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Treasurers and Ticket Sellers, Local 857, IATSE, MPTAA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON D.C.

THE MADISON PROJECT,)	CASE NO. 31-RC-8882
)	
Employer,)	REQUEST FOR REVIEW
)	
and)	
)	
TREASURERS AND TICKET SELLERS,)	
LOCAL 857 IATSE, MPTAA,)	
)	
Petitioner,)	
)	
)	
)	
_____)	

STATEMENT OF THE CASE

The hearing in this matter was conducted before the National Labor Relations Board, Region 31 on July 27, 2011 following a petition filed by Treasurers and Ticket Sellers, Local 857, IATSE, MPTAA, (hereinafter referred to as "Local 857") seeking to represent a bargaining unit including all full time, part time, and on-call employees engaged in ticket sales, subscription and customer services of the Employer, excluding all other employees, including supervisors and guards as defined in the Act.

On August 25, 2011, the Regional Director concluded that the Employer is a political sub-division within the meaning of Section 2(2) of the Act and accordingly, exempt from the Board's jurisdiction. The Regional Director also determined that should the Board decide that it would assert jurisdiction over the Employer, the claim by the Employer that a plan was being considered to permanently lay off employees in the petitioned-for unit was speculative and not imminent; no contract bar existed for the petitioned-for unit; the Ticket Fulfillment Manager was deemed to be a supervisor within the meaning of Section 2(11) of the Act; employee Nathalie Choupar, shared a substantial community of interest with the other petitioned for employees to be included in a bargaining unit; and, if an election is deemed appropriate, proper eligibility formula for part time employees in the appropriate unit would be the *Davison-Paxon* formula.

Petitioner seeks review of the Regional Director's determination that the Employer is a political subdivision within the meaning of Section 2(2) of the Act and therefore exempt from the Board's jurisdiction.

II

ARGUMENT

Madison Project not an employer that is an exempt political subdivision and therefore the Board has jurisdiction. Pursuant to an agreement between the Madison Project (hereinafter referred to as "Employer") and Santa Monica City College District (hereinafter "College"), Employer was created for the purpose of programing, presenting, and producing for the **general public**, a season of performances and theatrical projections with high profile, world class performers and emerging national and local talent each year. (See Employer Exhibit 2).

Two theaters are used on campus for productions under the auspices of the Employer. The productions are housed either on the Broad Stage or the Black Box Theater. The same theaters are also used for student productions and rentals. However, the box office personnel of the Employer are not used for any student productions or rentals. If student productions and Employer productions occur on the same day or evening, different box office personnel are used for handling the Employer's productions, separate and apart from student productions. (See Transcript p. 73). Moreover, the Employer and the College use different systems for ticket sales. (See Transcript pps. 99-100).

The Employer has approximately 20 to 21 members on their Board of Directors. Although Dr. Tsang, the President of the College, sits on the Board, he has never vetoed any action of the Employer's Board of Directors, nor have any of the Employer's Board members been involuntarily removed by him. A majority of the membership of the Board of Directors are not associated with the College. The day-to-day operations of the Employer are under the auspices of Mitchell Heskell who is the Chief Operations Officer.

Pursuant to the agreement between the College and Employer, the latter is responsible to

assure that it maintains in its employ, a sufficient number of employees to adequately and economically perform its responsibilities under the agreement. Moreover, responsibility relating to issues of employment, supervision, compensation, promotion and discharge of employees, as well as union negotiations and compliance with laws and regulations dealing with employee matters, rests with the Madison Project, which is deemed to be the employer of the employees. The Employer is also required to insure that all of its employees understand that they are employees of Madison Project and not the College. (See Employer Exhibit 2, paragraph 7(e)(1).)

In practice, all employees of the Employer including box office personnel are advised that they are not employees of the College. (See Transcript, p. 77). Although the agreement between the College and the Employer at paragraph 5(d)(1) provides that “the College is to provide a centralized box office and purchase system including personnel for Santa Monica College events, Madison Project Productions and Madison Project Presentations,” that sentence as practiced is related to just the physical structure of the box office and does not relate to any control by the College over Madison Project employees. The revenue derived from ticket sales involving the Employer’s productions and presentations belong to the Employer. Similarly, sponsorship revenues that are generated by the Employer belong to it and not the College. The volunteers and students who work student productions are not employees of the Employer.

