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 REPLY BRIEF TO RESPONDENT'S ANSWERING BRIEF TO THE ACTING GENERAL COUNSEL'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE AND MOTION TO WITHDRAW ACTING GENERAL COUNSEL'S EXCEPTION 16

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@nlrb.gov

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 Reply Brief to Respondent's Answering Brief to the Acting General Counsel's Exceptions to the Decision of the Administrative Law Judge. [1]

On September 20, 2012, 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. On November 1, 2012, Respondent filed an Answering Brief to the Acting General Counsel's exceptions. The Counsel for the Acting General Counsel herewith files its Reply Brief to Respondent's Answering Brief to the Acting General Counsel's Exceptions to the Decision of the Administrative Law Judge.[2] This reply brief is limited to the following single point, as Respondent's

[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

[2] Counsel for the Acting General Counsel hereby moves to withdraw Acting General Counsel's Exception 16. As Respondent points out it merely admitted in its Answer that the unit described in paragraph 5(a) of the complaint accurately describes the contractual unit, not that the unit is appropriate. Respondent now asserts that it was "misled" and that the complaint does not accurately describe the contractual unit. Although the complaint does not track the contractual unit word for word, Counsel for the Acting General Counsel maintains that paragraph 5(a) of the complaint accurately describes the contractual unit, and that Respondent, which is represented by experienced labor relations counsel, was not misled. In any event, Counsel for the Acting General Counsel relies on the language of the contracts in evidence to establish the contractual unit. (GCX 3-4, RX 1).

remaining arguments are addressed in the Acting General Counsel's brief in support of exceptions.

Respondent's contention that the parties have a Section 8(f) agreement is without merit and is inconsistent with the record evidence, which establishes that the parties have a Section 9(a) agreement covering the unit employees, including staff employees.

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 Union is the 9(a) representative of Respondent's employees as described in the parties collective-bargaining agreement. (GCX 3, 4). In its answering brief, Respondent asserts that the parties' collective-bargaining relationship has similarities to a Section 8(f) relationship, and that therefore, their relationship must, in fact, be governed by Section 8(f).

In support of its position, Respondent asserts that it relies on referrals from the Union to supplement its staff employee work force. This factor is not dispositive as it is customary for employers to seek employees through a union's work referral system in many industries other than the building and construction industry.

Respondent argues that Freeman Decorating Company, 336 NLRB 1 (2001) support its position that the parties' agreement is governed by Section 8(f). The Board's holding in Freeman Decorating Company, however, does not support any such proposition. Respondent correctly notes in a footnote that the Board found it unnecessary to address the ALJ's findings of an 8(f) relationship, but appears to gloss over this very important point. More specifically, in Freeman Decorating Company, the Board held:

> We agree with the judge that the contracts between these two employers and the Carpenters were unlawful because the Respondent Employers' previous withdrawal of recognition from Local 39 violated Section 8(a)(5)

> and (1). GES and Freeman consequently violated Section 8(a)(2) and (1), and the Carpenters for the same reason violated Section 8(b)(1)(A). *It is therefore unnecessary for us to address the alleged majority showings of support for the Carpenters, or to determine whether the contracts would have been permissible without majority showing under Section 8(f) of the Act in the absence of the 8(a) (5) violation.* Emphasis added.

Freeman Decorating Company, 336 NLRB at 14. As the Board in Freeman Decorating Company failed to adopt, or make any affirmative determination with respect to the ALJ's finding that the parties' relationship was governed by Section 8(f), it is inappropriate for Respondent to rely on the ALJ's holding in Freeman to support its position in the instant matter. Further, it should be noted that the ALJ in Freeman merely stated:

> It appears that under proper circumstances a contract between Carpenters and convention and trade show Employers may falls (sic) within the protection of Section 8(f) of the Act. However, the circumstances here are complicated by the continued question of representation by Local 39 and my findings here.

Freeman Decorating Company, 336 NLRB at 49. Thus, the ALJ did not affirmatively find that the Respondents in Freeman Decorating Company were construction industry employers as contemplated by Section 8(f) of the Act, and the Board saw no need to make any such findings. Nonetheless, the facts in Freeman Decorating Company are distinguishable from the facts in the instant matter and the Board's holding does not provide any significant guidance in analyzing this case.

In Carpenters Local 623 (Atlantic Exposition Services), 335 NLRB 586, 591-592, fn.10 (2001), the ALJ noted that the Board has never held that trade show industry work is construction work. Moreover, in Pekowski Enterprises, Inc. d/b/a Expo Group, 327 NLRB 413, 426-429 (1999), the Board upheld an administrative law judge's

determination, based on a detailed analysis of the operations of a trade show industry employer, that the employer did not meet any of the three requirements for a Section 8(f) relationship to exist. ALJ Keltner Locke found that the employer failed to establish that it was engaged primarily in the building and construction industry. 327 NLRB at 428. He also found independently found that the evidence in that case failed to establish that the employees referred by the union to the employer in that case, the Teamsters, performed any construction work, or that the Teamsters as a labor organization had building and construction employees as its members. 327 NLRB at 429.

Similarly, Respondent has failed to establish that it is primarily engaged in the building and construction industry, or that IATSE Local 835, the charging party in this case, refers employees to Respondent who have performed any construction industry work, or that IATSE Local 835 as a labor organization has building and construction employees as its members.

Even assuming for the sake of argument that Respondent could have entered into a lawful Section 8(f) relationship with the Union, as previously argued in the Acting General Counsel's Brief in Support of Exceptions, Section 1.01 of the parties' collective bargaining agreement clearly establishes the Union as the Section 9(a) representative of Respondent's unit employees, including its staff employees. In Central Illinois Construction, 335 NLRB 717 (2000), the Board held that written contract language standing alone can establish Section 9(a) status if the language unequivocally shows:

> (1) that the union requested recognition as the majority representative of the unit employees; (2) that the employer granted such recognition; and (3) that the employer's recognition was based on the union's showing , or offer to show, substantiation of its majority support.

335 NLRB at 719. Here, Section 1.01 of the parties' 2004-2007, 2007-2011 and 2011-2014 agreements contains all three elements required to establish a Section 9(a) relationship as set forth in Central Illinois Construction:

> 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).

See Shepard Decorating Co., 196 NLRB 152 (1972).

In summary, Respondent has voluntarily recognized the Union as the Section 9(a) representative since at least 2004, and entered into a series of Section 9(a) collective-bargaining agreements with the Union, and Respondent's argument, eight years later, that there is not proof the Union ever had majority status among the staff employees, who are part of the contractual unit, is without merit. See Strand Theatre of Shreveport Corp., 346 NLRB 523, 523, fn.1, 536-537 (2006), enfd. 493 F.3d 515 (5th Cir. 2007). Thus, as argued in the Acting General Counsel's brief in support of exceptions, and contrary to Respondent's argument in its answering brief, Acting General Counsel's exceptions 1,2, 3 and 10 should be granted.

For the above reasons, and for the reasons set forth in the Acting General Counsel's exceptions, Counsel for the Acting General Counsel respectfully urges the Board to grant the Acting General Counsel's exceptions in their entirety.

DATED AT Miami, Florida this 15th day of November 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@nlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that the Reply Brief to Respondent's Answering Brief to the Acting General Counsel's Exceptions to the Decision of The Administrative Law Judge and Motion to Withdraw Acting General Counsel's Exception 16 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 15th day of November, 2012.

By electronic filing:
Hon. Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570
www.nlrb.gov

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

Tobe 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, Suite 1320
Miami, FL 33130
john.king@nlrb.gov