

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

BRISTOL RIVERSIDE THEATER COMPANY, INC.

Employer

and

Case 04-RC-106777

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
LOCAL 8

Petitioner

**HEARING OFFICER'S REPORT AND RECOMMENDATION
ON CHALLENGED BALLOT**

Before: Joanne M. Sacchetti, Hearing Officer

Appearances:

For the Employer:

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For the Petitioner:

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INTRODUCTION

The Employer, Bristol Riverside Theater Company, Inc., operates a theater located in Bristol, Pennsylvania. The Petitioner, International Alliance of Theatrical Stage Employees Local 8, filed a petition with the National Labor Relations Board seeking to represent certain employees of the Employer. An election was held resulting in one determinate challenged ballot. On August 21, 2013, I presided over a hearing on the determinative challenged ballot where all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, and to give opening and closing statements. I have considered the evidence and the arguments presented by the parties. Based on the evidence presented at the hearing, including testimony of the witnesses and my assessment of their demeanor, as well as the contentions made in both parties' opening and closing statements, I have decided that the challenged ballot of Katherine Coots should be opened and counted, and that a new Tally of Ballots be issued.¹

To provide a context for my discussion, I will first present an overview of the procedural history of the case, an overview of the Employer's operations, the challenged ballot, and the parties' positions. Next, I will review the factors that must be evaluated in determining whether the challenge should be sustained or overruled. Finally, I will present in detail the facts and reasoning that support my recommendation.

I. STATEMENT OF THE CASE

Pursuant to a Stipulated Election Agreement approved by the Regional Director on June 19, 2013, an election by secret mail ballot was conducted beginning July 26, 2013, in the unit set forth in paragraph 5 of the Agreement. The Corrected Tally of Ballots, issued on July 29, 2013, showed the following results:

Approximate number of eligible voters	9
Void Ballots	0
Votes cast for Petitioner	4
Votes cast against participating labor organization	4
Valid votes counted.....	8
Challenged Ballots	1
Valid votes counted plus challenged ballots.....	9

The challenged ballot is determinative of the results of the election. During the time allotted, neither party filed objections to the election.

Pursuant to Section 102.69(c) of the Board's Rules and Regulations, under the direction and supervision of the Regional Director, the Region conducted a preliminary investigation of

¹ I have reviewed and weighed all testimony in light of the entire record. The facts found in this report are based on the record as a whole as well as my observations of the witnesses. Contradictory testimony not specifically mentioned was not disregarded, but has been rejected as excessively vague, not credible and/or irrelevant to the issue posed by the challenged ballot.

the determinative challenged ballot. On August 13, 2013, the Regional Director issued a Notice of Hearing on Challenged Ballot, directing that a hearing be held to take testimony and resolve the factual issues presented by the challenged ballot. A hearing was held before me on August 21, 2013, in Philadelphia, Pennsylvania.

II. OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer operates a theater located at 120 Radcliffe Street, Bristol, Pennsylvania. The theater is a non-profit corporation founded in 1986, and is owned by the Grundy Foundation. The theater presents five live main stage theatrical productions during an early-September to mid-June season as well as smaller productions and a concert series. The Employer leases three additional spaces in Bristol, Pennsylvania. One space, located approximately two miles away from the theater, is where scenery is constructed, and is also used to store scenery, furniture, dressing, and other overflow items not in use. This space is often referred to as the Scene Shop. A second space, located directly across the street from the theater, is used for costume storage. The third space is about a block away from the theater and is used for rehearsals. All of the Employer's live productions require the use of sets and stage properties. Katherine Coots, the individual who is the subject of the determinative challenged ballot, is involved in painting the sets.

III. THE CHALLENGED BALLOT AND THE PARTIES' CONTENTIONS

The Notice of Hearing on Challenged Ballot states that the Employer challenged the ballot of Katherine Coots on the ground that she had not worked a sufficient number of hours to satisfy the election eligibility standard. The Employer now asserts that Coots is ineligible on the ground that she is a statutory supervisor because of her authority effectively to recommend hiring, establish employee wage rates, and assigns and responsibly directs the work of two other employees. As the proponent of the challenge, the Employer bears the burden of proof. *Sweetner Supply Corp.*, 349 NLRB 1122, 1123 (2007); *Golden Fan Inn*, 281 NLRB 226, 230 fn. 24 (1986). The Employer also bears the burden of proof because it seeks to exclude Coots as a statutory supervisor. *Dean & Deluca New York*, 338 NLRB 1046, 1047 (2003) (and cases cited therein).

