UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, Subregion 11

CHARLESTON SYMPHONY ORCHESTRA

Employer

and

MICHAEL A. SMITH 10-RD-102923

Petitioner

and

COASTAL CAROLINA ASSOCIATION OF PROFESSIONAL MUSICIANS, LOCAL 502 OF THE AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA[1]

Union

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Charleston Symphony Orchestra, is based in Charleston, South Carolina. The Employer is a signatory to a collective-bargaining agreement with the Union, Coastal Carolina Association of Professional Musicians, Local 502 of the American Federation of Musicians of the United States and Canada (Union), which represents all musicians enumerated in the parties' collective-bargaining agreement as core musicians, non-core musicians, local import musicians, and non-local import musicians.[2] The collective-bargaining agreement is scheduled to expire on June 30, 2013. The Petitioner, Michael A. Smith, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, and

[1] The Union's name appears as stipulated to at the hearing.

[2] Local and non-local import musicians will be referred to collectively as import musicians.

later amended the petition at the hearing, to decertify a unit consisting of all musicians employed by the Employer who have worked two concert series and 19 services or nine workdays over a one-year period preceding this Decision or 51 services or 25 workdays in the prior two years, excluding the music director, office clerical employees, guards, and supervisors as defined in the Act.[3] A hearing officer of the Board conducted a hearing. The Petitioner orally set forth its position at the hearing and filed a post-hearing brief. Both the Employer and the Union filed post-hearing briefs. The briefs and positions of the parties at the hearing have been duly considered.

POSITIONS OF THE PARTIES

As evidenced at the hearing and set forth orally or by brief, five issues are raised: (1) whether core, non-core, and import musicians share a community of interest; (2) whether all or a portion of the core, non-core, import musicians are eligible to vote in the election; (3) whether musician Chris B. Fensom (Fensom) is a non-core musician or an import musician; (4) whether musician Brent Price (Price) is a non-core musician or no longer employed by the Employer; and (5) whether a mail ballot election should be conducted at this time or await the commencement of the resumption of the 2013-2014 concert season.

The parties disagree on whether the core, non-core, and import musicians share a community of interest sufficient to constitute an appropriate unit, as well as on the appropriate eligibility formula to be used. Regarding the musicians in dispute, the Petitioner contends the following: that core, non-core, and import musicians share a community of interest and that those who have worked at least 19 services or nine workdays in the past year, or 51 services or 25 workdays in the past two years, are eligible to vote; that musician Fensom is an import

[3] The parties stipulated to the exclusion of the music director, office clerical employees, guards, and supervisors from the unit.

musician; and that musician Price is no longer employed by the Employer. The Employer asserts the following: that only the core and non-core musicians—not the import musicians—share a community of interest and are eligible to vote and, in the alternative, that only those import musicians who fulfill the formula set forth by the Board in *Davison-Paxon Company*, 185 NLRB 21 (1970) are eligible to vote; that Fensom is a non-core musician; and that Price is no longer employed. The Union maintains that all musicians share a community of interest; that those core, non-core, and import musicians who meet the formula set forth by the Board in *Juilliard School*, 208 NLRB 153 (1974) are eligible to vote; that Fensom is a non-core musician; and that Price is a non-core musician.

With respect to the timing of the election, both the Employer and Petitioner take the position that an election should be conducted now. The Union, on the other hand, takes the position that the election should not be conducted until after the next concert season commences.

THE REGIONAL DIRECTOR'S FINDINGS

As discussed more fully herein, I have concluded that the core, non-core, and import musicians share a community of interest and that the musicians who were employed by the Employer for at least two concert series for a total of five working days (rehearsals or performances) over a one-year period or 15 working days (rehearsals or performances) over a two-year period immediately preceding the date of this Decision shall be included in the unit found appropriate. See *Juilliard School*, *supra*. I have also concluded that Price will be allowed to vote subject to challenge provided he is eligible to vote as determined by the appropriate eligibility formula. The Petitioner is willing to proceed to an election in any alternative unit the Region might direct. Finally, I have concluded the election should be conducted after the

commencement of the Employer's 2013-2014 season.

