UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

and **Case 19-CA-167454**

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 15

COUNSEL FOR THE GENERAL COUNSEL'S RESPONSE TO ORDER TO SHOW CAUSE AND MOTION FOR SUMMARY JUDGMENT

Counsel for the General Counsel ("CGC" or "General Counsel") hereby submits this response to the Board's November 9, 2016, Order requiring the parties to Show Cause as to why summary judgment should not be granted for either party. CGC hereby requests that summary judgment be granted for the General Counsel or, in the alternative, that the Motion for Summary Judgment filed by Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services ("Respondent"), be dismissed in its entirety.

I. PROCEDURAL BACKROUND RELATED TO RESPONDENT'S REFUSAL TO RECOGNIZE AND BARGAIN WITH ITS EMPLOYEES' CERTIFIED COLLECTIVE BARGAINING REPRESENTATIVE

As set forth in detail in the CGC's September 15, 2016, Opposition to Respondent's Motion for Summary Judgment ("GC Opposition")[1] filed with the Board, the Regional Director certified the International Alliance of Theatrical Stage Employees, Local 15 ("Union") as the exclusive collective-bargaining representative of a unit of

[1] Documents appended to this GC Motion for Summary Judgment are referred to generally by letter as Attachment _ (Att. _). Documents appended to Attachment A, the GC Opposition, are referred to by the numbered exhibits therein, as identified in the original submission (Att. A, Exhibit __).

Respondent's technician, concierge, and quality-control employees on December 18, 2015. (Att. A, Exhibits 1 and 2) Respondent requested review on January 4, 2016. (Att. A, Exhibit 2) The Union first requested bargaining that same day. (Att. A, Exhibits 1 and 2) Respondent refused. (Att. A, Exhibit 1)

On May 19, 2016, the Board denied Respondent's request for review of the Regional Director's decision, upholding the certification. (Att. A, Exhibits 1 and 2) The Union renewed its request to bargain within 4 days, on May 23, 2016. (Att. A, Exhibits 1 and 2) Respondent then finally agreed to bargain. (Att. A, Exhibit 2)

On June 23, 2016, the Regional Director issued the Complaint alleging that Respondent had failed and refused to bargain with the Union from about January 4, 2016, to May 23, 2016, and seeking an extension of the certification year consistent with *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962) and a notice reading. (Att. A, Exhibit 1) In its Answer to the Complaint ("Answer"), Respondent denied, *inter alia*, that it failed and refused to recognize and bargain with the Union as alleged. (Att. A, Exhibit 2)

On September 12, 2016, Respondent filed with the Board its Motion and Memorandum in Support of Summary Judgment ("Respondent's Motion") in the above-captioned matter. (Att. B) On September 15, 2016, the CGC opposed that Motion, contending that summary judgment was not appropriate given Respondent's denial of certain facts in the Complaint. (Att. A)

However, while Respondent's Motion was still pending before the Board, on October 13, 2016, the parties agreed to and submitted a stipulation of facts together with a motion waiving a hearing and seeking an order from the Administrative Law Judge in the above-captioned matter. ("Joint Motion") (Att. C) That Joint Motion

stipulated to all facts alleged in the Complaint. (Att. C) The Associate Chief Administrative Law Judge granted the motion, postponed the hearing indefinitely, and then suspended briefing pending the Board's ruling on Respondent's Motion. ("ALJ Oct. 13 Motion" and "ALJ Oct. 14 Motion") (Atts. D and E)

II. SUMMARY JUDGMENT SHOULD BE GRANTED FOR THE GENERAL COUNSEL BECAUSE RESPONDENT STIPULATED TO ALL FACTS ALLEGED IN COMPLAINT

Employers are obligated by § 8(a)(5) of the Act to bargain collectively with the chosen representative of their employees. Once the representative has been certified as such in a Board representation proceeding, an employer may not re-litigate in an unfair labor practice proceeding those issues already litigated in the representation proceeding, absent newly discovered, relevant evidence not available at the time of the litigation in the representation proceeding. *See generally Pittsburgh Plate Glass* Co. v. *NLRB,* 313 U.S. 146, 162 (1941); *Washington Beef, Inc.,* 322 NLRB 398 (1996); Board's Rules and Regulations, 29 C.F.R. § 102.67(g) (2015).

Following the Union's certification as the representative of an appropriate unit of Respondent's employees, Respondent refused to recognize and bargain with the Union. That fact was in dispute until Respondent, in the Joint Motion, stipulated to all the facts alleged in the Complaint. Since entering that Joint Motion, Respondent has not asserted, nor can it assert, the existence of any newly discovered relevant evidence on these issues. Accordingly, there are no material issues of disputed fact left regarding the Union's status as the exclusive collective-bargaining representative of these employees or regarding Respondent's obligation to recognize and bargain with the Union. *Concrete Form Walls, Inc.,* 347 NLRB 1299 (2006).

Nor can there be any dispute that Respondent was obligated to recognize and bargain with the Union during the time in question. It is well-established that an employer's obligation to recognize and bargain with a union begins from the date that the union is certified by a region as the exclusive bargaining representative of its employees, unless the Board acts to overturn the certification. *Allstate Ins. Co.,* 234 NLRB 193, 193 (1978); Board's Rules and Regulations, § 102.67(g) (2015). To prove a violation of the duty to recognize and bargain, all that is required is proof of the employer's refusal to meet with a certified union, even during a time when there has been no final action by the Board on review.[2] *Allstate,* 234 NLRB at 193 (citing *E.V. Williams*, 175 NLRB 792, 792 n.1 (1969); *NLRB v. Katz, d/b/a Williamsburg Steel Products Co.*, 369 U.S. 736 (1962)).

Here, the Union was certified on December 18, 2015, and Respondent has now admitted that it refused to recognize and meet with the Union for bargaining from January 4 to May 23, 2016. Therefore, it violated the Act and summary judgment should be granted for the General Counsel.

III. EVEN IF SUMMARY JUDGMENT IS NOT GRANTED FOR GENERAL COUNSEL, RESPONDENT'S MOTION SHOULD BE DISMISSED

As discussed above, summary judgment should be granted to the General Counsel, as Respondent has admitted to the alleged conduct that clearly violates § 8(a)(5). In the event the Board determines summary judgment in favor of the General

[2] New language in the Board's Rules and Regulations, adopted on December 15, 2014, as part of the new representation case rules, makes this abundantly clear: Board review of a regional director's action, such as a certification, "shall not, unless specifically ordered, operate as a stay of any action by the regional director." 29 C.F.R. §102.67(c) (2015). Further, "[t]he regional director's actions are final unless a request for review is granted." 29 C.F.R. § 102.67(h) (2015). The provision for impounding ballots and consequently delaying certification was removed under the new rules. *Compare* 29 C.F.R. § 102.67(b) (2014) to 29 C.F.R. § 102.67(b)–(c) (2015).

Counsel is not appropriate, Respondent's Motion should be dismissed for the following reasons.

First, as of the time of the filing of Respondent's Motion, it had admitted in its Answer a number of the facts alleged in the Complaint but denied others. Among the facts it denied is that it failed and refused to bargain with the Union. Given that this fact is material to the unfair labor practice allegation at issue here, summary judgment for Respondent is inappropriate. Rule 102.24(b) of the Board's Rules and Regulations; *Lakeview Convalescent Ctr.,* 307 NLRB 563, 564 (1992) (summary judgment appropriate only if pleadings and supporting materials establish that there is no genuine issue requiring a hearing and that the moving party is entitled to judgment as a matter of law); *Lake Charles Memorial Hosp.*, 240 NLRB 1330, 1331 (1979) (citing Fed. R. Civ. P. 56(c)) (burden does not shift to the opposing party to show that there is a genuine issue for hearing unless the moving party establishes by admissible evidence that there is "no genuine issue as to any material fact").

Second, Respondent's legal argument in support of its Motion is seriously flawed. In both its Motion and Answer, Respondent claims that it was privileged to refuse to recognize and bargain with the Union during the pendency of its request for review of the certification of the Union. Respondent relies on *Howard Plating Indus., Inc.,* 230 NLRB 178 (1977), to support this claim of privilege, positing that that case stands for the proposition that refusal to initiate bargaining pending Board review of objections is lawful. That is not the holding of the case, however. Rather, in *Howard Plating,* the Board held that a refusal to bargain is lawful *if there is no certification*. *Id*. at 178, 179

n.2. Unlike here, in *Howard Plating* there was no certification. That is a key distinction that Respondent seems to have overlooked.[3]

The Board, however, has not, as evidenced by its reiteration of that crucial distinction shortly after issuing *Howard Plating*. In *Allstate*, like here, an employer, after certification, agreed to bargain only after the Board had denied its request for review. 234 NLRB at 193. The administrative law judge, citing *Howard Plating* and reasoning as Respondent does here, dismissed the case. *Id.* The Board reversed, holding that "the real issue … is the importance of an outstanding certification…." *Id.*

Since then, the Board has made it clear that "[a] pending request for review stays neither a certification nor the resulting obligation to bargain and, therefore, does not affect the ripeness of a complaint alleging an unlawful refusal to bargain." *Cocoanut Grove,* 270 NLRB 345, 347 (1984). Indeed, the Board has repeatedly found that an employer is not relieved of its obligation to bargain with a certified representative pending Board consideration of a request for review. *See, e.g., Salem Hosp. Corp.,* 357 NLRB No. 119, slip op. at 1 n.3 (2011); *Monark Boat Co.,* 260 NLRB 615, 616 (1982), *enforcement denied*, 713 F.2d 355 (8th Cir. 1983), *decision supplemented*, 276 NLRB 1143 (1985), *enforced,* 800 F.2d 191 (8th Cir. 1986); *Benchmark Indus., Inc.*, 262 NLRB 247, 248 (1982), *enforced*, 724 F.2d 974 (5th Cir. 1984); *Madison Detective Bureau, Inc.,* 250 NLRB 398 (1980).

Third, Respondent assumed the risk of violating the Act by not bargaining during the period between certification and the Board's review, and it cannot now seek to

[3] Respondent also cites to a footnote in *San Miguel Hosp. Corp.,* 357 NLRB 326 (2011). That citation is inapposite as well: *San Miguel* involved unilateral changes, not a refusal to initiate plenary bargaining. The Board recited dicta from *Howard Plating* in the course of explaining that *Howard Plating* was not on point. *San Miguel*, 357 NLRB at 327 n.5.

escape having played a losing hand. While it may turn out that the Board overturns a certification and thereby abrogates any bargaining obligation, an employer that refuses to bargain assumes the risk that the Board will not do so. *Allstate,* 234 NLRB at 193. Here, the Board did not overturn the Union's certification. Because Respondent gambled and lost, its Motion must be denied.

Fourth, were Respondent's Motion granted, the Board would be abrogating its duty to protect employee rights during that recognized critical first-year post-certification period. The Board has long been protective of the first year of bargaining and insists that a union receive at least one year of actual bargaining. *Mar-Jac Poultry Co.*, 136 NLRB at 787. If the Board were to grant Respondent's Motion, it would be essentially sanctioning an employer's freedom "to take advantage of its own failure to carry out its statutory obligation…." *Id*. Therefore, if summary judgment is not granted to the General Counsel, Respondent's Motion should be denied.

IV. CONCLUSION

Given that Respondent has now stipulated to all facts alleged in the Complaint, Counsel for the General Counsel respectfully asks that summary judgment be entered against Respondent. In the alternative, Respondent's Summary Judgment Motion should be denied in its entirety.

Dated at Seattle, Washington, this 23rd day of November, 2016.

Carolyn McConnell,
Counsel for the General Counsel
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915 2nd Ave., Ste. 2948
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Attachments

ATT. A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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

and **Case 19-CA-167454**

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 15

COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

On September 12, 2016, Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services ("Respondent"), filed a Motion and Memorandum in Support of Summary Judgment ("Motion") in the above-captioned matter pursuant to Rule 102.24(b) of the Board's Rules and Regulations. That Rule provides that the Board "may deny the motion where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicated on their face that a genuine issue may exist." *Id.* Counsel for the General Counsel ("CGC") respectfully opposes the Motion and, for all the reasons set forth in the Rule as well as Respondent's reliance on inapposite case law to justify its alleged unlawful conduct, requests that the Motion be denied in its entirety.

I. RESPONDENT REFUSED TO RECOGNIZE AND BARGAIN WITH THE UNION AS THE COLLECTIVE BARGAINING REPRESENTATIVE OF ITS EMPLOYEES AFTER THE DECEMBER 18, 2015, CERTIFICATION

The following facts are set forth in the attached Complaint and Notice of Hearing ("Complaint") (Exhibit 1) and Respondent's Answer to the Complaint ("Answer") (Exhibit 2).

The Regional Director certified the International Alliance of Theatrical Stage Employees, Local 15 ("Union") as the exclusive collective-bargaining representative of a unit of Respondent's technician, concierge, and quality control employees on December 18, 2015. Respondent requested review on January 4, 2016. The Union first requested bargaining that same day. Respondent refused.

On May 19, 2016, the Board denied Respondent's request for review of the Regional Director's decision, upholding the certification. The Union renewed its request to bargain within four days, on May 23, 2016. Respondent finally agreed to bargain.

Given Respondent's refusal to bargain from the time of certification in December of 2015 until after the Board denied the request for review in May of 2016, on June 23, 2016, the Regional Director issued the Complaint alleging that Respondent had failed and refused to bargain with the Union for that period, and seeking an extension of the certification year consistent with *Mar-Jac Poultry Co.,* 136 NLRB 785 (1962), as well as a notice reading. In its Answer, Respondent denies, *inter alia*, that it failed and refused to recognize and bargain with the Union as alleged. Respondent also asserts it was privileged to deny its unit employees the benefit of their choice of representative for that critical five-month period following certification.

II. RESPONDENT'S MOTION SHOULD BE DISMISSED BECAUSE THERE ARE FACTS IN DISPUTE AS WELL AS PRECEDENT PROTECTING THIS NEWLY CERTIFIED UNIT DURING THE CERTIFICATION YEAR

Respondent's Motion should be dismissed for several reasons. First, as stated above and set forth in its Motion, Respondent admits a number of the facts alleged in the Complaint, while denying others. Among those it denies is that it failed and refused to bargain with the Union. Given that this disputed fact is clearly material to the unfair labor practice allegation at issue here, summary judgment is inappropriate. Rule

102.24(b) of the Board's Rules and Regulations; *Lakeview Convalescent Ctr.,* 307 NLRB 563, 564 (1992) (summary judgment appropriate only if pleadings and supporting materials establish that there is no genuine issue requiring a hearing and that the moving party is entitled to judgment as a matter of law); *Lake Charles Memorial Hosp.*, 240 NLRB 1330, 1331 (1979) (citing Fed. R. Civ. P. 56(c)) (burden does not shift to the opposing party to show that there is a genuine issue for hearing unless the moving party establishes by admissible evidence that there is "no genuine issue as to any material fact").

