

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SUBREGION 17**

Oklahoma City, Oklahoma

SMG

Employer

and

Case 14-RC-105131

INTERNATIONAL ALLIANCE OF THEATRICAL  
STAGE EMPLOYEES LOCAL 112

Petitioner

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act (Act), as amended, a hearing was held on May 24, 2013, before a hearing officer of the National Labor Relations Board (Board) to determine whether the petitioned-for unit of employees constitutes an appropriate unit for the purpose of collective-bargaining. At the close of the hearing, the parties were afforded the opportunity to file briefs addressing the issues raised during the hearing. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Based on a thorough review of the record, I make the following findings:

(1) The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; (2) The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein; (3) The Petitioner is a labor organization which claims to represent certain employees of the Employer; and (4) No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

## **A. ISSUES**

International Alliance of Theatrical Stage Employees Local 112 (Petitioner) seeks an election in the following unit: All stagehands including riggers, lighting technicians, audio technicians, stage carpenters, truck loaders, property persons, wardrobe attendants, makeup artists, hair stylists, forklift operators, personnel lift operators, audio-visual technician, laser and pyrotechnics operators, and spotlight operators engaged in the loading in, operation, and loading out of equipment used in connection with all entertainment events, theatrical events, trade and industrial shows, conventions, meetings, sports, competitions, and exhibitions, and the installation and removal of all banners, signage, CAT-5 cables, and traveling stages at the Cox Convention Center located at 1 Myriad Gardens, Oklahoma City, Oklahoma, and the Chesapeake Energy Arena located at 100 West Reno Avenue, Oklahoma City, Oklahoma, excluding all guards and supervisor as defined by the Act, and all other employees.

The Petitioner contends that the unit accurately describes work performed under the Employer's control by the employees referred from the Petitioner's hiring hall. The Employer seeks dismissal of the petition, arguing that it does not employ employees in the petitioned-for unit, and further contending that Theatrical Payroll Service Oklahoma Inc. (TPSO), the Petitioner's subsidiary, employs the petitioned-for employees and that the relationship between the Petitioner and TPSO constitutes a disabling conflict of interest. The Employer also disputes the unit description, arguing that it does not accurately describe the unit employees' duties.

For the reasons discussed in detail below, I conclude that no question affecting commerce exists because the evidence establishes that the Employer does not employ employees in the petitioned-for unit. In reaching this conclusion, I rely on evidence that the Employer does not meaningfully control unit employees' terms and conditions of employment.

## **B. FACTS**

### **1. The Employer's Business**

The Employer is a partnership engaged in the business of operating Chesapeake Energy Arena (CEA) and Cox Convention Center (Cox Center) pursuant to a management agreement with the City of Oklahoma City and the Oklahoma City Public Property Authority. Under the terms of this arrangement, the Employer is responsible for managing the day-to-day operations and providing maintenance, marketing, box office, and food and beverage services at CEA, which serves as the home arena for the National Basketball Association's Oklahoma City Thunder, and Cox Center, which houses the Oklahoma City Barons, a local minor league hockey club. During periods in which CEA and Cox Center are not occupied by their anchor tenants,<sup>1</sup> the Employer is authorized to enter into license agreements with production companies for use of the facilities in connection with other events.

In accordance with the Employer's standard license agreement, the Employer agrees to provide certain services in connection with events. In return, the Employer deducts a license fee from a licensee's proceeds after an event has concluded. Notably, the Employer's standard license agreement specifically excludes stagehand services and

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<sup>1</sup> The record reflects that the Barons hosted approximately 40 games during the most-recent season. The undersigned takes notice of the fact that, during the typical NBA season, the Thunder would be expected to play 82 regular season games, half of which would occur at the team's home arena.

holds licensees responsible for procuring their own stagehands. Despite this exclusion, however, the record establishes that licensees commonly ask the Employer to either arrange stagehand services or seek the Employer's advice regarding available labor sources. On those occasions in which the Employer solicits and pays for stagehand services on a licensee's behalf, it deducts additional amounts above and beyond the standard license fee from the licensee's proceeds to cover its additional expenses.

## **2. The Petitioner's Relationship With The Employer**

The Petitioner operates a hiring hall through which it refers employees to employers. At some unknown point, the Petitioner established Theatrical Payroll Services of Oklahoma, Inc. (TPSO). TPSO is a wholly-owned subsidiary of the Petitioner, and the record establishes that Petitioner's officers also serve as TPSO's corporate officers. TPSO is responsible for billing employers who obtain employees through the Petitioner's hiring hall.

There is no evidence that the Petitioner and the Employer have ever negotiated a collective-bargaining agreement covering work performed in Oklahoma City.<sup>2</sup> Nevertheless, the record suggests that, since the Employer assumed management responsibilities at Cox Center in 1981, the Petitioner has periodically referred employees to the Employer.

Evidence regarding the parties' recent practice suggests that the Employer requests referrals by issuing a purchase order to the Petitioner, often attaching the purchase order to an e-mail and sending it to the Petitioner's business agent or secretary. Upon receiving the Employer's request, the Petitioner's dispatcher contacts employees listed on the

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<sup>2</sup> The Employer also manages an arena and convention center in Tulsa, Oklahoma, and the record indicates that the Employer negotiated a collective-bargaining agreement with the Petitioner's sister local covering its stagehands.