The Board of Directors of Madison Projects are primarily responsible for the administration and operation of all of the Employer’s productions and its employees. Thus, Madison Project does not transform itself into a political subdivision because its Board of Directors and management personnel are under the supervision of the College. Although the productions of the Employer are performed at the theaters on the College’s campus, the performances are not integrated with any of the College’s operations or instructional programs.

The labor relations policies of the Employer are separate from those of the College and the administration of labor relations is within the responsibility of Madison Project and its managers, who are responsible for making decisions for unit employees.

Although the Employer's stated purpose is to "promote excellence in education in the Arts through presentation and production, and to carry on other educational activities associated with this purpose," there is nothing in the agreement between the College and the Employer to indicate that Madison Project was to be run as a department or administrative arm of the College. Thus, the creation of Madison Project should not be viewed as a creation directly by Santa Monica College so as to constitute an arm of the State or College.

Moreover, there is no evidence in the record to establish that the authority of the President of the College over Madison Project is determined by any statutory or other legal mandate separate and apart from the College's own by-laws. (See *City University of New York*, 337 NLRB 152, 337 NLRB 965; *Five Cap, Inc.*, 331 NLRB No.1 57, 170 LRRM 1181; *St. Paul Ramsey Medical Center*, 288 NLRB No. 911, 128 LRRM 1174; and *Charter School Administration Services, Inc.* 353 NLRB 935 (2008).

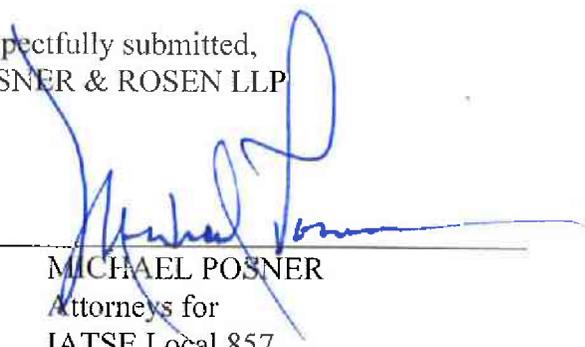
III

CONCLUSION

For the reasons set forth above, it is respectfully submitted that Petitioner's request for review be granted and the Employer be determined to be covered by the Act..

DATED: September 8, 2011

Respectfully submitted,
POSNER & ROSEN LLP

By: 
MICHAEL POSNER
Attorneys for
IATSE Local 857

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18
3 and not a party to the within action; my business address is 3600 Wilshire Blvd., Suite 1800, Los
4 Angeles, CA 90010.

5 On September 8, 2011 I served the foregoing document described as **REQUEST FOR
6 REVIEW** on the interested parties in this action.

7 [XX] by placing the original [XX] a true copy of thereof enclosed in sealed
8 envelope(s) addressed as follows:

9 Richard W. Kopenhefer, Esq.
10 Jessica S. Kantor, Esq.
11 Sheppard Mullin Richter & Hampton, LLP
12 1901 Avenue of the Stars, Suite 1600
13 Los Angeles, CA 90067-6055

14 Brian D. Bock, Esq.
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17 Los Angeles, CA 90048

18 [XX] (BY MAIL)
19 As follows: I am "readily familiar" with the firm's practice of collection and
20 processing correspondence for mailing. Under that practice, it would be deposited
21 with the U.S. Postal Service on that same day with postage thereon fully prepaid
22 at Los Angeles, California in the ordinary course of business. I am aware that on
23 motion of the party served, service is presumed invalid if postal cancellation date
24 or postage meter date is more than one (1) day after date of deposit for mailing in
25 affidavit.

26 (FEDERAL EXPRESS)
27 I am "readily familiar" with the firm's practice of collection and processing
28 correspondence for mailing via Federal Express. Under that practice, it would be
deposited in the Federal Express Service Box on that same day with postage
thereon fully prepaid at Los Angeles, California in the ordinary course of
business.

[XX] (FEDERAL) I declare that I am employed in the office of a member of the bar of
this court at whose direction the service was made.

23 SHARON D. GIBBS

24 _____
25 [Type or Print Name]

24 
25 [Signature]