Staff Assistant Chiara did 45 rental agreements for Dollar and 12 agreements for Thrifty in October; he did 19 agreements for Dollar and 13 agreements for Thrifty in December. Staff Assistant Newell did 143 rental agreements for Dollar and 49 agreements for Thrifty in October; she did 42 agreements for Dollar and 3 agreements for Thrifty in December 2010. (Union Ex. 6 and 7; Employer Ex. 24 and 25.)

The significance of the fact that the two staff assistant I employees have assisted at the rental counters is diminished greatly by the fact that Operations Managers—who are excluded from the unit—have also assisted at the rental counters on numerous occasions. For example, in

October 2010, Operations Manager Tamara Birkedahl prepared 51 rental agreements at Dollar in October, more than Staff Assistant Chiara at Dollar. In October 2010, Operations Manager Jeffrey Pitts did 39 agreements, Margaret Savelio did 29 agreements, and Todd Trueblood prepared 25 rental agreements at Dollar. In addition to General Manager Rick Klier, the following Operations Managers also have assisted at the rental counter when needed: Keith Johnson, Mark Peters, and Kirsten Sloan (Union Ex. 6 and 7).

The Regional Director found it significant, for purposes of functional integration, that the Employer operates on a "CHOICE" business model at DIA, which means that the customer reserves a classification of vehicle at the rental counter and then chooses the particular vehicle within such classification when he or she walks out to the lot (Decision at 31). The only impact of the CHOICE program on functional integration, however, is that the exit booth agent (rather than the RSA) enters the specific vehicle into the system as the customer exits the facility (Tr. 21, 170). Even in a non-CHOICE operation, however, the exit booth agent would still have to verify that the customer has the specific vehicle assigned to the customer. On the other hand, the lot agent, rather than showing the customer to a specific vehicle, merely shows the customer to a row of vehicles in the classification reserved by the customer, so the CHOICE program actually diminishes functional integration to that degree. In short, the fact that the Employer uses a CHOICE program does not appreciably increase functional integration or interaction, let alone cause the degree of functional integration or interaction that would override the proposed bargaining unit of RSAs.

### III. Argument

#### 1. The Decision is a departure from officially reported Board precedent.

First, the Decision fails to accord sufficient weight to traditional Board criteria that the Act does not require that a proposed bargaining unit be the *most* appropriate unit or the *ultimate* unit; the Act requires only that it be *an* appropriate unit to ensure that employees in each case have “the fullest freedom in exercising the rights guaranteed by the Act.” *Overnite Transportation Co.*, 322 NLRB 723 (1996). A union is not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963).

Second, although in an introductory paragraph the Regional Director cited several cases governing bargaining units in the car rental industry, she relied solely upon an inapposite case that did not involve the car rental industry, *United Rentals, Inc.*, 341 NLRB 540 (2004). (Decision at 29 *et seq.*) In *United Rentals* the employer rented equipment to homeowners and small contractors—the record is not clear about the specific equipment, but it appears to have been lawn mowers, roto-tillers, and other small equipment that was loaded onto trailers for pickup by or delivery to customers. Further, the overall bargaining unit in *United Rentals* was 18 employees, from which the petitioning union had sought to carve out a unit of mechanics, yard employees, and drivers (12 employees). All employees worked in or from the same building under the supervision of one person, the branch manager. The counter employees, whom the Regional Director apparently equates with the RSAs here, used pickup trucks to make deliveries (like drivers); helped customers or drivers load deliveries (like yard employees), and repaired equipment (like mechanics). Yard employees regularly filled in for counter employees, and

counter employees regularly filled in for yard employees. In short, there was overwhelming functional integration and interchange in the small bargaining unit involved in *United Rentals*.

*United Rentals* is inapposite to the facts and the industry involved herein. To the Petitioner's knowledge, there are no cases in the car rental industry supporting the Employer's contention that a "wall-to-wall" unit is the only appropriate unit when a petitioner has sought a smaller unit. To the contrary, the Board consistently has rejected contentions, in the face of alleged functional integration or interchange no greater than that reflected in the record herein, that all employees must be included.