COLLECTIVE BARGAINING AGREEMENT

The Employer is a professional symphony orchestra based in Charleston, South Carolina and is a party to a collective-bargaining agreement with the Union. That agreement covers "all Musicians" set forth and described therein. Musicians are classified as being core, non-core, or import and are defined in and subject to the terms of the agreement.[4] Compensation, benefits, working conditions, selection for work opportunities, and other aspects of employment for musicians are delineated within the agreement. However, only core and non-core musicians who are Union members have been allowed to participate in ratification of a collective-bargaining agreement.

OVERVIEW OF EMPLOYER'S OPERATIONS

The orchestra plays an annual schedule from October through March or April, which includes a subscription series of various concerts such as: the Masterworks series, the Chamber Orchestra series, and the Pops (referring to popular music) series. Musicians also perform in special events and at non-subscription events (referred to as "sold services"). In addition, musicians perform in events called "run outs" in which an entity contracts for a performance at local or non-local community venues utilizing only a few of the musicians. The number of rehearsals ranges from one to four, depending upon the concert series and the musicians' familiarity with and complexity of the selected musical arrangements. In addition, each year the Employer holds two educational programs for students. The term "services" refers to rehearsals and performances.

During the 2011-2012 concert season, the Employer presented 27 performances. Five

[4] Core, non-core, and import musicians will be referred to collectively herein as musicians.

were the Masterworks programs; three were the Chamber Orchestra programs; and four were the Pops programs, each with one performance, for a total of 12 performances. The remaining 15 events were special events and sold services. Musicians also performed at various other run outs to other venues throughout the year.

The Employer also presented 27 performances during the concert season for 2012-2013. Five Masterworks programs were performed, each of which ran for two days; five Chamber Orchestra programs, each of which ran for one day; and three Pops programs, each of which ran for two days for a total of 21 performances. Special events and non-subscription events brought the total number of performances to 27. In addition, musicians performed run outs throughout the community and the state.

The Employer's schedule for the upcoming 2013-2014 concert season includes more performances than in prior years. The schedule includes six Masterworks programs with each to run for three days; six Chamber Orchestra programs with each to run for one day; four Pops programs with each to run for two days; and one special event to run for one day.

The complement of musicians required for each concert series varies depending upon the type of music selected for each of the programs. Musical arrangements vary in regard to the instruments that are needed and, therefore, the musicians who will be necessary to perform in each concert. Generally, the number of musicians necessary to conduct a Masterworks program is between 60 to 80 musicians. Chamber Orchestra performances require the use of from 20 to 30 musicians, while the Pops performances utilize from 40 to 80 musicians. Special events such as performances of Handel's "Messiah" require between 20 to 24 musicians. The number of musicians used for run outs depends upon each contracting entity's request. It is unclear from the record concerning the number of musicians used in educational programs.

DESCRIPTION AND FUNCTION OF MUSICIANS

To perform the various concert programs, the Employer uses a vast number of highly skilled and educated musicians categorized as core, non-core, local import and non-local import. The parties stipulated that during the 2011-2012 concert season, there were 21 core musicians, 8 to 9 non-core musicians, and 167-168 import musicians. The parties further stipulated that during the 2012-2013 concert season, there were 24 core musicians, 7 to 9 non-core musicians[5], and 175 to 176 import musicians. In addition, the parties stipulated to the names of the core and non-core musicians for the 2012-2013 concert season.

The core orchestra is composed of core musicians and consists of the following number of instruments: two flutes; two oboes; two clarinets; one bassoon; two horns; two trumpets; one trombone; one bass trombone; one timpani; one percussion; four violins; two violas; two celli; and one bass. The Employer contracts with non-core and import musicians to substitute for or add to the core musicians necessary to perform selected musical arrangements.

