

DTG Operations, Inc. and Teamsters Local Union No. 455, International Brotherhood of Teamsters.
Case 27–RC–008629

December 30, 2011

DECISION ON REVIEW AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER
AND HAYES

On January 28, 2011, the Regional Director for Region 27 issued a Decision and Order in which she found that the petitioned-for unit of 31 rental service agents (RSAs) and lead rental service agents (LRSAs) at the Employer DTG Operations, Inc.'s Denver International Airport rental car facility is not an appropriate unit for bargaining.¹ Instead, the Regional Director found that the smallest appropriate unit is a wall-to-wall unit containing all 109 of the Employer's hourly employees.² Because the Petitioner expressly declined to participate in an election to represent that larger unit, the Regional Director dismissed the petition.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Petitioner filed a timely request for review. The Employer filed an opposition. On April 29, 2011, the Board granted the Petitioner's request for review. Both parties filed briefs on review.

Having carefully considered the entire record in light of our recent decision in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), we reverse the Regional Director's finding that the petitioned-for bargaining unit is not appropriate. Applying *Specialty Healthcare*, we find, first, that the RSAs and LRSAs share a community of interest and, second, that the Employer failed to demonstrate that the additional employees it seeks to include share an overwhelming community of interest with the RSAs and LRSAs. Accordingly, we conclude that the petitioned-for RSA/LRSA unit constitutes an appropriate unit for bargaining, and we remand to the Regional Director to direct an election in that unit.

Facts

The Employer operates a rental car facility near Denver International Airport (DIA), where it rents cars and light-duty vehicles under the trade names Dollar-Rent-A-

Car and Thrifty Car Rental. The Employer maintains a 13-acre facility on "rental car row," located a few miles from DIA, that includes separate Dollar and Thrifty rental buildings and a common maintenance garage and carwash building. All the Employer's employees are required to have a high school diploma and a driver's license, and all are called on to move vehicles around the lot when necessary. Employee pay ranges from \$7.28 an hour for the lowest-paid shuttler to \$30 an hour for the highest-paid mechanic. All employees wear company uniforms, but the color of the uniforms depends on their classification. RSAs' and LRSAs' uniforms are, as the Regional Director found, "'classier' uniforms that are made of better quality material" than other uniforms.

The Employer operates the facility 24 hours a day, 7 days a week, in three 8-hour shifts. The RSA/LRSA function is staffed 24 hours a day, but most other jobs are staffed for only parts of the day. For example, maintenance operates from 7 a.m. to 11 p.m., and no lot or return agents are scheduled past 10:30 p.m. The Employer holds two daily planning meetings, at 8:30 a.m. and 4:30 p.m., with representatives from the various employee classifications.

The Employer has nine operations managers, who rotate as the supervisor on duty for the facility each shift. Most of the employees on a given shift are subject to the overall supervision of the operations manager on duty,³ but different operations managers are responsible for different groups of employees with regard to scheduling, granting time off, and other administrative tasks.

The Petitioned-For Unit: RSAs and LRSAs

Upon arrival at the airport, customers ride the Employer's courtesy buses to the Employer's facility, which is several miles from the airport. The bus drivers drop the customers off at one of the two car-rental counters, staffed by the 25 RSAs and 6 LRSAs.

An RSAs primary duties are to greet customers, process rental contracts, sell optional services, answer and receive telephone calls, resolve overdue rentals, and respond to customer questions and complaints. Each RSA is responsible for entering information into the Employer's database about the customers, their rental contracts, vehicle upgrades, and additional products sold with any contract. A typical RSA completes hundreds of rental agreements each month.⁴ As discussed below, RSAs also fill in for lot agents during lot agents' breaks and perform lot and return agent duties on the overnight shift.

¹ Pertinent portions of that decision are attached as an appendix to this Decision and Order.

² The wall-to-wall unit would include, in addition to the RSAs and LRSAs, the facility's 3 staff assistants, 2 lead staff assistants, 9 return agents, 6 lot agents, 9 service agents, 4 lead service agents, 1 fleet agent, 9 exit booth agents, 2 shuttlers, 21 courtesy bus drivers, 2 lead courtesy bus drivers, 3 mechanics, 4 assistant mechanics, 2 bus mechanics, and 1 building maintenance technician.

³ The day-shift mechanics are separately supervised by Charlene Donovan.

⁴ The record indicates that RSAs and LRSAs who worked all 12 months in 2010 averaged about 368 rental agreements per month.

RSAs must have at least 9 to 12 months of car rental or sales experience. They are paid between \$8.50 and \$12.75 an hour.

LRSAs perform all of the regular duties of the RSAs. In addition, LRSAs represent the RSA classification at the two daily planning meetings; assist in scheduling RSA breaks and lunches; and have primary responsibility for handling frequent customers. LRSAs must have 1 to 2 years of sales experience in the car rental industry, preferably with some lead experience, and they are paid between \$9.50 and \$14.25 an hour.

The Employer operates a mandatory "Incentive Compensation Plan" covering only its RSAs and LRSAs.⁵ Under this plan, RSAs/LRSAs do not receive any credit for simply renting vehicles as the customers reserved them. Rather, RSAs/LRSAs earn incentive pay by selling upgrades and additional products to customers, such as rental of a more expensive vehicle or a GPS unit and purchase of insurance coverage or prepaid fuel. An RSA/LRSA does not receive any incentive pay unless the additional sales exceed a monthly threshold established by the Employer.⁶ RSAs and LRSAs who do not consistently meet that threshold are subject to transfer (to a different classification) or discharge under the Employer's "Core Model for Sales" performance-improvement plan.⁷ Although many of the other employee classifications participate in separate incentive plans, none of those plans has any such disciplinary component.

Employees Who Work Outside On and Around the Lot:
Lot Agents, Exit Booth Agents, Return Agents, Service
Agents, Lead Service Agents, the Fleet Agent,
and Shuttlers

After the RSA/LRSA completes her work with a customer, the RSA/LRSA directs the customer out of the rental building to the lot, where the customer is greeted by a lot agent. The lot agent directs the customer to the pool of vehicles from which the customer makes a selection. Although lot agents can encourage customers to

purchase upgrades, it appears that they are unable to process those upgrades themselves. Lot agents are also responsible for monitoring the supply and cleanliness of vehicles on the lot. They must have 1 year of customer service experience. They are paid between \$9.50 and \$13.50 an hour and are eligible for incentive pay under the return agents' incentive program described below.⁸ Lot agents are not scheduled to work after 10:30 p.m. because the Employer's business is slower at night. After that time, RSAs/LRSAs perform lot agent duties as needed. RSAs/LRSAs also regularly fill in for lot agents when lot agents take breaks.

After choosing a vehicle, the customer drives it to the exit booth, where an exit booth agent electronically scans the vehicle identification and contract. Before finalizing the rental contract, the exit booth agent offers the customer another opportunity to purchase additional options, such as loss damage waivers, prepaid fuel, and toll booth passes.⁹ Exit booth agents are paid between \$9 and \$13.50 an hour and are eligible to participate in an incentive plan that pays them 2-1/2 percent of the value of all additional items they sell.¹⁰ The employer prefers that exit booth agents have at least 9 to 12 months of car rental or sales experience.

When a customer returns a vehicle to the facility, a return agent assists the customer in checking the vehicle for personal belongings and inspects the car for damage. The return agent also checks the fuel level and the odometer reading, and uses a handheld computer to generate a final statement and close out the contract. The return agent then directs the customer to the courtesy bus pickup area. Return agents are paid between \$9.50 and \$14.25 an hour. They also have an incentive program, which rewards them for closing duties including handheld close percentages, accident reports obtained, and either preventive maintenance or fuel recovery.¹¹ Return agents must have 1 year of customer service experience. They are not scheduled to work after 10:30 p.m.

⁵ Although the evidence is somewhat contradictory on this point, both the Employer's witness who testified about the program and the document describing the program indicate that the program applies to non-RSA/LSFA employees only if they complete at least 100 rental contracts per month. Moreover, the Employer acknowledges that "in essence it pertains to" the RSAs and LRSAs only.

⁶ The threshold amount is set by the corporate office and varies by month and rental location. The amount credited toward the threshold varies by product sold.

⁷ The Employer identified at least four former RSAs/LRSAs who were transferred to staff assistant, return agent, or lot agent positions during the past few years as a result of failing to improve under the Core Model, as well as one who was discharged upon refusing a transfer. Further, after placement in the Core Model, one employee quit and another—current lead service agent Harold Moss—decided that "sales was not for him."

⁸ It appears that until sometime recently, lot agents and return agents comprised a single classification called "greeters." The incentive plan that applies to both current classifications still uses that job title.

⁹ The contract is not finalized until after the customer has chosen the vehicle she wishes to rent. Thus, the exit booth agent updates the contract to include the vehicle identification information.

¹⁰ Exit booth agents need not meet any minimum threshold of additional sales to receive incentive pay.

¹¹ Handheld close percentages, preventative maintenance, and fuel recovery must meet a minimum threshold to generate incentive pay for return agents and lot agents; however, return agents are paid a flat fee of \$5 for each signed accident report they obtain from a customer. When RSAs/LRSAs fill in for lot or return agents, the RSAs/LRSAs do not participate in the lot and return agents' incentive program.

Once a rental car is returned, the service agents and lead service agents on the lot clean and prepare it for rental. Their duties include inspecting the vehicle for damage, refueling it, and performing preventive maintenance. Service agents are paid between \$8.50 and \$12.75 an hour, and lead service agents are paid between \$9.50 and \$14.25 an hour. Service agents also receive a monthly cash incentive based on a formula related to the number of cars, above a minimum threshold, that they clean in a given month. Service agents must have some previous work experience.

The Employer also has a fleet agent on the premises who processes vehicles to be added to the rental fleet and disposes of used rental vehicles. The fleet agent, who is paid between \$10.50 and \$15.75 an hour, must have at least 1 year of experience in car rental and 1 year in body shop repair or maintenance.

The Employer has two shuttlers, who move cars within and to and from the facility and who otherwise assist service agents and the fleet agent. Shuttlers are paid \$7.28 to \$10.92 an hour. The Employer prefers that they have a high school diploma or the equivalent.

Mechanics, Assistant Mechanics, Bus Mechanics,
Building Maintenance Technician, Courtesy
Bus Drivers, and Lead Courtesy Bus Drivers

The Employer's mechanics, assistant mechanics, and bus mechanics work in the maintenance building performing mechanical and maintenance work on the Employer's vehicles. Mechanics are required to have at least two Automotive Service Excellence (ASE) certifications and 3 years of experience in HVAC, electrical repair, or general mechanics. They are paid between \$18 and \$27 an hour. Assistant mechanics must have vocational training or the equivalent in automotive mechanics or a related field and 1 year of automotive repair or related experience in the car rental industry. They are paid between \$10 and \$15 an hour. Mechanics and assistant mechanics have incentive programs based on the number of preventive maintenance measures and warranty collections they complete each month.

