

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 ANSWERING BRIEF**  
**TO RESPONDENT'S EXCEPTIONS TO THE**  
**DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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## **I. Statement of the Case<sup>1</sup>**

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the undersigned Counsel for the Acting General Counsel files the following Answering Brief to Respondent's Exceptions to the Decision of the Administrative Law Judge.

On September 20, 2012, the Administrative Law Judge Robert Ringler issued his Decision in the above captioned proceeding wherein he determined that Venue Trading Co., d/b/a Trade Show Supply, herein called Respondent, engaged in violations of Section 8(a)(1) and (5) of the Act by failing to provide requested information, as more fully discussed below. On October 18, 2012, Respondent filed exceptions and a supporting brief with the Board. On the same date, the Acting General Counsel filed exceptions and a supporting brief with the Board.

## **II. Respondent's Exceptions 1 through 7 and 11 through 13 challenging the ALJ's finding that the Union demonstrated the relevance of the information it requested are without merit and should be denied.**

The Acting General Counsel avers, for the reasons set forth in his Exceptions to the ALJ's Decision and Brief in Support thereof, that the information requested by the Union relating to staff employees is presumptively relevant as the record evidence demonstrates that the parties intended to, and did in fact, include staff employees as covered employees under the parties' successive collective bargaining agreements over the past decade.

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<sup>1</sup> 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

The Judge acknowledged that his relevance analysis is based on the debatable assumption that the staff employees are outside the unit, and actually required a showing of relevance. (ALJD 6, fn. 08). Implicit in the Judge's comments is that it would not be unreasonable to conclude that the staff employees are in fact unit employees covered by the agreement, as asserted in the Acting General Counsel's exceptions, and thus there is a presumption of the relevance of the requested information. 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).

As also set forth in the Acting General Counsel's exceptions and brief in support of exceptions, the undisputed record evidence supports the conclusion that the Union is the 9(a) representative of the unit employees of the Respondent.

Respondent argues that this is not a case in which the Union seeks information about employees so that it can effectively represent them. Respondent further argues that this case is one in which the Union has no collective-bargaining relationship with Respondent with respect to staff employees. In support of its position, Respondent claims that the Union did not administer the contract with respect to staff employees or service them in any way. Respondent's suggestion that the parties did not intend to include staff employees is without merit. It is undisputed that the staff employees were addressed during the negotiations of several contracts over the past decade or so, and

changes in the contracts were made that specifically referred to staff employees, and only staff employees. (GCX 3, 4, RX 1). If the parties did not intend staff employees to be covered by the collective-bargaining agreement, surely the parties would not have negotiated about staff employees, or changed contract provisions with respect to staff employees. The Union's failure to file grievances on behalf of staff employees does not negate the clearly established collective-bargaining relationship concerning these employees. The Union needs the requested information to determine whether it has a basis to pursue grievances for the staff employees.

If, for the sake of argument, the Board denies the Acting General Counsel's exceptions and determines that Respondent's staff employees are not included in the unit of employees represented by the Union, the Board should uphold the ALJ's determination that the Union demonstrated the relevance of the requested non-unit information to the performance of its role as the bargaining agent for the undisputed unit employees. (ALJD 6, In. 30). Notwithstanding the ALJ's dicta in Footnote 9 regarding the Union's likelihood of success in an arbitral forum, the ALJ's holding that the Union is still entitled to review the requested information is correct. (ALJD 7, fn 9).

Respondent argues that the Judge misapplied the Board's standard for requesting information concerning employees outside of the bargaining unit, and that the Union failed to demonstrate the relevance of the requested information. Respondent cites Disneyland Park, 350 NLRB 1256 (2007) and Finch, Pruyn & Co., 349 NLRB No. 28 (2007) in support of its position. The facts of both cases are easily distinguishable from the instant matter. In Disneyland Park, the union sought information regarding, inter alia, subcontractors. The parties had an agreement which

specifically allowed for the subcontracting of work, provided that by doing so, no employees are terminated or laid off. Disneyland at 1256. The union did not present evidence that any employees were laid off or terminated as a result of the employer's use of subcontractors. The Board found that the union failed to demonstrate the relevance of information relative to subcontractors as there had been no assertion that unit employees were laid off or discharged as a result of the subcontracting of work. Id at 1258. In the instant matter, the collective-bargaining agreement specifically compels Respondent to use a limited number of staff employees, to offer certain benefits to staff employees, and in the absence of such, make certain contributions to the Union's fund on behalf of the staff employees. (GCX 3, 4 RX 1; TR 68: 3-4).