Second, Respondent's legal argument in support of summary judgment is flawed and wholly without merit. Respondent relies on *Howard Plating Indus., Inc.,* 330 NLRB 178 (1977), for the proposition that, without more, a refusal to initiate bargaining pending Board review of objections is not unlawful. That limited citation does not tell the story, however, as the Board, faced in *Howard Plating* with a case with no certification, held that refusal to bargain is not unlawful *absent a certification.* It seems remiss to overlook such an operative fact, particularly given the December 18, 2015, certification in this matter.

Shortly after *Howard Plating*, the Board reiterated that crucial distinction in *Allstate Ins. Co.,* 234 NLRB 193 (1978), *decision supplemented*, 245 NLRB 76 (1979). That case involved precisely the same material facts as at issue here: an employer, after certification, agreed to bargain only after the Board had denied its request for review. *Id.* at 193. Interestingly, the administrative law judge in *Allstate* had relied on the same reasoning and citation to *Howard Plating* in his decision to dismiss as Respondent does here. *Id.* The Board reversed, on the grounds that "the real issue in

the instant case … is the importance of an outstanding certification…," which had been absent in *Howard Plating*. *Id.*

As the Board made clear, "[i]f an employer declines to meet for bargaining in the face of a Regional Director's certification … even though there has been no final action by the Board on review, the General Counsel need not show bad faith in support of a refusal-to-bargain allegation." *Id.* Indeed, not only has the Board has affirmed this principle consistently since, but it has repeatedly found that an employer is not relieved of its obligation to bargain with a certified representative pending Board consideration of a request for review. *See, e.g., Salem Hosp. Corp.,* 357 NLRB No. 119, slip op. at *1 n.3 (2011); *Cocoanut Grove*, 270 NLRB 345, 347 (1984); *Benchmark Indus., Inc.*, 262 NLRB 247, 248 (1982), *enforced*, 724 F.2d 974 (5th Cir. 1984); *Monark Boat Co.*, 260 NLRB 615, 618 (1982), *enforcement denied*, 713 F.2d 355 (8th Cir. 1983), *decision supplemented*, 276 NLRB 1143 (1985), *enforced,* 800 F.2d 191 (8th Cir. 1986); *Madison Detective Bureau Inc.,* 250 NLRB 398 (1980).

Finally, the Board has long been quite protective of that first year of bargaining running from the date of certification so that a newly-elected union receives at least one year of actual bargaining. *Mar-Jac*, 136 NLRB at 787. Were Respondent correct, this would mean that an employer would be free to refuse to bargain for any or all portions of the mandated 1-year period for bargaining and thereby "take advantage of its own failure to carry out its statutory obligation…." *Id*. Respondent's claim that it was privileged to refuse to bargain with the certified representative pending Board consideration of its request for review is clearly wrong.

III. CONCLUSION

Given that Respondent disputes facts alleged in the Complaint and that its legal argument is meritless, Respondent's Motion should be denied in its entirety.

Dated at Seattle, Washington, this 15th day of September, 2016.

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National Labor Relations Board, Region 19
915 2nd Ave, Suite 2948
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Attachments

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

COMPLAINT AND NOTICE OF HEARING

This Complaint is based on a charge filed by International Alliance of Theatrical Stage Employees, Local 15 (the "Union"). It is issued pursuant to § 10(b) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.*, and § 102.15 of the Rules and Regulations of the National Labor Relations Board (the "Board"), and alleges that Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services ("Respondent"), herein called by its correct name, has violated the Act as described below.

1.

The charge in this proceeding was filed by the Union on January 7, 2016, and a copy was served on Respondent by U.S. mail on January 12, 2016.

2.

(a) At all material times, Respondent has been a State of Delaware corporation with offices and places of business in Tukwila and Tacoma, Washington (the "facilities"), where it is engaged in the business of providing event technology services.

(b) In conducting its operations described above in paragraph 2(a) during the past 12 months, which period is representative of all material times, Respondent received gross revenue in excess of $500,000.

(c) In conducting its operations described above in paragraph 2(a) during the past 12 months, which period is representative of all material times, Respondent purchased and received at the facilities goods valued in excess of $50,000 directly from points outside the State of Washington.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of §§ 2(2), (6), and (7) of the Act.

3.

At all material times, the Union has been a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times, an unnamed agent held the position of Respondent's attorney and has been an agent of Respondent within the meaning of § 2(13) of the Act.

5.

(a) The following employees of Respondent ("Unit") constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act:

> All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by Respondent at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities.

(b) On December 18, 2015, in Case 19-RC-161471, the Union was certified as the exclusive collective bargaining representative of the Unit.

(c) On May 19, 2016, the Board denied Respondent's request for review of the certification of representative in Case 19-RC-161471.

(d) At all times since December 18, 2015, based on § 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6.

(a) On about January 4, 2016, the Union, by e-mail, requested that Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the Unit.

(b) On about May 23, 2016, the Union, by e-mail, renewed its request for recognition and bargaining.

(c) From about January 4, 2016, to May 23, 2016, Respondent failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

7.

By the conduct described above in paragraph 6, Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of §§ 8(a)(1) and (5) of the Act.

8.

The unfair labor practices of Respondent described above affect commerce within the meaning of §§ 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph 6, the General Counsel seeks an Order requiring that, at a meeting or meetings scheduled to ensure the widest possible attendance, a responsible agent of Respondent, such as the unnamed agent set forth in paragraph 4 above, read the notice to the employees on work time in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during work time in the presence of Respondent's agent identified above in paragraph 4.

WHEREFORE, as part of the remedy for Respondent's unfair labor practices alleged above in paragraph 6, the General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before July 7, 2016, or postmarked on or before July 6, 2016**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case

Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. *See* § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the **25th day of October, 2016, at 9 a.m.,** in the James C. Sand Hearing Room of the Jackson Federal Building, 915 Second

Avenue, Seattle, Washington, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Seattle, Washington, this 23rd day of June, 2016.

RK Hooks

RONALD K. HOOKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Attachments

Form NLRB-4668
(6-2014)

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence**: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered**

(OVER)

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case 19-CA-167454

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
LOCAL 15
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATONS 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

ANSWER

COMES NOW Respondent Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services ("PSAV" or "Respondent"), by and through the undersigned attorneys, and by way of an Answer to the Complaint issued in Case 19-CA-167454 admit or deny as follows:

1. Respondent admits the allegations contained in paragraph 1.

2. (a) Respondent admits to the allegations contained in paragraph 2(a).

   (b) Respondent admits to the allegations contained in paragraph 2(b).

   (c) Respondent admits to the allegations contained in paragraph 2(c).

   (d) Respondent admits to the allegations contained in paragraph 2(d).

3. The Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 3 and accordingly denies the same.

4. Respondent admits that it retains counsel for legal services. The allegations contained in paragraph 4 are vague and Respondent lacks sufficient knowledge to admit or deny the allegations and accordingly denies the same.

Exhibit 2

5. (a) Respondent admits that the positions identified in paragraph 5(a) have be recognized by the Board to constitute an appropriate bargaining unit for the locations identified therein. Respondent denies the remaining allegations contained in paragraph 5(a).

(b) Respondent admits that on December 18, 2015, Region 19 Regional Director Ronald K. Hooks issued his Decision on Challenges and Objection and Certification of Representative certifying the International Alliance of Theatrical Stage Employees, Local 15 ("Local 15") as the exclusive collective bargaining representative to the employees in the bargaining unit identified in paragraph 5(a). Additionally, the Regional Director's decision advised of both parties ability to seek Board review of his decision as well as the prior decision to direct an election. The decision identified that requests for review were required to be received by the Board by January 4, 2016. If no requests for review were filed by that date the Regional Director's decision would become final. Respondent denies the remaining allegations contained in paragraph 5(b).

(c) Respondent admits that following a timely request for review being submitted to the Board, on May 19, 2016, the Board issued its decision denying the Respondent's request for review of the Regional Director's decision.

(d) Paragraph 5(d) comprises a legal opinion that does not require a response. To the extent that a response is required, Respondent denies the allegations contained in paragraph 5(d).

6. (a) Respondent admits that on or around January 4, 2016, the International Alliance of Theatrical Stage Employees, Local 15 ("Local 15") submitted an email to Respondent requesting the initiation of bargaining. Respondent further admits that on January 4, 2016, it

served Local 15 with a copy of its request for review of the Regional Director's decision. Respondent denies the remaining allegations contained in paragraph 6(a).

(b) Respondent admits that following the Board's decision denying Respondent's request for review of the Regional Director's decision that, on or around May 23, 2016, Local 15 submitted an email to Respondent requesting the initiation of bargaining. In response to Local 15's email, Respondent agreed to begin negotiations and suggested potential dates for future negotiations. Respondent denies the remaining allegations contained in paragraph 6(b).

(c) Respondent denies the allegations contained in paragraph 6(c).

7. Paragraph 7 comprises a legal opinion that does not require a response. To the extent that a response is required, Respondent denies the allegations contained in paragraph 7.

8. Paragraph 8 comprises a legal opinion that does not require a response. To the extent that a response is required, Respondent denies the allegations contained in paragraph 8.

AFFIRMATIVE DEFENSES

First Affirmative Defense – Section 10(b) Statute of Limitations

The claims asserted in the Complaint are barred in whole, or in part, by the applicable statute of limitations.

Second Affirmative Defense – Inadequate Investigation/Compliance with Casehandling Manual

The Complaint is barred as it is the result of an investigation that failed to comply with the NLRB Casehandling Manual.

WHEREFORE the Respondent prays for the following relief:

1. For dismissal of the Complaint with prejudice, or for a Judgment in favor of the Respondent whereby all relief sought in the Complaint is denied;

2. For an award of attorney fees and costs incurred in the defense of this action;

3. For any other relief that may be just and proper.

July 6, 2016

Respectfully submitted,

/s/ David Shankman

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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2016, a true and correct copy of the foregoing Answer and Affirmative Defenses was filed electronically through the NLRB E-File Portal on the following:

Ronald K. Hooks
Regional Director, Region 19
NLRB Regional Office
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Seattle, WA 98714-1006

Katelyn Sypher, Esq.
Schwerin Campbell Barnard
Iglitzin & Lavitt LLP
18 West Mercer Street Suite 400
Seattle, WA 98119
Attorney for Local 15

/s/ Michael Willats
Michael Willats

Certificate of Service

I hereby certify that a copy of Counsel for the General Counsel's Opposition to Respondent's Motion for Summary Judgment was served on the 15th day of September, 2016, on the following parties:

E-file:

Gary Shinners, Executive Secretary
National Labor Relations Board
1015 Half St. SE
Washington, D.C. 20570

The Honorable Gerald Etchingham
Associate Chief Judge
National Labor Relations Board
Division of Judges
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ATT. B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATONS 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 MOTION AND MEMORANDUM
IN SUPPORT OF SUMMARY JUDGMENT

Pursuant to Section 102.24 of the National Labor Relations Board's ("NLRB") Rules and Regulations, 29 C.F.R. § 102.24, Respondent Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services ("PSAV" or "Respondent"), respectfully submits this 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. STATEMENT OF FACTS.

By order of the Regional Director for Region 19, a secret mail ballot election was conducted from November 9, 2015 until November 30, 2015. (Ex. 1 – Regional Director Decision, at 1.) Of the votes cast in the election, 36 were cast in favor of the International Alliance of Theatrical Stage Employees, Local 15 ("Local 15"), 33 were cast against Local 15, and 5 ballots were challenged. (Ex. 1 at 2.) PSAV filed a timely objection to the results of the election on December 7, 2015. (Ex. 1 at 2.) As part of its objections, PSAV asserted that multiple voters were not counted and/or provided ballots in time to participate in the election, and that such ballots could have altered the outcome of the election. (Ex. 1 at 2-3.) After receiving evidence from the parties

in support of their respective positions, the Regional Director sustained the challenged ballots, denied PSAV's objections to the use of the mail ballot procedure, upheld the election results, and issued a Certification of Representation. (Ex. 1 at 2, 8-9.)

The Regional Director's decision was issued on December 18, 2015. (Ex. 1 at 10.) As part of his decision, the Regional Director advised the parties of their right to appeal the decision by submitting a request for review to the Board by no later than January 4, 2016. (Ex. 1 at 9.) If no request for review was filed, the Regional Directors decision would become final and treated the same as if it had been issued by the Board. (Ex. 1 at 9.)

On January 4, 2016, PSAV submitted a timely request for review with the Board. PSAV's request for review was also served on Local 15 that same day. Despite being aware that PSAV was challenging the Regional Director's decision, Local 15 submitted a request for the parties to begin contract negotiations on all mandatory subjects of bargaining. (Ex. 2 – Iglitzin Email 01.04.2016.) Because the challenges were potentially determinative upon the outcome of the election, PSAV declined to enter into negotiations with Local 15 until the Board had an opportunity to issue its decision and Local 15 was officially certified as the exclusive representative of the designated PSAV employees. Nevertheless, Local 15 pursued the instant action alleging that PSAV's exercise of its statutory right to appeal amounted to a bad-faith refusal to bargain with the Local. (Ex. 3 – Notice of ULP Charge.)[1]

On May 19, 2016, the Board issued its decision upholding the Regional Director's decision and certifying Local 15 as the exclusive representative of the designated PSAV employees. (Ex. 5

[1] Notably, as the outcome of PSAV's request for review of the Regional Director's decision had the potential to alter the outcome of the election and any potential obligation PSAV might have to bargain with Local 15, Region 19 advised PSAV that its investigation of the ULP charge that is the basis of this matter would be held in abeyance pending the Board's ruling on PSAV's request for review. (Ex. 4 – McConnell Email 02.12.2016.)

– Board Decision.) Upon receiving the Board's decision, PSAV reached out to Local 15's designated business representative to obtain available dates to begin negotiations. (Ex. 6 –Email Chain Dated 05.24.2016.)

Since the Board has issued its decision, the parties have engaged in multiple bargaining sessions during which they exchanged both proposals and counterproposals. The parties have reached tentative agreement on several provisions thus far, and have another negotiation scheduled on September 19, 2016 to continue negotiations. PSAV's conduct demonstrates that following the resolution of its objections to the Regional Director's decision, it has complied with its obligation to bargain with Local 15 as the exclusive representative of certain PSAV employees.