Bus mechanics must have vocational training or the equivalent in automotive mechanics or a related field, ASE certification, and 3 years of experience in HVAC, electrical repair, or general mechanics. They communicate with bus drivers via two-way radio regarding any bus repair needs and then perform the needed repairs. Bus mechanics are paid between \$20 and \$30 an hour.

Courtesy bus drivers, who drive the buses that transport customers between the airport and the rental facility, must hold a commercial driver's license (CDL). The Employer prefers that they have a high school diploma or the equivalent. They earn between \$10 and \$15

an hour and may accept tips from customers; they have no other incentive pay program. The two lead courtesy bus drivers hold the same qualifications and perform the same functions as the courtesy bus drivers, but they also maintain a uniform flow of buses throughout the route. Lead bus drivers earn between \$11 and \$16.50 an hour.

The building maintenance technician, who performs facility maintenance, must be certified in mechanical/electrical engineering or a related field and have 1 to 3 years of experience. His pay range is from \$10.50 to \$15.75 an hour.

Staff Assistants and Lead Staff Assistants

There are three staff assistants and two lead staff assistants. Two of the staff assistants work in the Dollar rental building in upstairs administrative offices; they are responsible for generating computer reports to monitor the rental operations, receiving and responding to customer calls, and monitoring the lost and found. When the rental counters are busy, these two staff assistants, along with some managers, perform RSA duties.¹² The staff assistants are eligible to receive incentive pay under the RSA/LRSA incentive program for upgrades they sell when performing the RSA function, but they are not subject to the Core Model's disciplinary consequences for not meeting minimum monthly thresholds. A third staff assistant, who primarily works in the maintenance area doing computer work to assist mechanics in titling and registering vehicles, does not perform any RSA work. Staff assistants—whom the Employer classifies at two levels depending on experience—range from having 1 to 2 years of experience in data processing or a related field to having 3 to 5 years of experience in data processing or bookkeeping and, preferably, college course work in accounting. They are paid between \$9 and \$15 an hour.

One of the two lead staff assistants works in the maintenance building and handles subrogation files, including accident reports. She does not perform any RSA work. The other lead staff assistant works in the Dollar building's administrative offices. She handles accounts payable for the facility, oversees the work of the other

¹² Employer records indicate that during 2010, Mark Chiara and Desiree Newell, the two staff assistants who performed RSA duties, averaged approximately 73 and 112 rental agreements per month respectively. Chiara—a former RSA who was moved to the staff assistant position as a consequence of the Core Model—thus averaged just under 20 percent, while Newell averaged about 30 percent, of the 368 agreements per month generally completed by each of the RSAs/LRSAs. Newell apparently worked on rental agreements during only 5 months of 2010, and the vast majority of her completed agreements were in only 2 months (September and October), with comparatively few or none during the rest of the year.

Managers apparently assist with RSA/LRSA duties more often than staff assistants.

staff assistants, and orders supplies. She also performs RSA work during busy times, but only on a very limited basis.¹³ Like the higher-level staff assistants, lead staff assistants must have 3 to 5 years of experience in data processing or bookkeeping, and the Employer prefers that they also have some college work in accounting. They are paid between \$11 and \$16.50 an hour.

Employee Interchange

As described above, RSAs/LRSAs perform necessary lot and return functions when covering for employees in those classifications on breaks and during the night shift, when no one in those classifications is on duty. It also appears that RSAs have filled in for exit booth agents if an exit booth agent calls in sick, but there is no evidence regarding how frequently this has occurred. As described above, two staff assistants and one lead staff assistant perform RSA duties during busy periods for varying amounts of time. In addition, one of the four lead service agents, Harold Moss, who formerly worked as an RSA, occasionally filled in for absent RSAs in 2010, and one return agent, April DeBerry, asked to be trained at the rental counter.¹⁴

Employee Interaction

RSAs/LRSAs communicate with the lot agents when they cover for the lot agents on breaks and on those infrequent occasions when both classifications work together to assist a customer with disabilities. RSAs/LRSAs also have limited interaction with return agents when the return agents enter the building to obtain blank accident forms or when a customer requests a larger discount from a return agent than the return agent has authority to grant. RSAs/LRSAs work side by side with two of the three staff assistants and, on very limited occasions, with one of the lead staff assistants when they help with RSA work during busy periods. RSAs/LRSAs may also have sporadic interaction with bus drivers on occasions when the bus drivers unload luggage and store it in the sales office. In the rare instances that a customer with disabilities needs a hand-controlled vehicle, LRSAs communicate about it with the mechanics during the daily planning meetings.¹⁵

¹³ That lead staff assistant, Taira Wright, averaged only about 14 rental agreements per month in 2010.

¹⁴ Records indicate that Moss averaged approximately 38 rental agreements per month during the 8 months that he did RSA work that year; he was, however, still an RSA for at least part of that time. DeBerry averaged only about nine rental agreements per month for the 4 months of 2010 that she worked on rental agreements.

¹⁵ The Regional Director made extensive findings regarding interchange and interaction among employees in classifications other than the RSAs/LRSAs. But what is at issue here is the community of interest between the petitioned-for RSAs/LRSAs and the other hourly em-

Analysis

The Board's recent decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), set forth the principles that apply in cases like this one, in which an employer contends that the smallest appropriate bargaining unit must include additional employees (or job classifications) beyond those in the petitioned-for unit. As explained in that decision, the Board first assesses, as in the usual case, whether the petitioned-for unit is an appropriate bargaining unit by applying traditional community-of-interest principles.¹⁶ *Id.*, slip op. at 8–9. If the petitioned-for unit satisfies that standard, the burden is on the employer to demonstrate that the additional employees it seeks to include share an overwhelming community of interest with the petitioned-for employees, such that there “is no legitimate basis upon which to exclude certain employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Id.*, slip op. at 11–13, and fn. 28 (quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421, 422 (D.C. Cir. 2008)). Applying this framework here, we find that the RSAs/LRSAs share a community of interest, and the Employer has not shown that the additional employees that it seeks to include share an overwhelming community of interest with the RSAs/LRSAs. Accordingly, we find that the petitioned-for unit is appropriate.

The RSAs/LRSAs Share a Community of Interest

Under Section 9(b) of the Act, the Board “shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.” As explained above, we therefore begin by considering whether the bargaining unit described in the Union's petition is appropriate. As we have often stated, “[t]here 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.’”¹⁷ *Overnite Transportation Co.*, 322 NLRB 723,

employees. Because we find that the RSA/LRSA unit, exclusive of those other employees, is an appropriate unit for bargaining, we need not consider the extent of interchange and interaction—and of shared interests generally—among classifications within the excluded group.

¹⁶ The Board will also apply established presumptions, if appropriate. The Regional Director recognized, and we agree, that there are no unique presumptively appropriate units in the rental car industry; the Board has found various types of units to be appropriate, including separate service units that exclude rental agents. See, e.g., *Budget Rent-A-Car of New Orleans, Inc.*, 220 NLRB 1264 (1975).

¹⁷ Based on the plain language of the Act, “it is well-settled [] that there is more than one way in which employees of a given employer

723 (1996) (emphasis in original), reaffirmed in *Specialty Healthcare*, supra, slip op. at 9. Therefore, a union is “not required to request representation in the most comprehensive or largest unit of employees of an employer unless an appropriate unit compatible with th[e] requested unit does not exist.” *Specialty Healthcare*, supra, slip op. at 11 (quoting *Overnite*, 322 NLRB at 723).

Here, we find that the petitioned-for unit of RSAs/LRSAs is an appropriate bargaining unit—subject to the Employer’s proving that the unit must include additional employees—because the RSAs/LRSAs unmistakably share a community of interest. In determining whether employees in a proposed unit share a community of interest, the Board examines:

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Specialty Healthcare, supra, slip op. at 9 (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). We find that the 25 RSAs and 6 LRSAs share virtually all of the community-of-interest factors listed above. There are only slight differences between the RSA and LRSA classifications: unlike RSAs, LRSAs attend the Employer’s twice-daily planning meetings; they assist in scheduling RSAs’ breaks; and they have 1–2 years, rather than 9–12 months, of experience. Accordingly, LRSAs are paid slightly more than RSAs. In all other respects relevant to the community of interest factors, the RSAs and LRSAs are identical. The Employer does not assert otherwise.¹⁸

The RSAs/LRSAs Do Not Share an Overwhelming Community of Interest with the Other Hourly Employees

The Regional Director expressly found that the RSAs and LRSAs share an overwhelming community of interest with the 78 other employees that the Employer seeks to include in the bargaining unit. We agree that this is the proper standard. See *Specialty Healthcare*, supra, slip op. at 11–13.¹⁹ We nonetheless reverse the Regional

Director’s finding. Because RSAs/LRSAs work separately from other employees and perform distinct sales tasks with distinct qualifications, distinct expectations, and distinct consequences for the failure to meet those expectations, we conclude, as explained below, that the record evidence does not demonstrate that RSAs/LRSAs share an overwhelming community of interest with the other hourly employees.

We begin by emphasizing what the Employer does not argue. The Employer does not argue that some, but not all of the other hourly employees share an overwhelming community of interest with the RSAs/LRSAs. Rather, the Employer argues that the smallest appropriate unit includes all the hourly employees, i.e., that they all share an overwhelming community of interest with the RSAs/LRSAs.

Only the RSAs and LRSAs regularly work behind sales counters inside the two rental buildings, separate from virtually all of the other hourly employees. Except for the staff assistants, who work in the rental buildings’ upstairs administrative offices, all other hourly employees work elsewhere—either on the lot, in buses, in exit booths hundreds of yards away from the rental buildings, or in the separate maintenance building. The RSAs/LRSAs also wear uniforms that are different from those of all other employees.

The RSAs/LRSAs also have distinct functions: they are the only classification that is primarily responsible for executing rental agreements and offering and processing vehicle upgrades and GPS devices. The sales functions are entirely distinct from the functions of mechanics, bus drivers, and the building maintenance technician. While lot agents and exit booth agents may en-

it is not clear whether the Regional Director allocated the burden of proof to the Employer. Nonetheless, because she found that there was an overwhelming community of interest, rather than finding that there was not, we need not determine whether she placed the burden of proof on the proper party.