To demonstrate the relevance of non-unit information, the Acting General Counsel must show that 1) the Union demonstrated the relevance of the non-unit information, or 2) the relevance of the information should have been apparent under the circumstances. Id at 1258. The record evidence establishes not only that the Union clearly demonstrated the relevance of the information, as correctly found by the Judge, but also the relevance should be readily apparent to Respondent given the clear terms of the parties' collective bargaining agreement regarding Respondent's affirmative obligations with respect to staff employees.

Respondent's reliance on Finch is equally misguided. That portion of the Board's decision cited by Respondent in its brief, holding that the Union must offer more than mere suspicion in order to demonstrate the relevance of information, referred to the union's failure to demonstrate the relevance of information related to the employer's prehire drug and alcohol testing of applicants, a *non-mandatory subject of bargaining*.

In that case, the union stated that its request was based on safety concerns, but did not articulate any basis for having such concerns. The instant matter is clearly distinguishable from that case as, once again, the Union clearly demonstrated why it suspected that the collective bargaining agreement was not being adhered to, e.g., reports from union members to Union agent Vales, and Vales' observation, that unknown individuals were doing bargaining unit work, and Vales' concern that these individuals were not being reported to the Union as staff employees and were not receiving the benefits that they were entitled to under the contract. (ALJD 6, In. 30-37; ALJD 7 In. 1-36; Tr. 68-69)

Respondent's contention that the Union "never articulated the relevance of the information it was seeking with respect to TSS's non-union staff employees", is misleading and inaccurate. The Judge correctly found that the Union's rationale was previously communicated to Respondent, based on the Union's January 2010 and November 29, 2010 letters to Respondent which, in crystal clear terms, detailed the Union's motivation for requesting the information. (ALJD 6, In 30-38; GCX 5, 6).

Respondent further claims that the requested information was irrelevant to any of the Union's obligations and that providing the information will not help the Union assess whether temporary agency employees were being utilized. Such an approach in analyzing the relevance standard is incorrect. As noted above, and in the ALJ's decision, the information requested by the Union would have assisted in determining whether Respondent was in compliance with various provision of the parties' contract. Although Respondent claims that the September 1, 2008 through August 31, 2011 time frame was not covered by the parties' 2011-2014 contract, the Respondent and Union

have been parties to several successive collective bargaining agreements which address Respondent's use of staff employees. Respondent's obligation, for example, to make contribution on behalf of staff employees who were not being offered benefits commenced long before the execution of the 2011-2014 contract. As noted above, the Union's concern was articulated to Respondent by letters dated January 2010 and November 29, 2010, during the term of the previous agreement. Therefore, the Union's request for information dating back to 2008 in order to evaluate Respondent's compliance with the current and previous agreements is not unreasonable.

In rejecting Respondent's misplaced reliance on Disneyland and Finch, the Board should appropriately find, as did the Judge, that the Union sufficiently demonstrated the relevance of the requested information, and that Respondent has unlawfully failed to provide the requested information. Thus, even if the Board finds that the staff employees are not unit employees, the Judge correctly relied on relevant Board law in holding that the Union's request satisfied the Board's long held "broad, discovery-type of standard" in finding that Respondent violated the Act by withholding the requested relevant information. Lenox Hill Hospital, 327 NLRB 1065 (1999); W-L Molding, 272 NLRB 1239 (1984); Peterbilt Motors Co., 357 NLRB No. 13, slip op. at 2-3 (2011); Magnet Coal, Inc., 307 NLRB 444 fn. 3 (1992), enfd. mem. 8 F.3d 71 (D.C. Cir. 1993); Globe Stores, 227 NLRB 1251, 1253-1254 (1977).