II. ARGUMENT.

The NLRB has repeatedly found that an employer's refusal to bargain while timely objections regarding an election's certification are pending does not constitute a ULP. *See Howard Plating Indus., Inc.*, 230 NLRB 178, 179 (1977); *see also Color Custom, Inc.*, Cases Nos. 7-CA-35878, JD-4-96, 1996 WL 33321297, *5-6 (NLRB Div. of Judges Jan. 24. 1996); *Oberthur Techs. of Am. Corp.*, Case Nos. 4-CA-128098, JD-53-16, 2016 WL 3361188, *5 n.5 (NLRB Div. of Judges June 16, 2016) (citing the holding from *Plating Industries*). In fact, "the Board has never held that a simple refusal to initiate collective-bargaining negotiations pending final Board resolution of timely filed objections to the election is a *per se* violation of Section 8(a)(5) and (1)." *Howard Plating*, 230 NLRB at 179; *San Miguel Hosp. Corp.*, 357 NLRB 326, 327 n.5 (2011) (noting that "the Board has never found unlawful a refusal to initiate collective bargaining pending final Board resolution of timely filed objections absent additional evidence that the employer sought to avoid its bargaining obligation"). A ULP will only be found to have been committed where there is "additional evidence, drawn from the employer's whole course of conduct, which

proves that the refusal was made as part of a bad-faith effort by the employer to avoid its bargaining obligation." *Howard Plating*, 230 NLRB at 179. Simply put, "[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." *Id.*; *see also Color Custom*, 1996 WL 33321297 at *5 ("Respondent was entitled to refuse to bargain generally with the Union for an entire agreement and entitled to seek the resolution of its objections to the election and avoid the burden of bargaining with a union that might not have been certified.") A respondent's only obligation while its objections are pending is to not make any changes without bargaining. *Color Custom*, 1996 WL 33321297, *5.

The facts here demonstrate that this case is directly in line with the holding of *Howard Plating*. Following receipt of the Regional Director's decision addressing the ballot challenges and objections presented by PSAV, PSAV filed a timely request for review with the Board. As the Board's ruling had the potential to alter the election's outcome, PSAV elected — as it was clearly lawfully entitled to do — to obtain Board review of the Regional Director's decision before engaging in collective bargaining. Further, the complaint issued in this case makes clear that the only conduct alleged to be in violation of the National Labor Relations Act (the "Act") is PSAV's refusal to enter into contract negotiations with Local 15 for the period of January 4, 2016 through May 23, 2016 — the time period during which the Regional Director's decision was under review. (Ex. 7 – Complaint, at 3.) There are no additional allegations that PSAV sought to take any unilateral action on mandatory subjects of bargaining during this time period. (Ex. 7 at 1-4.) Moreover, as soon as the Board issued its decision regarding PSAV's request for review, PSAV

reached out to Local 15's business representative seeking dates on which the parties could meet and begin bargaining. (Ex. 6.)

Subsequent to the Board's issuance of its decision, and PSAV's request for dates to begin negotiations, the parties have engaged in multiple bargaining sessions. They have exchanged both proposals and counterproposals, and reached tentative agreement on some contractual provisions. The parties have another bargaining session scheduled for September 19, 2016 during which they intend to discuss additional proposals/counterproposals submitted by the parties.

PSAV conducted itself exactly as the Board requires while an employer elects to pursue its right to challenge the results of an election that may entirely alter its obligation to bargain. The factual circumstances here fall squarely within the holding of *Howard Plating* and support that PSAV's actions that are the subject of the instant complaint do not constitute a violation of the Act.

III. CONCLUSION.

For the reasons set forth above, PSAV respectfully requests that summary judgment be entered in favor of PSAV and against the Charging Party. PSAV's conduct conforms to the Board's holding in *Howard Plating*, allowing an employer to delay collective bargaining until such time as its objections have been considered and a final decision on certification is rendered, particularly where the result of the Board's review could change the outcome of the election. Therefore, as there are no genuine issues of fact that are in dispute, summary judgment is appropriate in this case.

September 12, 2016

Respectfully submitted,

/s/ David Shankman

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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2016, a true and correct copy of the foregoing Motion and Memorandum in Support of Summary Judgment was filed electronically through the NLRB E-File Portal on the following:

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Michael Willats

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

AUDIO VISUAL SERVICES GROUP, INC. d/b/a
PSAV PRESENTATION SERVICES

Employer

and **Case 19-RC-161471**

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 15

Petitioner

DECISION ON CHALLENGES AND OBJECTION AND CERTIFICATION OF REPRESENTATIVE

On October 23, 2015, I issued a Decision and Direction of Election in this matter.[1] Pursuant to that Decision and Direction of Election, an election by secret mail ballot was conducted from November 9, 2015 until November 30, 2015, when the ballots were counted. The employees who were eligible to vote in the election included:

> All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialist, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities.

[1] The sole issue for the hearing was whether the election should be conducted manually or by mail. As explained in the Decision and Direction of Election, the Regional Director has complete discretion to determine whether an election should be conducted manually or by mail ballot. See *Nouveau Elevator Industries,* 326 NLRB 470, 471 (1998) (Regional Director has broad discretion in determining the method by which an election is conducted). In prefacing its objection, the Employer continues to contend, without a specific objection on this issue, that the election should have been conducted manually. The Employer states in its submission that it reserves its argument in regard to the method of voting in the event it should decide to request review of the Regional Director's Decision on Challenges and Objection and Certification of Representative.

The Tally of Ballots was made available to the parties pursuant to the Board's Rules and Regulations and showed the following results:

Approximate number of eligible voters	93
Void ballots[2]	0
Votes cast for Petitioner	36
Votes cast against participating labor organization	33
Valid votes counted	69
Challenged ballots	5
Valid votes counted plus challenged ballots	74

The challenges were sufficient in number to affect the results of the election. As described in more depth below, three of these challenges were "not on list" challenges by the Board Agent and the remaining two challenges were made by the Employer contending that the voters did not share a community of interest with the bargaining unit.

On December 7, 2015, the Employer filed a timely objection to conduct affecting the results of the election and a request for an extension of time in which to file its formal submission of evidence in support of the objection. I granted the Employer an extension of time to December 11, 2015 to submit its offer of proof. On December 11, 2015, the Employer filed its Offer of Proof in Support of its objection ("Offer of Proof").

Pursuant to § 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned Regional Director caused an investigation to be made of the challenged ballots and the Employer's objection, during which the parties were afforded

[2] As discussed below, the Regional Office received the unsigned ballot of Perry Bryce on November 17, 2015. Pursuant to CHM § 11336.5(c) an unsigned ballot is void and cannot be counted. Therefore, the Regional Office mailed a duplicate voter kit to Bryce on that same day. However, as the Region did not receive a signed ballot from Bryce by the time of the count, his previously received unsigned ballot should have been marked void on the tally of ballots (See CHM § 11336.5(c)).

full opportunity to submit evidence bearing on the issues. As set forth below, I find that the not on list challenges should be sustained, and I approve the Employer's withdrawal of its challenge to two ballots. Additionally, I conclude that the objection does not warrant setting aside the election as discussed below. Therefore, as there are no remaining issues, I am issuing a Certification of Representative.

CHALLENGES

The ballots of Ms Emenke, John Kenan, and Cerek Creisler were challenged by the Board Agent on the grounds their names did not appear on the voter list ("not on list"). The ballots of Kyle Shoji and Karl S. Johnson were challenged by the Employer on the grounds that they were not eligible to vote because they do not share a community of interest with the bargaining unit.

Neither party presented argument or an offer of proof concerning the eligibility of the three not on list challenges. Therefore, I sustain the not on list challenges and these ballots will not be opened and counted. After the issuance of the Tally of Ballots, the Employer withdrew its challenge to the ballots of Shoji and Johnson, I approve the Employer's withdrawal. As these two ballots are not determinative to the outcome of the election, the ballots will not be opened and counted.

A revised Tally of Ballots will not be issued as the tally of votes counted remain unchanged. As reflected, a majority of valid votes counted were cast in favor of the Union.

OBJECTION

In its objection, the Employer contends eight (8) eligible voters, specifically named in its objection, were disenfranchised by virtue of casting ballots that were not

counted and/or not being provided ballots in time to be counted and/or were not provided ballots upon request, and that all such ballots are determinative of the outcome of the election. In its Offer of Proof, the Employer goes on to allege that the disenfranchisement was a "result of flaws and irregularities in the Board's mail ballot procedure", which, according to the Employer, "did not afford the eligible voters an adequate notice and opportunity to vote." The Employer, in its Offer of Proof, addressed the specific circumstances surrounding four of the voters it named in its objection, did not address the other four, and proffered the names of three additional eligible voters whose ballots were not counted. The central thrust of the Employer's objection, and the point on which all of the eligible voters listed and detailed in its Offer of Proof would provide testimony, concerns the circumstances surrounding the mailing and delivery of ballots. Specifically, the Employer contends the employees will testify that either a) they properly deposited a ballot in a mail box in sufficient time for the ballot to arrive in the Regional Office to be counted in the election but the ballot was either not received or received after the count, or b) they received their ballot too late to be able to return it in a timely manner or c) they did not receive a ballot. The Employer contends the election should be set aside and a new election should be conducted. I disagree.

The Investigation.

The investigation revealed that all voter kits, which include voting instructions, a ballot, and inner and outer envelopes, were sent out from the Regional Office on November 9, 2015, to the addresses listed on the voter eligibility list provided by the Employer. Of the individuals named in the Employer's objection and its Offer of Proof (a total of 11 individuals), two ballots cast by Mosier and Greenland, and timely received in

the Regional Office were opened and counted on November 30 and included in the Tally of Ballots. A third voter, Bryce Perry, returned an unsigned ballot which was received by this office on November 17. As unsigned ballots are considered to be void and not to be counted, the Region mailed Perry a duplicate voter kit that same day. The Region received Perry's duplicate ballot on December 11 after the Tally of Ballots issued. The fourth voter, Carlos Delgado, mailed an unsigned ballot, postmarked on November 28 and received by the Region on December 2 after the Tally of Ballots issued. With respect to Kevin Millen, the Employer contends Millen received the ballot at his old address, on November 27 but it was too late to cast a ballot. To date, the Region has not received a ballot from Millen. With respect to the sixth voter, Shawn Carter, his voter kit was returned to this office on November 19, as undeliverable. That same day, the Region acquired a new address from the Employer, and mailed Carter a duplicate ballot. To date, the Region has not received a ballot. With respect to the seventh voter Elicia Greene, to date the Region has not received a returned voter kit or a ballot. With respect to the eighth voter, Darren Bradenburg, the investigation revealed that the Employer contacted the Region to request a duplicate ballot, was informed that the voter needed to make such request, but Brandenburg did not call the Region so no duplicate ballot was mailed. On December 4 the Region received Brandenburg's voter kit as undeliverable.

With respect to the additional three individuals named in the Employer's offer of proof, the investigation revealed that on December 2 the Region received one ballot postmarked November 30. As it was received after the issuance of the Tally of Ballots,

this ballot was not opened or counted. To date, the Region has not received the other two ballots, nor have their voter kits been returned as undeliverable.

Discussion

The Board has recently addressed similar concerns associated with mail delivery and timely receipt of ballots in a regional office. In *Classic Valet Parking*, 363 NLRB No. 23 (October 23, 2015), 10 ballots were excluded because they were not received in Regional Office 29 prior to the completion of the Tally of Ballots.[3] There, as in the instant case, the employer contended that these 10 ballots, postmarked prior to but arriving after the Tally of Ballots, should be counted. The *Classic* Board rejected the employer's contention. Although addressing the concerns of possible disenfranchisement of eligible voters as a result of vagaries of postal service mail delivery, the Board opted to maintain the substantial policy considerations favoring the finality of election results. Citing *Versail Mfg., Inc.*, 212 NLRB 592, 593 (1974), the Board pointed out that without adhering to this policy of finality, election results could be delayed for significant periods of time as mail-in ballots slowly come into regional offices. *Id*. at 1

The reasoning presented in both *Classic* and *Versail* is persuasive, on point, and directly applicable to the facts of the instant case. It is quite evident that the situation that caused the Board concern in those cases is also present in the instant case as ballots were received days after the Tally of Ballots, one arriving 11 days late. The Employer here contends that these ballots should be counted. However, the Employer cites no cases which directly support this contention. *Kerrville Bus Co.*, 257 NLRB 176

[3] In *Classic Valet*, the voters were provided with a total of 14 days to return the mail-in ballots. In the instant case 21 days was the turn-around time.

(1981), which the Employer cites, undermines its argument as its implicit holding is that to be counted, a ballot must arrive in the Regional Office prior to the completion of the Tally of Ballots. In that case, a mixed manual/mail-in election, the mail-in ballots were to be received by the Regional Office by December 15 and the manual ballots were to be cast on December 17. Two days later, on December 19, the ballots were comingled and counted. All of the seven challenged mail-in ballots arrived in the Regional Office after the December 15 cut-off date but either before or on the December 17 manual voting date, and prior to the December 19 vote count. The *Kerrville* Board, after reviewing the facts, accepted the Hearing Officer's recommendation, overruled the challenges and directed that the challenged ballots be counted. The Board found it significant that the mail-in ballots, although technically late, were received by the date for the manual balloting and prior to the issuance of the Tally of Ballots. Therefore, for a vote to be counted in a mail-in election it must arrive in the Regional Office prior to the tally of ballots.[4] See also *Watkins Construction Co.*, 332 NLRB 828, 828 (2000) (late ballot should be counted if it is received before the count begins) In the final analysis, the Board's "in before the Tally" rule establishes a clear, bright line for counting mail-in ballots as it is easily discernible by voters, Board Agents, Petitioners, and Employers alike.

Applying the holding in *Kerrville* to the instant case, as suggested by the Employer, it is clear that all ballots must arrive in the Regional Office prior to the Tally of Ballots to be counted in the election. I therefore recommend that any part of the Employer's objection based on not counting late arriving ballots be overruled.

[4] Each eligible voter received three notices of the date, time, and place for their ballot to be received in the Regional Office. Two in the election kit (form letter and voting instruction form) and one in the Notice to Employees required to be conspicuously posted by the Employer in the workplace.

In regard to the Employer's allegation that ballots were not provided upon request, the investigation revealed that the Regional Office received only one request for a duplicate election kit. However, this request came from the Employer who was informed to have the voter call the Regional Office directly. The Employer does not contend, nor is there record the voter requested a duplicate voter kit. As there is no evidence to support the Employer's contention that certain voters were disenfranchised as a result of the Regional Office not providing duplicate voter kits upon request, I recommend that this portion of the Employer's Objection be overruled.

Finally, the Employer's objection implies that it is the postmark on the ballot envelope and not the time stamp affixed by the Regional Office that should control when a ballot is cast and such ballot is therefore eligible to be included in the ballot count. The Employer argues that since the Region counted only those ballots actually received prior to the Tally, the election should be set aside. In regard to this allegation, the Board has found that the failure of the Postal Service to deliver mail ballots does not necessitate setting aside an election. See *J. Ray McDermott & Co. v. NLRB*, 571 F.2d 850, 855 (1978)("It cannot be said that an election by mail is per se invalid whenever a potentially decisive number of votes, no matter how small, is lost through the vagaries of mail delivery."). As discussed above, to be counted, ballots must be received by the Regional Office before the Tally to be counted.

CONCLUSION

Based upon the above noted precedent as applied to the facts revealed by the investigation, the challenges are sustained and the Employer's objection is overruled in its entirety.