The Employer contends that Katherine Coots is a statutory supervisor on the grounds that she is an integral part of creating the theater set based on her artistic vision, and in order to implement her artistic vision, she supervises two other painters, Brooke Murray and Claire Leitner. The Employer also maintains that Coots effectively recommended that the Employer hire Murray and Leitner and set their wages. The Employer further contends that once Coots receives paint elevations (a document that shows the Set Designers' desired colors, textures and finishes of the set), she is solely responsible for all the painting and has sole discretion to determine whether to physically paint the set herself, or to assign the task to Murray or Leitner.

The Petitioner contends that Katherine Coots is not a statutory supervisor and is, at most, a lead person based on her education and experience as a painter in the theater industry. The Petitioner also maintains that Bristol Riverside Theater often hires by word of mouth and that Coots did not have the discretion to hire or set Murray and Leitner's wages. The Petitioner says that it is the nature of employment in the small theater community that employees make friends while working at other

theaters and know who may be looking for work. In this instance, when the Employer asked if Coots knew anyone to help complete a job within the allotted time, Coots merely recommended individuals she had worked with before and provided the Employer with the wage rates she knew they were making at those other jobs.

IV. LEGAL PRINCIPLES OF STATUTORY EXCLUSION

Supervisors are specifically excluded from coverage under the National Labor Relations Act. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711 (2001); *Barstow Community Hospital*, 352 NLRB 1052 (2008); *Shaw Inc.*, 350 NLRB 354, 355 (2007). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Barstow Community Hospital*, 352 NLRB at 1052; *Oakwood Healthcare*, 348 NLRB 686 (2006). Section 2(11) of the Act sets forth a three-part test for determining whether an individual is a supervisor. Pursuant to this test, employees are statutory supervisors if: (1) they hold the authority to engage in any one of the 12 supervisory functions listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. See *NLRB v. Kentucky River*, 532 U.S. at 712-713; *NLRB v. Health Care Corp. of America*, 511 U.S. 571, 573-574 (1994).

The statutory criteria for supervisory status set forth in Section 2(11) are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Kentucky River*, 532 U.S. at 713; *Juniper Industries*, 311 NLRB 109, 110 (1993). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. See *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994); *Juniper Industries*, 311 NLRB at 110. The authority effectively to recommend an action means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed. See *Children's Farm Home*, 324 NLRB 61 (1997); *Hawaiian Telephone Co.*, 186 NLRB 1 (1970). The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act. *Oakwood Healthcare*, 348 NLRB at 687 (2006); *Avante at Wilson*, 348 NLRB 1056, 1057 (2006). Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Dole Fresh Vegetables*, 339 NLRB 785, 793 (2003); *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. See *Kanahwa Stone Co.*, 334 NLRB 235, 237 (2001); *Gaines Electric*, 309 NLRB 1077, 1078 (1992).

In its decisions in *Oakwood Healthcare*, 348 NLRB 686 (2006); *Croft Metals*, 348 NLRB 727 (2006); and *Golden Crest Healthcare*, 348 NLRB 727 (2006), the Board clarified the circumstances in which it will find that individuals exercise sufficient discretion in performing two of the functions listed in Section 2(11) – assignment and responsible direction of work – to justify their classification as statutory supervisors. As clarified in *Oakwood*, the term “assign”

refers to the “act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood Healthcare*, 348 NLRB at 689-690.

In *Oakwood Healthcare*, the Board explained “responsible direction” as follows: “If a person on the shop floor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible . . . and carried out with independent judgment.” *Oakwood Healthcare*, 348 NLRB at 691 (quoting Senator Flander’s comments in proposing adding “responsibly to direct” to Section 2(11) of the Act, 1 Legis. Hist. 1303 (LMRA 1947)). “Responsible direction” involves the delegation of overall duties rather than the mere assignment of discrete tasks. *Oakwood Healthcare*, 348 NLRB at 689. The Board will find that an individual has the authority responsibly to direct other employees only if the individual is *accountable* for the performance of the tasks by the other employee. *Id.* at 691-692. Accountability means that the employer has delegated to the putative supervisor the authority to direct the work and the authority to take corrective action if necessary, and the putative supervisor faces the prospect of adverse consequences if the employees under his or her command fail to perform their tasks correctly. *Id.* at 692.

