

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

THE HERTZ CORPORATION

Employer

and

Case No. 31-RC-8542

AUTOMOTIVE, INDUSTRIAL, and  
ALLIED WORKERS, TEAMSTERS LOCAL 495

Petitioner

**DECISION AND ORDER**

Automotive, Industrial, and Allied Workers, Teamsters Local 495, (Petitioner), filed a petition under Section 9(c) of the National Labor Relations Act, as amended (the Act), seeking to represent a unit of exit booth agents employed by The Hertz Corporation (the Employer)<sup>1</sup> at its facility located at 9000 Airport Blvd. in Los Angeles. The sole issue in dispute is whether the petitioned-for employees are guards within the meaning of Section 9(b)(3) of the Act. Section 9(b)(3) precludes the Board from certifying a labor organization as the representative of a unit of guards if the union admits to membership employees other than guards or is affiliated directly or indirectly with an organization that admits employees other than guards to its membership. The parties stipulated that the Petitioner represents employees who are not guards.<sup>2</sup> The Employer contends that the petitioned-for employees are guards and, therefore, the Petition must be dismissed; the Petitioner disagrees and asserts that these employees are not guards. For the reasons set forth below, I conclude that the petitioned-for employees are guards within the meaning of Section 9(b)(3) and, therefore, I shall dismiss the petition.

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<sup>1</sup> The Employer's name appears as corrected by stipulation of the parties.

<sup>2</sup> It is evident from the record that Petitioner admits to membership employees other than guards.

A hearing was held before a hearing officer of the National Labor Relations Board (the Board). The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

**I. FINDINGS**

**A. Hearing Officer Rulings:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3</sup>

**B. Jurisdiction:** The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.<sup>4</sup>

**C. Labor Organization:** Petitioner is a labor organization within the meaning of Section 2(5) of the Act, as amended, and claims to represent certain employees of the Employer.

**D. Question Concerning Representation:** A question affecting commerce exists concerning the representation of certain employees within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

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<sup>3</sup> The post-hearing briefs in this matter were due Tuesday, September 27, 2005. The Petitioner did not file a brief. Since the Employer's brief was not delivered to this office until Wednesday, September 28, 2005, it was returned to the Employer as untimely and a copy was retained for the case file. The Employer subsequently provided a record from the delivery service establishing that the brief had been tendered to the delivery service on September 26, 2005, the day before the due date. Therefore, pursuant to Section 102.111(b) of the Rules and Regulation, the brief was timely filed. Accordingly, I have read and considered the copy of the brief maintained for our files.

<sup>4</sup> The Employer, The Hertz Corporation, a Delaware corporation, is engaged in the rental and sale of motor vehicles at its location at 9000 Airport Blvd., Los Angeles, California. During the past 12 months, a representative period, the Employer had gross revenues from such rentals in excess of \$500,000. During the same period, the Employer purchased and received goods valued in excess of \$50,000, which goods were shipped directly to its facilities in California from points located outside the State of California. The Employer, thus, satisfies the Board's statutory jurisdictional standard, as well as the Board's discretionary standard for asserting jurisdiction. *The Hertz Corporation*, 265 NLRB 1127 (1982).

## II. FACTS

The petitioned-for employees<sup>5</sup> work at the Employer's facility at the Los Angeles Airport (LAX), which, according to the Employer's City Manager, is the largest and busiest car rental location in the world. The Employer rents over 60,000 vehicles a month at this location. The Employer employs about 450 to 500 employees at its LAX facility, including the 25 petitioned-for employees. The Petitioner currently represents the following employees of the Employer at the LAX facility, in several different bargaining units: vehicle service attendants, customer service representatives, instant return representatives, mechanics, bus mechanics, tire/lube employees, and drivers.

The LAX rental facility is about 12 acres in diameter and has 5 exit gates and 1 entrance gate. The perimeter of the facility is fenced. This rental facility is open 24 hours a day, 7 days a week. The Employer also has an 18-acre facility (the Garret Lot) that is about 3 blocks away, which is used for storage of new cars that are being added to the rental fleet and older cars that are being removed from the fleet. There is a gate and a security booth at the entrance to the Garret Lot. Although the Garret Lot only is open from 6:00 a.m. until 10:00 p.m., gate security representatives are assigned to it 24 hours a day, 7 days a week. There also is an employee parking lot, which is contingent to the rental facility.

The gate security representatives are assigned to the entrance and exit booths. At each exit, there are security mechanisms that are operated by the gate security representatives. There are gate barrier arms that move up and down and there is a mechanism that has "tiger teeth," which would puncture the tires of any vehicle that attempted to drive over them.<sup>6</sup> The gate security representatives control the gate barrier arms and the tiger teeth by pressing a button from inside the booth. There are monitors in the booths that show pictures from video cameras, which are located near the booths and that record a picture of the drivers' faces as cars leave, as well as the license plates of the

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<sup>5</sup> The petitioned-for employees are referred to in the Petition as "exit booth agents." These employees also are referred to in the record as exit gate security representatives, guards, security guards, gate security representatives and security representatives. For convenience, I will refer to them as gate security representatives, which is the designation in the training manual.