**III. Respondent's Exceptions 8 through 13, challenging the ALJ's finding that Respondent was properly served with the charge are without merit and should be denied.**

In its exceptions, Respondent takes issue with the ALJ's determination that the charge was properly served upon it. However, as the Judge found, the charge in Case

12-CA-074022 was timely filed on February 7, 2012, and timely served on Respondent by the Board's Tampa Regional office on February 8, 2012. [GCX 1(a), 1(b) and 1(c)]. In addition, Respondent's President and owner, Chris Griffin, admitted in his testimony that he received a copy of the instant charge from the Board's Tampa Regional office, and the record also shows that Griffin responded to the charge by letter dated March 22, 2012. (Tr. 28-29, 146-147; GCX 14).

There is no testimony suggesting that the charge was untimely filed, or that Respondent was untimely served with the charge, and Respondent does not make that claim. Rather, Respondent incorrectly claims, contrary to longstanding Board law, that the Union's failure to separately serve the charge upon Respondent relieves it of any liability.

Respondent cites Dun & Bradstreet Software Service, Inc., 317 NLRB 84 (1995), *affd.* sub nom. Kelly v. NLRB, 79 F.3d 1235 (1<sup>st</sup> Cir. 1996) in support of its position. That case involved the discharge of an employee on April 12, 1993, and the service of a charge by the Regional Office on October 13, 1993, one day outside the 6-month statute of limitation as proscribed in Section 10(b) of the Act. The Board noted that Section 102.14 of the Board's Rules and Regulations indicates that the charging party is responsible for the timely and proper service of a copy of the charge on the person against whom such charge is made. Dun & Bradstreet at 85. Section 102.14 (b) of the Board's Rules and Regulations states, in relevant part:

The Regional Director will, as a matter of courtesy, cause a copy of such charge to be served by regular mail on the person against whom the charge is made. ....the Regional Director shall not be deemed to assume responsibility for such service.

Dun & Bradstreet stands for the proposition that even if the charging party has timely filed a charge with a Regional Director, and the Regional Director could have timely served the charge but did not do so, and neither did the charging party, then Section 10(b) of the Act precludes the issuance of a valid complaint. It is the responsibility of the charging party, not the Regional Director, to timely serve a charge. See also, Section 101.4 of the Board's Statements of Procedure, to the same effect. However, neither Dun & Bradstreet nor the Board's Rules requires that a charge be timely served by both the Regional Director and the charging party. Thus, nothing in the Rules requires that if the Regional Director has timely served the charge on the charged party, then the charged party must also timely serve the charge. Timely service by the Regional Director alone satisfies Section 10(b) of the Act.

This principle is clearly articulated in Radio Station KVEC, 93 NLRB 618, fn.1 (1951), where the Board found no merit to Respondent's contentions that the complaint should be dismissed because copies of the charges were served upon the Respondent by the Regional Director and not by the charging party. The Board held the following:

We find no merit in the Respondent's exceptions. Neither the Act and its legislative history, nor the Rules and Regulations of the Board supports Respondent's position that the Charging Party *alone* can satisfy the service requirements of Section 10(b) of the Act.

Emphasis in original, citing American Pipe and Steel Corporation, et al, 93 NLRB 54, fn.2 (1951) (Section 10(b) establishes no identity requirement with respect to the person charged with the responsibilities of service).

#### IV. Conclusion

For the above reasons, Counsel for the Acting General Counsel respectfully urges the Board to deny Respondent's exceptions to the Judge's decision in their entirety. Further, the Acting General Counsel urges the Board to grant the Acting General Counsel's Exceptions and modify the Judge's decision accordingly.

DATED AT Miami, Florida this 1<sup>st</sup> day of November 2012

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that the Acting General Counsel's Answering Brief to Respondent's Exceptions to Decision of the Administrative Law Judge 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 and served by electronic mail upon the below-listed parties on this 1<sup>st</sup> day of November, 2012

By electronic filing:

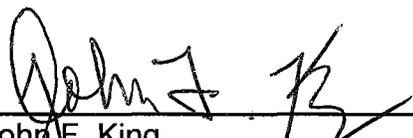
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