Assignment or responsible direction will, as noted above, show supervisory status only if the exercise of independent judgment is involved. Independent judgment is found where the alleged supervisor acts free from the control of others, forms an opinion by discerning and comparing data, and makes a decision not dictated by circumstances or company policy. *Oakwood Healthcare*, 348 NLRB at 693-694. Independent judgment requires that the decision “rise above the merely routine or clerical.” *Id.* at 693.

As I stated above, the burden of establishing supervisory status is on the party asserting such status exists. *Bennett Industries*, 313 NLRB 1363 (1994); *Midland Transportation*, 304 NLRB 4 (1991). Where the evidence is in conflict, or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Dole Vegetables*, 339 NLRB at 793; *Phelps Community Medical Center*, 295 NLRB at 490. A party claiming individuals are supervisors because they responsibly direct others must show the particular acts and judgments that make up their direction of work. *North Shore Weeklies*, 317 NLRB 1128 (1995). A lack of evidence on any of the elements necessary to establish supervisory status is held against the party asserting that status. *Dean & Deluca New York*, 338 NLRB at 1048. Mere inferences or conclusory statements, without detailed, specific evidence of independent judgment, are insufficient to establish supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB at 731; *Avante at Wilson*, 348 NLRB at 1057; Job descriptions, job titles, and similar “paper authority,” without more, do not demonstrate actual supervisory authority. *G4S Regulated Security*, 358 NLRB No. 160, slip op. at 1, 2 (2012) (senior manager's testimony discounted as conclusory and nonspecific); *Sears, Roebuck & Co.*, 304 NLRB 193, 194 (1991).

V. THE ELIGIBILITY OF KATHERINE COOTS

A. Facts

The Employer retains approximately 14 full-time employees and two part-time employees. The Employer hires between 20 and 30 additional employees, as needed, for live productions, including carpenters, electricians, dressers, wardrobe and props employees, sound engineers and painters. All of these positions are called “over-hire.” Work begins on the construction of the set about four to six weeks before the live production opens.

The Production Manager oversees all aspects of having the set built, electrical work completed, costumes made, and props being found or built. Production Manager Andrew Deppen testified that he is responsible for the budget of each production. The budget includes two categories, labor and materials. Deppen determines how much money is allocated into each category and can exhaust the entire budget, or go over, if necessary.

The Assistant Production Manager, Assistant Stage Manager, Technical Director, Master Electrician, Wardrobe Supervisor, and Property Master are salaried employees that work under the supervision of the Production Manager. The Stage Manager and Master Electrician are contracted employees also under the supervision of the Production Manager. All other employees, or “over-hires,” are paid hourly.

The Production Manager and Technical Director participate in production meetings where they discuss the Set Designer’s plans, the build schedule, materials needed, the budget, how to execute construction, how completed pieces are to be delivered to the theater, installation, maintenance during the production’s run, and the final breakdown after the live production is over.

The Technical Director also meets with the Set Designer to discuss the theater’s capabilities in regard to the building’s infrastructure and the theater’s budget requirements. The Set Designer gives a final version of a blueprint and a schematic of the set design to the Production Manager, Technical Director, and Director. Finally, the Set Designer creates the color elevation that is given to the set painter. After the carpenters complete the construction of the set at the Scene Shop, the set painters paint the scenery.

Stephen Hungerford was the Technical Director and Andrew Deppen was the Production Manager for Bristol Theater’s five live productions in the 2012 to 2013 season. Those productions were: *Oleanna*, *What a Glorious Feeling*, *Deathtrap*, *Pirates of Penzance*, and *Inherit the Wind*.

Hungerford testified that he supervised the build crew for the sets of these productions which included welders, carpenters, loading hands (individuals who take the set from the Scene Shop and install it in the theater), and painters. Hungerford spent a majority of his time working at the Scene Shop. Deppen testified he spent a majority of his time in his office on the second floor of the theater, which is about two miles away from the Scene Shop.