CERTIFICATION OF REPRESENTATIVE

It is certified that a majority of the valid ballots have been cast for INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, LOCAL 15, and that it is the exclusive collective bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the to the Union's national agreement with the Employer, and guards and supervisors as defined by the Act.

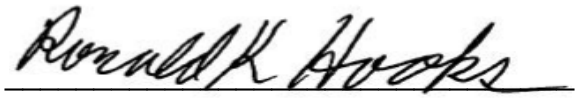
REQUEST FOR REVIEW

Pursuant to the provisions of Sections 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington DC, a request for review of this decision which may be combined with a request for review of the regional director's decision to direct an election as provided in Sections 102.67(c) and 102.69 (c)(2), if not previously filed. The request for review must conform to the requirements of Sections 102.67 (e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by January 4, 2016 If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select the E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board 1015 Half Street, S.E., Washington DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties

and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

DATED at Seattle, Washington on December 18, 2015.



Ronald K. Hooks
Regional Director, Region 19
National Labor Relations Board
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

Michael Willats

From: Dmitri Iglitzin <iglitzin@workerlaw.com>
Sent: Monday, January 04, 2016 3:11 PM
To: David Shankman
Cc: Katelyn Sypher; Sal Ponce; 'Mylor Treneer'
Subject: PSAV Presentation Services 19-RC-161471

Follow Up Flag: Follow up
Flag Status: Flagged

David:

Pursuant to Section 8(d) of the NLRA, IATSE Local 15 hereby formally requests that PSAV commence meeting with it on the earliest practical date to negotiate and execute an agreement relating to the wages, hours, and other terms and conditions of employment of the bargaining unit of PSAV employees that was recently certified by the NLRB (referenced above).

Mylor Treneer, Business Agent for IATSE Local 15, will be the union representative for these negotiations. Please let Mylor know who will be his counterpart at PSAV, so he can discuss the scheduling of these negotiations.

Thank you very much,

Dmitri Iglitzin
Counsel for IATSE Local 15

Dmitri Iglitzin | **Schwerin Campbell Barnard Iglitzin & Lavitt, LLP** | 206.257-6003 | www.workerlaw.com

Union Representation - Strategic Organizing - Campaign Finance

This communication is intended for a specific recipient and may be protected by the attorney-client and work-product privilege.

EXHIBIT 2

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Agency Website: www.nlrb.gov
Telephone: (206)220-6300
Fax: (206)220-6305

Download
NLRB
Mobile App

January 12, 2016

JAYMES TOYCEN, REGIONAL VICE PRESIDENT
PSAV PRESENTATION SERVICES
26020 201ST PL SE
COVINGTON, WA 98042-6123

Re: PSAV Presentation Services
Case 19-CA-167454

Dear Mr. Toycen:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney CAROLYN MCCONNELL whose telephone number is (206)220-6285. If this Board agent is not available, you may contact Supervisory Examiner KAREN ROOKER whose telephone number is (206)220-6337.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly. **Due to the nature of the allegations in the enclosed unfair labor practice charge, we have identified this case as**

one in which injunctive relief pursuant to Section 10(j) of the Act may be appropriate. Therefore, in addition to investigating the merits of the unfair labor practice allegations, the Board agent will also inquire into those factors relevant to making a determination as to whether or not 10(j) injunctive relief is appropriate in this case. Accordingly, please include your position on the appropriateness of Section 10(j) relief when you submit your evidence relevant to the investigation.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Ronald K. Hooks

RONALD K. HOOKS
Regional Director

Enclosures/pr

1. Copy of Charge
2. Commerce Questionnaire

cc: DAVID S. SHANKMAN, ATTORNEY
SHANKMAN LEONE, P.A.
707 N. FRANKLIN STREET
TAMPA, FL 33602

Revised 3/21/2011

NATIONAL LABOR RELATIONS BOARD

MCCONNELL

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office: If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER
	19-CA-167454

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

[ ] CORPORATION [ ] LLC [ ] LLP [ ] PARTNERSHIP [ ] SOLE PROPRIETORSHIP [ ] OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS *(Products handled or manufactured, or nature of services performed).*

7. A. PRINCIPAL LOCATION:	B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. Total:	B. At the address involved in this matter:

9. DURING THE MOST RECENT *(Check appropriate box):* [ ] **CALENDAR YR** [ ] **12 MONTHS** or [ ] **FISCAL YR** *(FY dates)*

	YES	NO
A. Did you **provide services** valued in excess of $50,000 directly to customers outside your State? If no, indicate actual value. $		
B. If you answered no to 9A, did you **provide services** valued in excess of $50,000 to customers in your State who purchased goods valued in excess of $50,000 from directly outside your State? If no, indicate the value of any such services you provided. $		
C. If you answered no to 9A and 9B, did you **provide services** valued in excess of $50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than $50,000, indicate amount. $		
D. Did you **sell goods** valued in excess of $50,000 directly to customers located outside your State? If less than $50,000, indicate amount. $		
E. If you answered no to 9D, did you **sell goods** valued in excess of $50,000 directly to customers located inside your State who purchased other goods valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $		
F. Did you **purchase and receive goods** valued in excess of $50,000 from directly outside your State? If less than $50,000, indicate amount. $		
G. Did you **purchase and receive goods** valued in excess of $50,000 from enterprises who received the goods directly from points outside your State? If less than $50,000, indicate amount. $		
H. **Gross Revenues** from all sales or performance of services ***(Check the largest amount)***: [ ] $100,000 [ ] $250,000 [ ] $500,000 [ ] $1,000,000 or more If less than $100,000, indicate amount.		
I. **Did you begin operations within the last 12 months?** If yes, specify date: _____		

10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

[ ] YES [ ] NO *(If yes, name and address of association or group).*

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE *(Type or Print)*	SIGNATURE	E-MAIL ADDRESS	DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
19-CA-167454	1/7/2016

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
PSAV Presentation Services

b. Tel. No. 206-631-8484

c. Cell No.

f. Fax No. 206-652-4766

d. Address *(Street, city, state, and ZIP code)*
26020 201st Place SE
Covington, WA 98042

e. Employer Representative
Jaymes Toycen

g. e-Mail
jtoycen@psav.com

h. Number of workers employed
approx. 65

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Service Provider

j. Identify principal product or service
Event Presentation Services

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
Within the past six (6) months the Employer has violated section 8(a)(1) and (5) of the Act by failing to bargain with the Union after the Union became certified, despite the Union's request that it do so.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Alliance of Theatrical Stage Employees, Local 15

4a. Address *(Street and number, city, state, and ZIP code)*
2800 1st Ave, Suite 231
Seattle, WA 98121

4b. Tel. No. 206-441-1515

4c. Cell No.

4d. Fax No. 206-448-5325

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)* International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the U.S., its Territories and Canada

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Katelyn M Sypher
(signature of representative or person making charge)

Katelyn Sypher, Attorney
(Print/type name and title or office, if any)

Address 18 W Mercer St, Suite 400, Seattle, WA 98119

1/7/16
(date)

Tel. No. 206-257-6021

Office, if any, Cell No.

Fax No. 206-378-4132

e-Mail
sypher@workerlaw.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Michael Willats

From: McConnell, Carolyn <Carolyn.McConnell@nlrb.gov>
Sent: Friday, February 12, 2016 7:14 PM
To: David Shankman; Dmitri Iglitzin; Katelyn Sypher
Subject: 19-CA-167454, PSAV

Parties:

This case is being held in abeyance pending the Board's ruling on the request for review in 19-RC-167141.

Sincerely,

Carolyn McConnell
Field Attorney | National Labor Relations Board | Region 19
United States Government
2948 Jackson Federal Building, 915 Second Ave., Seattle, WA 98174
✉ carolyn.mcconnell@nlrb.gov | ☎ (206) 220-6285 | 🖷 (206) 220-6305

The NLRB encourages all parties to file documents electronically through our online E-File system: https://mynlrb.nlrb.gov/portal/nlrb.pt?open=512&objID=202&mode=2

EXHIBIT 4

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AUDIO VISUAL SERVICES GROUP, INC.,
d/b/a PSAV PRESENTATION SERVICES
Employer

and 19-RC-161471

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 15
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election and the Decision on Challenges and Objection and Certification of Representative is denied as it raises no substantial issues warranting review.[1]

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

Dated, Washington, D.C., May 19, 2016.

[1] Member Miscimarra believes the instant case highlights some of the inherent disadvantages associated with conducting a mail-ballot election rather than a manual election, especially considering that four ballots mailed by four eligible voters were never received by the Region, and the Region did not count three other ballots received after the tally was conducted. Each of these problems involved a potentially determinative number of ballots, given that the tally was 36-33 in favor of the Union. However, Member Miscimarra agrees that the Regional Director did not abuse his discretion in conducting a mail-ballot election. He further believes that the instant case is materially different from *Classic Valet Parking*, 363 NLRB No. 23 (2015), and *Premier Utility Services, LLC*, 363 NLRB No. 159 (2016), two cases in which Member Miscimarra dissented based on this view that fundamental breakdowns in the mail-ballot election warranted rerun elections. In this case, Member Miscimarra concurs with the denial of review based on the high level of participation in the election, the relatively small (though possibly determinative) number of voters who were potentially disenfranchised, and the absence of substantial irregularities in the Region's adherence to the Board's mail-ballot procedures.

TO

REGION 19 REGIONAL DIRECTOR
DAVID SHANKMAN, ESQ.
DMITRILGLITZIN, ESQ.

From: David Shankman [mailto:DShankman@shankmanleone.com]
Sent: Tuesday, May 24, 2016 10:55 AM
To: Katelyn Sypher
Cc: Dmitri Iglitzin
Subject: RE: IATSE Local 15 - PSAV

Please advise regarding below. We asked Mylor a week ago if not longer and there has been no response.

David Shankman
Shankman Leone, P.A.
707 Franklin St.
5th Floor
Tampa, Florida 33602
Phone (813)223-1099
Facsimile (813) 223-1055
Direct: (813)252-7971
Shankman|Leone
Attorneys

From: David Shankman
Sent: Monday, May 23, 2016 8:14 PM
To: Katelyn Sypher <sypher@workerlaw.com>
Cc: Dmitri Iglitzin <iglitzin@workerlaw.com>
Subject: RE: IATSE Local 15 - PSAV

Katelyn, thanks for the note. We were waiting to hear back from Mylor regarding an agreed date for negotiations for the rigging contract but hadn't heard back. Since then, the NLRB decision was issued so I wanted to find out if we had enough time on June 9-10 or whether we wanted to block off some other dates. Should we handle that through you or through Mylor (he never got back to our RVP that he was working with). Please advise.

David Shankman
Shankman Leone, P.A.
707 Franklin St.
5th Floor
Tampa, Florida 33602
Phone (813)223-1099
Facsimile (813) 223-1055
Direct: (813)252-2971
Shankman|Leone
Attorneys

From: Katelyn Sypher [mailto:sypher@workerlaw.com]
Sent: Monday, May 23, 2016 5:50 PM
To: David Shankman <DShankman@shankmanleone.com>

Cc: Dmitri Iglitzin <iglitzin@workerlaw.com>
Subject: IATSE Local 15 - PSAV

David,

Now that the Board has denied PSAV's request for review of all Region 19 pre-election and election-related determinations, will PSAV honor its obligations under the Act and come to the table to bargain a first contract with Local 15?

Please let us know what dates the Employer has available for a first bargaining session.

Best regards,

Katelyn Sypher | **Schwerin Campbell Barnard Iglitzin & Lavitt LLP** | 206.257.6021 | www.workerlaw.com
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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

COMPLAINT AND NOTICE OF HEARING

This Complaint is based on a charge filed by International Alliance of Theatrical Stage Employees, Local 15 (the "Union"). It is issued pursuant to § 10(b) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.*, and § 102.15 of the Rules and Regulations of the National Labor Relations Board (the "Board"), and alleges that Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services ("Respondent"), herein called by its correct name, has violated the Act as described below.

1.

The charge in this proceeding was filed by the Union on January 7, 2016, and a copy was served on Respondent by U.S. mail on January 12, 2016.

2.

(a) At all material times, Respondent has been a State of Delaware corporation with offices and places of business in Tukwila and Tacoma, Washington (the "facilities"), where it is engaged in the business of providing event technology services.

EXHIBIT 7

(b) In conducting its operations described above in paragraph 2(a) during the past 12 months, which period is representative of all material times, Respondent received gross revenue in excess of $500,000.

(c) In conducting its operations described above in paragraph 2(a) during the past 12 months, which period is representative of all material times, Respondent purchased and received at the facilities goods valued in excess of $50,000 directly from points outside the State of Washington.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of §§ 2(2), (6), and (7) of the Act.

3.

At all material times, the Union has been a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times, an unnamed agent held the position of Respondent's attorney and has been an agent of Respondent within the meaning of § 2(13) of the Act.

5.

(a) The following employees of Respondent ("Unit") constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act:

> All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by Respondent at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities.

(b) On December 18, 2015, in Case 19-RC-161471, the Union was certified as the exclusive collective bargaining representative of the Unit.

(c) On May 19, 2016, the Board denied Respondent's request for review of the certification of representative in Case 19-RC-161471.

(d) At all times since December 18, 2015, based on § 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6.

(a) On about January 4, 2016, the Union, by e-mail, requested that Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the Unit.

(b) On about May 23, 2016, the Union, by e-mail, renewed its request for recognition and bargaining.

(c) From about January 4, 2016, to May 23, 2016, Respondent failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

7.

By the conduct described above in paragraph 6, Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of §§ 8(a)(1) and (5) of the Act.

8.

The unfair labor practices of Respondent described above affect commerce within the meaning of §§ 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph 6, the General Counsel seeks an Order requiring that, at a meeting or meetings scheduled to ensure the widest possible attendance, a responsible agent of Respondent, such as the unnamed agent set forth in paragraph 4 above, read the notice to the employees on work time in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during work time in the presence of Respondent's agent identified above in paragraph 4.

WHEREFORE, as part of the remedy for Respondent's unfair labor practices alleged above in paragraph 6, the General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before July 7, 2016, or postmarked on or before July 6, 2016**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case

Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. *See* § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the **25th day of October, 2016, at 9 a.m.,** in the James C. Sand Hearing Room of the Jackson Federal Building, 915 Second

Avenue, Seattle, Washington, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Seattle, Washington, this 23rd day of June, 2016.