<sup>6</sup> The "tiger teeth" are a series of sharp steel prongs imbedded in the exit lane.

cars exiting. In performing their duties, the gate security representatives use scanners to keep track of vehicles and use two way radios.

The gate security representatives monitor the entrances and exits. They check the driver's license and rental leaves the facility. They check to be sure that the driver is the person to whom the vehicle was rented and they confirm that the customer has the correct vehicle. If a customer in agreement of each customer that wants to change his or her vehicle, the gate security representative contacts a manager. Certain of the gate security representatives can make the change in the computer themselves, though this change only happens with respect to about 1% of the rentals. Since customers who participate in the Employer's Gold Service program are permitted to go directly to their vehicles without waiting in line to interact with a customer service representative, there are vehicles that are left on the lot unlocked and with keys and the rental agreement in them. When a Gold Service customer exits the lot, the gate security representative must record the rental agreement number on a log and obtain the customer's signature. On occasions, employees or managers may rent or use the Employer's vehicles. On these occasions, the gate security representative at the exit booth verifies the authorization for the use of the vehicle and inspects the trunk of the vehicle, looking for the unauthorized presence of company supplies or property.<sup>7</sup>

The gate security representatives also prevent unauthorized entry to the facility. They keep non-customers and private vehicles off the premises. Gate security representatives may be asked to ensure that particular individuals, including former employees, are not permitted access to the premises and they escort away from the premises suspicious individuals who have obtained entry. Gate security representatives are expected to investigate irregularities that are brought to their attention by others or that they personally observe. In addition, the gate security representatives inventory the vehicles in the maintenance area, they distribute payroll checks,<sup>8</sup> and they may be called

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<sup>7</sup> Although the gate security representatives inspect the trunks of vehicles exiting that are driven by employees, they do not inspect the trunks of cars driven by customers.

<sup>8</sup> The payroll checks are distributed in the employee lunchroom. The gate security representative distributing the checks has the employees sign for their checks.

upon to assist a customer service representative who is having problems with a difficult customer.

The gate security representatives assigned to the Garret Lot do not interact with customers. After the gate to that lot is shut at 10:00 p.m., in order to prevent the theft of parts from the vehicles being stored there, a gate security representative patrols the lot. Gate security representatives assigned to the main rental lot also patrol that lot at times.

The record reveals specific recent examples of instances when gate security representatives have been involved in the prevention of theft. For example, recently a gate security representative called the police after an individual exited the lot by driving a car through the gate area and popping the tires on the “tiger teeth.” The gate security representative interacted with the police and identified the suspect. The gate security representatives also are involved in the protection of employees. About a year ago, there was a reported rapist in the area and the gate security representatives escorted employees to their cars on the employee parking lot. Now they don’t routinely escort employees to the employee parking lot, but they sometimes still are requested to do so.

The gate security representatives are involved in incidents that involve employees. For example, recently an ex-employee from another facility had altered some stolen rental agreements and attempted to use an altered agreement to leave the Employer’s LAX facility with a car. A gate security representative prevented this from happening. Also, when management wants an employee that is being fired to be escorted off the property, a gate security representative waits outside while the employee is notified of the termination and then escorts the employee off the premises. This procedure happened as recently as a month before the hearing in this matter.

The gate security representatives maintain daily activity reports on which they note activities, both usual and unusual. They also complete incident reports concerning unusual activity. These incident reports may involve violations of rules by employees. For example, gate security representatives report inappropriate parking by employees in handicap parking areas, inappropriate temporary parking by employees in the visitor area while clocking in to work, and speeding by employees in the parking lot. The reporting of these incidents may lead to discipline of the employee who has been reported.

The gate security representatives are not required to have any particular training or experience when they are hired. They are not required to be licensed or bonded and they are not fingerprinted or photographed when they are hired. Moreover, they are not permitted to carry any type of weapon.

With respect to training, newly hired gate security representatives are assigned to a more senior gate security representative to receive on the job training. They also receive “toolbox training,” which refers to brief meetings of a supervisor or manager with the gate security representatives. About once or twice a year, when there are enough new gate security representatives to warrant it, there is a formal training session for the new gate security representatives that lasts about five to seven hours.<sup>9</sup> At this training, the gate security representatives are provided with a manual entitled “Hertz Exit Gate Security Representative New Hire Course Participant’s Manual.” The instructor goes through the manual with the gate security representatives and they are expected to read any sections that they did not cover in the training. The manual explains that the gate security representatives are expected to “protect company employees, customers and property.” The manual describes the gate security representatives’ duties as including the following: the control of vehicular and pedestrian traffic; the prevention of crime; the provision of first alert/alarm response; and the reporting of infractions and incidents, including employee theft.<sup>10</sup> The manual contains lessons concerning, inter alia, arrest/custody procedures,<sup>11</sup> the use of force, arrest authority and limitations, patrol functions, and emergency situations. With respect to strikes and picketing, the manual provides that gate security representatives must maintain order at the exit gates. It also instructs them that they must remain neutral and that they must inform management immediately if any picket line activity begins. The gate security representatives are instructed that in the event of a strike or picketing they would be responsible for ensuring that the entrances and exits to the facility remain unobstructed.

