

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

VENUE TRADING CO.
d/b/a TRADE SHOW SUPPLY

and

Case 12-CA-074022

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES
(IATSE), LOCAL 835, AFL-CIO

**ACTING GENERAL COUNSEL'S BRIEF IN SUPPORT OF EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

John F. King
Counsel for the Acting General Counsel
National Labor Relations Board, Region 12
Miami Resident Office
51 SW 1st Avenue, Suite 1320
Miami, Florida 33130
Telephone No. (305) 536-4074
Facsimile No. (305) 536-5320
John.king@nrlb.gov

I. Statement of the Case¹

This case involves an alleged violation of Section 8(a)(5) of the National Labor Relations Act (the Act) by Venue Trading Co., d/b/a Trade Show Supply (Respondent). Specifically, the Complaint alleges that since on or about September 8, 2011, including by letters dated September 8, 2011 and December 16, 2011, International Alliance of Theatrical Stage Employees (IATSE), Local 835, AFL-CIO (the Union) has requested that Respondent provide information that is necessary and relevant to the Union's performance of its duties as the exclusive collective bargaining representative of Respondent's bargaining unit employees, and that since on or about September 9, 2011, including by letter dated November 15, 2011, Respondent has failed and refused to provide the requested information to the Union. The case was heard by Administrative Law Judge Robert A. Ringler (the ALJ) on August 13, 2012, and the ALJ issued his decision on September 20, 2012.

In his decision, the ALJ recommended that the Board order the Respondent to provide the requested information to the Union, as alleged in the Complaint. However, the ALJ erred by failing to find that the Union is the exclusive Section 9(a) correct collective bargaining representative of the bargaining unit. In addition, the ALJ erred by failing to find that staff employees, who were the subject of the Union's information request, are included in the bargaining unit represented by the Union.

II. Issues Presented

The central issues presented are:

1. Whether the ALJ erred in finding that the Union is the **limited** exclusive bargaining representative of certain employees of the Employer, rather than the unit employees' exclusive

¹ The following references are used in this document and in the Acting General Counsel's Brief in Support of Exceptions to the Administrative Law Judge's Decision:

[ALJD p. ___, ln. ___] = ALJD page and line numbers

[TR ___] = transcript page number.

[GCX ___] = General Counsel's exhibit number

[RX ___] = Respondent's exhibit number

bargaining representative of the unit employees pursuant to Section 9(a) of the Act. (Emphasis added). Exceptions 1, 2, 3 and 10. (ALJD 8, In 16-22).

2. Whether the ALJ erred in his description of the appropriate bargaining unit, including his failure to specifically identify staff employees as included in the appropriate unit represented by the Union, and that therefore the information requested is presumptively relevant to the Union's performance of its duties as the unit employees' bargaining representative, and that Respondent failed to rebut that presumption, and including these facts in his analysis and conclusion. Exceptions 4 through 16. (ALJD 8, In 16-22; 9 In 12-15; Appendix).

III. Argument

A. The Union is the exclusive collective bargaining representative of the employees under Section 9(a) of the Act. (Exceptions 1, 2, 3 and 10).

Respondent provides exhibition services, including the installation and dismantling of exhibits, primarily in Orlando, Florida. (Tr. 15:10-14; 136:20-25 Griffin; ALJD 2, In 19-20). Christopher Griffin has been Respondent's president since the company was formed in or about August 2001. (Tr. 15:1-2, 15-20, 130:10-14, Griffin). Since in or about 2004, Respondent has entered into successive collective-bargaining agreements with the Union. This includes agreements that were effective from September 1, 2004 to August 31, 2007, September 1, 2007 to August 31, 2011 (GCX 3; ALJD 2, fn 3), and the current agreement, which is effective from September 1, 2011, to August 31, 2014. (GCX 4; Tr. 17:10-25, Griffin, ALJD 2, In 23-24). Griffin signed these agreements for the Employer, IATSE Trade Show Division Director Bill Gearn signed them for the International Union, and Local 835 business agent Richard Vales has signed them for Local 835 and the other signatory IATSE locals, i.e. IATSE locals 835, 60, 558, 321, 115, and 412. (GCX 3-4, RX 1). Vales testified that since 2005, Gearn has given him the authority to sign the agreement on behalf of all of the locals that are parties to the collective-bargaining agreement. (Tr. 60:1-4, 61, Vales).