In reversing the Regional Director’s conclusion that an overwhelming community of interest exists, we expressly place the burden of proof on the Employer. Even assuming that *Specialty Healthcare* changed the assignment of this burden, rather than simply clarifying the existing burden, we find that imposing the burden of proof on the Employer is not a retroactive change that “work[s] a ‘manifest injustice.’” See *SNE Enterprises*, 344 NLRB 673, 673 (2005) (citations omitted). As in *SNE Enterprises*, there is no evidence that the Employer relied on any precedent relieving it of the burden of proof; indeed, the Employer presented extensive evidence aimed at demonstrating the extent of the community of interest between the RSAs/LRSAs and the other employees. *Id.* Moreover, like *SNE Enterprises*, this is a representation case where the Board’s ordinary rule is to apply its decisions retroactively, including to all pending cases. *Id.* at 673–674. Finally, imposing the burden on employers in the limited circumstances specified in *Specialty Healthcare* “d[oes] not otherwise represent a significant departure from a well-settled area of the law.” *SNE Enterprises*, 344 NLRB at 674.

may be appropriately grouped for purposes of collective bargaining.” *Overnite*, 322 NLRB at 723.

¹⁸ Moreover, no party contends that the LRSAs are supervisors.

¹⁹ The Regional Director’s decision issued before *Specialty Healthcare*, which clarified that it is the Employer who bears the burden of demonstrating the existence of an overwhelming community of interest when it seeks to expand the bargaining unit beyond an otherwise-appropriate petitioned-for unit. *Id.*, slip op. at 12–13 fn. 28. Here,

courage a small number of upgrades or add-ons, the lot agents cannot consummate sales and that is not the primary function of exit booth agents. Other than staff assistants and exit booth agents who finalize car rentals, no other employees work with computers,²⁰ and none perform the range of contract-processing functions that RSAs/LRSAs perform on a daily basis.

RSAs and LRSAs are also the only classification required to have at least 9 months of car rental or sales experience. (The Employer “prefer[s]”—but does not require—exit booth agents to have such qualifications.) And typically, RSAs/LRSAs have none of the specialized licensing or training required of some of the other classifications, including the mechanics, the building maintenance technician, and the bus drivers.

The above factors strongly militate in favor of a separate unit of rental service agents. See *Avis Rent-A-Car System, Inc.*, 132 NLRB 1136 (1961) (rejecting employer’s claim that rental agents who occasionally helped deliver equipment or clean vehicles during rush periods must be included in a petitioned-for unit consisting of employees similar to lot and service agents, mechanics, and other support employees); see also *Budget Rent-A-Car of New Orleans, Inc.*, 220 NLRB 1264 (1975) (rejecting an employer’s similar claim that rental agents must be included in petitioned-for unit of service employees).

Of critical importance in demonstrating that the RSAs/LRSAs have separate and distinct interests from those of other hourly employees is the RSAs’/LRSAs’ required participation, unlike any other classification of employees, in a potentially punitive incentive program.²¹ Although some of the other employees participate in incentive programs, which offer employees the opportunity to earn extra pay, only the exit gate agents’ plans are based on sales and no other plan potentially imposes adverse consequences, let alone such drastic ones: only the RSA/LRSA incentive program creates a mandatory quota of extra products that RSAs/LRSAs must sell simply to maintain their positions.²² The high stakes associated with the RSA/LRSA incentive plan and the Core Model

create for RSAs/LRSAs a set of interests regarding their terms and conditions of employment shared by none of the other classifications that the Employer seeks to include in the bargaining unit.²³

The evidence reflects little to no interchange between the petitioned-for unit of RSAs/LRSAs and the other hourly classifications. RSAs/LRSAs perform other classifications’ work when they cover breaks and the overnight shift for lot and return agents. Lot and return agents, however, do not perform RSA duties (other than one return agent, April DeBerry, who has processed a very limited number of rental agreements because she individually requested training at this task). RSAs/LRSAs apparently have occasionally filled in for an exit booth agent who is out sick.

Other classifications’ performance of RSA/LRSA work is largely limited to some staff assistants/lead staff assistants who help with RSA duties during busy periods. As discussed above, staff assistants Chiara and Newell averaged, at most, under one-third of the rental agreements per month typically completed by each of the RSAs/LRSAs. And lead staff assistant Wright, the only other member of the staff assistant/lead staff assistant classification who performed any RSA duties, completed only a fraction as many agreements as Chiara and Newell completed. Overall, most of the staff assistants and lead staff assistants performed little or no RSA work. Significantly, even when the staff assistants and lead staff assistant perform RSA duties, they are not subject to the consequences imposed by the Core Model (though they are apparently eligible for incentive pay if they meet the in-

²⁰ Return agents do use handheld devices to generate a final statement for the customer, but the modifications they can make to a contract are significantly more limited than those that RSAs/LRSAs can make. For example, a discount of more than 10 percent must be processed by an RSA/LRSA.

²¹ Cf. *Overnite*, 331 NLRB at 663–664 (excluding classification of drivers when, “significantly,” drivers were only classification that could be sent home for lack of work).

²² Cf. *Dollar Rent a Car & Thrifty Car Rental*, 357 NLRB 97 (2011) (RSAs at Employer’s Las Vegas operation were lawfully discharged both for aggressive tactics in selling add-ons and for “manipulating the rental process for personal gain” by failing to rent to customers that did not purchase add-ons).

²³ In support of its contention that the Core Model does not create a significant enough difference between RSAs/LRSAs and the other hourly employees to cause RSAs/LRSAs to have a separate and distinct community of interest, the Employer cites *K.G. Knitting Mills*, 320 NLRB 374 (1995); *Sears, Roebuck & Co.*, 319 NLRB 607 (1995); and *Levitz Furniture Co. of Santa Clara*, 192 NLRB 61 (1971). *K.G. Knitting* is wholly inapposite as the Board in that postelection challenged ballot case merely held that the disputed employees fit within the unit description. In *Sears*, the Board disagreed with the factual findings upon which the Regional Director had found a proposed unit consisting of a diverse group of classifications to be appropriate despite its exclusion of sales employees. The decision does not suggest that a unit limited to the sales employees would not have been an appropriate unit. Finally, in *Levitz*, the Board rejected proposed warehouse and drivers units in the absence of any separate supervision and sufficient geographic separation, and after finding that the temporary interchange of all employees was “frequent and regular.” In doing so, the Board expressly distinguished prior cases dividing sales from nonsales employees. 192 NLRB at 62. Moreover, none of the cases cited by the Employer considered whether the disputed employees shared an *overwhelming* community of interest with the unit employees. *Id.* at 11–13. Finally, although not solely dispositive, none of the cited cases involved circumstances in which the employees in the proposed unit, but *not* the disputed employees, were subject to a minimum sales threshold with the serious consequences that exist here.

centive program's qualifications). Further, RSAs/LRSAs never perform staff assistants' duties. Such limited, one-way "interchange" does not require that the staff assistant/lead staff assistants be included in a unit with the RSAs/LRSAs, especially given that two out of five employees in the staff assistant classification (one of whom is a lead staff assistant) performed *no* RSA work during 2010.²⁴

The Regional Director's reliance on the Board's finding in *United Rentals, Inc.*, 341 NLRB 540 (2004), that a wall-to-wall unit was the smallest appropriate unit, is misplaced. *United Rentals* involved a small equipment rental facility with a total of 18 employees (in contrast to the 109 here), "all" of whom "pitch[ed] in" and "perform[ed] the functions of different classifications." *Id.* at 541. The employees at issue in that case performed petitioned-for work "regularly and in many instances every day," and vice versa. *Id.* The infrequent and limited employee interchange between RSAs/LRSAs and the other hourly classifications here is not analogous to the frequent and broad interchange that existed in *United Rentals*. In cases more like this one, the Board has found that infrequent and limited interchange does not preclude a finding that the petitioned-for unit had a distinct community of interest.²⁵

Although the Employer's facility is functionally integrated, with all employees working toward renting vehicles to customers, each classification has a separate role in the process. As a result, and unlike *United Rentals*, RSAs/LRSAs have only limited interaction with the other classifications, as shown above.

The Employer nevertheless contends that the Regional Director properly found only a wall-to-wall unit appropriate because all hourly employees "work under common supervision [and] receive similar hourly pay and fringe benefits." To be sure, there is some evidence of cross-supervision of classifications by the operations

managers on duty during a given shift (except for the separately supervised mechanics on the day shift). As noted above, however, RSAs/LRSAs are separately supervised by a designated operations manager for purposes of scheduling, granting time off, and other administrative tasks. They are also separately represented in the daily planning meetings. Given all the circumstances, the degree of common daily supervision present here does not outweigh the other factors demonstrating that RSAs/LRSAs do not share an overwhelming community of interest with the other employees. See *Overnite Transportation Co.*, 331 NLRB 662, 663-664 (2000) (rejecting employer's contention that a wall-to-wall unit was smallest appropriate unit despite evidence of "cross-supervision" when there was also evidence of "separate immediate supervision").

The similarity between the RSAs'/LRSAs' base wages and those of some of the other classifications also does not render the separate unit of RSAs/LRSAs inappropriate. Similarity of wage rates alone is not determinative. See, e.g., *Specialty Healthcare*, *supra* (finding separate unit of certified nursing assistants appropriate despite similarity between their wage ranges and those of excluded classifications). Moreover, if similarity in wages were given great weight here, the RD's finding that a wall-to-wall unit is appropriate would be undermined by the wide range of wages from the shuttlers (as low as \$7.28 an hour) to the bus mechanics (up to \$30 an hour). Finally, because of the distinct incentive programs applicable to RSAs/LRSAs and other employees, any similarity in base wages proves little about the employees' actual earnings and less still about any commonality in the working conditions and the performance expectations that determine the employees' actual earnings.

In sum, we find that the petitioned-for RSAs' and LRSAs' primary job functions and duties, skills and qualifications, uniforms, work areas, schedules, incentives, risks, and supervision are different from all other employees. RSAs/LRSAs, therefore, have employment interests that are materially different from the other employees that the Employer seeks to include in the bargaining unit. Accordingly, we reverse the Regional Director's finding that the RSAs/LRSAs share an overwhelming community of interest with those other hourly employees and her resulting determination that a wall-to-wall unit is the only appropriate unit.

Conclusion

For the reasons explained above, we find that the RSAs and LRSAs share a community of interest among themselves but do not share an overwhelming community of interest with the Employer's other hourly employ-

²⁴ We do not consider RSAs'/LRSAs' forced transfers as an alternative to discharge under the Core Model as evidence of interchange demonstrating a community of interest between RSAs/LRSAs and the classifications into which they may be transferred. To the contrary, as explained above, such transfers highlight the fundamental *disparity* between the interests of RSAs/LRSAs, whose very employment depends on meeting their incentive program's thresholds, and the interests of the other employees, whose maintenance of their employment is *not* conditioned on earning incentives.