RK Hooks

RONALD K. HOOKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Attachments

Form NLRB-4668
(6-2014)

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence**: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered**

(OVER)

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case 19-CA-167454

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL NO.
7015 1520 0000 8841 6110

JAYMES TOYCEN
REGIONAL VICE PRESIDENT
PSAV PRESENTATION SERVICES
26020 201ST PL SE
COVINGTON, WA 98042-6123

REGULAR MAIL

KATELYN SYPHER, ATTORNEY
SCHWERIN CAMPBELL BARNARD
IGLITZIN & LAVITT LLP
18 WEST MERCER STREET SUITE 400
SEATTLE, WA 98119

REGULAR MAIL

DAVID S. SHANKMAN, ATTORNEY
SHANKMAN LEONE, P.A.
707 N. FRANKLIN STREET
TAMPA, FL 33602

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
LOCAL 15
2800 1ST AVE STE 231
SEATTLE, WA 98121-1119

IMPORTANT NOTICE

The date which has been set for hearing in this matter should be checked immediately. If there is proper cause for not proceeding with the hearing on that date, a motion to change the date of hearing should be made within ten (10) days from the issuance of the Complaint. Thereafter, the Regional Office will assume that the scheduled hearing date has been agreed upon and that all parties will be prepared to proceed to the hearing on that date. Also, note the attached new Rules pertaining to continuances.

All parties are encouraged to explore fully the possibilities of settlement. Early settlement agreements prior to extensive and costly trial preparation may result in substantial savings of time, money and personnel resources for all parties. The Board agent assigned to this case will be happy to discuss settlement at any mutually convenient time.

Anne Pomerantz, Regional Attorney
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rescheduling Unfair Labor Practice Hearings

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board issues a final rule permanently implementing its recent experimental modification of the procedures for rescheduling unfair labor practice hearings. The procedures are permanently modified so that the authority to reschedule hearings is transferred, subject to certain exceptions, from the Regional Directors to the administrative law judges.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTAL INFORMATION: On August 1, 1988, the National Labor Relations Board implemented a one-year experiment in all of its Regional Offices whereby the authority to reschedule unfair labor practice hearings was transferred, subject to certain exceptions, from the Regional Directors to the administrative law judges. (See 53 FR 26348). The experiment was subsequently extended until November 30, 1989 (see 54 FR 31392), and a comment period was provided until October 2, 1989 (see 54 FR 37039).

The Board received comments by the Acting Associate General Counsel, from the Deputy Chief Administrative Law Judge, and from several private law firms or attorneys that practice before the Agency. Each are summarized below.

Acting Associate General Counsel

The comments by Acting Associate General Counsel William G. Stack indicated that, although most of the Regional Offices opposed the experimental rescheduling system, the data which they had accumulated during the experimental period showed that the experiment had actually had "minimal impact" on their case processing. Thus, given the Board's expressed concern about the public's perception of the fairness of the old system, the Acting Associate General Counsel concluded that "permanently instituting the new system may create a more favorable image of the Agency with little, if any, adverse affect on casehandling."

Deputy Chief Administrative Law Judge

The comments from Deputy Chief Administrative Law Judge David S. Davidson indicated that while the experimental procedure had "somewhat increased" the workload of the administrative law judges, "most of the [rescheduling] requests require little time for disposition, and continuation of the procedure would present no problem" for the judges. However, noting that a postponement was virtually automatic in cases where there was no objection to the request, the Deputy Chief Administrative Law Judge suggested that an additional exception might be allowed to permit the Regional Directors to reschedule the hearing in such cases. Such an exception, the Deputy Chief Administrative Law Judge concluded, "would significantly reduce the number of requests coming to [the administrative law judges] and should have little impact on public perception of fairness."

Private Practitioners

Four comments were received from private law firms or attorneys that practice before the Agency. Two of these comments, from Edward Miller, former NLRB chairman and now Senior Counsel of Pope, Ballard, Shepard & Fowle, Ltd., and from Dean Denlinger of Denlinger, Rosenthal & Greenberg, were submitted at the outset of the experiment. Former Chairman Miller indicated that, although he had some concerns about how some of the exceptions would be applied, he was supportive of the experiment. Denlinger indicated that he generally supported the changes in the experimental procedure and recommended that the changes be made permanent, but urged that the exceptions in the experimental rule be eliminated and that all decisions concerning the rescheduling of hearings be made by the administrative law judges. The two other comments were submitted by G. Roger King of Bricker & Eckler, and Fred F. Holroyd of Holroyd, Yost & Merical. G. Roger King indicated that Bricker & Eckler was supportive of the experimental procedure, and recommended that the experiment "be made permanent." Fred F. Holroyd indicated that while he was also supportive of changing the old procedure, he could see "no difference in the actual practice from the old system to the new," and recommended that the authority to reschedule hearings be transferred to the administrative law judges without exception.

Having considered all of the above comments, the Board has decided to make the experimental rescheduling procedure permanent. Virtually all of the comments indicate that the experimental procedure will help at least in some degree to change the apparent public perception of unfairness in this area. Accordingly, we conclude that the experimental procedure will serve its stated purpose and should be permanently implemented in a final rule.

We will, however, make one change in the experimental procedure. In agreement with Deputy Chief Administrative Law Judge Davidson, we see no reason not to permit the Regional Directors to continue to reschedule hearings in those instances where there is no objection. Accordingly, we will incorporate this change into the final rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Board certifies that the rule will not have a significant impact on a substantial number of small businesses

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, labor management relations.

Accordingly, 29 CFR part 102 is amended as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1).

2. Sections 102.16 and 102.24(a) are revised to read as follows:

§ 102.16 Hearing; change of date or place.

(a) Upon his own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may extend the date of such hearing or may change the place at which it is to be held, except that the authority of the Regional Director to extend the date of a hearing shall be limited to the following circumstances:

(1) Where all parties agree or no party objects to extension of the date of hearing;

(2) Where a new charge or charges have been filed which, if meritorious, might be appropriate for consolidation with the pending complaint;

(3) Where negotiations which could lead to settlement of all or a portion of the complaint are in progress;

(4) Where issues related to the complaint are pending before the General Counsel's Division of Advice or Office of Appeals; or

(5) Where more than 21 days remain before the scheduled date of hearing.

(b) Where in circumstances other than those set forth in subsection (a) of this section, motions to reschedule the hearing should be filed with the Division of Judges in accordance with section 102.24(a). When a motion to reschedule has been granted, the Regional Director issuing the complaint shall retain the authority to order a new date for hearing and retain the responsibility to make the necessary arrangements for conducting such hearing, including its location and the transcription of the proceedings.

§ 102.24 Motions; where to file; contents; service on other parties; promptness in filing and response; summary judgment procedures

(a) All motions under § 102.22 and 102.29 made prior to the hearing shall be filed in writing with the Regional Director issuing the complaint. All motions for summary judgment or dismissal made prior to the hearing shall be filed in writing with the Board pursuant to the provisions of § 102.50. All other motions made prior to the hearing, including motions to reschedule the hearing under circumstances other than those set forth in § 102.16(a), shall be filed in writing with the chief administrative law judge in Washington, DC, with the deputy chief judge in San Francisco, California, with the associate chief judge in New York, New York, or with the associate chief judge in Atlanta, Georgia, as the case may be. All motions made at the hearing shall be made in writing to the administrative law judge or stated orally on the record. All motions filed subsequent to the hearing, but before the transfer of the case to the Board pursuant to § 102.45, shall be filed with the administrative law judge, care of the chief administrative law judge in Washington, DC, the deputy chief judge in San Francisco, California, the associate chief judge in New York, New York, or the associate chief judge in Atlanta, Georgia, as the case may be. Motions shall briefly state the order or relief applied for and the grounds therefor. All motions filed with a Regional Director or an administrative law judge as set forth above shall be filed therewith by transmitting three copies thereof together with an affidavit of service on the parties. All motions filed with the Board, including motions for summary judgment or dismissal, shall be filed with the Executive Secretary of the Board in Washington, DC, by transmitting eight copies thereof together with an affidavit of service on the parties. Unless otherwise provided in these rules, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

* * * * *

Dated, Washington, DC, December 1, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89-29172 Filed 12-12-89; 8:45 am]

BILLING CODE 7545-01-M

ATT. C

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

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

and Case 19-CA-167454

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 15

JOINT MOTION AND STIPULATION OF FACTS

The parties to this case, Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services ("Respondent"), International Alliance of Theatrical Stage Employees, Local 15 ("Charging Party"), and Counsel for the General Counsel ("General Counsel"), jointly move to waive a hearing with respect to the sole allegation in this matter and to authorize the Administrative Law Judge ("ALJ") to issue a decision pursuant to § 102.35(a)(9) of the Rules and Regulations of the National Labor Relations Board ("Board"). The waiver of the hearing will effectuate the purposes of the Act and avoid unnecessary costs and delay. This Motion is not intended in any way to waive the parties' rights to obtain judicial review of any Decision and Order the Board issues in this case based on this stipulated record.

If this Motion is granted, the parties agree to the following:

1. The record in this matter, Case 19-CA-167454, consists of the Charge and Amended Charge, the Complaint, the Answer to the Complaint, the Stipulation of Facts (provided below) together with any exhibits attached thereto, and each party's Statement of Issue Presented and Statement of Position.

2. This matter is submitted directly to the ALJ for issuance of findings of fact, conclusions of law, and an order.

3. The parties waive a hearing before an ALJ.

4. The parties have withdrawn all subpoenas for witness testimony or for the production of documents any of them have served in connection with the hearing that was scheduled to occur before the ALJ.

5. The ALJ should set the time for the filing of briefs.

The parties also jointly agree to the following Stipulation of Facts in this matter. This stipulation is made without prejudice to any objection any party may have as to the relevance of any facts stated herein.

STIPULATION OF FACTS

1. The Charge in this matter, which is attached as Exhibit A, was filed by the Charging Party on January 7, 2016, and was served on Respondent by regular mail on January 12, 2016.

2. On June 23, 2016, the Regional Director of Region 19 of the Board ("Regional Director") issued a Complaint and Notice of Hearing ("Complaint") in this matter, which is attached as Exhibit B.

3. On July 6, 2016, Respondent filed a timely Answer to the Complaint, which is attached as Exhibit C, denying that it had violated the National Labor Relations Act ("Act").

4. Respondent is a State of Delaware corporation with offices and places of business in Tukwila, Seattle, Sea-Tac, Bellevue, and Tacoma, Washington, where it is engaged in the business of providing event technology services.

5. In conducting its operations described above in paragraph 4, during the past 12 months, which period is representative of all material times, Respondent received gross revenue in excess of $500,000.

6. In conducting its operations described above in paragraph 4 during the past 12 months, which period is representative of all material times, Respondent purchased and received at its facilities located within the State of Washington goods valued in excess of $50,000 directly from points outside the State of Washington.

7. At all material times, Respondent has been, and is, an employer engaged in commerce within the meaning of §§ 2(2), (6), and (7) of the Act.

8. At all material times, the Charging Party has been a labor organization within the meaning of § 2(5) of the Act.

9. On October 6, 2015, the Charging Party filed a petition in Case 19-RC-161471, which is attached as Exhibit D, seeking to represent the following employees ("Unit") of Respondent at its facilities in Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington:

> all full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians.

10. On October 23, 2015, the Regional Director issued a Decision and Direction of Election ("D&DE") in Case 19-RC-161471, which is attached as Exhibit E, finding that the Unit constitutes a unit appropriate for the purpose of collective bargaining and directing that a mail ballot election be held among the employees in the Unit.

11. Based on the D&DE, a mail ballot election was held among Respondent's employees from November 16 to November 30, 2015. On November 30, 2015, the ballots were counted and an initial Tally of Ballots showed a determinative number of challenged ballots. That Tally is attached as Exhibit F.

12. On December 18, 2015, the Regional Director issued a Decision on Challenges and Objection and Certification of Representative ("DCO&CR") in Case 19-RC-161471, which is attached as Exhibit G.

13. On January 4, 2016, Respondent filed a Request for Review of the D&DE and DCO&CR with the Board, which is attached as Exhibit H.

14. On February 12, 2016, Region 19 advised Respondent and Charging Party via email that the charge attached as Exhibit A was being held in abeyance pending the Board's ruling on Respondent's Request for Review. That email is attached as Exhibit I.

15. On May 19, 2016, the Board denied Respondent's Request for Review, which denial is attached as Exhibit J.

16. On about January 4, 2016, and May 23, 2016, the Charging Party, by email to an agent of Respondent, requested that Respondent recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit. Those emails are attached as Exhibit K.

17. From about January 4, 2016, to May 23, 2016, Respondent declined to recognize and enter into collective bargaining negotiations with the Charging Party as the exclusive collective-bargaining representative of the Unit.

18. On May 23, 2016, by email, Respondent agreed to Charging Party's request to participate in collective bargaining negotiations with the Charging Party and worked with the Charging Party to coordinate available negotiation dates. That email chain is attached as Exhibit L. To date, Respondent and the Charging Party have engaged in multiple bargaining sessions during which they have exchanged both proposals and counterproposals, reaching tentative agreement on several contractual provisions. Additional negotiations are currently scheduled.

STATEMENTS OF ISSUE PRESENTED

1. The General Counsel and Charging Party frame the issue as: Whether Respondent violated §§ 8(a)(1) and (5) by refusing to recognize and bargain with the Charging Party as the exclusive collective-bargaining representative of the Unit after the Charging Party had been certified as such, but before the Board had denied Respondent's Request for Review of that certification.

2. Respondent frames the issue as: Whether Respondent violated §§ 8(a)(1) and (5) by declining to enter into collective bargaining negotiations with the Charging Party as the exclusive collective-bargaining representative of the Unit while Respondent's Request for

Review of the Regional Director's DCO&CR in Case 19-RC-161471 was pending before the Board.

POSITIONS OF THE PARTIES

A. General Counsel's Position

The General Counsel's position is that Respondent violated §§ 8(a)(1) and (5) of the Act by refusing to recognize the Charging Party and bargain after the Charging Party was certified as the exclusive bargaining representative of the Unit. Given the nature of the violation, the General Counsel requests that Respondent be ordered to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit. The General Counsel also requests that a representative of Respondent be ordered to read the notice to the employees on work time in the presence of a Board agent, or that Respondent promptly have a Board agent read the notice to employees during work time in the presence of Respondent's agent.

B. Respondent's Position

Respondent's position is that it did not violate §§ 8(a)(1) and (5) of the Act by declining to enter into collective bargaining negotiations with the Charging Party prior to the Board's denial of its Request for Review on May 19, 2016, due to the conditional nature of the Regional Director's issued DCO&CR and further supported by Region 19's advising the parties that the charge would be held in abeyance pending the Board's ruling on Respondent's Request for Review. Therefore, Respondent had no bargaining obligation until after the Board's May 19, 2016 decision, and the Complaint should be dismissed.

C. Charging Party's Position

The Charging Party's position is that Respondent violated §§ 8(a)(1) and (5) of the Act by refusing to recognize the Charging Party and bargain after the Charging Party was certified as the exclusive bargaining representative of the Unit. The Charging Party concurs with the General Counsel as to the remedy for the violation.

Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services

By: Michael Willatts Date: 10/12/2016
MICHAEL WILLATTS
COUNSEL FOR PSAV

Counsel for the General Counsel, National Labor Relations Board

By: Date: 10/12/16
Carolyn McConnell

International Alliance of Theatrical Stage Employees, Local 15

By: Date: 10/12/2016
Counsel

Attachments

EXHIBIT A

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 19-CA-167454	Date Filed 1/7/2016

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
PSAV Presentation Services

b. Tel. No. 206-631-8484

c. Cell No.

f. Fax No. 206-652-4766

d. Address *(Street, city, state, and ZIP code)*
26020 201st Place SE
Covington, WA 98042

e. Employer Representative
Jaymes Toycen

g. e-Mail
jtoycen@psav.com

h. Number of workers employed
approx. 65

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Service Provider

j. Identify principal product or service
Event Presentation Services

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
Within the past six (6) months the Employer has violated section 8(a)(1) and (5) of the Act by failing to bargain with the Union after the Union became certified, despite the Union's request that it do so.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Alliance of Theatrical Stage Employees, Local 15

4a. Address *(Street and number, city, state, and ZIP code)*
2800 1st Ave, Suite 231
Seattle, WA 98121

4b. Tel. No. 206-441-1515

4c. Cell No.

4d. Fax No. 206-448-5325

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)* International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the U.S., its Territories and Canada

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Katelyn M Sypher
(signature of representative or person making charge)

Katelyn Sypher, Attorney
(Print/type name and title or office, if any)

Address 18 W Mercer St, Suite 400, Seattle, WA 98119

1/7/16
(date)

Tel. No. 206-257-6021

Office, if any, Cell No.

Fax No. 206-378-4132

e-Mail
sypher@workerlaw.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

RECEIVED-NLRB-REGION 19
2016 JAN -7 P 4: 26
SEATTLE, WASHINGTON

EXHIBIT B

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

COMPLAINT AND NOTICE OF HEARING

This Complaint is based on a charge filed by International Alliance of Theatrical Stage Employees, Local 15 (the "Union"). It is issued pursuant to § 10(b) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.*, and § 102.15 of the Rules and Regulations of the National Labor Relations Board (the "Board"), and alleges that Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services ("Respondent"), herein called by its correct name, has violated the Act as described below.

1.

The charge in this proceeding was filed by the Union on January 7, 2016, and a copy was served on Respondent by U.S. mail on January 12, 2016.

2.

(a) At all material times, Respondent has been a State of Delaware corporation with offices and places of business in Tukwila and Tacoma, Washington (the "facilities"), where it is engaged in the business of providing event technology services.

(b) In conducting its operations described above in paragraph 2(a) during the past 12 months, which period is representative of all material times, Respondent received gross revenue in excess of $500,000.

(c) In conducting its operations described above in paragraph 2(a) during the past 12 months, which period is representative of all material times, Respondent purchased and received at the facilities goods valued in excess of $50,000 directly from points outside the State of Washington.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of §§ 2(2), (6), and (7) of the Act.

3.

At all material times, the Union has been a labor organization within the meaning of § 2(5) of the Act.

4.

At all material times, an unnamed agent held the position of Respondent's attorney and has been an agent of Respondent within the meaning of § 2(13) of the Act.

5.

(a) The following employees of Respondent ("Unit") constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act:

> All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by Respondent at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities.

(b) On December 18, 2015, in Case 19-RC-161471, the Union was certified as the exclusive collective bargaining representative of the Unit.

(c) On May 19, 2016, the Board denied Respondent's request for review of the certification of representative in Case 19-RC-161471.

(d) At all times since December 18, 2015, based on § 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6.

(a) On about January 4, 2016, the Union, by e-mail, requested that Respondent recognize and bargain with it as the exclusive collective-bargaining representative of the Unit.

(b) On about May 23, 2016, the Union, by e-mail, renewed its request for recognition and bargaining.

(c) From about January 4, 2016, to May 23, 2016, Respondent failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

7.

By the conduct described above in paragraph 6, Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of §§ 8(a)(1) and (5) of the Act.

8.

The unfair labor practices of Respondent described above affect commerce within the meaning of §§ 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph 6, the General Counsel seeks an Order requiring that, at a meeting or meetings scheduled to ensure the widest possible attendance, a responsible agent of Respondent, such as the unnamed agent set forth in paragraph 4 above, read the notice to the employees on work time in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during work time in the presence of Respondent's agent identified above in paragraph 4.

WHEREFORE, as part of the remedy for Respondent's unfair labor practices alleged above in paragraph 6, the General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before July 7, 2016, or postmarked on or before July 6, 2016**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case

Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. *See* § 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the **25th day of October, 2016, at 9 a.m.,** in the James C. Sand Hearing Room of the Jackson Federal Building, 915 Second

Avenue, Seattle, Washington, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Seattle, Washington, this 23rd day of June, 2016.

RK Hooks

RONALD K. HOOKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Attachments

Form NLRB-4668
(6-2014)

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence**: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered**

(OVER)

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case 19-CA-167454

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED MAIL NO.
7015 1520 0000 8841 6110

JAYMES TOYCEN
REGIONAL VICE PRESIDENT
PSAV PRESENTATION SERVICES
26020 201ST PL SE
COVINGTON, WA 98042-6123

REGULAR MAIL

KATELYN SYPHER, ATTORNEY
SCHWERIN CAMPBELL BARNARD
IGLITZIN & LAVITT LLP
18 WEST MERCER STREET SUITE 400
SEATTLE, WA 98119

REGULAR MAIL

DAVID S. SHANKMAN, ATTORNEY
SHANKMAN LEONE, P.A.
707 N. FRANKLIN STREET
TAMPA, FL 33602

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
LOCAL 15
2800 1ST AVE STE 231
SEATTLE, WA 98121-1119

EXHIBIT C

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATONS 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

ANSWER

COMES NOW Respondent Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services ("PSAV" or "Respondent"), by and through the undersigned attorneys, and by way of an Answer to the Complaint issued in Case 19-CA-167454 admit or deny as follows:

1. Respondent admits the allegations contained in paragraph 1.

2. (a) Respondent admits to the allegations contained in paragraph 2(a).

   (b) Respondent admits to the allegations contained in paragraph 2(b).

   (c) Respondent admits to the allegations contained in paragraph 2(c).

   (d) Respondent admits to the allegations contained in paragraph 2(d).

3. The Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 3 and accordingly denies the same.

4. Respondent admits that it retains counsel for legal services. The allegations contained in paragraph 4 are vague and Respondent lacks sufficient knowledge to admit or deny the allegations and accordingly denies the same.

5. (a) Respondent admits that the positions identified in paragraph 5(a) have be recognized by the Board to constitute an appropriate bargaining unit for the locations identified therein. Respondent denies the remaining allegations contained in paragraph 5(a).

(b) Respondent admits that on December 18, 2015, Region 19 Regional Director Ronald K. Hooks issued his Decision on Challenges and Objection and Certification of Representative certifying the International Alliance of Theatrical Stage Employees, Local 15 ("Local 15") as the exclusive collective bargaining representative to the employees in the bargaining unit identified in paragraph 5(a). Additionally, the Regional Director's decision advised of both parties ability to seek Board review of his decision as well as the prior decision to direct an election. The decision identified that requests for review were required to be received by the Board by January 4, 2016. If no requests for review were filed by that date the Regional Director's decision would become final. Respondent denies the remaining allegations contained in paragraph 5(b).

(c) Respondent admits that following a timely request for review being submitted to the Board, on May 19, 2016, the Board issued its decision denying the Respondent's request for review of the Regional Director's decision.

(d) Paragraph 5(d) comprises a legal opinion that does not require a response. To the extent that a response is required, Respondent denies the allegations contained in paragraph 5(d).

6. (a) Respondent admits that on or around January 4, 2016, the International Alliance of Theatrical Stage Employees, Local 15 ("Local 15") submitted an email to Respondent requesting the initiation of bargaining. Respondent further admits that on January 4, 2016, it

served Local 15 with a copy of its request for review of the Regional Director's decision. Respondent denies the remaining allegations contained in paragraph 6(a).

(b) Respondent admits that following the Board's decision denying Respondent's request for review of the Regional Director's decision that, on or around May 23, 2016, Local 15 submitted an email to Respondent requesting the initiation of bargaining. In response to Local 15's email, Respondent agreed to begin negotiations and suggested potential dates for future negotiations. Respondent denies the remaining allegations contained in paragraph 6(b).

(c) Respondent denies the allegations contained in paragraph 6(c).

7. Paragraph 7 comprises a legal opinion that does not require a response. To the extent that a response is required, Respondent denies the allegations contained in paragraph 7.

8. Paragraph 8 comprises a legal opinion that does not require a response. To the extent that a response is required, Respondent denies the allegations contained in paragraph 8.

AFFIRMATIVE DEFENSES

First Affirmative Defense – Section 10(b) Statute of Limitations

The claims asserted in the Complaint are barred in whole, or in part, by the applicable statute of limitations.

Second Affirmative Defense – Inadequate Investigation/Compliance with Casehandling Manual

The Complaint is barred as it is the result of an investigation that failed to comply with the NLRB Casehandling Manual.

WHEREFORE the Respondent prays for the following relief:

1. For dismissal of the Complaint with prejudice, or for a Judgment in favor of the Respondent whereby all relief sought in the Complaint is denied;

2. For an award of attorney fees and costs incurred in the defense of this action;

3. For any other relief that may be just and proper.

July 6, 2016

Respectfully submitted,

/s/ David Shankman

David Shankman
Michael Willats
SHANKMAN LEONE, P.A.
707 N. Franklin Street
5th Floor
Tampa, FL 33602
Phone: (813) 223-1099
Fax: (813) 223-1055

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2016, a true and correct copy of the foregoing Answer and Affirmative Defenses was filed electronically through the NLRB E-File Portal on the following:

Ronald K. Hooks
Regional Director, Region 19
NLRB Regional Office
915 2nd Ave Ste 2948
Seattle, WA 98714-1006

Katelyn Sypher, Esq.
Schwerin Campbell Barnard
Iglitzin & Lavitt LLP
18 West Mercer Street Suite 400
Seattle, WA 98119
Attorney for Local 15

/s/ Michael Willats
Michael Willats

EXHIBIT D

FORM NLRB-502 (RC)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 19-RC-161471	Date Filed October 6, 2015

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE -** A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer	2b. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)*
PSAV Presentation Services	3315 S. 116th Street, Tukwila, WA 98168

3a. Employer Representative – Name and Title	3b. Address (If same as 2b – state same)
Jaymes Toycen, Regional Vice President	26020 201st Place SE, Covington, WA 98042

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
253-631-8484		206-652-4766	jtoycen@psav.com

4a. Type of Establishment *(Factory, mine, wholesaler, etc.)*	4b. Principal product or service	*5a. City and State where unit is located:*
Service Provider	Event Presentation Services	Seattle, Bellevue, Tukwila, & Tacoma, WA

5b. Description of Unit Involved

Included: All Technicians, including Entry-Level Technicians, Senior Technicians, Lead Technicians, Driver Technicians, Concierges, and Warehouse Technicians

Excluded: Project Managers, Riggers

6a. No. of Employees in Unit: 65

6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes [✓] No [ ]

Check One:

[ ] 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) *(If no reply received, so state).*

[ ] 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent ***(If none, so state).***	8b. Address

8c. Tel No.	8d Cell No.	8e. Fax No.	8f. E-Mail Address

8g. Affiliation, if any	8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any *(Month, Day, Year)*

9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? _____

(Name of labor organization) _____, has picketed the Employer since *(Month, Day, Year)* _____.

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. *(If none, so state)*
N/A

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address

11. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: [ ] Manual [✓] Mail [ ] Mixed Manual/Mail

11b. Election Date(s):	11c. Election Time(s):	11d. Election Location(s):
10/27/15 - 11/17/15	N/A	N/A

12a. Full Name of Petitioner (*including local name and number*)	12b. Address *(street and number, city, state, and ZIP code)*
International Alliance of Theatrical Stage Employees, Local 15	2800 1st Avenue, Suite 231, Seattle, WA 98121

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent *(if none, so state)*
International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the U.S., its Territories, and Canada

12d. Tel No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
206-441-1515		206-448-5325	businessagent@ia15.org

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title	13b. Address *(street and number, city, state, and ZIP code)*
Dmitri Iglitzin, Attorney	18W. Mercer Street, Suite 400, Seattle, WA 98102

13c. Tel No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address
206-257-6003		206-257-6036	iglitzin@workerlaw.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title	Date
Dmitri Iglitzin	Dmitri Iglitzin	Attorney	10/06/15

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT E

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

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

Employer

And **Case 19-RC-161471**

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 15

Petitioner

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of all full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its facilities in Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington.

A hearing officer of the Board held a hearing in this matter. The parties reached a stipulation on all substantive matters before me, including the appropriateness of the petitioned-for Unit. The only contested matter, and the only issue the parties addressed on the record at hearing, concerns the logistics of holding the petitioned-for election, which is a non-litigable issue. On the one hand, the Employer argues in favor of a manual election; on the other hand, Petitioner argues that a mail ballot election is appropriate. As explained below, I will direct a mail ballot election because employees in the petitioned-for Unit are geographically scattered and because conducting a manual election would not be an efficient use of the Board's financial resources.

THE EMPLOYER'S OPERATION[1]

The Employer is an in-house provider of meeting services that caters to the audio-visual needs of hotel guests and convention-goers at about 20 hotels in the greater Seattle area. The Employer sets up audio-visual services and takes down the equipment that needs to be presented to accommodate guests at hotels where there are meetings.

The approximately 95 employees in the petitioned-for Unit are assigned to a particular hotel or convention center and based out of Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington. About half of the approximately 95 employees are based out of Seattle, about 14

[1] Election mechanics are a non-litigable issue on which the parties were not allowed to present evidence. Given that the parties reached stipulations on all other issues, the record does not contain any evidence regarding the employees' work schedules, locations, or other issues. Rather, all information is based on arguments made by parties' counsel at hearing.

employees are based out of Bellevue, about six employees are based out of Sea-Tac, and about one or two employees are based out of Tacoma. Generally, it appears that employees are dispersed to work locations near their base. However, employees in the petitioned-for Unit travel regularly to other work locations, as needed by the Employer.

The majority of employees in the petitioned-for Unit work full time, with about twenty-five percent or less of the employees working part time. Both parties raise arguments about the possible impact of the part-time workforce on the election. The Employer contends that the timeframe in which the election will be held is the Employer's busy season. As a result, per the Employer, its part-time workforce will be regularly working over 30 hours per week and will not hold other employment during that time. Conversely, the Union contends that part-time employees regularly seek other work and thus may be required to turn down other work opportunities on the date of any manual election.

CONCLUSION

Based upon the entire record in this matter, I conclude and find as follows:

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.[2]

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. 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.

5. 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 full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the

[2] The Employer, a State of Delaware corporation, with offices and places of business in Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington, is engaged in the business of providing event technology services. Within the past twelve months, a representative period, the Employer received gross revenue in excess of $500,000 and purchased and received at its facilities located within the State of Washington goods valued in excess of $50,000 directly from points outside the State of Washington.