In addition to Respondent, several other employers in the industry referred to as exhibitor appointed contractors or “EACs” have been signatories to the standard EAC agreement like the one between Respondent and the Union. (Tr. 62:13-17, Vales, GCX 3-4). There are approximately 75 EACs that are signatories to the current standard EAC agreement. (Tr. 137:15-17, Griffin, 112:16-17, Vales). Although a committee of about 8 to 10 EACs has bargained with the Union regarding the renewal of each successive collective-bargaining agreement, each EAC has signed its own individual collective-bargaining agreement after the negotiations. (Tr. 137:17-23, Griffin).

Under the current and prior collective-bargaining agreements between Respondent and the Union, the Union is the exclusive bargaining representative of all employees performing work described in the agreement’s “Scope of Agreement” provision, including staff employees, who are defined essentially as employees who work for a single employer performing bargaining unit work. (Tr. 62:22-25, 63:1-2, Vales). Article 1.01 of the parties’ 2004-2007, 2007-2011 and 2011-2014 agreements contains the following language:

The Union claims, and the Employer acknowledges and agrees, that a majority of its employees has authorized the Union to represent them in collective bargaining. The Employer agrees to recognize, and does hereby recognize the Union as **exclusive** collective bargaining agent for all employees performing the work described below in the Scope of Agreement article on all present and future job sites within the jurisdiction of the Union. This agreement extends to the Staff Employees described in Section 1.03.

(GCX 3-4, RX 1, emphasis added). Section 1.02 contains a lengthy, detailed description of the work covered by the agreement that comes within the jurisdiction of the Union, including “the erecting and dismantling of display booths and/or exhibits”. (GCX 3-4, RX 1).

The undisputed record evidence supports the conclusion that the Union is the 9(a) representative of the unit employees of the Respondent. The ALJ, in footnote 2, states the law with respect to the recognition of unions under Section 8(f) of the Act. (ALJD 2, fn. 2). The ALJ correctly states that Section 8(f) and existing Board law permit construction industry employers to grant recognition to unions, without regard to a showing of majority status. Citing John

Deklewa & Sons, 282 NLRB 137 (1987), *enfd. sub nom. Iron Workers Local 3 v. NLRB*, 843 F. 2d 770 (3d Cir. 1988). However, neither the Acting General Counsel, nor Respondent, elicited testimony that supports a finding that the Respondent is a construction industry employer, or that the parties have a Section 8(f) relationship. In addition, neither party argued in its brief that the parties' collective bargaining relationship was based in whole, or in part, on Section 8(f) of the Act.

In FHE Services, 338 NLRB 1095 (2003), the Board adopted the ALJs finding with respect to whether an employer was a construction industry employer. The ALJ in that case held that:

The Board in Carpenters (Rowley-Schlimgen), 318 NLRB [714] at 715-716, cited the Standard Industrial Classification (SIC) Manual for 1957 and 1987 to define "construction" to include "new work, additions, alterations, reconstruction, installations, and repairs." *Id.* at 715. The *Construction Review*, volume 3, was similarly referred to in C.I.M. Mechanical Co., 275 NLRB [685] at 691, and construction was defined as follows:

Construction covers the erection, maintenance and repair (including replacement of integral parts), of immobile structures and utilities, together with service facilities which become integral parts of structures and are essential to their use for any general purpose. It includes structural additions and alterations, Structures include buildings ... and all similar work which are built into or affixed to the land ... Construction covers those types of immobile equipment which, when installed, become an integral part of the structure and are necessary to any general use of structure. This includes such service facilities as plumbing, heating, air-conditioning and lighting equipment.... In general construction does not include the procurement of special purpose equipment designed to prepare the structure for a specific use.