²⁵ See, e.g., *Home Depot USA*, 331 NLRB 1289 (2000) (finding separate unit of delivery drivers appropriate despite drivers' performance of "puller" work—i.e., pulling merchandise off of store shelves in preparation for delivery—when pullers were not on duty); *Budget*, 220 NLRB at 1264 (rental representatives occasionally moved vehicles, did some refueling, and cleaned vehicles for service agents); and *Avis*, 132 NLRB at 1136 (rental representatives occasionally delivered vehicles to customers or cleaned vehicles during rush periods, and a utilityman regularly handled rental agent duties every day).

ees.²⁶ Under *Specialty Healthcare*, the petitioned-for RSAs/LRSAs thus constitute an appropriate unit for bargaining. We therefore remand the case to the Regional Director to hold an election in the petitioned-for unit.²⁷

ORDER

It is ordered that the Regional Director's finding that the only appropriate bargaining unit is a wall-to-wall unit is reversed, and the case is remanded to the Regional Director for further appropriate action.

MEMBER HAYES, dissenting.

My colleagues' reversal of the Regional Director to find that the petitioned-for unit is appropriate provides further confirmation of the predictable effects of their outcome-driven *Specialty Healthcare*¹ test for determining whether a unit is appropriate for bargaining. The Regional Director here actually found that a unit limited to Rental Service Agents and Lead Rental Service agents was inappropriate because they share an "overwhelming community of interests" with all of the car rental Em-

ployer's hourly employees working at the same facility. Prior to *Specialty Healthcare*, the phrase "overwhelming community of interests" may have been a correct factual description of a grouping of employees in a particular case, but it was not legally required.² Now, however, a petitioned-for unit of employees will be found appropriate, if they share a community of interests among themselves, unless a party contesting it can prove that other employees share an overwhelming community of interests with them.

One would think that the Regional Director's factual findings under the very test espoused by my colleagues would not be susceptible to reversal under the Board's "clearly erroneous" request for review standard.³ Unfortunately, one would be wrong. There is no need to examine the particular inter-classification distinctions drawn by my colleagues in reversing the Regional Director. The larger truth is that it is difficult to imagine a multiclassification, multifunction workplace where the jobs of all workers are nevertheless so homogeneous that such distinctions cannot be drawn. As long as a union does not make the mistake of petitioning for a unit that consists of only part of a group of employees in a particular classification, department, or function, i.e., a so-called fractured unit,⁴ it will be impossible for a party to prove that an overwhelming community of interests exists with excluded employees. Board review of the scope of the unit has now been rendered largely irrelevant.⁵ It is the union's choice, and the likelihood is that most unions will choose to organize incrementally, petitioning for units of the smallest scale possible. The days of traditional all-inclusive production and maintenance units, technical units, or service and maintenance units—much less wall-to-wall plant units—are numbered. I adhere to the previously expressed view that giving the Board's imprimatur to this balkanization represents an abdication of our responsibility under Section 9 and may well disrupt labor relations stability by requiring a constant process of bargaining for each micro-unit as well as pitting the narrow interests of employees in one such unit against those in other units.⁶

²⁶ The dissent does not address the specific facts of this case. Because the legal and policy arguments made in the dissent were fully addressed in *Specialty Healthcare*, supra, and *Northrop Grumman*, 357 NLRB 2015 (2011), we do not respond further here.

²⁷ We also disagree with the Regional Director's finding that the staff assistants are more akin to plant clericals than office clericals and therefore must be included in the unit. See generally *Caesars Tahoe*, 337 NLRB 1096, 1098 (2002) (test to determine if employees are includable in production unit as "plant clericals" or excludable as "office clericals" is whether employees' principal functions and duties relate to the production process as distinguished from general office operations); see also *Fireman's Fund Insurance*, 173 NLRB 982, 984 (1968) (Board's normal practice is to exclude office clericals from other units). General Manager Klier testified that the primary functions of the staff assistants, who normally work in second-floor offices above the rental counters and away from the customer areas, are office clerical in nature. To be sure, two of the staff assistants and one lead staff assistant sometimes fill in for and work alongside the RSAs/LRSAs. Nevertheless, the record supports Klier's testimony that the staff assistants' primary duties are office clerical in nature: they prepare reports (including reports regarding the work of RSAs/LRSAs), answer phones, and administer the lost-and-found. Those functions require them to have skills and qualifications typical of office clericals: data processing, bookkeeping, and/or accounting. See also *L.M. Berry & Co.*, 198 NLRB 217, 219 (1972) (excluding clericals from unit of sales employees despite evidence that clericals performed tasks related to sales campaigns and interacted with sales employees, where clericals, working in separate office area, prepared reports and handled incoming calls).

The Employer relies on *Caesars Tahoe*, in which the Board found that a particular employee was a plant clerical, rather than an office clerical. Id., 337 NLRB at 1098. But that employee split his time between performing maintenance work like that of employees in the petitioned-for maintenance unit and performing dispatching duties, which are more closely related to maintenance/production work than the office work of the staff assistants and lead staff assistants here. We find that *Caesar's Tahoe* is not analogous to this case.

¹ 357 NLRB 934 (2011). I adhere to my dissenting views expressed there at slip op. 948–952.

² See *Newton-Wellesley Hospital*, 250 NLRB 409, 411–412 (1980), and *NLRB v. Lundy Packing Co.*, 68 F.3d 1577, 1581 (4th Cir. 1995).

³ See Board Rules and Regulations Sec. 102.67(c)(2).

⁴ See *Odwalla Inc.*, 357 NLRB 1608 (2011).

⁵ I suppose there may remain some disputes about the appropriateness of some petitioned-for units based on function. Member Becker, after all, dissented from the majority's finding in *Wheeling Island Gaming, Inc.*, 355 NLRB 651 (2010), that a petitioned-for unit of poker dealers, separate from other card game dealers, was not appropriate.

⁶ See my dissent in *Northrop Grumman*, 357 NLRB 2015, 2021–2022 (2011).

For the reasons expressed above and in my prior dissents to the *Specialty Healthcare* test, I would affirm the Regional Director's decision and dismiss the petition.

APPENDIX

DECISION AND ORDER

On December 15, 2010, the Petitioner, Teamsters Local Union No. 455 (Petitioner), filed a petition under Section 9(c) of the National Labor Relations Act,¹ seeking to represent certain employees of DTG Operations, Inc. (Employer), at its Denver International Airport location (DIA). The Employer operates a car rental facility housing both the Dollar and Thrifty car rental brands adjacent to DIA.

The issue to be resolved in this case is the appropriate scope of the bargaining unit. At the hearing, the Petitioner amended its petition to reflect that it seeks to represent approximately 24 rental sales agents and 6 lead rental sales agents (RSA) employed by the Employer at its DIA facility. The Employer, however, contends that because of the similarity of the hourly employees' terms and conditions of employment, shared supervision, and the regular interchange and interaction among all the hourly employees working at the DIA facility, the petitioned-for unit is not appropriate. Instead the Employer asserts that the only appropriate unit is a single-facility, wall-to-wall unit at its DIA operations, including all the regular and lead RSAs.²

I conclude for the reasons enunciated below that the petitioned-for unit sought by the Petitioner limited to RSAs and lead RSAs is not an appropriate unit for collective-bargaining. Instead, I find that the Employer has met its burden of establishing that its DIA operations are so functionally integrated that the smallest appropriate unit must consist of all hourly employees employed by the Employer at its DIA facility. See *United Rentals, Inc.*, 341 NLRB 540 (2004).³

STATEMENT OF THE CASE

On January 3 and 4, 2011, a hearing was held before Hearing Officer Kristyn A. Myers. Following the close of the hearing, the parties timely filed briefs. 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 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 National Labor Relations Board (Board). Specifically, I find that the Employer is an Oklahoma corporation with facilities located throughout the United States, including an office and place of

business located at Denver International Airport, 23520 East 78th Avenue, Denver, Colorado, where it is engaged in the retail automotive rental business. The Denver, Colorado operations are the only operations at issue herein. During the past 12 months, a representative period, in conducting its business operations, the Employer derived gross revenues in excess of \$500,000, and during the same period, the Employer purchased and received at its DIA facility goods valued in excess of \$5000 directly from points 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. Based upon the record herein, no question affecting commerce exists concerning the representation of the petitioned-for employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons set forth below.⁴

STATEMENT OF FACTS

A. Employer's Operations

1. Choice business model

The Employer's DIA airport operation is designated as a CHOICE rental facility. This is a relatively new business model in the rental industry that provides for greater customer input on the model of car rented by the customer. Under this business model, customers are no longer assigned to a particular vehicle. Instead, the customer can choose the specific model vehicle he desires from an available pool of vehicles in a particular rental class, or elect to upgrade to another class of vehicles if the customer sees something he prefers elsewhere on the lot. Thus, while the Employer has some idea what vehicle classes need to be available based on reservations on a particular shift, the CHOICE business model requires availability of a wide selection of models in various rental classes at all times to ensure that customers truly have a "choice" of what vehicle they ultimately drive off the lot.

2. Airport rental counter

While vehicle rentals are exclusively processed at the Employer's off-site "rental car row" facility, the Employer does maintain and staff a joint Dollar/Thrifty rental counter located inside DIA. The purpose of this airport counter is to provide customers with rental information in advance of their arrival at the off-site facility, and to direct customers to the courtesy buses that will transfer them to the rental facility. The Employer

⁴ Based on my findings, the smallest appropriate unit would be described as:

INCLUDED: All full-time and regular part-time employees employed by the Employer at its facilities located at Denver International Airport, Denver, Colorado in the following classifications: rental sales agent, lead rental sales agent, lot agent, return agent, service agent, lead service agent, exit booth gate agent, courtesy bus driver, lead courtesy bus driver, staff assistant I, staff assistant II, lead staff assistant, fleet agent, shuttler, mechanic, assistant mechanic, bus mechanic and building maintenance technician.

EXCLUDED: All other employees, managers, guards, and supervisors as defined in the National Labor Relations Act.

¹ 29 U.S.C. 151, et seq.

² The record reflects that the Employer also operates a location in Aspen, Colorado, but the Parties stipulated that any appropriate unit should consist only of employees employed by the Employer at its DIA location.

³ I am dismissing the petition on the basis that the Petitioner expressly declined to proceed to an election in a wall-to-wall unit.

schedules one of its six lot agents to staff the DIA rental counter, Tuesday through Saturday, from 9 a.m. to 5 p.m.⁵

3. Car rental facility

The Employer operates a 24-hour a day, 7-day a week, full-service rental car facility adjacent to DIA that primarily serves customers traveling through the airport. The Employer operates both the Dollar Rent-A-Car (Dollar) and Thrifty Car Rental (Thrifty) brand names at a single facility. The airport facility is located on a 13-acre parcel of land approximately 5 miles from DIA on "rental car row." Currently, the Employer has a fleet of approximately 2600 rental cars, which fluctuates seasonally, and can increase to 3000 during the peak months. The Employer employs approximately 109 nonmanagerial, hourly employees, and 10 managers to staff its DIA operation, including the counter at DIA and the off-site facility.