Union's national agreement with the Employer, and guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Alliance of Theatrical Stage Employees, Local 15.

A. Election Details

I have determined that a mail ballot election will be held. While the Board's longstanding policy is that representation elections should be conducted manually, the Board has recognized "that there are instances where circumstances tend to make it difficult for eligible employees to vote in a manual election or where a manual election, though possible, is impractical or not easily done." *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, §11301.2. In such circumstances, the Regional Director, in his discretion, "may reasonably conclude that conducting the election by mail [. .] would enhance the opportunity for all to vote." *Id.* Board policy states that the following situations normally suggest the propriety of using mail ballots: "(a) where eligible voters are 'scattered' because of their job duties over a wide geographic area; (b) where eligible voters are 'scattered' in the sense that their work schedules vary significantly, so that they are not present in a common location at common times." *Id.* In addition to scattering, the Regional Director "should also consider the efficient use of the Agency's financial resources, because their efficient and economic use is a reasonable concern." *Id.*

The Board has long held that Regional Directors act within their discretion and in accordance with the Casehandling Manual when they choose to direct mail ballot elections due to physical scattering of employees and conservation of Agency resources. *See, e.g.*, *Masiongale Electrical-Mechanical, Inc.*, 326 NLRB 493 (1998) (upholding Regional Director's decision to utilize mail ballot election where employees scatter among eight jobsites in three cities and none of the jobsites were owned by the employer); *San Diego Gas and Elec.*, 325 NLRB 1143 (1998) (finding that Regional Director should take employee scattering into account for deciding appropriateness of mail ballot elections).

Here, employees in the petitioned-for Unit are sufficiently scattered to warrant use of a mail-ballot election. Employees not only work in five different cities in the Puget Sound area, but also work at various worksites within each city. Moreover, these worksites are not owned by the Employer, which would require the Agency to procure space to conduct elections at the election sites proposed by the Employer. In light of the dispersed geographic locations of employees' worksites and the significant expense to the Agency to conduct a manual election, I find that a mail-ballot election is appropriate in this case.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 4:45 p.m. on Monday, November 9, 2015, ballots will be mailed to voters from the National Labor Relations Board, Region 19, 915 Second Ave., Room 2948, Seattle, Washington 98174. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by November 16, 2015 should communicate immediately with the National Labor Relations Board by either calling the Region 19 Office at (206) 220-6300 or our national toll-free line at 1-866-667- NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Regional office on Monday, November 30, 2015 at 2:00 p.m. In order to be valid and counted, the returned ballots must be received in the Regional office, prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **October 9, 2015** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in an economic strike who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that 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. Unit employees in the military services of the United States may vote if they request a ballot from the Regional Office and return it prior to the counting of the ballots.

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.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, October 27, 2015**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Seattle, Washington, on the 23rd day of October, 2015.

Ronald K Hooks

RONALD K. HOOKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

EXHIBIT F

FORM NLRB-760
(7-10)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Date Filed 10/6/15

AUDIO VISUAL SERVICES GROUP, INC.
d/b/a PSAV PRESENTATION SERVICES

Employer

and

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 15

Petitioner

Case No. 19-RC-161471

Date Issued November 30, 2015

City Seattle State WA

Type of Election:
(Check one:)

- ☐ Stipulation
- ☐ Board Direction
- ☐ Consent Agreement
- ☒ RD Direction
  Incumbent Union (Code)

(If applicable check either or both:)

- ☐ 8(b) (7)
- XX☒ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 93
2. Number of Void ballots ..... Ø
3. Number of Votes cast for PETITIONER 36
4. Number of Votes cast for .....
5. Number of Votes cast for .....
6. Number of Votes cast against participating labor organization(s) 33
7. Number of Valid votes counted (sum 3, 4, 5, and 6) 69
8. Number of challenged ballots 5
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 74
10. Challenges are ~~(are)~~ sufficient in number to affect the results of the election.
11. ~~A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast~~ for

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, LOCAL 15

For the Regional Director
Region 19

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYER

For PETITIONER

For

EXHIBIT G

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

AUDIO VISUAL SERVICES GROUP, INC. d/b/a
PSAV PRESENTATION SERVICES

Employer

and **Case 19-RC-161471**

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 15

Petitioner

DECISION ON CHALLENGES AND OBJECTION AND CERTIFICATION OF REPRESENTATIVE

On October 23, 2015, I issued a Decision and Direction of Election in this matter.[1] Pursuant to that Decision and Direction of Election, an election by secret mail ballot was conducted from November 9, 2015 until November 30, 2015, when the ballots were counted. The employees who were eligible to vote in the election included:

> All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialist, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities.

[1] The sole issue for the hearing was whether the election should be conducted manually or by mail. As explained in the Decision and Direction of Election, the Regional Director has complete discretion to determine whether an election should be conducted manually or by mail ballot. See *Nouveau Elevator Industries,* 326 NLRB 470, 471 (1998) (Regional Director has broad discretion in determining the method by which an election is conducted). In prefacing its objection, the Employer continues to contend, without a specific objection on this issue, that the election should have been conducted manually. The Employer states in its submission that it reserves its argument in regard to the method of voting in the event it should decide to request review of the Regional Director's Decision on Challenges and Objection and Certification of Representative.

The Tally of Ballots was made available to the parties pursuant to the Board's Rules and Regulations and showed the following results:

Approximate number of eligible voters	93
Void ballots[2]	0
Votes cast for Petitioner	36
Votes cast against participating labor organization	33
Valid votes counted	69
Challenged ballots	5
Valid votes counted plus challenged ballots	74

The challenges were sufficient in number to affect the results of the election. As described in more depth below, three of these challenges were "not on list" challenges by the Board Agent and the remaining two challenges were made by the Employer contending that the voters did not share a community of interest with the bargaining unit.

On December 7, 2015, the Employer filed a timely objection to conduct affecting the results of the election and a request for an extension of time in which to file its formal submission of evidence in support of the objection. I granted the Employer an extension of time to December 11, 2015 to submit its offer of proof. On December 11, 2015, the Employer filed its Offer of Proof in Support of its objection ("Offer of Proof").

Pursuant to § 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned Regional Director caused an investigation to be made of the challenged ballots and the Employer's objection, during which the parties were afforded

[2] As discussed below, the Regional Office received the unsigned ballot of Perry Bryce on November 17, 2015. Pursuant to CHM § 11336.5(c) an unsigned ballot is void and cannot be counted. Therefore, the Regional Office mailed a duplicate voter kit to Bryce on that same day. However, as the Region did not receive a signed ballot from Bryce by the time of the count, his previously received unsigned ballot should have been marked void on the tally of ballots (See CHM § 11336.5(c)).

full opportunity to submit evidence bearing on the issues. As set forth below, I find that the not on list challenges should be sustained, and I approve the Employer's withdrawal of its challenge to two ballots. Additionally, I conclude that the objection does not warrant setting aside the election as discussed below. Therefore, as there are no remaining issues, I am issuing a Certification of Representative.

CHALLENGES

The ballots of Ms Emenke, John Kenan, and Cerek Creisler were challenged by the Board Agent on the grounds their names did not appear on the voter list ("not on list"). The ballots of Kyle Shoji and Karl S. Johnson were challenged by the Employer on the grounds that they were not eligible to vote because they do not share a community of interest with the bargaining unit.

Neither party presented argument or an offer of proof concerning the eligibility of the three not on list challenges. Therefore, I sustain the not on list challenges and these ballots will not be opened and counted. After the issuance of the Tally of Ballots, the Employer withdrew its challenge to the ballots of Shoji and Johnson, I approve the Employer's withdrawal. As these two ballots are not determinative to the outcome of the election, the ballots will not be opened and counted.

A revised Tally of Ballots will not be issued as the tally of votes counted remain unchanged. As reflected, a majority of valid votes counted were cast in favor of the Union.

OBJECTION

In its objection, the Employer contends eight (8) eligible voters, specifically named in its objection, were disenfranchised by virtue of casting ballots that were not

counted and/or not being provided ballots in time to be counted and/or were not provided ballots upon request, and that all such ballots are determinative of the outcome of the election. In its Offer of Proof, the Employer goes on to allege that the disenfranchisement was a "result of flaws and irregularities in the Board's mail ballot procedure", which, according to the Employer, "did not afford the eligible voters an adequate notice and opportunity to vote." The Employer, in its Offer of Proof, addressed the specific circumstances surrounding four of the voters it named in its objection, did not address the other four, and proffered the names of three additional eligible voters whose ballots were not counted. The central thrust of the Employer's objection, and the point on which all of the eligible voters listed and detailed in its Offer of Proof would provide testimony, concerns the circumstances surrounding the mailing and delivery of ballots. Specifically, the Employer contends the employees will testify that either a) they properly deposited a ballot in a mail box in sufficient time for the ballot to arrive in the Regional Office to be counted in the election but the ballot was either not received or received after the count, or b) they received their ballot too late to be able to return it in a timely manner or c) they did not receive a ballot. The Employer contends the election should be set aside and a new election should be conducted. I disagree.

The Investigation.

The investigation revealed that all voter kits, which include voting instructions, a ballot, and inner and outer envelopes, were sent out from the Regional Office on November 9, 2015, to the addresses listed on the voter eligibility list provided by the Employer. Of the individuals named in the Employer's objection and its Offer of Proof (a total of 11 individuals), two ballots cast by Mosier and Greenland, and timely received in

the Regional Office were opened and counted on November 30 and included in the Tally of Ballots. A third voter, Bryce Perry, returned an unsigned ballot which was received by this office on November 17. As unsigned ballots are considered to be void and not to be counted, the Region mailed Perry a duplicate voter kit that same day. The Region received Perry's duplicate ballot on December 11 after the Tally of Ballots issued. The fourth voter, Carlos Delgado, mailed an unsigned ballot, postmarked on November 28 and received by the Region on December 2 after the Tally of Ballots issued. With respect to Kevin Millen, the Employer contends Millen received the ballot at his old address, on November 27 but it was too late to cast a ballot. To date, the Region has not received a ballot from Millen. With respect to the sixth voter, Shawn Carter, his voter kit was returned to this office on November 19, as undeliverable. That same day, the Region acquired a new address from the Employer, and mailed Carter a duplicate ballot. To date, the Region has not received a ballot. With respect to the seventh voter Elicia Greene, to date the Region has not received a returned voter kit or a ballot. With respect to the eighth voter, Darren Bradenburg, the investigation revealed that the Employer contacted the Region to request a duplicate ballot, was informed that the voter needed to make such request, but Brandenburg did not call the Region so no duplicate ballot was mailed. On December 4 the Region received Brandenburg's voter kit as undeliverable.

With respect to the additional three individuals named in the Employer's offer of proof, the investigation revealed that on December 2 the Region received one ballot postmarked November 30. As it was received after the issuance of the Tally of Ballots,

this ballot was not opened or counted. To date, the Region has not received the other two ballots, nor have their voter kits been returned as undeliverable.

Discussion

The Board has recently addressed similar concerns associated with mail delivery and timely receipt of ballots in a regional office. In *Classic Valet Parking*, 363 NLRB No. 23 (October 23, 2015), 10 ballots were excluded because they were not received in Regional Office 29 prior to the completion of the Tally of Ballots.[3] There, as in the instant case, the employer contended that these 10 ballots, postmarked prior to but arriving after the Tally of Ballots, should be counted. The *Classic* Board rejected the employer's contention. Although addressing the concerns of possible disenfranchisement of eligible voters as a result of vagaries of postal service mail delivery, the Board opted to maintain the substantial policy considerations favoring the finality of election results. Citing *Versail Mfg., Inc.*, 212 NLRB 592, 593 (1974), the Board pointed out that without adhering to this policy of finality, election results could be delayed for significant periods of time as mail-in ballots slowly come into regional offices. *Id*. at 1

The reasoning presented in both *Classic* and *Versail* is persuasive, on point, and directly applicable to the facts of the instant case. It is quite evident that the situation that caused the Board concern in those cases is also present in the instant case as ballots were received days after the Tally of Ballots, one arriving 11 days late. The Employer here contends that these ballots should be counted. However, the Employer cites no cases which directly support this contention. *Kerrville Bus Co.*, 257 NLRB 176

[3] In *Classic Valet*, the voters were provided with a total of 14 days to return the mail-in ballots. In the instant case 21 days was the turn-around time.

(1981), which the Employer cites, undermines its argument as its implicit holding is that to be counted, a ballot must arrive in the Regional Office prior to the completion of the Tally of Ballots. In that case, a mixed manual/mail-in election, the mail-in ballots were to be received by the Regional Office by December 15 and the manual ballots were to be cast on December 17. Two days later, on December 19, the ballots were comingled and counted. All of the seven challenged mail-in ballots arrived in the Regional Office after the December 15 cut-off date but either before or on the December 17 manual voting date, and prior to the December 19 vote count. The *Kerrville* Board, after reviewing the facts, accepted the Hearing Officer's recommendation, overruled the challenges and directed that the challenged ballots be counted. The Board found it significant that the mail-in ballots, although technically late, were received by the date for the manual balloting and prior to the issuance of the Tally of Ballots. Therefore, for a vote to be counted in a mail-in election it must arrive in the Regional Office prior to the tally of ballots.[4] See also *Watkins Construction Co.*, 332 NLRB 828, 828 (2000) (late ballot should be counted if it is received before the count begins) In the final analysis, the Board's "in before the Tally" rule establishes a clear, bright line for counting mail-in ballots as it is easily discernible by voters, Board Agents, Petitioners, and Employers alike.

Applying the holding in *Kerrville* to the instant case, as suggested by the Employer, it is clear that all ballots must arrive in the Regional Office prior to the Tally of Ballots to be counted in the election. I therefore recommend that any part of the Employer's objection based on not counting late arriving ballots be overruled.

[4] Each eligible voter received three notices of the date, time, and place for their ballot to be received in the Regional Office. Two in the election kit (form letter and voting instruction form) and one in the Notice to Employees required to be conspicuously posted by the Employer in the workplace.

In regard to the Employer's allegation that ballots were not provided upon request, the investigation revealed that the Regional Office received only one request for a duplicate election kit. However, this request came from the Employer who was informed to have the voter call the Regional Office directly. The Employer does not contend, nor is there record the voter requested a duplicate voter kit. As there is no evidence to support the Employer's contention that certain voters were disenfranchised as a result of the Regional Office not providing duplicate voter kits upon request, I recommend that this portion of the Employer's Objection be overruled.

Finally, the Employer's objection implies that it is the postmark on the ballot envelope and not the time stamp affixed by the Regional Office that should control when a ballot is cast and such ballot is therefore eligible to be included in the ballot count. The Employer argues that since the Region counted only those ballots actually received prior to the Tally, the election should be set aside. In regard to this allegation, the Board has found that the failure of the Postal Service to deliver mail ballots does not necessitate setting aside an election. See *J. Ray McDermott & Co. v. NLRB*, 571 F.2d 850, 855 (1978)("It cannot be said that an election by mail is per se invalid whenever a potentially decisive number of votes, no matter how small, is lost through the vagaries of mail delivery."). As discussed above, to be counted, ballots must be received by the Regional Office before the Tally to be counted.