338 NLRB at 1098.

There is no record evidence that would support a finding that Respondent, which is in the business of erecting and dismantling trade show and convention exhibits, is engaged in the construction industry as contemplated by Section 8(f) of the Act, or by existing case law. The ALJ's 8(f) language in footnote 2 appears to be the basis for his finding that the union is the *limited* exclusive collective bargaining representative of the unit. (emphasis added). (ALJD 2 fn 2). However, his use of the word "limited" in footnote 2 is incorrect because the record evidence

shows that the parties have entered into an exclusive collective bargaining relationship that clearly is governed by Section 9(a).

In summary, the record evidence clearly establishes that the parties have entered into a collective bargaining relationship governed by Section 9(a) of the Act. Neither the Acting General Counsel nor Respondent elicited testimony that suggests that Respondent is a construction industry employer or that the parties' collective bargaining relationship is governed by Section 8(f) of the Act. , and neither advanced any such position. Accordingly, the ALJ's determination that the Union is the *limited* exclusive collective bargaining representative of Respondent's employees should be modified to delete the word limited. (ALJD 8, In 16-22).

B. The ALJ failed to correctly describe the bargaining unit, which includes staff employees, and to find that the information requested by the Union concerning staff employees is presumptively relevant to the Union's performance of its duties as the unit employees' exclusive bargaining representative because the information requested concerned unit employees. (Exceptions 4 through 16).

The ALJ erred by failing to correctly describe the appropriate unit. In his Conclusions of Law, (ALJD 8, In. 19-22), Order (ALJD 9 In. 12-15) and Notice to Employees (ALJD Appendix), the ALJ described the appropriate unit as follows:

All employees of Venue Trading Co., d/b/a Trade Show Supply, who install and dismantle trade show exhibits within the jurisdiction of the Union, as described under our September 1, 2011 to August 3, 2014 collective bargaining agreement with the Union, excluding all other employees, supervisors and guards as defined in the Act.

(ALJD 8, In. 19-22; 9 In. 12-15; appendix).

In its answer to the Complaint, Respondent admitted that the following unit is appropriate under Section 9(b) of the Act, as alleged in paragraph 5(a) of the Complaint:

All employees of Respondent, including Staff employees, who perform any of the work described in the Scope of Agreement article of the collective-bargaining agreement between Respondent and the Union on all present and future job sites within the jurisdiction of the Union.

The ALJ's unit description differs significantly from the language found in the parties' collective bargaining agreement. As noted above, Article 1-Recognition and Scope of the Agreement states at Section 1.01, in part:

The Employer agrees to recognize and hereby recognizes the Union as the exclusive collective bargaining agent **for all employees performing the work described below in the Scope of Agreement Article on all present and future job sites within the jurisdiction of the Union. This agreement extends to the Staff employees described in Section 1.03 of this Article.**

(GCX 3-4, RX1 emphasis added). As further noted above, Section 1.02 contains a lengthy, detailed description of the work covered by the agreement that comes within the jurisdiction of the Union, including but not limited to "the erecting and dismantling of display booths and/or exhibits". (GCX 3-4, RX 1). The Union's representative authority is not limited to those individuals who install and dismantle trade show exhibits as described by the ALJ. (ALJD 8, In. 19-22; 9 In. 12-15; appendix) Rather, the Union's authority extends to individuals who perform any of the multitude of tasks as outlined in Section 1.02. The ALJ erred in limiting the Union's representative authority to installation and dismantling of trade show exhibits, without making reference either to Section 1.02 of the agreement, or specifying those tasks identified therein. (ALJD 8, In. 19-22; 9 In. 12-15; appendix).

