

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DLC CORP. d/b/a TEA PARTY
CONCERTS and/or LIVE NATION
Employer

and

Case 1-RC-22162

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
MOVING PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF
THE U.S. AND CANADA, LOCAL 11,
AFL-CIO

Petitioner

DECISION ON REVIEW AND ORDER REMANDING

Employer's Request for Review of the Regional Director's Supplemental Decision and Direction of Election is granted solely with respect to the eligibility period. The Regional Director found that employees eligible to vote in the third rerun election were those who were employed on at least two shows during the period January 1, 2008 to December 31, 2008. Having carefully considered this issue in light of the undisputed facts, we find that the Regional Director erred by failing to set the eligibility period as the 12 months immediately preceding the direction of election. Accordingly, we set aside the third rerun election held on September 11 and 12, 2009, and direct a fourth rerun election to be held during the Employer's 2010 season.

In her initial Decision and Direction of Election, the Regional Director concluded that the proper eligibility formula for the unit of stagehands who work on a seasonal basis should enfranchise those employees who have worked two productions during the year preceding the decision. This eligibility formula was in accord with American Zoetrope, 207 NLRB 621 (1973).¹ Accordingly, the Employer provided the Region with an Excelsior list that gave the names of employees who satisfied the stated eligibility requirements. Upon directing a second rerun election after sustaining objections, the Board concluded that voting eligibility would be "consistent with the eligibility requirements set forth in the Regional Director's Decision and Direction of Election dated January 16, 2008." Tea Party Concerts and/or Live Nation, 353 NLRB No. 130, slip op. at 2 (2009). Pursuant to this Direction, it appears that the Employer provided the Region with an Excelsior list on April 13, 2009 that included all employees who had worked two shows during the 12 months prior to the Board's decision. Now, in her Supplemental Decision directing another election after sustaining objections to the second election, the Regional Director finds that employees eligible to vote in the third

¹ On March 13, 2008, the Board denied the Employer's request for review of the Regional Director's decision to use the eligibility formula set forth in American Zoetrope.

rerun election are those who were employed on at least two shows “during the period January 1, 2008 to December 31, 2008.”

We find no support for the Regional Director’s use of this eligibility formula. Rather, in situations such as this, eligibility is ordinarily determined from the “latest completed payroll period preceding the date of issuance of the notice of rerun election.” Casehandling Manual, (Part Two), Representation Proceedings, Sec. 11452.2. Because of the unique nature of the entertainment industry, the Board has modified this formula, as the Regional Director did here, so that eligibility will ordinarily be determined based on the number of shows worked in the “year preceding” the decision. See American Zoetrope, 207 NLRB at 623. The Regional Director’s decision to now specify the exact dates for eligibility in the preceding calendar year not only departs from American Zoetrope, but also would potentially disenfranchise individuals who worked the 2009 summer concert season, the employees most immediately affected by the election.²

In light of the foregoing, we reverse the Regional Director solely with respect to the eligibility formula set forth in her Supplemental Decision and Direction of Election. In all other respects, the Request for Review is denied as it raises no substantial issues warranting review.

ORDER

The case is remanded to the Regional Director for the conduct of an election at an appropriate time and place and with a proper eligibility formula.

WILMA B. LIEBMAN,	CHAIRMAN
PETER C. SCHAUMBER,	MEMBER
CRAIG BECKER,	MEMBER

Dated, Washington, D.C., May 19, 2010.

² According to the Employer, the Regional Director’s eligibility period would result in 29 employees who will not be able to vote in the third rerun election, and would permit an addition of 10 employees who otherwise should not be eligible to vote.