In order to determine the number of core, non-core, and import musicians needed for a service, the Employer first decides the musical arrangements and the type and number of instruments needed. After the music has been selected and the number of core and then non-core musicians for those instruments has been determined, the remaining positions are filled by import musicians.

Whether musicians are classified as core, non-core, or import, several of them also perform for symphonies in other cities such as: Greenville or Hilton Head, South Carolina; Richmond, Virginia; or Atlanta, Georgia. Hence, performance obligations with one of these or other symphonies can impact the availability of musicians to perform services with the

[5] The two musicians in dispute are Chris B. Fensom and Brent Price.

Employer.

A. Core musicians

Core musicians are tenured and the only musicians paid on a salaried basis. They are contracted to be paid a minimum salary for performing a minimum number of services (rehearsals and performances). During the 2012-2013 season, core musicians were contracted to perform a minimum of 192 services; if they performed additional services, they were paid a set per-service rate.[6] Core musicians are not required to perform each program within a concert series. Rather, they are assigned certain weeks during the concert season to work. If a concert is scheduled for a week in which a core musician is assigned to work, the musician is required to attend rehearsals and perform the concerts.

B. Non-core musicians

Non-core musicians were classified as core musicians during the prior collective-bargaining agreement, but their status changed to that of non-core by the terms of the soon-to-expire agreement. Non-core musicians are offered the right of first refusal for every available service requiring their instruments. They are contracted on a per-service basis, at the same rate as core musicians, without a minimum salary.

C. Import musicians

Import musicians are used to complete the roster of musicians needed for a service. The difference between local and non-local import musicians is based on the number of miles from their residences to the Gaillard Municipal Auditorium in Charleston, South Carolina, with 35 miles being the demarcation between the two groups. Import musicians are paid a per-service rate. The rate paid to local import musicians is higher than the rate paid to non-local import

[6] The number of services musicians are to perform for the 2013-2014 season is unknown because the current collective-bargaining agreement expires on June 30, 2013.

musicians. However, non-local import musicians are entitled to travel and per diem compensation.

The Employer differentiates import musicians by their instruments and then ranks them on a list in order of preference using "A" list for the most preferable, "B" list for the next preferable, and then the "C" list. Thus, import musicians with a letter "A" by their names will be contacted first to ascertain their availability before those listed on the "B" or "C" lists. The performance of import musicians during rehearsals and concerts will determine their placement on a particular list and possible future employment by the Employer. A musician can submit a resume, audition for, or can be referred by someone in the orchestra to obtain a place on the import list.

The Employer utilized import musicians in each of the 27 concert events for the 2011-2012 and 2012-2013 seasons to complete the roster of required musicians after the core and/or non-core musicians had been determined.[7] During the 2011-2012 season, import musicians comprised approximately one half or more of the performing musicians in about 10 of 27 concert events and comprised approximately one fourth to one half of the performing musicians in approximately 12 other concert events. Import musicians constituted approximately less than one fourth of the musicians used during the remainder of the concert events for the 2011-2012 season. Although there were no non-core musicians listed on seven of the 27 rosters of musicians for the 2011-2012 season, there were core musicians listed on each of the 27 rosters.

During the 2012-2013 concert season, approximately one half or more of the musicians used for 13 of the 27 concert events were import musicians and approximately one fourth to one half of the musicians used for 12 other concert events were import musicians per the roster of

[7] This is according to the 27 rosters of musicians contained in Joint Exhibit 4 for 2011-2012 and in Joint Exhibit 5 for 2012-2013 concert seasons.

musicians. Import musicians comprised about one fourth or less of the musicians used for the remaining concert events for the 2012-2013 season. The remaining musicians were core and/or non-core musicians. The names of core musicians appeared on each roster of musicians, but non-core musicians were not listed on 11 of the 27 rosters of musicians for the 2012-2013 concert season.