Unit employees other than staff employees are obtained by Respondent from the Union's hiring hall pursuant to the exclusive work referral system set forth in the agreement. (GCX 3-4, RX1, Section 1.021 and Article VIII). Staff employees are employees who work for a single employer, in this case for Respondent, performing bargaining unit work. (Tr. 62:22-25, 63:1-2, Vales). Respondent President Chris Griffin admitted that Respondent uses staff employees to perform unit work on the exhibition floor. (Tr. 142-143).

A number of other contract provisions illustrate that staff employees are considered part of the unit and that their terms and conditions of employment are governed by the parties' contract.

Section 1.03 of the current agreement provides, in part:

This agreement does not prohibit the assignment of Staff employees to do any work in the exposition field. Should more than fifteen (15) of said individuals be required on any call, the Employer will request one worker from the Union for each of the additional Staff employees. A Staff employee shall be considered to be exclusive to one (1) employer.

(GCX 4; ALJD 3, In 5-7). Section 1.03 of the parties' 2007 to 2011 agreement provided that Respondent could have only 14 staff employees until September 1, 2009, when the maximum increased to 15. (RX 1, GCX 3).

Under Section 1.031 of the current and prior agreements, the Union has the right to designate a steward for the unit employees, including the staff employees on a job, after the threshold of 15 staff employees is reached and the hiring hall must be used. (ALJD 3, In 5-7). Section 1.031 also provides that the Union may appoint a steward from among the staff employees. (GCX 3-4, RX 1). Section 1.032 covers out-of-town staff employees, allowing them to work within the jurisdiction of the local union pursuant to a certain ratio. A similar Section 1.032 appears in the parties' 2007 to 2011 and 2004 to 2007 agreements. (GCX 3-4, RX 1).

Section 8.07 of the agreement states:

The Employer will provide to the Union a list of its Staff employees. The Employer will advise the Union of the Staff employees and requested employees who have been notified and confirmed when placing the original call.

(GCX 3-4, RX 1). There is nothing in the agreement that waives the Union's statutory right to information that is necessary and relevant to the performance of its duties as the unit employees' bargaining agent, or which purports to limit the Respondent's obligations to provide information to the Union solely to providing a list of staff employees.

Aside from the above-described language of the parties' collective-bargaining agreement that unequivocally designates the Union as the bargaining representative of staff employees, there are several provisions in the agreement specifically covering the benefits of staff employees. Article 11- Health & Welfare Annuity and Pension, under Section 11.03, states that if Respondent provides health insurance and/or retirement benefits for staff employees, then Respondent is not required to make an hourly contribution to the IATSE Health & Welfare Fund

or the IATSE Annuity Fund. (GCX 3-4; RX 1;ALJD 3, In 13-17). Under Section 11.06 of the current agreement, Respondent is required to “maintain and make available to the Union, the Trustees or one or more of their designees for inspection and verification, all of its payroll records covering such employment.” (GCX 3-4, RX 1).²

In addition, the parties have bargained over staff employees during negotiations for each successive agreement. In the 2004 agreement, the maximum number of staff employees on a show was 14. In the 2007 agreement, the maximum was increased to 15, and during the most recent negotiations in June and July of 2011, the Union rejected a proposal by the EAC employers to increase the maximum number of staff employees to about 20. (Tr. 142:10-21, Griffin; 113:21-25, 114, 115:1-3, Vales ; GCX 3-4, RX 1). Vales, Gearn, and Griffin attended the 2011 bargaining sessions. (Tr. 113:21-23, 114:8-10, Vales, 139:6-12, Griffin).

The Union’s information requests are described at pages 3 to 4 of the ALDJ. See also GCX 8, 16, 17, 33. The Union fully explained the reasons for its information requests to Respondent. (ALJD 5, In. 18-45; Tr. 31-33, 68-69, 70-71, 77, 115-117, 123-124, 146-148). Information pertaining to employees in the bargaining unit, including employee’s names, addresses, phone numbers, pay-related data, and employee benefits, is presumptively relevant to a union’s representational duties, including that necessary to decide whether to proceed with a grievance or arbitration. *Alcan Rolled Products-Ravenswood, LLC*, 358 NLRB No. 11 (2012), slip op. at 6-7 (names of employees who complained to employer about disciplined coworker in unit presumptively relevant); *Salem Hospital Corporation a/k/a the Memorial Hospital of Salem County*, 358 NLRB No. 95, slip op. at 5 (2012) (bargaining unit information such as hire dates, rate of pay, hours worked for a two year period, participation in pension and health insurance plans presumptively relevant); *Information Services, Inc.*, 341 NLRB 988, 988, 992 (2004) (information such as gross salaries, total hours worked, overtime, names, addresses, and