Two rental buildings and a maintenance building are located on the property. One of the rental buildings is a two-story structure that contains the rental counter for the Dollar rental car brand, and houses most of the Employer's offices on the second floor. The other rental building is a one-story structure, which houses the rental counter for the Thrifty rental car brand and an office. The maintenance building houses some office space. Although the rental counters for each brand are in separate buildings, all other rental functions are combined and carried out without respect to brand. In this regard, the rental pick-up and return lines are interchangeably used by customers for both brands. Similarly, the Employer has an on-site car wash facility and maintenance facilities used to service the entire rental fleet. The maintenance facility is also used to repair and maintain the courtesy buses used to transport customers between the airport and rental car facility. Adjacent to the maintenance building are three exit booths where rental customers for both brands finalize their rental car contracts and exit the property.

4. Rental process

Upon arrival at the airport, a customer may approach the Dollar/Thrifty information counter and inquire about how to rent a vehicle or how to pick up a reserved vehicle. The counter employee provides the information and directs the customer to the courtesy bus pick-up area to be transported to the rental facility.⁶ Customers can exit on the east or west side of the terminal and go to the designated Dollar/Thrifty pick-up area. From there, the customers board a courtesy shuttle to be transported to the off-site rental facility. During transport, customers are given a prepared speech explaining how the rental process will work and encouraged to purchase the add-on options discussed more fully below. Depending on customer preference, the shuttle drops the customer off at either the Dollar or Thrifty rental building.

⁵ While the Employer stated in its post-hearing brief that the DIA counter is staffed Monday through Friday, the referenced transcript page establishes that it is not staffed on Sundays and Mondays.

⁶ If it is a weekend or between the hours of 5 p.m. and 9 a.m. customers are instructed to proceed directly to the courtesy bus pick-up area by a sign.

At the drop off points, customers are told to enter the rental building and approach the rental counters. Once inside, an RSA will greet the customer and begin the process of generating the rental car agreement. The RSA will input customer information into the Company database and try to sell the customer additional products available with the car rental. Once that transaction is complete, the customer is directed to exit the building to choose a vehicle.

Upon exiting the building, the customer is greeted by a lot agent. The lot agents direct the customer to the pool of vehicles that are available based on the class of car the customer has rented. The lot agents also encourage the customers to upgrade to higher vehicle classes and add on additional products, but do not process such upgrades. If a lot agent convinces a customer to upgrade, the customer is either directed to return to the rental counter, or the upgrade is noted on the contract jacket and processed by the exit booth gate agent as the customer leaves the facility.

Once the customer chooses a vehicle, the customer drives towards the exit and stops at an exit booth. The exit gate booth agent scans the vehicle identification and the rental contract and finalizes the rental agreement. The exit agent also offers the customer another opportunity to purchase the additional options offered by the RSA, including toll passes, fuel options, vehicle upgrades, or additional insurance. The customer will then exit the rental premises onto the highway.

When the customer return the vehicle to the facility, he enters the premises and proceeds to the designated return lanes. There, the customer is met and greeted by a return agent. The return agent assists the customer in checking the vehicle for personal belongings, and proceeds through the steps of closing out the contract for the customer. The return agent checks for vehicle damage, fuel level, and odometer readings and then uses a handheld computer to generate a final statement for the customer. Once the contract is closed, the return agent directs the customer to the courtesy bus pickup area where the customer will board the shuttle and be transported back to the airport.

The rental car is then turned over to a service agent to be prepared for return to the rental fleet. The service agent checks the vehicle and determines if it just needs to be cleaned and washed or whether the vehicle maintenance. If the vehicle simply needs to be cleaned, the service agent will perform the necessary cleaning and return the vehicle to the ready line. The service agents are responsible for identifying vehicles which require preventive maintenance or repairs before being returned to the rental fleet. If the vehicle needs any maintenance or repairs, the service agents move the car to the maintenance area for repair or maintenance by the mechanics.

B. Organizational Structure

1. Supervisory hierarchy

Richard Klier is the General Manager for the Employer's DIA operation. His office is located on the second floor of the Dollar building. Reporting directly to Klier are nine Operations Managers. They are: Seth Spaulding, City Fleet Manager; Charlene Duran, Fleet Maintenance Manager; Todd Trueblood, Senior Operations Manager; Keith Johnson, Senior Operations Manager; Kristen Sloan, Operations Manager; Jeff Pitts, Opera-

tions manager; Margaret Savelio, Operations Manager; Mark Peters, Operations Manager and Tammy Birkendahl, Operations Manager.⁷

Because the Employer is in operation 24-hours a day, 7-days a week, it has established a so-called “flat line” reporting management structure. This means that while each of the nine operations managers is assigned to manage certain specific classifications of employee with respect to scheduling, tracking attendance and approving leave,⁸ on a daily basis scheduled hourly employees report directly to whichever managers are actually on duty.⁹ There is no human resources office at the DIA airport facility. Instead, all personnel matters except for scheduling, approving leave requests and approval of time cards are handled through the Corporate office in Tulsa, Oklahoma. If an operations manager determines that an hourly employee needs to be disciplined, the manager must submit the disciplinary recommendations to Human Resources at the Employer’s headquarters before discipline can be meted out. Once Human Resources approves the disciplinary action, the discipline is imposed in the presence of two managers who hold a disciplinary meeting with the employee.

General Manager Klier schedules a “station manager” to oversee the entire operation of the rental facility for each particular shift. Todd Trueblood, Keith Johnson, Kirsten Sloan, Jeff Pitts, Margaret Savelio, Mark Peter, and Tammy Birkendahl are the only managers eligible to be designated as station managers.¹⁰ One or two operations managers are also scheduled on each shift to assist the designated station manager. The management team scheduled for a given shift runs the entire operation during the course of that shift without regard to employee classification, with the exception of the weekday maintenance employees who are supervised on day shift by Charlene Duran. However, since maintenance is in operation

from 7 a.m. to 11 p.m., 7 days a week, maintenance employees report to whichever managers are scheduled when Duran is not working.

The Employer holds two daily planning meetings. The first meeting is held at 8:30 a.m., and the second meeting is held at 4:30 p.m. These meetings are run by the station manager, and attended by the operations managers scheduled to work at those times, and lead employee representatives from most job classifications.¹¹ The purpose of these meetings is to discuss the demands of the day. This includes determining where the most help will be needed, what types of vehicles are in high demand, how to get the high demand vehicles available for rental as quickly as possible, and the scheduling of employee breaks. The managers and employee participants report back to the employees in their respective classifications what was discussed at the meeting. After the meeting the managers communicate anticipated needs to the maintenance department with respect to the priority of getting certain vehicles ready for rental.

2. DIA facility job classifications

The wall-to-wall unit proposed by the Employer includes approximately 109 employees classified as follows: 6 lead RSAs, 24 RSAs, 4 lead service agents, 9 service agents, 9 return agents, 6 lot agents, 2 lead staff assistants, 3 staff assistants, 2 lead courtesy bus drivers, 21 courtesy bus drivers, 3 mechanics, 4 assistant mechanics, 2 bus mechanics, 1 building maintenance technician, 9 exit gate booth agents, 1 fleet agent, and 2 shuttlers.¹²

3. Employment and personnel policies

All the managerial and hourly employees at the Employer’s airport location are subject to the same employment policies and enjoy the same benefit package set forth in the Company’s Employee Handbook.

All hourly employees keep track of their attendance in the Employer’s Kronos time system and receive identical paychecks from the Employer which are issued under the DTG name, not branded as Dollar or Thrifty. In this regard, employees may clock in on any of the three time clocks, which are located in the Dollar, Thrifty, and maintenance buildings. Similarly, all employees have access to the three break rooms located in each of those three buildings.

All hourly employees are required to have a high school diploma or equivalent and a valid driver’s license because they may be called upon to move cars at any time based on operational needs. All hourly employees are paid on a grid pay scale that includes step pay increases. As set forth more fully below, many of the Employer’s job classifications are entitled to participate in sales incentive programs tailored to their job functions in addition to their hourly pay.

⁷ The parties stipulated that the general manager and nine operations managers are statutory supervisors on the basis that they possess and exercise one or more of the supervisory indicia enumerated in Section 2(11) of the Act. Since this stipulation is supported by the record evidence, the general manager and operations managers should be excluded from any bargaining unit found appropriate.

⁸ The record is silent with respect to which managers directly supervise attendance for the lot agents, exit booth agents, shuttlers, return agents, the staff assistant II and the building maintenance employee. The record does establish that the fleet agent report to Seth Spaulding and that the assistant mechanics, mechanics, and bus mechanics report to Charlene Duran for matters regarding attendance and leave. Similarly, RSAs and lead RSAs report to Todd Trueblood and Margaret Savelio; staff assistants and lead staff assistants report to Tammy Birkendahl; lead courtesy bus drivers and the bus drivers report to Mark Peters; and service agents and lead service agents report to Jeff Pitts.

⁹ While the general manager testified that the operations managers are also responsible for the “job performance” of the classifications of employees they oversee for payroll purposes, the record evidence establishes that the Employer eliminated formal job evaluations several years ago. The record is silent as to how the operations managers currently assess employee job performance.

¹⁰ It appears that City Fleet Manager Seth Spaulding and Fleet Maintenance Manager Charlene Duran primarily work the day shift in the maintenance area, which is why they are not scheduled as station managers.

¹¹ If a lead employee is not available or the job classification does not have leads, a regular employee attends these meetings instead.

¹² The Parties stipulated and the record supports a finding that the various employees classified as lead employees do not possess or exercise supervisory authority under Sec. 2(11). Accordingly, I find that the lead employees should be included in any unit found appropriate.

All employees wear unbranded name tags and similarly colored uniforms, which are provided by the Employer. The actual color of the uniforms depends on the employee's job classification. Some classifications, such as the courtesy drivers wear uniforms rented Cintas, while other classifications, such as RSAs, receive a set of permanent uniforms. The RSAs that work behind the rental counter wear "classier" uniforms that are made of better quality materials. All employees, including RSAs, are supplied with identical winter coats because their job duties require them to work outside in the elements at least some of the time.

D. Job Duties

1. RSAs

There are 25 RSAs employed by the Employer at its DIA location. The primary duties of the RSAs are to greet customers, process rentals, sell optional services, answer and receive telephone calls, resolve overdue rentals, and respond to customer questions and complaints. The RSAs work behind the rental counter in either the Dollar or Thrifty building. They are responsible for entering information into the Employer's database about the customers, the rental contract, rental upgrades, or additional products sold with any contract. RSAs rotate in one-month intervals between work at the Dollar and Thrifty rental counters. They may, however, be assigned to either counter if necessary to fill in for employee absences or based on rental demands under either brand name. The Dollar and Thrifty rental counter are staffed 24-hours a day, 7-days a week. RSAs work 40 hours a week and can be assigned to the day shift, afternoon shift or night shift.

RSAs must have at least 9-12 months of car rental or sales experience. They are paid between \$8.50 and \$12.75 an hour, and are required to participate in the Employer's incentive compensation plan.