Bristol Theater has no formal hiring procedure and most “over-hires” are hired by recommendation, or “word of mouth.” Electricians recommend the hire of other electricians, carpenters recommend carpenters, and so forth. There is no formal interviewing process for new hires. New hires are provided paperwork that must be completed and returned to the Production Manager. Hungerford and Deppen both testified that Katherine Coots was hired as a painter at Hungerford’s recommendation for the production of *Oleanna* in August 2012. Coots worked on all five of the theater’s 2012 to 2013 productions and was paid an hourly wage.

The record reveals that after the blue prints of the set were completed, the build schedule created, and the color elevations provided to Coots, Technical Director Hungerford instructed Coots when the painting needed to be completed. Hungerford discussed with Coots what materials she needed, and if she needed assistance completing the job within the allotted time. Hungerford testified that when additional manpower was needed to paint, he asked Coots if she knew people who were interested in working. Coots suggested Brooke Murray, Claire Leitner and a few other names, and told Hungerford she would call around and ask their rates. Coots knew Murray and Leitner from working together at other jobs. Coots provided, in separate emails to Deppen, their names and the rates they were making at those other jobs. Coots sent one email to Deppen on December 26, 2012, regarding Murray, and another email on February 20, 2013, regarding Leitner. Deppen determined whether there was money in the budget to bring in Murray and Leitner at the suggested wage rates and provided them with the paperwork required to initiate their employment with the theater.

The record further reveals that the timeline to complete painting the set is established by the build schedule which is created during production meetings. Coots did not attend any production meetings and there is no evidence that she participated in creating the build schedule. Hungerford testified that for safety purposes, individuals are not permitted to work alone in the Scene Shop. Coots discussed with Murray and Leitner the times they would be able to work at the Scene Shop based on when they could gain access to the Scene Shop, when the carpentry was completed on items that needed paint, when Coots would be working at the Scene Shop, and their own availability. All three of them had outside commitments and Leitner typically worked when Coots worked because Coots drove Leitner to the theater. There was no evidence that Coots set Murray and Leitner’s schedules, or told them when to report to work.

Employees prepare their own time sheets showing the number of hours they work. These time sheets are submitted to Production Manager Andrew Deppen. There is no evidence that Coots approved Murray or Leitner’s time sheets. The Employer suggests an email from Coots to Deppen shows that Coots set Murray and Leitner’s schedule. Coots testified, and I find, that on that particular occasion, Deppen did not drop off time sheets at the Scene Shop, so Coots sent the email to Deppen with number of hours she, Murray and Leitner worked so they would be paid for those hours.

Deppen testified at length that Coots directed Murray and Leitner in their daily painting tasks, but provided no examples, and admitted that he is rarely present at the Scene Shop when Coots, Murray and Leitner are working. He further testified that it was Coots’ responsibility to make sure that Murray and Leitner paint the scenery correctly, but provided no examples of where the Employer held Coots responsible for their work or where Coots issued discipline to

Murray or Leitner, ore rewarded them, as a result of their performance. The Set Designer provides the color elevation that Coots is required to follow. Coots consults with the Set Designer only when she needs to clarify the Set Designer’s artistic vision of the paint on the set. Once clarified, Coots shares this information with Murray and Leitner. Coots is a more experienced painter than Murray and Leitner. When there is a need to employ a specific painting technique to accomplish a task, Coots, Murray, and Leitner mutually discuss and decide who might best perform certain tasks based on their experience, artistic strengths, and technical knowledge.

Finally, the Employer presented copies of show programs from each of the five live productions of the 2012 to 2013 season. The Employer claims the programs establish that Coots is a supervisor. In the five programs, Coots is listed as either the Scenic Charge Artist, Scenic Artist, or Scenic Charge. In two of the programs, Murray and Leitner are listed as Scenic Painters.