² This provision is Section 11.023 in the agreements that expired on August 31, 2011 and on August 31, 2007. (GCX 3, RX 1).

phone numbers of unit employees presumptively relevant); *Dexter Fastener Technologies, Inc.*, 321 NLRB 612-613 (1996). When information is presumptively relevant, a union is not required to make a showing of relevance of the requested information, and the information must be provided unless an employer has rebutted the presumption or because the information relates to non-union matters. *Alcan Rolled Products*, 358 NLRB No. 11, slip op. at 6-7, *Disneyland Park*, 350 NLRB 1256, 1257 (2007). The ALJ erred by failing to find that the information sought concerned unit employees, i.e. the staff employees, and was therefore presumptively relevant. Respondent failed to introduce any evidence that rebutted the presumption of relevance of the requested information. Thus, by failing to provide the requested information concerning staff employees, including hire dates, termination dates, wage rates and changes to wage rates, proof of health and retirement plan, and total number of hours worked, Respondent violated Section 8(a)(5) and (1) of the Act.

IV. Conclusion

In summary, the Acting General Counsel's exceptions should be granted in their entirety. Accordingly, the Acting General Counsel respectfully urges the Board to modify the ALJ's findings of fact, conclusions of law, recommended Order and Notice to Employees so that they are consistent with the following points:

1. The Union is the exclusive collective bargaining represent of Respondent's unit employees pursuant to Section 9(a) of the Act.
2. Staff employees are included in the unit.
3. The following unit constitutes a unit appropriate for the purposes of collecting bargaining within the meaning of Section 9(b) of the Act:

All employees of Respondent, including Staff employees, who perform any of the work described in the Scope of Agreement article of the collective-bargaining agreement between Respondent and the Union on all present and future job sites within the jurisdiction of the Union.

4. The information sought by the Union concerned unit employees, i.e. the staff employees, and was therefore presumptively relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, and Respondent failed to rebut the presumption that the requested information is relevant.

DATED AT Miami, Florida this 18th day of October, 2012

Respectfully submitted,

/s/ John F. King

John F. King, Counsel for the Acting General Counsel
National Labor Relations Board, Region 12
Miami Resident Office
51 SW 1st Avenue, Suite 1320
Miami, FL 33130
Telephone No. (305) 536-4074
Facsimile No. (305) 536-5320
John.king@nrlb.gov

CERTIFICATE OF SERVICE

I hereby certify that the Acting General Counsel's Brief in Support of Exceptions in the matter of Venue Trading Co., d/b/a Trade Show Supply, Case 12-CA-074022, was electronically filed with the National Labor Relations Board Division of Judges and served by electronic mail upon the below-listed parties on this 18th day of October, 2012.

Thomas Royall Smith, Esq.
Jackson Lewis LLP
390 N Orange Avenue
Suite 1285
Orlando, FL 32801-1674
smitht@jacksonlewis.com

Toby Lev
Egan, Lev & Siwica, P.A.
231 E. Colonial Drive
Orlando, FL 32801-1228
tlev@eganlev.com

Joseph Egan, Jr., Esq.
Egan, Lev & Siwica, P.A.
231 E. Colonial Drive
Orlando, FL 32801-1228
jegan@eganlev.com

/s/ John F. King
John F. King
Counsel for the Acting General Counsel
National Labor Relations Board
Miami Resident Office, Region 12
51 S.W. 1st Avenue
Miami, FL 33130
john.king@nlrb.gov