The degree to which the Employer utilized a specific non-core or import musician for both concert seasons varied. All of the non-core musicians performed at least one concert program in each of the 2011-2012 and 2012-2013 concert seasons. The number of concert programs each non-core musician performed during the two seasons ranged from seven to 19. In regard to Fensom and Price, whose status is in dispute, Fensom performed in nine concert programs during the two seasons, while Price performed in seven concert programs during the two seasons. [8]

Of all the import musicians the Employer hired during concert seasons 2011-2012 and 2012-2013, the record establishes that the Employer hired approximately 60 import musicians to perform in at least one service during both time periods. Although Joint Exhibits 4 and 5 set forth the rosters of the 27 concert events during those two concert seasons, those exhibits and the record testimony thereto do not establish the total number of rehearsals and other performances of each non-core and import musician during those seasons.

D. Common terms and conditions of employment

[8] Concerning the eligibility of Fensom and Price, I find the following: Fensom is eligible to vote, provided that he satisfies the eligibility formula as set forth later in this Decision, because the only dispute with respect to his eligibility is whether he is a non-core or import musician. Inasmuch as I find both classifications are within the unit found appropriate, it is unnecessary to determine Fensom's exact status. With regard to Price, the Employer and Petitioner contended at hearing that he was no longer employed, but the Union would not so stipulate. The record is insufficient to resolve this issue. Accordingly, Price will be permitted to vote subject to challenge, provided that he satisfies the eligibility formula.

Benefits offered to musicians vary depending upon their categorization as core, non-core, or import. Medical and dental insurance premiums for core musicians are paid by the Employer while non-core musicians must pay their own premiums. Import musicians are not eligible for such benefits. Core and non-core musicians are eligible to participate in a payroll deduction pension plan, but import musicians are not eligible. Core musicians are entitled to five paid personal leave services and five sick leave services during the concert season that are not granted to the other musicians. However, the same attendance and tardiness rules apply to all musicians for each service. The foregoing terms and conditions of employment are set out in the parties' collective bargaining agreement.

ANALYSIS

The issues discussed herein are whether musicians share a sufficient community of interest to constitute an appropriate unit, as well as the appropriate eligibility formula to use. As set forth below, I find that the core, non-core and import musicians do share a sufficient community of interest to constitute an appropriate unit. I further find that the formula articulated by the Board in *Juilliard School*, 208 NLRB 153 (1974) is the appropriate formula to apply in determining the eligibility of specific non-core and import musicians.

A. The community of interest and appropriate unit.

Regarding the issue of the appropriate unit, core, non-core, and import musicians are clearly defined in and subject to the terms of the parties' collective-bargaining agreement. This agreement sets forth the core, non-core, and import musicians' compensation, benefits, working conditions, selection for concert opportunities, and other terms of employment.

The Board places substantial weight on prior bargaining history in concluding that employees share a community of interest and thus is "reluctant to disturb a unit established by

collective bargaining which is not repugnant to Board policy or so constituted as to hamper employees in fully exercising rights guaranteed by the Act." *Canal Carting, Inc*., 339 NLRB 969 (2003) (citing *Buffalo Broadcasting Co*., 242 NLRB 1105 n.2 (1979)). In addition, the core, non-core, and import musicians are closely integrated in the performance of the same work duties under basically the same working conditions, and all are essential to the continued operations of the Employer. Therefore, I find that the core, non-core, and import musicians share a community of interest and thus constitute an appropriate unit.

B. The eligibility formula.

Having found an appropriate unit, the question now is one of voter eligibility of the musicians within the unit. The Board applies formulas to determine whether irregularly-employed employees have a sufficient community of interest with regular employees to warrant their inclusion in a voting unit. The Board seeks "to permit optimum employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in the terms and conditions of employment offered by the employer." *Kansas City Repertory Theatre, Inc*., 356 NLRB No. 28, slip op. at 4 (2010); *Columbus Symphony Orchestra*, 350 NLRB 523, 524 (2007); *Steppenwolf Theatre Company*, 342 NLRB 69, 70-71 (2004); *Trump Taj Mahal Casino*, 306 NLRB 294, 296 (1992), enfd. 2 F.3d 35 (3rd Cir. 2009).