For example, in *Avis Rent-A-Car System, Inc.*, 132 NLRB 1136 (1961), the union sought a unit of mechanics, "lotmen," "gasmen," "servicemen," and other classifications, excluding rental agents. Despite the antiquated titles, such employees performed tasks similar to the lot agents, service agents, mechanics, and other support employees that the Regional Director included in the present bargaining unit. The Board in *Avis* rejected the employer's contention that the unit should include rental agents. The Board pointed out that, much as RSAs do here albeit under modern conditions, the rental agents worked behind a rental counter, prepared rental agreements, and performed similar customer service tasks. The Board excluded them from the unit, despite evidence that rental agents occasionally delivered vehicles to customers or cleaned vehicles during rush periods—just as the day-shift RSAs herein cover breaks of lot agents or the evening or night-shift RSAs do some lot agent or return agent duties after 9:00 p.m. simply because none of those employees are scheduled to work after 9:00 p.m. Thus, the fact that evening and night-shift employees necessarily must do some duties of lot or return agents when none of those employees are scheduled to work is not a true example of interchange, which normally requires that both classifications of employees interchangeably perform some of the

duties of the other classification when needed. Moreover, it does not diminish the unique community of interest among RSAs. As discussed above, the only employees who perform any duties of RSAs with any frequency are the two staff assistant I employees, who assist, along with excluded Operations Managers, at the rental counters.

Similarly, in *Budget Rent-A-Car of New Orleans, Inc.*, 222 NLRB 1264 (1975), the union sought a bargaining unit of service employees, who performed duties related to the movement, washing, cleaning, and conditioning of rental vehicles, which were similar to the duties performed here by lot agents, service agents, return agents, assistant mechanics, and mechanics for DTG. Again, the employer contended that the only appropriate unit should include rental representatives. Like the RSAs here, the rental representatives occasionally moved vehicles in the absence of a service representative or performed service representative duties such as refueling or cleaning a vehicle. Reversing the regional director, the Board held that the requested unit of service representatives was appropriate by itself. The Board found that as in the *Avis* case—and as in the instant case—the service representatives performed “basically manual functions and there is virtually no employee interchange between the service and the rental representatives.” *Id.* at 1264. “Further, unlike rental representatives, service representatives never qualify customers, rent cars, or fill out rental forms.” Here, the same observation is true, with the limited exception that exit gate booth agents enter the specific car rented by the customer into the computer system.

The Board has continued to reject employer contentions that the only appropriate unit in the car rental industry must include all employees. In *Alamo Rent-A-Car*, 330 NLRB 897 (2000), the union sought a bargaining unit composed of service agents, shuttlers, and other classifications similar to the service and support employees that DTG claims should be included

herein. On the unit composition issue, the regional director specifically rejected the employer's contention that the unit must be composed of all employees, including rental agents. *Alamo Rent-A-Car*, Case 20-RC-17501 (RD Decision and Direction of Election dated March 25, 1999), pp. 17-19.<sup>2</sup> There was also a dispute about the scope of the unit, as the union requested a unit consisting of two locations in San Francisco, while the employer claimed that all four of its San Francisco locations were tightly integrated and must be included. The Board, while disagreeing with the regional director about limiting the scope of the unit to two locations, agreed with the regional director's determination of unit composition, with one exception that is not material here. 330 NLRB at 897.<sup>3</sup>

In summary, the Board has consistently rejected employer contentions that the only appropriate bargaining unit in the car rental industry must include all employees, including rental agents and service employees. Although in those cases the union was seeking a unit of service employees excluding rental agents, the converse is just as applicable here. As the Board noted in the aforementioned cases, it has rejected such "wall to wall" units even when there was functional integration or occasional overlap comparable to that herein. To the Petitioner's knowledge, the Board has never found in the car rental industry that the only appropriate unit must include all employees, which would be contrary to the statutory principle of "assur[ing] to employees the fullest freedom in exercising the rights guaranteed by this Act" that is enshrined in Section 9(b).

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<sup>2</sup> The exact nature of the unit composition issue is not clear from the reported Board decision, but is revealed by the regional director decision.

<sup>3</sup> See also *M.H.T. Corp. d/b/a Dollar Rent-A-Car*, 250 NLRB 1361 (1980) (parties stipulated to service unit of garage, maintenance, and car shuttle employees).

Therefore, the Regional Director's Decision constitutes a departure from reported Board precedent, and the request for review should be granted for that reason.