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<sup>9</sup> About two thirds of the current gate security representatives have had this formal training.

<sup>10</sup> According to the manual, gate security representatives can inspect items being carried off the property by employees, including briefcases, purses, tool boxes and bags.

<sup>11</sup> The gate security representatives are instructed never to detain an individual in any way other than verbally.

The gate security representatives report to a particular Senior Station Manager.<sup>12</sup> They wear a uniform that is distinct from the uniforms of other employees. The gate security representative uniform consists of a dark blue hat, a dark blue jacket and a light blue shirt. There is a badge on both the hat and the jacket with the words “Security Officer,” and the shirt has a yellow star and the words “Hertz Security.”<sup>13</sup>

### III. DISCUSSION AND CONCLUSION

Section 9(b)(3) of the Act precludes the Board from certifying any labor organization as “the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.”<sup>14</sup> Congress enacted this section out of a concern about conflicts of interest that might arise if guards were represented by unions that also represented non-guard employees. *Burns Security Services*, 300 NLRB 298, 299 (1990), enf. denied 942 F2d 519 (8<sup>th</sup> Cir. 1991). As the Board noted in *The Boeing Company*, 328 NLRB 128, 130 (1999), Congress was particularly concerned about the role a disputed employee may play during a period of industrial unrest or strike by other employees of the employer. Congress sought to prevent conflicts that might arise if during a strike by non-guard employees represented by the same union as guards, the guards were required to enforce security rules against their striking co-workers. *Id.*

In *The Boeing Company*, *id.*, the Board described typical guard responsibilities or functions as including “the enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security

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<sup>12</sup> It does not appear that any employees other than a business clerk and the gate security representatives report to this Senior Station Manager.

<sup>13</sup> The counter sales representatives wear gray pants, a white shirt, a tie and a gray jacket.

<sup>14</sup> Section 9(b)(3) provides that:

the Board shall not... (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

procedures; weapons training and possession; participation in security rounds or patrols; the monitor and control of access to the employer's premises; and wearing guard-type uniforms or displaying other indicia of guard status." It is not necessary that the alleged guards actually enforce rules themselves in order to be considered guards within the meaning of the Act; the possession and exercise of the responsibility to observe and report infractions of rules to protect property and the safety of persons is sufficient. *The Wackenhut Corporation*, 196 NLRB 278, 279 (1972).

As the Board explained in *Rhode Island Hospital*, 313 NLRB 343, 346 (1993), the controlling factor in determining "guard" status is the nature of the duties of the alleged guard and not the percentage of time which the alleged guard spends performing these duties. Nevertheless, the Board in *Rhode Island Hospital* did consider whether the guard responsibilities were a "minor or incidental part" of the disputed employees' overall responsibilities. *Id.* at 347.

In this case, the gate security representatives duties include the following: monitoring and controlling access into and out of the Employer's premises; reporting infractions of rules designed to protect the Employer's property and the safety of individuals, including infractions by employees; patrolling the Garret Lot after 10:00 p.m. and at times patrolling the main rental lot; and protecting the safety of individuals in circumstances where there is a potential problem with an aggravated customer, in situations where an employee must be escorted off the property, and by escorting employees to their cars when there is a safety concern. I also note that the gate security representatives wear distinctive uniforms, with badges; they receive specialized security training within 6 months to a year after they are hired; and they have the duty to ensure that entrances and exits are unobstructed in event of a strike or picketing. In these circumstances, I conclude that the gate security representatives are guards within the meaning of Section 9(b)(3). The fact that the gate security representatives do not carry weapons, are not required to have prior guard experience, and have not yet all had special training as guards does not negate the fact that they fit the statutory definition of a guard. See, *Peco energy Co.*, 322 NLRB 1074 (1997); *Jakel Moters*, 288 NLRB 730, 743 (1988).

Since I have determined that the gate security representatives are guards within the meaning of the Act, and since the Petitioner is a labor organization that represents and admits to its membership employees other than guards, I find that the Petitioner is not qualified, under Section 9(b)(3), to represent the employees sought by its petition. Accordingly I shall dismiss the petition

**ORDER**

IT IS HEREBY ORDERED that the petition filed in this case is dismissed.

**RIGHT TO REQUEST REVIEW**

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, under the provision of Section 102.67 of the Board's Rules and Regulations. The Board in Washington must receive this request by October 18, 2005.<sup>15</sup>

**DATED** at Los Angeles, California this 4th day of October, 2005.

/s/ James J. McDermott  
James J. McDermott, Regional Director  
National Labor Relations Board  
Region 31

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<sup>15</sup> In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlrb.gov](http://www.nlrb.gov).