The RSA compensation plan works as follows. With each rental transaction an RSA has the opportunity to "upsell" a customer. These upgrades result in what the company refers to as incremental revenue. Each RSA's incremental revenue is automatically computed on a monthly basis when the RSA enters the details of the rental contract into the computer system. Incremental revenue sales include upgrades to more expensive vehicles, renting GPS devices, selling toll passes referred to as "Pass 24," selling a variety of additional insurance plans, and selling various pre-paid fuel options. Corporate headquarters calculates minimum requirements for each RSA on a monthly basis, deriving a target number of incremental sales that an individual RSA must achieve in order to receive any incentive compensation for that month. Once an RSA reaches his or her target incremental sales, the RSA will receive a predetermined amount of money for each additional sale he or she made that month.

The Company generates monthly reports titled "RSA Peer Rankings," showing how the RSAs performed that month and ranking the agent's performance based on their incremental sales. All this information is stored in the company's electronic database and is accessible by all RSAs to gauge their performance during the month. If an RSA fails to meet the target incremental sales for a month, the agent is put on the "Core

Model for Sales" program. The "Core Model for Sales" program involves a five step process to assist RSAs in improving their sales. If an RSA is unable to meet the sales requirements over an extended period of time, the RSA may be transferred to a different position or terminated.

RSAs have a significant amount of daily interchange with lot agents and return agents. In this regard, RSAs are scheduled to cover for breaks and lunch hours of lot agents on a daily basis. Generally, the RSAs rotate this break coverage during a given week. As discussed below, lot agents and return agents are not scheduled to work during late evenings and the night shift, so during the times there are no lot agents or return agents, RSAs perform these duties. On average RSAs as a group are assigned to perform lot agent duties at least 8.5 hours a day, and return agent duties at least 7.5 hours a day. When RSAs cover for a lot agent or a return agent, they continue to earn their hourly wage but do not earn any money towards their incremental sales targets.

Additionally, RSAs regularly work side-by-side with staff assistants because the staff assistants work at the rental sales counter when there are too many customers in line for the number of scheduled RSAs to process. The use of staff assistants to fill in for RSAs is so common that the RSAs announce a "code 10-100" to page staff assistants when the RSAs need assistance at the rental counter. The RSA work performed by the staff assistants is included on the monthly RSA Peer Ranking Report. The peer reports entered into the record establish that during some months, certain staff assistants process as many contracts as employees officially classified as RSAs.

The RSAs also have some interaction with service agents regarding which vehicles are available for rental and when the RSAs are performing lot and return agent duties. RSAs also interact with shuttle bus drivers with respect to unloading customer luggage and customer transportation needs, particularly when a customer has special needs. Finally, RSAs occasionally communicate with mechanics regarding vehicle availability after the daily planning meetings.

2. Lead RSAs

The Employer employs six lead RSAs at its DIA location. These lead RSAs perform all the regular duties of the RSAs. In addition, the lead RSAs attend the two daily planning meetings and report back to the RSAs about what occurred at the meeting. The leads also assist in scheduling RSA breaks and lunches.

The Employer offers an express rental service for customers allowing frequent customers to bypass the rental counter and head directly to the parking lot to pick up their vehicles. The lead RSAs have primary responsibility for the "Express Rental Board" services. The lead RSAs pre-print the express rental agreements and place them in cars. Lead RSAs also handle the cash box maintained behind the rental counter and fill out any associated paperwork with cash transactions.¹³

The lead RSAs must have one to two years sales experience in the car rental industry, including some lead experience.

¹³ Regular RSAs also occasionally balance money in drawers, retrieve money collected during the shift, complete deposit slips, and place money in the safe.

Lead RSAs are paid between \$9.50 and \$14.25 an hour and participate in the same incentive compensation plan as the RSAs. Lead RSAs work the same hours as RSAs and have the same work contacts and interaction with other employee classifications as the RSAs.

3. Service agents

The Employer employs nine service agents at its DIA location. Service agents are responsible for cleaning cars and preparing them to be put back into the rental fleet. This includes servicing rental vehicles by inspecting them for damage or preventive maintenance, refueling vehicles, and cleaning and washing the vehicles. Service agents also maintain fuel logs on vehicles using hand held computers. Once a vehicle is ready to be put into service, the service agents drive the vehicle from the servicing area to the ready line. Service agents also drive vehicles requiring maintenance to the maintenance area.

The Employer has a hiring preference for individuals with some previous work experience. Most service agents work 40 hours a week and are scheduled to work on shifts between 6 a.m. to 10:30 p.m., 7 days a week, but one service agent is scheduled to do inventory at night and works until 2:30 a.m. Service agents are paid between \$8.50 and \$12.75 an hour, and participate in an incentive compensation plan. Service agents receive a monthly cash incentive based on a formula related to the number of cars they clean in a given month, minus any failed spot inspections.

Service agents regularly communicate with return agents regarding service and maintenance issues for specific returned vehicles. Service agents also regularly communicate with mechanics about which vehicles need preventive maintenance or repairs and when the service agents transport those vehicles to the maintenance area. During times of high demand, mechanics and assistant mechanics help perform service agent functions, and return agents help move cars to the ready line. The record is silent as to how frequently this occurs.

4. Lead service agents

The Employer employs four lead service agents at its DIA facility. In addition to the duties performed by the regular service agents, the lead service agents attend the daily planning meetings and report back to the service agents about what was discussed at the meeting. The lead service agent is responsible for coordinating the service agents, assisting in scheduling breaks, and in inspecting the quality of the work of the service agents. Lead service agents work the same hours as service agents. The lead service agents are paid between \$9.50 and \$14.25 an hour, and participate in the same incentive compensation plan as service agents.

The lead service agents have the same work contacts and interactions as the regular service agents, with the exception of lead service agent Herman Moss, who is occasionally fills in for absent RSAs. Moss also possesses a commercial driver's license (CDL), which is required for the Employer's courtesy shuttle bus drivers, so Moss also fills in as a courtesy driver as needed.

5. Return agents

The Employer employs nine return agents at its DIA facility. Return agents greet customers returning rental cars, and go through the appropriate procedures to check-in vehicles at the conclusion of the rental term. These duties include checking mileage, inspecting the vehicle for damage, checking the fuel level, and closing out customer contracts on their hand-held computers. Return agents also direct customers to the courtesy shuttle buses.

Return agents are required to have at least 1 year of customer service experience. Return agents work 40 hours a week, on shifts scheduled from 5 a.m. until 9:30 p.m. Return agents are paid between \$9.50 and \$14.25 an hour, and are eligible to participate in an incentive compensation plan. Agents receive \$5 for each signed accident report that they turn in. Also, each time a return agent charges a customer for refueling a vehicle that is returned with less than a full tank, that revenue goes into a pool and the return agents receive a percentage of that revenue based on the number of rental contracts they have closed on their hand-held computers. The service agents must meet a monthly threshold before being entitled to participate in the fuel incentive pool.

With regard to interchange, return agents and the lot agents discussed immediately below are actually cross-trained, and scheduled interchangeably to perform return agent and lot agent duties. Return agents assist the service agents and shuttlers in moving cars around the lot and parking cars at the ready line. As noted, RSAs are scheduled on a daily basis to fill in for return agents on their breaks and RSAs perform all of the return agent duties during the hours when no return agents are scheduled. There is also one return agent who fills in for absent RSAs on a sporadic basis.

Return agents interact with RSAs when customers report an accident with the vehicle. Return agents contact RSAs when they are sending a customer to the rental service counter for discounts larger than what return agents have authority to grant. Return agents communicate with mechanics about vehicles recalls, and about specific vehicles that need repairs. As noted above, return agents communicate with service agents about vehicles ready to be serviced, or when service agents need assistance moving vehicles to the ready line.

6. Lot agents

The Employer employs six lot agents at its DIA location. Lot agents are responsible for monitoring the supply and cleanliness of vehicles in the various car class parking areas, directing customers to vehicles, and showing them where to exit the premises. Lot agents also encourage customers to upgrade and initiate the upgrade process when they are successful. Lot agents must have at least one year customer service experience, with a preference for one year of car rental experience. Lot agents are scheduled to work 40 hours a week, 7 days a week, on shifts running from 7 a.m. to 10:30 p.m.

Lot agents are paid between \$9 and \$13.50 an hour. Since lot agents and return agents are scheduled interchangeably, they have the same work interactions and are eligible to participate in the same incentive compensation plan available to return agents when these employees work in the return area.

When working as lot agents, these employees communicate by two-way radio with service agents about which vehicles should be brought to the ready line. Lot agents also communicate with mechanics about vehicle maintenance issues that arise after a car has been placed in service. Finally, lot agents are occasionally contacted by RSAs regarding what models of cars are available for rental because of customer inquiries.

7. Exit Gate booth agents

The Employer employs nine exit gate booth agents at its DIA facility. The exit gate booth agents greet customers as they exit the rental facility and give directions as requested by customers. These exit gate booth agents actually finalize the contracts initiated by the RSAs because under the CHOICE model, the RSA does not know the actual vehicle selected by the customer. The exit gate booth agents scan the vehicle identification for the vehicle selected by the customer and electronically "attach" the vehicle to the rental agreement that was initiated by the RSA. These exit gate booth agents are required to obtain signatures on the contracts of the Express customers who bypassed the rental counter, and to verify their driver's licenses. Exit gate booth agents also process upgrades initiated by lot agents, and "soft sell" additional products to customers including insurance packages, fuel options, and toll passes.

Exit gate booth agents must have at least 9–12 months of car rental or sales experience. This position is staffed 24 hours a day, 7 days a week, and these agents generally work 40 hours a week. Exit gate booth agents are paid between \$9 and \$13.50 an hour and are eligible to participate in an incentive compensation plan. Exit gate booth agents receive \$.50 for each pre-paid fuel contract sold at the gate. Agents also receive a percentage payment for all their sales of upgrades, insurance, Pass 24 toll tags.

With regard to interchange, one exit gate booth agent has a CDL and occasionally works as a courtesy bus driver. The exit gate booth agents send a representative to the daily planning meetings. They also communicate with mechanics if a vehicle leaving the gate needs a repair.

8. Fleet agents

The Employer employs one fleet agent at its DIA location. The primary function of the fleet agent is processing new vehicles to be entered into the rental fleet, and disposing of used rental vehicles by transporting them to Company sales lots or local vehicle auctions. The fleet agent also documents vehicle histories, and coordinates vehicle repairs.

The fleet agent must have at least one year car rental experience and one year in body shop repair or maintenance. This individual generally works five days a week, from 8 a.m. to 4:30 p.m. The fleet agent is paid between \$10.50 and \$15.75 an hour, and is not eligible for any incentive compensation plans.