**2. The Regional Director's determinations on several substantial factual issues are clearly erroneous on the record.**

The Regional Director erroneously found that hourly employees have identical terms and conditions of employment (Decision at 31). To the contrary, the terms and conditions of work RSAs are substantially different from the conditions of other employees in key respects. First, their physical conditions and location of work are decidedly different. RSAs work behind sales counters in the rental buildings, prepare rental agreements for customers, and operate computers. Service agents, lot agents, and return agents work outside and perform basically manual labor related to preparing, renting, or returning vehicles (other than the return agents' task of closing out the contract on a handheld electronic device). Booth agents work in a booth that is hundreds of yards distant from the rental buildings, and mechanics work in the maintenance building performing mechanical and maintenance work under separate supervision. Bus drivers drive buses from the airport to the facility and back.

Second, although all employees are subject to the same overall policies, fringe benefits, and employee handbook, this factor is diminished because all supervisors and, indeed, all employees of the entire corporation are subject to these same provisions. Even more important, however, is that only RSAs are subject to an incentive program that requires them—as a condition of continued employment as an RSA—to sell upgrades and other products aggressively to customers. Only RSAs are subject to an incentive program that penalizes them with disciplinary consequences leading to termination of employment, if they fail to reach certain thresholds set by the Employer. As discussed above, the Regional Director described this point

briefly in passing, but then failed to account for it in discussing that other employees also have incentive plans (Decision at 32).

Moreover, the Regional Director erroneously commingled several different classifications in discussing the incentive plans, finding as follows: “Moreover, the RSAs, exit booth gate agents, return agents and lot agents all sell some combination of pre-paid fuel, toll passes, vehicle upgrades, and insurance.” (Decision at 32.) In fact, the Employer’s witness admitted that exit booth agents at DIA only sell loss damage waivers, pre-paid fuel, and toll booth passes, even though the written incentive plan for them purports to cover vehicle upgrades and GPS units (Employer Exhibit 28; Tr. 222-23). The incentive plan for return agents or “greeters” only provides incentives for closing duties such as “handheld close percentage,” accident reports, preventive maintenance, and fuel recovery—they do not sell prepaid fuel, toll passes, vehicle upgrades, or insurance (Employer Exhibit 27; Tr. 223-24). There is no separate incentive plan for lot agents, as the Employer’s witness testified that they are included under the greeters’ incentive plan.

Third, the Regional Director erroneously found that RSAs are under common supervision (Decision at 32-33). She failed to account for the fact that although all employees on a given shift are subject generally to the overall supervision of the Operations Manager(s) on duty, the RSAs have separate immediate supervision in significant respects. As the Employer’s witness testified, Senior Operations Manager Todd Trueblood is directly responsible for scheduling them, granting time off, and other administrative tasks for RSAs, with assistance from Operations Manager Margaret Savelio (Tr. 121, 192-93). As the Board held in *Overnite Transportation Co.*, 331 NLRB 662, 663-64 (2000): “Further, although there is some evidence of ‘cross-supervision’ of classifications, there is also evidence of separate immediate supervision.

Thus, the evidence regarding supervision is insufficient to support the Employer's contention that a wall-to-wall unit is the smallest appropriate unit.”

Fourth, the Regional Director’s finding of an “extensive amount of interchange between classifications of employees” is clearly erroneous as to the employees sought in the Petition, the RSAs (Decision at 34). As discussed above, no other classification of employees—with the exception of the two staff assistant I employees (and the excluded Operations Managers)—performs the functions of RSAs with any frequency. The day-shift RSAs cover breaks of lot employees, but those employees never perform RSA duties. The evening and night-shift RSAs necessarily perform some functions of lot and service agents after approximately 9:00 p.m. **because none of those employees are scheduled to work then.** None of those employees ever perform functions of RSAs. The Petitioner respectfully submits that such overlap of duties is not true interchange, let alone extensive interchange sufficient to override the unique community of interest among RSAs.