It is well established that the Board generally uses a formula for voting part-time or on-call employees as set forth in *Davison-Paxon Co*., 185 NLRB 21, 23-24 (1970). That formula provides that an employee is deemed to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if the employee regularly averages four or more hours of work per week for the last quarter prior to the eligibility date.

When special circumstances exist, however, the Board will apply an alternative formula

in order to optimize enfranchisement. The Board has found these special circumstances to exist in the entertainment industry, warranting use of an alternative formula based on irregular patterns of employment, as employees are often hired on a production-by-production or day-by-day basis in this industry. *Kansas City Theatre*, supra; *Columbus Orchestra*, supra. See, *Medion, Inc*., 200 NLRB 1013 (1972) (employees eligible who worked two productions for five days over one year); *American Zoetrope Productions*, 207 NLRB 621 (1973) (two productions during the past year); *DIC Entertainment, L.P*., 328 NLRB 660 (1999) (two productions for a minimum of five working days in the last year or at least 15 working days in the last year). Factors used in determining that a deviation from *Davison-Paxon* is warranted include the length and number of the employer's performance series and the degree to which the employer relies upon permanent staff versus per diem or per service employees to perform the majority of its performances. *Kansas City Theatre*, supra. The Board also looks to whether the irregularly-employed individuals have a "reasonable expectation of future employment." *American Zoetrope Productions,* 207 NLRB at 623; *Medion, Inc*., *supra*.

In the *Kansas City Theatre* case, the Board affirmed a Regional Director's decision applying the *Juilliard School* alternative formula to musicians employed for two productions for a total of five working days over a one-year period or 15 days over a two-year period. Specifically, each season the employer there presented seven to eight productions with each one containing approximately 25 to 45 performances. The employer hired up to ten musicians on an "as needed" basis because the number of musicians needed varied with each production. *Kansas City Theatre*, supra at 3-4. The alternative formula was found appropriate because of the infrequency of the employer's musical productions and the irregular hiring pattern of musicians. *Id*., at 5.

In the current case, I find that special circumstances exist that warrant the use of an alternative formula. In this regard, the Employer had a relatively small number of concert programs performed, 27 in all, in each of the past two concert seasons. In each of those performances, the Employer had an insufficient number of salaried and tenured core musicians to perform and had to rely upon pay-per-service non-core and then, import musicians.

The Employer has relied heavily upon both non-core and import musicians. Concerning non-core musicians, more than one half of all the rosters of musicians for each concert season listed a non-core musician. The number of concert programs each non-core musician performed during the 2011-2012 and 2012-2013 concert seasons ranged from seven to 19.

During the 2011-2012 and the 2012-2013 concert seasons, approximately 60 import musicians were used by the Employer for at least one concert event. More specifically, import musicians comprised approximately one half or more of the performing musicians in about 10 of 27 concert events during the 2011-2012 concert season and in about 13 of 27 concert events during the 2012-2013 concert season. Of the remaining performances, import musicians constituted about one fourth to one half of the performing musicians in approximately 12 of 27 concert events during each of the 2011-2012 and 2012-2013 concert seasons. The foregoing makes clear that the Employer has substantially relied upon import along with non-core musicians, and that both categories of musicians have a reasonable expectation of future employment.

This dependence upon both non-core and import musicians, rather than reliance upon core musicians, supports enfranchising certain of them. Although the record indicates that the number of services that each non-core and import musician performed within a concert season varied, the record is unclear as to the actual total number of services each import musician

performed; thus, it cannot be determined exactly the number and names of import musicians who should be enfranchised.