B. Analysis

Hiring Authority

The only employees the Employer contends that Coots effectively recommended for hire are Brook Murray and Claire Leitner. Coots’ role in recommending Murray and Leitner, however, was limited. Hungerford asked Coots who she might want to work with as a painter and who might be available and she suggested names of coworkers she new from other theater jobs. On two separate occasions, Coots told management she knew who might be interested – she suggested Murray first and later, Leitner. Coots knew the women’s qualifications because they worked together in the past. It is not unusual for employers to consider word-of-mouth referrals from its experienced work force as a way of recruiting employees. See *NLRB v. Adco Electric*, 6 F.3d 110, 1117 (5th Cir. 1993). The Employer places great weight on its experienced workforce when seeking over-hires. Furthermore, the Production Manager routinely does not perform job interviews of recommended new hires and only requires that they complete necessary paperwork. However, something more than an employer’s accepting referrals from its work force, and reliance on them, is necessary to constitute a supervisory recommendation. In *F.A. Bartlett Tree Expert Co.*, 325 NLRB 243 (1997), the Board upheld a decision that crew foremen who “inform the general foreman when they learn of individuals who are interested in being hired, and at times...recommend an applicant’s hire” are not supervisors even though these recommendations had “some influence on the general foreman’s hiring decisions,” since “the extent” of such influence was “not known.” *Id.* at 245. In the instant case, there is no evidence that Coots’ recommendation of Murray and Leitner garnered any more weight than those of the electricians, carpenters, or other over-hires that also recommend individuals for hire and there is no evidence that the Production Manager ever rejected anyone’s recommendation. The Board has stated that caution should be exercised before finding supervisory status since supervisors are excluded from the protections of Section 7 of the Act. *King Broadcasting Co.*, 329 NLRB 378, 381 (1991). In this case, the use of word-of-mouth referrals would confer supervisory status on the Employer’s entire work force. “In light of this, the Board must guard against construing supervisory status too broadly to avoid unnecessarily stripping workers of their organizational rights.” *Chevron USA*, 309 NLRB 59, 62 (1992). Additionally, Coots did

not set Murray and Leitner's hourly wages but merely emailed Deppen that she knew who would be available to do the work and what wage they would likely accept based on her knowledge of having worked with them at other theaters. Deppen determined if the numbers worked within his budget. *Sack Cinema at Assembly Square*, 259 NLRB 372, 373 (1981); see also *Musical Theatre Association*, 221 NLRB 872, 873 (1975). Accordingly, I find that Coots does not set employee wages or effectively recommend employees for hire within the meaning of Section 2(11) of the Act.

Responsibly Directs Employees

The Employer contends that Coots responsibly directs employees because she assigns work and approves schedules. There was no evidence presented to show that Coots directed Murray or Leitner to be at work at certain times or set their schedules. Record testimony shows that Coots, Murray, and Leitner collaborated and mutually agreed on acceptable schedules based on Bristol Theater's time targets, their ability to access the set while others are present for safety purposes, and each individual's other commitments. On one occasion Coots provided Deppen with an email with the number of hours that Coots, Murray, and Leitner worked. However, the time sheets the employees typically use to provide Deppen with their hours worked were not available and Coots merely sent the email to Deppen in the absence of the employees' usual time sheets. The evidence establishes, and I find, that Coots' role in this instance was merely clerical—she reported the hours the employees worked so that they would be paid. She did not approve the hours or otherwise exercise independent judgment in submitting the information to Deppen. The Employer also provided no documentary evidence from its records to indicate Coots acted with supervisory authority in submitting or approving Murray and Leitner's usual time sheets. Even if I were to believe this one-time email submission was Coots' approval of Murray and Leitner's hours, the sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. See *Kanahwa Stone Co.*, 334 NLRB 235, 237 (2001); *Gaines Electric*, 309 NLRB 1077, 1078 (1992); *Dlubak Corp.*, 307 NLRB 1138, 1167, 1170 (1992), *enfd.* 5 F.3d 1488 (3d Cir. 1993); *Fred Rogers Co.*, 226 NLRB 1160, 1161 (1976); *Theatre Now*, 211 NLRB 525 (1974), *enft. denied on other grounds* 567 F.2d 531 (2d Cir. 1977).