Finally, the finding that RSAs have an “overwhelming community of interest” with all of the other classifications included in the unit by Regional Director is clearly erroneous on the factual record (Decision at 30). RSAs have a unique work location, unique physical conditions of work, and unique work duties, compared with the other employees who fulfill primarily service, maintenance, and support functions. They have a unique incentive plan. They are the only employees who are subject to discipline and discharge for failing to comply with the Employer’s minimum standards in the incentive plan. Although they obviously share some interests in common with their fellow employees—as any employees of the same employer share some common interests—Petitioner respectfully contends that the finding of an overwhelming community of interest is clearly erroneous based upon the facts in the record.

**3. The Regional Director clearly erred in finding that the two staff assistant I employees should be included as plant clerical employees.**

The Regional Director found that the two employees classified as staff assistant I, the only other employees besides supervisors who regularly perform RSA duties, are plant clerical employees within the meaning of *Desert Palace, Inc., d/b/a Caesars Tahoe*, 337 NLRB 1096 (2002), and related cases (Decision at 27 n. 15). The Petitioner respectfully disagrees.

As the Employer's witness, General Manager Rick Klier, testified on direct examination, the primary functions of the staff assistants are office clerical in nature (Tr.53-57). They prepare several daily reports for management, such as General Manager Klier, including "non-revenue" reports and reports on discounts offered by RSAs to customers. Klier was unable to recall the other kinds of reports they prepare. Klier testified that the reports are not "confidential," but preparing reports for management on discounts provided by RSAs is inconsistent with having a community of interest with RSAs.

Although the Regional Director characterized the staff assistant I's duties as relating to the production process, this finding is contradicted by Klier's own testimony. Thus, he testified as follows (Tr. 55, emphasis added):

Q. Now are these people, the staff assistant I's, are they clerical employees or how would you describe their function?

A. I mean I guess you could classify them as clerical. I mean they do filing, if that would be classified as clerical. They do some report functions. They answer the telephones from our customers, inbound telephone calls and they handle our lost and found. So I guess you could describe it as such.

Q. All right. **Now would you describe their functions as clerical functions related to office type matters or to the actual production of your product.**

A. **To the office, yes.**

Hence, the Regional Director's finding that the staff assistant I should be included because they are plant clericals is clearly erroneous. Instead, they should be excluded as office clerical employees. The Board customarily excludes office clerical employees from other bargaining units, and there are no compelling circumstances justifying their inclusion here. *L.M. Berry and Co.*, 198 NLRB 217, 219 (1972) (excluding office clerical employees from sales unit). As in *L.M. Berry*, the rental sales agents or RSAs at issue here are primarily sales employees, whose main function and incentives are designed to increase the Employer's "production," *i.e.*, the sales of products (vehicles, upgrades, insurance, GPS devices, prepaid fuel, etc.) to customers. On the other hand, the primary function of staff assistants is to perform office clerical work related to the administration of the Employer's business, *e.g.*, preparing reports on discounts offered by RSAs, preparing "non-revenue" reports and other reports, and administering the lost-and-found system. Although staff assistants assist as needed at the rental counter, just as Operations Managers and even the General Manager assist at the counter when needed, this does not change the essential character of the staff assistant's primary duties as office clerical work.

#### **IV. Conclusion**

The Regional Director's Decision departed from reported Board precedent in relying mainly, if not entirely, upon a case that did not involve the car rental industry at all, and disregarding the several cases in which the Board has consistently rejected contentions that a "wall-to-wall" unit is the only appropriate unit in the car rental industry. In addition, the Decision rests upon several important findings of fact that are clearly erroneous, as shown by the record.

In summary, the preponderance of the evidence supports the conclusion that the bargaining unit proposed by the Petitioner is an appropriate unit for bargaining. Rental sales

agents and lead rental sales agents share a unique community of interest, with different working conditions and duties from other employees, a unique incentive plan that subjects only RSAs and no other classification to potential disciplinary consequences, separate immediate supervision, insufficient functional integration or interchange to override their separate community of interest, and other factors that warrant a separate bargaining unit.

Therefore, Petitioner requests the Board to grant the request for review, to find that the unit requested by the Petitioner is appropriate for collective bargaining, and to direct an election in the requested unit.

Respectfully submitted on this 14<sup>th</sup> day of February, 2011.

*s/ Michael J. Belo*

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the PETITIONER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND ORDER by email and by placing a copy in the U.S. Mail, with first-class postage affixed, and addressed to the following:

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*s/ Michael J. Belo*

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