The Employer maintains that only the core and non-core musicians should be eligible to vote, citing *Davison-Paxon*. Although the Board on occasion has found the *Davison-Paxon* formula appropriate for use in determining the eligibility of employees in the entertainment industry, those cases are distinguishable. In *Steppenwolf Theatre Co*., 342 NLRB 69 (2004), the unit involved production employees where the employer had 14 productions each season totaling some 500 performances over an eleven month period and a substantial amount of the work was performed by full-time staff members. Another case, *Wadsworth Theatre Management*, 349 NLRB 122 (2007), involved a unit of box office employees. The employer presented at least four productions per year with each one running four weeks. In addition, the employer showed two weekly movie series every Monday as well as held numerous special sporting and art events. In *Columbus Symphony Orchestra*, 350 NLRB 523 (2007) the unit sought was full-time, part-time, per diem, and casual production employees. In that case, the employer operated a year round 46 week schedule of performances and presented more than 170 productions utilizing a full-time staff to perform a vast majority of the production work.

Significantly, the facts in the cases noted above involve employers who operated nearly year round, produced large numbers of performances during the year, and depended significantly upon full-time staff. In contrast, here the Employer operates about six to seven months of the year, and presents about 16 productions for a total of about 27 performances a year. It maintains only about 24 total core musicians, which is simply insufficient to fulfill the complement of musicians needed for each performance.

The Petitioner asserts that an alternative eligibility formula should be used, but not the

formula set forth in *Juilliard School,* because that will enfranchise musicians who do not have a community of interest with the unit musicians. Rather, the Petitioner introduces a formula that allows musicians employed for at least two concert series for a total of 19 services or nine workdays over a one-year period, or 51 services or 25 workdays over a two-year period immediately preceding the date of this Decision, to be eligible to vote. The approximate number of eligible voters under this formula would be about 60 musicians.

The Petitioner's formula is centered on the number of performances by non-core or import musicians rather than on their reasonable expectancy of future employment, or on the Employer's ongoing and substantial reliance on non-core and import musicians. This formula will disenfranchise those musicians who have only worked about 10 percent of the services within the last year or about 15 percent of the services within the last two years. Notably, this formula fails to take into account the Employer's ongoing reliance upon non-core and import musicians, whose availability will vary from concert to concert and year to year, for numerous reasons such as a need for the musician's instrument, illness, performance in other symphonies, or other commitments. Simply put, specific unavailability during a recent period does not mean that the individual will not be contacted for work in the future. Rather, it is the nature of the entertainment industry for an employer to have a host of on-call non-core or import musicians available, because sudden changes may arise that affect whether there is a sufficient complement of musicians for performances. I find, therefore, that Petitioner's formula does not fulfill the Board's mandate to "permit optimal employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in the terms and conditions of employment offered by the employer." *Kansas City Repertory Theatre, Inc., supra*, slip op. at 4.

TIMING OF THE ELECTION

During the hearing, the parties agreed that a mail ballot election was appropriate in this matter. The parties disagreed as to when the election should commence.

During the hearing, the Petitioner argued[9] that inasmuch as the election was being conducted by mail the election should be conducted immediately based on the addresses the Employer currently maintains. The Employer similarly argued for an immediate election and asserted the musicians have an obligation to keep it informed of their current addresses if they want to receive communications from the Employer. The Employer also argued an election should be conducted now to resolve any issue of representation well before the commencement of the next concert season. The Union acknowledged that much of the communication between the musicians and the Employer was through email but asserts that during the off season musicians travel to other venues, take trips to visit family members, and have no obligation to keep the Employer informed of temporary physical addresses. In light of the above, it asserts that mail ballots might not be forwarded to a significant number of eligible voters.

Generally, with a seasonal employer the Board will not schedule an election when the employer is not operating. Rather, it schedules an election for sometime after the employer commences its seasonal operations and employment approaches reasonable peak of operations. Although such elections generally involve manual elections, they are also appropriate for mail ballot elections in situations where, as here, a substantial number of voters are scattered. *Saltwater, Inc.* 324 NLRB 343 (1997).

