

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

**AUDIO VISUAL SERVICES GROUP, INC., D/B/A  
PSAV PRESENTATION SERVICES**

**and**

**Case 19-CA-167454**

**INTERNATIONAL ALLIANCE OF THEATRICAL  
STAGE EMPLOYEES, LOCAL 15**

**RESPONDENT'S REPLY**

Respondent Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services (“PSAV” or “Respondent”), respectfully submits this Reply in support of its Motion and Memorandum of Law in support of Summary Judgment. For the reasons set forth fully below, summary judgment should be entered against the International Alliance of Theatrical Stage Employees, Local 15 (“Charging Party”) on the alleged unfair labor practice filed in this matter.

**I. THE GENERAL COUNSEL’S REFERENCED CASE LAW IGNORES THE FACTUAL CIRCUMSTANCES AND THE ACTIONS IT HAS TAKEN IN THIS MATTER**

While the General Counsel’s Office attempts to paint this as a situation in which an employer has ignored a clear edict that its employees are duly certified as being represented by a union, this position ignores the facts of this case as well as the General Counsel’s own actions in response to PSAV’s challenges to the Regional Director’s decision. The Regional Director’s decision clearly stated that requests for review of the decision could be combined with requests for review challenging the direction of an election and filed by January 4, 2016. (Ex. 1- Regional Director Decision, at 9.) If neither party filed a request for review, the Regional Director’s decision would be “final and shall have the same effect as if issued by the Board.” (Ex. 1 at 9.)

It is undisputed that PSAV filed a timely request for review. As such, the certification in the Regional Director's decision was not final as of January 4, 2016. This position is supported further by the General Counsel's own actions. After the Charging Party filed its alleged unfair labor practice, the General Counsel's office held the charge in abeyance pending the outcome of PSAV's request for review. (Ex. 4 – McConnell Email 02.12.2016.) To have previously asserted that the charge would not proceed while a request for review was pending with the Board, but now assert that the requested Board review had no impact on the effect of the Regional Director's conditional certification ignores the facts and is a blatant attempt by the General Counsel's office to talk out of both sides of its mouth.

Had the Regional Director's certification mandated that PSAV enter into comprehensive contract negotiations, notwithstanding PSAV's pending request for review, there would have been no reason for the General Counsel to hold the filed charge in abeyance. The fact that it did, demonstrates that it too recognized the Board's reasoning in *Howard Plating* that "[w]hile awaiting issuance of a Board decision which might have relieved it of any bargaining obligation, Respondent did not violate the Act, absent additional conduct reflective of bad-faith intentions, by refraining from the negotiations of a potentially moot collective-bargaining agreement." 230 NLRB 178, 179 (1977). Notably, there is no assertion in either the Complaint or in the General Counsel's opposition that PSAV took any action while awaiting the Board's decision that would support that it had any bad-faith intentions. (Ex. 7 – Complaint at 1-4; General Counsel Opposition Brief at 1-5.) As PSAV has exhibited no conduct that would demonstrate it exercised any bad-faith toward the Charging Party, PSAV's declination to engage in negotiations for a collective

bargaining agreement complied with Board precedent and cannot support the alleged unfair labor practice. Therefore, summary judgment should be granted in favor of PSAV.<sup>1</sup>

## II. CONCLUSION.

As the facts discussed above — and previously in PSAV’s Motion and Memorandum of Law in Support of Summary Judgment — demonstrate, the Regional Director’s decision and certification were not final due to PSAV having filed timely objections because that is what the Regional Director ordered. The General Counsel’s attempts to argue otherwise ignores its own conduct with respect to these proceedings, as it independently held the filed charge in abeyance pending the Board’s decision. The General Counsel’s action support the Board’s existing precedent. Absent additional conduct indicative of bad-faith intentions, an employer should not be liable for declining to bargain at a time where pending proceedings could completely alleviate it of any duty to bargain going forward. To hold otherwise would be contrary to Board precedent and in effect nullify a party’s ability to challenge any actions taken by the Regional Director. For the reasons set forth above, and previously in PSAV’s motion and memorandum in support, PSAV respectfully requests that summary judgment be entered in its favor and against the Charging Party.

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<sup>1</sup> The General Counsel also attempts to assert that disputes of fact demonstrate that summary judgment is inappropriate. The General Counsel’s position broadly relies on responses in PSAV’s Answer while wholly ignoring the statement of facts presented by PSAV in its motion. Despite arguing that it remains in dispute whether PSAV participated in any bargaining with the Charging Party prior to May 23, 2016; PSAV’s statement of facts acknowledged that due to the challenges raised in PSAV’s Request for Review to the Board, it declined to enter into negotiations with the Charging Party until the Board had an opportunity to issue its decision. It is undisputed that PSAV did not bargain with the Union until the Board issued its May 19, 2016 decision.

September 23, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 23, 2016, a true and correct copy of the foregoing Reply in Support of Summary Judgment was filed electronically through the NLRB E-File Portal on the following:

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