Petitioner's referral list to fill the request. On each call, the Petitioner's business agent designates one of the referred employees to serve as the Petitioner's steward, and the steward is endowed with the responsibility of documenting the referred employees' work hours and monitoring the working conditions for the Petitioner. Upon completion of a project, TPSO utilizes a standard rate schedule to invoice the Employer for the employees' hours, adding a 29-percent surcharge to cover referral fees, benefits, and other withholdings. TPSO then issues paychecks to employees who are referred through the hall, makes employees' benefit fund contributions, and maintains unemployment compensation insurance, workers' compensation insurance, and liability insurance for the employees.

In fall 2012, the Employer requested bids for stagehand services. The record indicates that the Employer received bids from four entities including TPSO. In April 2013, the Employer notified TPSO that it had selected another provider, NRG Oklahoma, to supply stagehand services beginning on June 1, 2013, and that it would no longer utilize the Petitioner's hiring hall. At the time of the hearing, the Employer and NRG were still negotiating the terms of an agreement.

### **C. ANALYSIS**

Although the record establishes that employees referred from the Petitioner's hiring hall routinely perform work at two facilities managed by the Employer, I conclude that the Employer is not the employer of the employees in the petitioned-for unit. Contrary to the Petitioner's arguments, I find that the evidence fails to establish that the Employer controls the employees' work or terms and conditions of employment.

An entity's status as an employer is an issue of fact, requiring evidence that the alleged employer "meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction." *Laerco Transportation*, 269 NLRB 324, 325 (1984) (explaining the standard for analyzing joint employer status). On balance, the record fails to establish that the Employer meaningfully controls any of the petitioned-for unit's terms and conditions of employment.

The Employer does not complete W-2 forms or otherwise document and report employees' income. Furthermore, the Employer does not deduct payroll taxes, and it does not carry workers' compensation insurance or unemployment insurance covering the unit employees. Although the Employer submits payment to TPSO for the employees' services, it does not set the employees' wages, track their hours, or supervise their performance.

As explained above, notwithstanding the exclusionary language in the Employer's license agreements, the record establishes that the Employer often assumes the responsibility for notifying the Petitioner when an event requires stagehand services. This evidence, however, fails to establish that the Employer exercises meaningful control over employees. Except on those occasions in which CEA or Cox Center require stagehand assistance for capital improvements, the Employer does not even determine how many employees are required to stage an event.<sup>3</sup> Rather, either one of the anchor tenants or an event production manager determines the number of employees needed, and the Employer simply forwards the requests to the Petitioner, who is typically responsible for determining which employees will be referred. Although the Employer occasionally

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<sup>3</sup> Even in these instances there is insufficient evidence that the Employer supervises the employees or provides any meaningful direction.

requests a specific employee, asks the Petitioner to refrain from referring a particular employee, or seeks documentation regarding employees' certifications, these facts do not evince meaningful control over the employees' terms and conditions of employment. Customers and general contractors often make similar requests, and the Board recognizes that such limited authority or control over an employee does not signify employer status. See, e.g., *C.T. Taylor Co.*, 342 NLRB 997, 998 (2004) (finding requests to remove an employee from property did not establish employer status); *H&W Motor Express, Inc.*, 271 NLRB 466, 467 (1984) (requiring compliance with safety regulations did not exhibit significant control); *Laerco*, 269 NLRB at 324 (rejecting employees did not establish employer status).

Ultimately, the evidence fails to establish that the Employer hires, fires, disciplines, or directs employees in the petitioned-for unit. The Employer does not train the petitioned-for employees, and there is no evidence that the Employer supervises their day-to-day work. Even though the Employer assigns an event coordinator to act as a liaison between the stagehands and event representatives, there is no evidence that event coordinators assign the employees' tasks or exercise any meaningful control over how they perform their work. See, e.g., *AM Property Holding Corp.*, 350 NLRB 998, 1001 (2007) (finding supervision to be "limited and routine" absent evidence that alleged employer trained employees or directed their tasks). Accordingly, I find that the Employer does not employ unit employees, and I conclude that it is appropriate to dismiss the petition.

Based on my determination that no question affecting commerce exists, it is not necessary to address the Employer's contention that TPSO is a statutory employer or its

argument that the Petitioner's association with TPSO constitutes a disabling conflict of interest. For the same reason, I find it unnecessary to address whether the unit description is appropriate or to resolve the appropriate basis for determining eligibility.

#### **D. CONCLUSION**

Based on the forgoing, the record establishes that no question affecting commerce exists concerning the representation of the employees in the petitioned-for unit because the Employer does not employ the employees.

#### **ORDER**

**IT IS HEREBY ORDERED** that the petition in this matter be, and it hereby is, dismissed.

**SIGNED** at Overland Park, Kansas, this 7th day of June 2013.

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Mary G. Taves, Acting Regional Director  
National Labor Relations Board  
Subregion 17

#### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m. (ET) on **June \_\_, 2013.**

This request may be filed electronically through E-Gov on the Agency's website, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile. Refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in filing electronically.

Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the website, select the E-Gov tab and click E-Filing. Then select the NLRB office for which you wish to E-File your documents.

Detailed E-filing instructions explaining how to file documents electronically will be displayed.