The Employer also contends that Coots supervises Murray and Leitner in assigning what they should paint. Record testimony reveals that Coots, Murray, and Leitner discuss their artistic strengths and weaknesses and mutually decide who might best be suited to paint a specific portion of the scenery based on their experience and artistic knowledge. *Phelps Community Medical Center*, 295 NLRB at 490; *Musical Theatre Assn.*, 221 NLRB 872 (1975). Deppen testified that Coots directed Murray and Leitner in their daily task but admitted he was rarely present to witness them at work. A party claiming individuals are supervisors because they responsibly direct others must show the particular acts and judgments that make up their direction of work. *North Shore Weeklies*, 317 NLRB 1128 (1995). Although Deppen testified that Coots directed Murray and Leitner's work, he was unable to provide details or specific examples. Mere inferences or conclusionary statements, without detailed, specific evidence of independent judgment, are insufficient to establish supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB at 731; *Avante at Wilson*, 348 NLRB at 1057; *Sears, Roebuck & Co.*, 304 NLRB 193, 194 (1991). No specific evidence was presented showing that Coots has ever assigned Murray or Leitner to a particular spot or task.

As to the show programs the Employer presented in which the Employer described Coots at different times as Scenic Charge Artist, Scenic Artist, and Scenic Charge, I find that they do not establish that Coots enjoys any of the supervisory indicia set forth in Section 2(11) of the Act. The Board insists on evidence supporting a finding of actual as opposed to mere paper authority. These programs fail to show Coots had any actual supervisory authority. *Food Store Employees Local 347 v. NLRB*, 422 F.2d 685, 689-690 (D.C. Cir. 1969); *NLRB v. Security Guard Service* 384 F.2d 143, 149 (5th Cir. 1969), enfg. 154 NLRB 8 (1965). The job descriptions the Employer relies upon are only paper authority and I give them no controlling weight. *Avante at Wilson*, 348 NLRB at 1056; *Training School at Vineland*, 332 NLRB 1412, 1416 (2000).

VI. CONCLUSION

The lynchpin of the Employer's claim that Coots is a supervisor is its contention that she had the authority to recommend effectively the hire, and set the wages of, Murray and Leitner. I find that, in referring Murray and Leitner, Coots functioned only as a skilled artist with knowledge of other qualified painters and that her role was not that of a supervisor invested with the authority of management to hire. The record indicates that the Employer routinely hires its production staff by "word of mouth" and that Coots' recommendation was no different. She is merely the Employer's most experienced painter and the Employer merely asked if she knew anyone who could assist in completing the painting of the set. The record shows that Coots is an hourly employee, does not attend any meetings with other managerial or supervisory employees, and does not responsibly direct Murray and Leitner. Additionally, Coots is not responsible for evaluating Murray and Leitner's performance and there is no evidence that she has ever adjusted grievances, or meted out discipline to Murray or Leitner. Therefore, I find that Coots does not possess any of the indicia of supervisory authority.

Based on the foregoing, I find that the Employer has not satisfied its burden of establishing that Katherine Coots is a statutory supervisor, and that her challenged ballot be opened and counted and a new Tally of Ballots issue.

Signed at Philadelphia, Pennsylvania, this 23th day of October, 2013.

/s/ Joanne M. Sacchetti

JOANNE M. SACCHETTI

Hearing Officer, Fourth Region

National Labor Relations Board

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

BRISTOL RIVERSIDE THEATER COMPANY, INC.

Employer

and

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 8

Petitioner

Case 4-RC-106777

Date of Mailing: October 23, 2013

**AFFIDAVIT OF SERVICE OF: HEARING OFFICER'S REPORT AND
RECOMMENDATION ON CHALLENGED BALLOT**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by post-paid first class mail upon the following persons, addressed to them at the following addresses:

<p>ETHAN M. DENNIS, ESQUIRE JOSEPH C. RUDDOLF, ESQUIRE DILWORTH PAXON, LLP 1500 MARKET STREET, SUITE 3500E PHILADELPHIA, PA 19102-2101</p>	<p>CARSON GABRIEL CAMPBELL, ESQUIRE SPEAR WILDERMAN, PC 230 S BROAD STREET, SUITE 1400 PHILADELPHIA, PA 19102-4104</p>
<p>AMY KAISSAR BRISTOL RIVERSIDE THEATER COMPANY INC P.O. BOX 1250 BRISTOL, PA 19007</p>	<p>MICHAEL BARNES, PRESIDENT/BUSINESS MANAGER INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, LOCAL NO. 8 2401 S. SWANSON STREET PHILADELPHIA, PA 19148-4113</p>

<p>Subscribed and sworn to before me this 23rd day of October, 2013</p>	<p>Designated Agent /s/ Rita Messina NATIONAL LABOR RELATIONS BOARD</p>
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