

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

HERTZ EQUIPMENT RENTAL
CORPORATION¹

Employer

and

Case 05-RC-089275

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL NO. 37, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

On September 24, 2012, the Region conducted a representation hearing in this case.³ Upon the commencement of the hearing, the parties reached stipulations covering all litigable issues. The sole issue before the Regional Director is whether the unit description should reflect the exclusion of specified classifications and the words “all other employees”. The parties stipulated that the following employees constitute an appropriate unit for purposes of collective bargaining:

All full-time and regular part-time truck drivers, shop mechanics, road mechanics, and yard workers employed by the Employer at the 5501 O’Donnell St., Baltimore, MD, but excluding **all other employees**, office clerical employees, sales employees, managerial employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act.

¹ The Employer’s name appears as amended at hearing.

² The Union’s name appears as amended at hearing.

³ The parties waived the filing of briefs

There are approximately 7 employees in the stipulated unit, and there is no history of collective bargaining.

At hearing the parties agreed that there are no employees whose job classifications were not specifically identified in the agreed to unit description, thereby making superfluous and potentially leading to future disputes the words “all other employees” to the unit description.⁴ Therefore, I find the appropriate unit description should not include the words “all other employees” in the exclusions section.

I. CONCLUSIONS AND FINDINGS

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

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.
2. As stipulated by the parties, the Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

⁴ The instant case is distinguishable from cases involving large units with many included and/or excluded classifications such as *Huntington Ingalls Corporation*, 358 NLRB No. 100 (2012) and *American University*, 351 NLRB No. 7 (2007) which were cited by the Employer’s counsel in support of its position. In *Huntington Ingalls Corporation*, the Employer employed approximately 18,500 people at the shipyard. Of those, approximately 2400 were employed in about 10 technical job classifications. The departmental unit that I found appropriate, and that was affirmed by the Board, contained only approximately 140 employees in one specific department -- E85 RADCON. See *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163 (2011). Likewise in *American University*, the unit found appropriate included only the shuttle bus drivers, and excluded a number of other employee classifications. In the instant case the Employer employs only a few job classifications and all classifications are either specifically included or excluded from the unit, so there is no legitimate reason to exclude “all other employees”.

3. The Petitioner, International Union of Operating Engineers, Local No. 37, AFL-CIO, is a labor organization as defined in Section 2(5) of the Act. And claims to represent certain employees of the Employer.
4. There is no prior history of collective bargaining between the Petitioner and the Employer.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
6. The parties stipulated that the Employer, Hertz Equipment Rental Corporation, a Delaware corporation, with an office and place of business in Baltimore, Maryland, is engaged in the business of equipment rentals. During the past 12 months, a representative period, the Employer, in conducting its business operations described above, received goods and materials valued in excess of \$50,000 directly from points located outside the State of Maryland.
7. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time truck drivers, shop mechanics, road mechanics, and yard workers employed by the Employer at 5501 O'Donnell St., Baltimore, MD, but excluding all office clerical employees, sales employees, managerial employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act.

II. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union of Operating

Engineers, Local No. 37, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list

of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

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

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, Bank of America Center, Tower II, 100 South Charles Street, Suite 600, on or before **October 5, 2012**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by mail, by electronic filing through the Agency website, www.nlr.gov, or by facsimile transmission at (410) 962-2198. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

III. RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **October 12, 2012** at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished**

by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁵ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

/s/ Wayne R. Gold

Dated: September 28, 2012

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
Bank of America Center, Tower II
100 S. Charles Street, Suite 600
Baltimore, MD 21201

⁵ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.