Because of the sporadic nature of the fleet agent's regular job duties, the fleet agent is regularly scheduled to perform either service agent duties or preventive maintenance mechanical duties. The fleet agent also assists the building maintenance technician with snow plowing and other duties as needed, and assists the vehicle shuttlers in moving vehicles to off-site locations.

During the course of his regular duties, the fleet agent interacts with return agents to inform them which cars need to be taken out of service, and interacts with mechanics to discuss which cars need what repairs.

9. Staff assistants

The Employer employs three staff assistants at its DIA location. Two of the staff assistants work in the Dollar building and are primarily responsible for receiving and responding to telephone customer complaints and inquiries. They also monitor the lost and found for the entire operation. This entails logging in found items, investigating and recording who the owner of the item might be based on the nature of the item or location at which it was found, and contacting customers to make arrangements to get the belongings returned. These staff assistants also generate various computer operations reports used by the Employer to monitor the rental operations.

As noted above, the staff assistants regularly perform RSA work and they also are called upon to move vehicles around the lot in emergency situations. The record is silent as to the interactions between staff assistants and other classification relating to their lost and found responsibilities.

The third staff assistant primarily works in the maintenance area performing computer functions to assist mechanics, titling and registering new vehicles with the Colorado Department of Motor Vehicles. This staff assistant rarely performs RSA duties, but she does move cars to the ready line when necessary.

A staff assistant I must have at least one to two years experience in data processing or a related field. The Employer prefers that employees classified as staff assistant level II have some college course work in accounting with three to five years of experience in data processing or bookkeeping. Staff assistants are paid between \$9 and \$15 an hour, depending on their level. Staff assistants are scheduled to work between 7:30 a.m. to 5:30 p.m., with coverage on weekdays and weekends.

10. Lead staff assistant

The Employer employs two lead staff assistants at its DIA location. One individual is located in the maintenance building and handles subrogation files, which includes obtaining accident reports and loading the information into the computer system for use by headquarters. The other lead staff assistant is located in the Dollar building, and handles the accounts payable for the DIA location and coordinates that process through headquarters. These two leads also attend the daily planning meetings and report back to the other staff assistants. The lead located in the Dollar building generally oversees the duties of the other staff assistants. She will also order supplies. The Employer prefers that lead staff assistants have some college course work in accounting, and three to five years of experience in data processing or bookkeeping is required. One lead staff assistant works from 9 a.m. to 5 p.m. and the other lead works from 7 a.m. to 3 p.m., Monday through Friday, 40 hours a week. Lead staff assistants are paid between \$11 and \$16.50 an hour and are not eligible for any sales incentive programs. The lead staff assistant located in the Dollar building regularly performs RSA work, and both of the staff assistants move cars to the ready line when necessary.

11. Courtesy bus driver

The Employer employs approximately 21 courtesy bus drivers at its DIA location. The primary function of the courtesy driver is to transport customers between the airport and rental facility. The bus drivers follow a general circuit at the airport, picking up at the east and west terminals of the airport. When the bus arrives back at the rental lot, the drivers first drop off customers at the Thrifty building, then at the Dollar building. The drivers then they retrieve returning airport customers at the Dollar building, return to the Thrifty building to pick up additional customers, and then proceed back to the airport. The drivers have a script they recite to inform customers at the time of pick-up about additional products, such as GPS or Pass 24, that are available at the rental counter.

All drivers must have a valid CDL to operate the shuttles. This position is scheduled 24 hours a day, 7 days a week, and most drivers work 40 hours a week. The bus drivers are paid between \$10 and \$15 an hour, and may accept tips from customers in lieu of an incentive program.

The record establishes that if the Employer has scheduled more courtesy bus drivers than the available number of buses, the extra drivers are not sent home, but are used as service agents. The Employer also schedules the exit booth agent, assistant mechanic, or lead service agent that possess CDLs to drive shuttle buses to cover for absences and vacations.

The bus drivers interact with RSAs to the extent that they unload customer luggage and place it in the sales office, or if an RSA asks a driver to wait for a specific customer. They will also communicate with bus mechanics via two-way radio about any issues they may be having with their bus.

12. Lead courtesy bus drivers

The Employer employs two lead courtesy bus drivers at its DIA facility. The primary function of the lead courtesy bus drivers is to maintain the flow of buses throughout the airport. The lead drivers operate courtesy shuttles like the regular drivers, but are responsible for communicating via two-way radio with the other scheduled drivers to make sure that the spacing between buses is consistent with timing required by the Employer with respect to customer pickup. At the end of their shift, the lead drivers also document mechanical issues with the buses on their respective shifts and provide that information to the bus mechanic, the maintenance manager and general manager. The lead bus drivers work on the same shifts as other drivers, but are paid between \$11 and \$16.50 an hour. They also may accept tips. Their interaction with other classifications is the same as for courtesy bus drivers.

13. Mechanics

The Employer employs three mechanics at its DIA facility. Generally, mechanics inspect and repair fleet vehicles, performing preventive maintenance on vehicles. They also evaluate and coordinate repairs under warranty and perform inspections on new vehicles. The mechanics do not do heavy mechanical work. If such work is required the vehicle is removed from the fleet. The mechanics must supply their own tools. Mechanics are required to have at least two Automotive Service Excellence (ASE) certifications, and 3 years experience in H/VAC,

electrical repair, or general mechanics. Mechanics work 40 hours a week. Their shifts run between 7 a.m. to 11 p.m., 7 days a week.

Mechanics are paid between \$18 and \$27 an hour and they are eligible to participate in an incentive program. Mechanics are paid \$1 for each Preventative Maintenance (PM) they perform once they meet an overall PM percentage target for the location. When mechanics submit warranty collections over \$2000 to headquarters in a month, they receive a percentage of the warranties that they submitted for collection.

Mechanics may shuttle cars off premises to an auction. They may also move cars from the service area if the return area is full. Mechanics perform the bulk of their duties in the garage area but they occasionally interact with return agents with respect to which vehicle has what problems, and which types of cars are under recall. Mechanics may interact with an exit gate booth agent if a customer sees something wrong with their car when they are leaving the premises. Service agents transport vehicles to the maintenance area to be repaired or maintained.

14. Assistant mechanics

The Employer employs approximately 4 assistant mechanics at its DIA location. The assistant mechanics perform preventive maintenance on vehicles, assist the mechanics in repairing vehicles, and assist the fleet agent with bringing new vehicles into the fleet and preparing older vehicles for removal from the fleet. Assistant mechanics must have vocational training or the equivalent in automotive mechanics or a related field, and one year automotive repair or related experience in the car rental industry. The assistant mechanics work 40 hours a week and are scheduled to work between 7 a.m. and 11 p.m.

Assistant mechanics are paid between \$10 and \$15 an hour and are eligible to participate in an incentive compensation plan. Assistant mechanics must perform 175 preventive maintenance (PM) measures per month in order to qualify for an incentive. Once they hit that target, they are entitled to receive a cash payment for each PM they perform. Similar to the mechanics, if they submit warranty collections over \$2000 to headquarters in a month, they receive a percentage of the warranties that they submitted for collection. The assistant mechanics have similar contact and interchange with other classifications as the mechanics.

15. Bus mechanic

The Employer employs two bus mechanics at its DIA facility. The bus mechanics work in the same building as the mechanics and assistant mechanics. Bus mechanics are responsible for repairing the fleet of shuttle buses. This includes performing preventive maintenance on the buses, evaluating and coordinating repairs under warranty, and performing inspections to ensure all buses meet Department of Transportation regulations. Bus mechanics must have vocational training, or the equivalent, in automotive mechanics or a related field, and ASE certification in T4 and T5 or S4 and S5. They also must have 3 years experience in H/VAC, electrical repair, or general mechanics. Bus mechanics work 40 hours a week and are scheduled to work between 7 a.m. to 11 p.m.

Bus mechanics are paid an hourly rate that ranges from \$20 to \$30 an hour and are not eligible for any incentive compensa-

tion plans. The record reflects that the bus merchants communicate with courtesy bus drivers via two-way radio about any issues with the fleet buses.

16. Building maintenance technician

The Employer employs one building maintenance technician at its DIA facility. This individual is responsible for performing facility maintenance, ensuring that corporate property image standards are met, performing preventive maintenance, and identifying and correcting safety problems at the facility. This employee performs minor repairs to the premises and will arrange for an outside contractor to perform larger tasks that are beyond the technician's expertise. Building technicians must have a certification for mechanical/electrical engineering or related fields and one to three years of related experience. The building maintenance technician works Monday through Friday, 6 a.m. to 2:30 p.m., and his pay rate ranges from \$10.50 to \$15.75 an hour.

The building maintenance technician will occasionally wash cars or move cars to the ready line. The building maintenance technician also assists mechanics with light repairs and oil changes if the mechanics have more work than they can handle to meet the vehicle needs. Finally, any employee who observes a problem with the company premises may page the maintenance technician and inform him of the problem.

17. Shuttlers

The Employer employs two shuttlers at its DIA facility. The shuttlers are responsible for transporting rental vehicles around the lot, to and from rental locations, vendors, and auctions. The shuttlers also assist the service agents and fleet agent. Shuttlers work 40 hours 5 days a week from 7 a.m. to 3 p.m. Their pay ranges from \$7.28 to \$10.92 an hour. Shuttlers move vehicles all over the property, so they are in contact with various classifications.

ANALYSIS AND CONCLUSIONS

A. Positions of the Parties

The Union seeks a unit consisting only of lead RSAs and RSAs at the Employer's DIA facility.¹⁴ While the parties agree

¹⁴ The Petitioner cites *Fireman's Fund Insurance*, 173 NLRB 982 (1968), and *LM Berry & Co.*, 198 NLRB 217 (1972), in support of its contention that office clericals should be excluded from the RSA unit it seeks because the staff assistants constitute a separate stand alone office clerical unit. I find the facts in those cases differ from the facts present in this matter because while those clericals had daily contact with sales people, they had no interchange of work duties, had separate supervision, and had a bare minimum of customer contact. I find that the record evidence establishes that the staff assistants are more akin to plant clericals than office clericals, and that it is appropriate to include them in the bargaining unit on the basis that the staff assistants' "principal functions and duties relate to the production process, as distinguished from general office operations." See *Caesars Tahoe*, 337 NLRB 1096 (2002), and the cases cited therein. In this regard, there is a significant amount of interchange between the staff assistants and RSAs. Moreover, while the evidence shows that several of the staff assistants engage in some duties which might be characterized as "office clerical" such as running routine reports, ordering supplies, and keeping track of accounts payable, a substantial portion of their duties involve direct interaction with the same customers served by the RSAs,

that the lead RSAs and RSAs should be included in any unit found appropriate, the Employer contends that because of the functional integration of its DIA airport operations, the smallest appropriate unit must be a wall-to-wall unit consisting of the agreed-upon lead RSAs and RSAs, as well as lead service agents, service agents, return agents, lot agents, fleet agents, lead staff assistants, staff assistants, lead courtesy bus drivers, courtesy bus drivers, mechanics, assistant mechanics, bus mechanics, building maintenance technician, exit gate booth agents, fleet agent, and shuttlers.