In choosing an appropriate election date, the Board attempts to balance the impact of the delay on the employees' exercise of their right to select or reject a bargaining representative

[9] Although the parties argued their positions on the timing of the election towards the close of the hearing, neither of them actually presented any evidence on the issue.

under Section 7 of the Act with facilitating that right to the greatest number of employees. In the instant case, I find that balance is best met by scheduling an election after the start of the 2013-2014 concert season. It is already too late to conduct an election before the end of the current school season. There is too much uncertainty as to how many employees will be able to obtain their mail ballots during this off period. Holding an election in the summer thus does not give proper weight in balancing the policies of facilitating the right to vote to the greatest number of employees. Moreover, a delay in the election will have little or no impact on the employees as they are not working for the Employer during the delay. *Bogus Basin Recreation Assn*., 212 NLRB 833 (1974).

CONCLUSION

As set forth previously, I find the appropriate unit is comprised of core, non-core, and import musicians. In addition, I find that the core, non-core, and import musicians who were employed by the Employer for at least two concert series for a total of five working days (rehearsals or performances) over a one-year period or 15 working days (rehearsals or performances) over a two-year period immediately preceding the date of this Decision shall be included in the unit found appropriate, and that musician Brent Price will be allowed to vote subject to challenge, provided he is eligible to vote as determined by the appropriate eligibility formula. I also find that the election should be conducted by mail ballot after the commencement of the 2013-2014 season.

FURTHER CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at 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 here.

3. The Union claims to represent certain employees of the Employer.

4. The Union is a labor organization within the meaning of Section 2(5) of the Act.

5. A 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.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

> All core, non-core, and import musicians that are employed by the Employer at its Charleston, South Carolina, location, excluding the music director, office clerical employees, and guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret mail ballot election among the employees in the unit found appropriate. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Coastal Carolina Association of Professional Musicians, Local 502 of the American Federation of Musicians of the United States and Canada.

In view of the seasonal nature of the Employer's operations, I shall issue a subsequent notice of intent to conduct an election directing a mail ballot election in the above unit at an appropriate time after commencement of the 2013-2014 concert season.

A. Voting Eligibility

Eligible to vote in the election are those musicians who were employed by the Employer

for at least two concert series for a total of five working days (rehearsals or performances) over a one-year period or 15 working days (rehearsals or performances) over a two-year period immediately preceding the date of this Decision. Brent Price will be allowed to vote subject to challenge provided he satisfies the requirements of the voter eligibility formula. Employees engaged in any economic strike, who have retained their status as strikers, and who have been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote by secret mail ballot.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company,* 394 U.S. 759 (1969).

Accordingly, it is hereby directed that the Employer must submit to the Subregional Office in Winston-Salem, North Carolina, an election eligibility list containing the full names

and addresses of all the eligible voters in the unit within 7 days from the date of the notice of intent to conduct election to be issued subsequently. *North Macon Health Care Facility,* 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by category, etc.). I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Winston-Salem Subregional Office located at Republic Square, Suite 200, 4035 University Parkway, Winston-Salem, North Carolina, 27106-3325 on or before the date set forth in the notice of intent to conduct an election. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review of this Decision affect the requirement to file the list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (336) 631-5210. Because the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Subregional Office located at Republic Square, 4035 University Parkway, Winston-Salem, North Carolina, 27106-3325. To file the eligibility list electronically, go to the Agency's website at www.nlrb.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

C. Notice of Posting Obligations

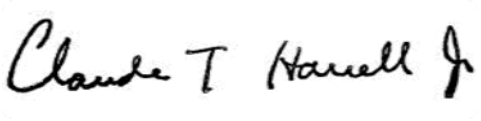
According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a

minimum of 3 days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires the Employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services* 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision 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 June 24, 2013. The request may be filed electronically through the Agency's website, www.nlrb.gov,[10] but may not be filed by facsimile.

Dated at Winston-Salem, North Carolina, on this 10th day of June 2013.



Claude T. Harrell Jr., Regional Director
Region 10, Subregion 11
National Labor Relations Board
4035 University Parkway, Suite 200
Winston-Salem, NC 27106

[10] To file the request for review electronically, go to www.nlrb.gov, select File Case Documents, enter the NLRB Case Number, and follow the detailed instructions.