At the close of the hearing, the Petitioner took the position that if an election is directed in a unit larger than the RSA unit it is seeking, it would consider whether it wished to proceed to an election depending on the composition of that unit. The Petitioner, however, expressly declined to proceed to an election in the wall-to-wall unit urged by the Employer.

B. General Legal Principles

The Petitioner correctly asserts that the Board has long held that a unit need not be the "most" appropriate or "ultimate" appropriate unit, but must merely be "an" appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). In *Overnite*, the Board stated:

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties and also has discretion to select an appropriate unit that is different from the alternative proposals of the parties. [Citations omitted.]¹⁵

Based on my determination that a unit consisting only of RSAs and lead RSAs is not appropriate, I must make a determination as to the smallest appropriate unit in this case. *Overnite Transportation* makes clear that Section 9(b) of the Act authorizes units composed of "subdivisions" of a "plant," and that "the . . . employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit." Id. at 723. As stated by the Board in *The Boeing Co.*, 337 NLRB 152, 153 (2001): "The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications." See also, e.g., *Bartlett Collins Co.*, 334 NLRB 484 (2001), and *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967).

As noted by the Petitioner, there are a number of cases in which the Board has made unit determinations in the vehicle rental industry, but has not established any particular presumptively appropriate units. Rather, the Board has employed traditional community of interest analysis and has determined that

lot agents, return agents and bus drivers. As noted, the staff assistants regularly function as RSAs, and are the primary point of contact with customers regarding the Employer's extensive lost and found department.

¹⁵ The Petitioner did not suggest any alternative units for me to consider in the event I found that the RSA unit was not an appropriate unit.

various combinations of employees constitute appropriate units. See, e.g., *Avis Rent-A-Car System, Inc.*, 132 NLRB 1136 (1961) (unit including garagemen, mechanics, mechanics helpers, lotmen, lubrication men, tiremen, and gasmen, but excluding rental agents found appropriate); *Budget Rent-A-Car of New Orleans, Inc.*, 220 NLRB 1264 (1975) (appropriate unit included only service representatives whose duties related to vehicle movement, washing, cleaning, inspection for damage, refueling, and obtaining odometer readings, and who had little customer contact, and excluded rental agents who primarily had customer contact); *Alamo Rent-A-Car*, 330 NLRB 897 (2000) (Board found multi-facility unit including service agents, shuttlers, PDI/fleet control employees, ready line agents, PSR's, and parts clerk and inventory clerk, excluding rental agents, administrative clerks, cashiers, mechanics, and mechanics helpers to be appropriate); *Budget Rent A Car Systems, Inc.*, 337 NLRB 884 (2002) (Board found separate petitioned-for units consisting of customer service coordinators, service agents, and mechanics at one location and separate unit of customer service coordinators and service agents at another location inappropriate based on functional integration between all five of the employer's Detroit area facilities and remanded case to the Regional Director); *United Rentals, Inc.*, 341 NLRB 540 (2004) (Board reversed Regional Director's finding that the petitioned-for unit of drivers, yard employees, and mechanics was appropriate and directed an election in wall-to-wall based on undisputed evidence of overlapping duties and interchange between the excluded employees and the petitioned-for employees, as well as common terms and conditions of employment).

In reaching its unit composition determinations in the above line of vehicle rental company cases, the Board employed its community of interest analysis and analyzed various factors including bargaining history, work contacts among the several groups of employees, extent of interaction and interchange of employees, differences in skills, or type of work required, centralization of management and supervision, functional integration of the employer's operation and geographic locations. See, e.g., *Overnite Transportation*, supra at 724, and the cases cited immediately above. None of the vehicle rental cases cited above involved unit determinations in operations using the CHOICE type of business model present in this matter, which appears to involve an increase in interaction between the various classifications of employees at issue.

C. Unit Determination

Under the circumstances presented, I conclude that the smallest appropriate unit of the employees is a wall-to-wall unit consisting of all of the hourly employees employed at the Employer's DIA airport location. Specifically, I find that the unit proposed by the Petitioner consisting solely of RSAs and lead RSAs is not an appropriate unit because of the overwhelming community of interest between the RSAs, lead RSAs, lead service agents, service agents, return agents, lot agents, fleet agents, lead staff assistants, staff assistants, lead courtesy bus drivers, courtesy bus drivers, mechanics, assistant mechanics, bus mechanics, building maintenance technician, exit gate booth agents, fleet agent, and shuttlers. Accordingly, the

smallest appropriate unit must also include all of these classifications.

I base this determination primarily on my finding that the hourly employees enjoy identical benefits, and have very similar identical terms and conditions of employment, share common supervision at the lowest level on evenings, nights, and weekends, have significant daily interaction, and regular interchange. The RSAs also have significant overlap of duties with the lot agents and return agents, and upsell the same products as the exit gate booth agents. In *United Rentals, Inc.*, supra at 540, the Board based its decision on strong and undisputed evidence of common terms and conditions of employment, overlapping duties and interchange between the excluded employees and the petitioned-for employees, finding that those factors mandated a determination that a wall-to-wall unit was the only appropriate unit. The Board found it particularly significant that the employees "all 'pitch in' and perform the functions of different classifications when necessary." *Id.* at 541.

Much like in *United Rentals*, the record evidence establishes that due to the functional integration of the Employer's operations because of the demand for flexibility and efficiency related to the CHOICE business model, the duties of all classifications overlap with at other classifications resulting in significant amounts of interaction, interchange, and overlap in job duties during the daily operation of the facility.

1. Hourly employees have identical terms and conditions of employment

The record establishes that all hourly employees at the DIA facility are subject to identical benefits and employment policies, and wear similar uniforms. All employees share the same breakrooms and everyone swipes their time cards on the same Kronos time system at one of three time clocks located on the property.

The hourly employees also have similar wage ranges. In this regard, while the lowest paid classification of shuttlers have wage rates which range from \$7.28 to \$10.92 an hour and the highest paid mechanic classification wages range from \$20 to \$30 an hour, the vast majority of employees, including RSAs, lot agents, return agents and staff assistants, fall somewhere in the middle with wages ranging between \$9 and \$16.50 an hour.¹⁶

The Petitioner argues that the incentive program for the RSAs warrants a finding that they have sufficiently distinct terms and conditions of employment warranting a finding that they constitute a separate bargaining unit. While the RSAs do participate in a wage incentive program unique to their position, six other classifications of employees at the Employer's facility also participate in the various incentive compensation

¹⁶ While there is a significant difference between the mechanics' high end potential wage rates and the rates of other employees, I find that this factor standing alone does not require me to exclude the mechanics from the bargaining unit. In this regard, the record is silent as to the actual wage rates of the mechanics and bus mechanics. Moreover, the Board regularly includes higher paid maintenance employees in bargaining units with lower paid sales or production employees.

plans described above.¹⁷ 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. Finally, while the courtesy bus drivers do not receive incentive pay through the Employer, they do collect tips. They are also responsible for “advertising” the availability of the incentivized products to customers while in route to the rental lot.

2. Common supervision

As noted above, the Employer does not have departmental lines of daily supervision. Rather, with the exception of the maintenance employees on the day shift, the hourly employees report to whichever station and operation managers are scheduled on their shift. This means that employees scheduled on evening, night, and weekend shifts may not see the operations manager to whom they report for scheduling and payroll purposes. Even day shift hourly employees report the scheduled station manager during daily meetings because these station managers are responsible for coordinating the flow of vehicles and directing employees to perform work outside their normal duties. Thus, the station managers are the managers with whom employees address any issue arising during the shift. For example, if there is a high demand for SUVs on a given shift, the station manager on duty directs the service agents and mechanics to get those vehicles ready for rental before other models of vehicle are serviced, and may reassign employees from other classifications to help expedite the process. The record evidence also shows that employees are free to discuss any work issues with any manager, including General Manager Klier.

3. Daily interaction

The record establishes that there is a significant amount of daily interaction between the majority of classifications at the DIA location. Of particular significance is the interaction between the RSAs, staff assistants, return agents, lot agents and bus drivers outlined above. In this regard, while the RSAs primarily work behind the rental counter and the lot agents and service agents work outside, they are in contact with respect to what vehicles are available for rental and concerning when the RSAs will cover the lot and return agents for breaks. RSAs are also contacted by return agents when customers request a larger discount than the return agent has authority to grant.

Similarly, service agents regularly interact with return agents, mechanics and lot agents, shuttlers, and the fleet employee. Fleet agents regularly interact with mechanics and assistant mechanics to discuss which cars need what repairs and which cars need to be grounded. Mechanics and assistant me-

chanics also interact with exit booth agents if there is something wrong with a customer’s vehicle when exiting the company premises. The building maintenance technician has regular contact with any employee who reports a problems on the premises that needs to be repaired. Finally, the bus drivers are in contact by two-way radio with the bus mechanics with respect to any problems they may have with their vehicles, and interact with return agents regarding customers awaiting transportation to the airport.

4. Regular interchange

The most significant factor warranting a finding that the wall-to-wall unit is the only appropriate unit herein is the extensive amount of interchange between classifications of employees. In fact, the record establishes that there is evidence of actual temporary interchange between each classification and at least one other classification, except for the two bus drivers. The RSAs actually have such interchange on a daily basis with the lot agents, return agents, and staff assistants. Specifically, the day shift RSAs cover the breaks of the lot agents and return agents on a daily basis. During the evening and night shifts, RSAs perform all of the duties of the lot and return agents because there are no scheduled lot and return agents. Additionally, the staff assistants are regularly called upon to work at the rental sales counters whenever customer demands warrant calling them to assist.

With regard to interchange of other classifications of employees, the record establishes that one exit gate booth agent, one assistant mechanic, and one return agent possess CDLs and fill in as bus drivers to cover vacations and absences. Finally, during periods of high demand, mechanics and assistant mechanics perform service agent functions, and staff assistants help shuttle vehicles around the lot when necessary.

Conclusion

Based on the forgoing and the record as a whole, I find that the smallest appropriate unit must include all hourly employees employed at the Employer’s DIA airport location because they share an overwhelming community of interest based on the functional integration of the Employer’s operations.

ORDER

At the hearing, the Petitioner declined to proceed to an election in the event it was determined that the smallest appropriate unit is the wall-to-wall unit proposed by the Employer. The Petitioner did state that it may be willing to proceed to an election in a smaller unit, depending on how such a unit was defined. Based on my finding for the reasons set forth above, that the smallest appropriate unit is a wall-to-wall unit:

It is hereby ordered that the petition filed herein is dismissed.

¹⁷ These seven include service agents, lot agents, return agents, exit gate booth agents, mechanics, and assistant mechanics.