CONCLUSION

Based upon the above noted precedent as applied to the facts revealed by the investigation, the challenges are sustained and the Employer's objection is overruled in its entirety.

CERTIFICATION OF REPRESENTATIVE

It is certified that a majority of the valid ballots have been cast for INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, LOCAL 15, and that it is the exclusive collective bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the to the Union's national agreement with the Employer, and guards and supervisors as defined by the Act.

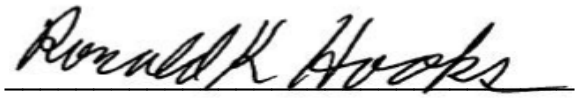
REQUEST FOR REVIEW

Pursuant to the provisions of Sections 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington DC, a request for review of this decision which may be combined with a request for review of the regional director's decision to direct an election as provided in Sections 102.67(c) and 102.69 (c)(2), if not previously filed. The request for review must conform to the requirements of Sections 102.67 (e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by January 4, 2016 If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select the E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board 1015 Half Street, S.E., Washington DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties

and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

DATED at Seattle, Washington on December 18, 2015.



Ronald K. Hooks
Regional Director, Region 19
National Labor Relations Board
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

EXHIBIT H

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

PSAV PRESENTATION SERVICES	§	
	§	
Employer,	§	
	§	
and	§	Case No. 19-RC-161471
	§	
INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES (IATSE), LOCAL 15	§	
	§	
Petitioner.	§	

EMPLOYER'S CONSOLIDATED REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION AND THE REGIONAL DIRECTOR'S DECISION ON CHALLENGES AND OBJECTION AND CERTIFICATION OF REPRESENTATIVE AND BRIEF IN SUPPORT

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1. INTRODUCTION

Pursuant to sections 102.67(c) and (i)(1), and 102.69(c) of the National Labor Relations Board's Rules and Regulations, PSAV Presentation Services ("PSAV" or the "Employer"), through its undersigned counsel, submits this request for review of the Regional Director's *Decision and Direction of Election* issued October 23, 2015, and its request for review of the Regional Director's *Decision on Challenges and Objection and Certification of Representative* issued December 18, 2015.

Respondent consolidates its request for review of the Decision and Direction of Election directing a mail ballot election with Respondent's objections to conduct affecting that election, because the two are sufficiently intertwined: A determinative number of voters in this case cast ballots that were not counted because PSAV's request for a mail ballot election was improperly denied and because of the flaws in the mail ballot procedures applied to this election process.

2. BACKGROUND

2.1 The Representation Hearing

There was not a stipulated election agreement in this case; the Regional Director directed a mail ballot election over PSAV's objection. The sole issue argued at the representation hearing conducted on October 16, 2015 was whether the election should be conducted manually, or by mail ballot. (DDE at 1). The Employer requested an in-person election. It offered four private conference room locations at its worksites or within walking distance of its worksites in the greater Seattle area where elections could be conducted on two consecutive dates. PSAV explained that the election would be held during the Employer's busy season and, as a result, its part-time workforce would be regularly working more than 30 hours per week and would not likely hold other employment during that time. (DDE at 2). Moreover, PSAV specifically

confirmed it would pay all voting employees for the workday on the dates of the in-person election.

Notwithstanding the above, the Union pushed for a mail ballot election. In support of its position, the Union argued only that 25% of the Employer's workforce was part-time and that these employees may seek other work and therefore may be required to turn down other work opportunities on the date of any manual election. (DDE at 2). No evidence or detail was offered to support this contention, nor was any argument presented to reject PSAV's contention above that all of the employees would be employed for the week of the election.

2.2 The Regional Director's Decision and Direction of Election

On October 23, 2015, the Regional Director issued a *Decision and Direction of Election*, directing an election entirely by mail ballot. The Director said that the employees in the petitioned-for Unit were sufficiently scattered to warrant use of a mail ballot election because they work in five different cities in the Puget Sound area, work at various worksites within each city, and the worksites are not owned by the employer (which would require the Agency to procure space to conduct elections at the election sites proposed by the Employer). (DDE at 3). The Director concluded a mail ballot election was appropriate due to the "dispersed geographic locations of the employees' worksites and the significant expense to the Agency to conduct a manual election[.]" (DDE at 3).

2.3 The Election

PSAV was told that at 4:45 p.m. on November 9, 2015, ballots were mailed from the NLRB regional office located at 915 2nd Avenue, Room 2948, Seattle, Washington 98174. There was no deadline to mail the ballots back to the Region. Instead, eligible voters were told

only that the ballots must be mailed in time for them to be received on Monday, November 30, 2015 (the Monday after the Thanksgiving holiday):

> All ballots will be commingled and counted at the Regional office on Monday, November 30, 2015 at 2:00 p.m. In order to be valid and counted, the returned ballots must be received in the Regional office, prior to the counting of the ballots.

(DDE at 4). The Tally of Ballots showed the following results:

Approximate number of eligible voters 93

Void ballots.....0

Votes cast for Petitioner.....36

Votes cast against participating labor organization 33

Valid Votes counted.....69

Challenged ballots.....5

Valid Votes counted plus challenged ballots 74

2.4 The Objections

Respondent timely objected to conduct affecting the results of the election on December 7, 2015. The Regional Director advised that on or before December 11, 2015, Respondent was required to present its proffer of the evidence that supported its request to set aside the election. Respondent timely filed its proffer which provided the following evidence Respondent was prepared to present at hearing.

2.4.1 Eligible Voters Did Not Timely Receive a Mail Ballot

<u>Lead Technician Kevin Millen</u>

Eligible voter Kevin Millen changed residences during the election period, but returned periodically to check his old mailbox to see if a ballot had arrived. However, Mr. Millen did not receive the ballot at his old address until November 27, 2015, at which point it was too late to

cast his vote and mail the ballot back to the NLRB in time to be counted. In his decision, the Regional Director did not address Mr. Millen specifically, but took the position that the "disenfranchisement of eligible voters as a result of vagaries of postal service mail" does not necessitate overturning an election, and that there are substantial policy considerations favoring the finality of election results.

Technician Darren Brandenburg

On November 20, 2015, the Employer notified the Region that eligible voter Darren Bradenburg did not receive a ballot. The Region told the Employer that Mr. Brandenburg needed to contact the Region directly in order to obtain a new ballot. On December 4, 2015, Mr. Bradenburg's voter kit was returned as undeliverable.

Lead Technician Shawn Carter

Eligible voter Shawn Carter's voter kit was returned to the NLRB as undeliverable on November 19, 2015. The Region asked the parties for an alternative address for Mr. Carter and sent him a duplicate voter kit that day.

2.4.2 Eligible Voters Returned Mail Ballots That Were Not Counted Because The Exterior Envelope Was not Signed

Senior Technician Bryce Perry

Eligible voter Bryce Perry completed his ballot and mailed it to the Region by depositing it in the outgoing mailbox at the United States Post Office. It was received by the Region on November 17, 2015, but Mr. Perry neglected to sign his envelope. A duplicate voter kit was mailed to Mr. Perry that same day. Mr. Perry received the duplicate voter kit on or around December 8, 2015. The duplicate voter kit was inside a box of mail that was left, by an unknown individual, in Mr. Perry's carport. He only discovered the box of mail upon returning from vacation after the Thanksgiving holiday. Confused as to why he had received a second ballot and

in a different, "more official looking" envelope, Mr. Perry completed and mailed the second ballot as well. The region received Mr. Perry's duplicate ballot on December 11, 2015. Neither of Mr. Perry's votes were counted.

Senior Technician Carlos Delgado

Eligible voter Carlos Delgado completed his ballot and mailed the ballot to the NLRB on November 26 or 27, 2015, by depositing it in the outgoing mailbox at the United States Post Office in Miami, Florida. The Region received Mr. Delgado's voter kit on December 2, 2015. It was postmarked November 28, 2015. Mr. Delgado neglected to sign his envelope. Mr. Delgado's vote was not counted.

2.4.3 Eligible Voters Returned Mail Ballots That Were Not Counted Because They Were Deemed Untimely

Senior Technician Bryce Perry

Mr. Perry cast two ballots in this election. His first ballot was not counted because he did not sign the envelope. His duplicate ballot was not counted because it was received after the tally of ballots. Mr. Perry did not receive his duplicate voter kit until after the tally of ballots had been completed.

Senior Technician Carlos Delgado

In addition to Mr. Delgado's vote not counting because he did not sign his envelope, his ballot also did not arrive at the regional office prior to the tally of ballots, despite having been mailed more than three days prior. His second ballot was therefore not counted.

2.4.4 One Eligible Voter Returned a Mail Ballot That Was Not Counted Because it Was Not Received by the Region

Technician Eleicia Greene

Eligible voter Eleicia Greene completed her ballot according to the instructions and mailed the ballot to the NLRB. The Region maintains it never received Ms. Greene's ballot and, therefore, her vote was not counted.

2.4.5 Eligible Voters Returned Mail Ballots That Were Not Counted for Unknown Reasons[1]

Lead Technician Drew Annen

Eligible voter Drew Annen completed his ballot according to the instructions and mailed the ballot to the NLRB on November 27, 2015, by depositing it in the outgoing mailbox at the United States Post Office in Everett, Washington. Respondent does not know why Mr. Annen's vote was not counted.

Lead Technician Ritchie Garcia

Eligible voter Ritchie Garcia completed his ballot according to the instructions and mailed the ballot to the NLRB from his home on November 23, 2015, before he left for the Thanksgiving holiday. Mr. Garcia included his return address on the envelope, and did not receive it back. Respondent does not know why Mr. Garcia's vote was not counted.

Technician Anthony Elliott

Eligible voter Anthony Elliott completed his ballot according to the instructions and mailed the ballot to the NLRB on or around November 20, 2015, by depositing it in the outgoing mailbox at his apartment complex. Respondent does not know why Mr. Elliott's vote was not counted.

[1] The Regional Director acknowledges that an additional ballot was received by the Region on December 2, 2015. However, that voter has not been identified by the Regional Director.

Technician Darin Branshaw

Eligible voter Darin Branshaw completed his ballot according to the instructions and mailed the ballot to the NLRB prior to November 30, 2015. Respondent does not know why Mr. Branshaw's vote was not counted.

2.5 The Decision

On December 18, 2015, the Director issued his decision on PSAV's objections overruling PSAV's objections in their entirety. The Regional Director refused to conduct a hearing on the matter.

3. LAW AND ANALYSIS

3.1 Grounds for Review

Section 102.67(d) of the Board's Rules and Regulations provides that review is appropriate

based on any of the following grounds:

> (1) that a substantial question of law or policy is raised because of:
>
> > (i) the absence of; or
> >
> > (ii) a departure from, officially reported Board precedent.
>
> (2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party
>
> (3) that the conduct of any hearing, or any ruling made in connection with the proceeding has resulted in prejudicial error
>
> (4) that there are compelling reasons for reconsideration of an important Board rule or policy.

Review of the Regional Director's *Decision and Direction of Election* directing a mail ballot election in this case is appropriate because the Regional Director's finding that there would be a "significant expense to the Agency to conduct a manual election" is clearly erroneous on the record and prejudicially affects the rights of a party. § 102.67(d)(2). That clearly

erroneous finding was bootstrapped to the Regional Director's decision to conduct a mail ballot election, which resulted in prejudicial error, and thus provides additional grounds for review under § 102.67(d)(3). Equally erroneous and prejudicial is the Regional Director's finding that the employees' worksites were sufficiently scattered to make appropriate a mail ballot election.. § 102.67(d)(2).

Review of the Regional Director's *Decision on Challenges and Objection and Certification of Representative* in this case is appropriate because the Regional Director committed prejudicial error in failing to include a grace period between the deadline to return ballots and the tally of ballots, and in refusing to count the votes of individuals who neglected to sign their ballot envelope.

3.2 The Regional Director Abused His Discretion By Directing a Mail Ballot Election

It is settled that "the Board's historical wisdom of favoring manual elections ... has its roots in the fundamental purpose of the Act—to provide for workplace democracy in which employees can select or reject a union as bargaining representative." *San Diego Gas & Elec.*, 325 NLRB 1143, 1144 (1998) (Hurtgen, Brame, dissenting). The Region concedes this point (DDE at 3). The preference for in-person elections is to promote the laboratory conditions desired by the NLRA. *See North American Aviation*, 81 NLRB 1046, 1048, n. 9 (1949) (where standards are not adequately maintained, whether through fault of the Board, or others, "the requisite laboratory conditions are not present and the [election] must be conducted over again.") (quoting *Matter of General Shoe Corporation*, 77 NLRB 124, 127 (1948)). Mail ballot elections, on the other hand, raise serious and legitimate concerns about issues such as voter privacy, coercion, the ability of voters to understand and properly complete the ballot, the absence of any Board agent to answer questions if a voter is confused or uncertain about the process, the

possibility that the voter kit will be inadvertently discarded, issues with the mail system, the decreased participation rates in mail ballot elections, and the destruction of laboratory conditions. *See e.g., Brink's Armored Car*, 278 NLRB 141 (1986) ("The danger that the laboratory conditions surrounding an election may be destroyed are greater in mail balloting situations than in manual elections because of the absence of direct Board supervision over the employees' voting.").

Mail ballot elections also result in decreased voter turnout. According to the Office of the General Counsel, during the two-year period January 1, 2006 through December 31, 2007, approximately 4,305 elections were conducted. Of those elections, approximately 240 were conducted by mail ballot or were mixed manual/mail ballot elections. There were approximately 280,295 employees eligible to vote in the elections (manual or mail) conducted in the sample two-year period. The voting rate in manual elections alone was 81.57% and in mail or mixed manual/mail, the rate was approximately 65%. Of the 240 mail ballot elections conducted, the Union won a majority in 177 or 73.75% of the total. *See Subject: Report on the Midwinter Meeting of the ABA Practice & Procedure Comm. of the Labor & Employment Law Section*, 2008 WL 2484199, at *8 (Apr. 17, 2008) (same). *See also San Diego Gas & Elec.*, 325 NLRB 1143, 1146 (1998) ("The Board's experience with representation elections has shown that the voter participation rate is generally higher in elections conducted manually than in mail ballot elections.").

For these reasons, mail ballot elections are limited to rare situations, such as where eligible voters were dispersed across the country, across the world, or out at sea, and only as an undesirable alternative where a manual election was "infeasible". *See e.g., Nat'l Van Lines*, 120 NLRB 1343, 1344 (1958) (a mail ballot election was conducted where "the eligible voters had

places of employment and residences which were scattered throughout the United States," and 350 notices of election were posted over a period of 16 days, at various employer locations stretching from New York to California.). Indeed, when NLRB Chairman William Gould suggested in 1994 that mail ballot elections should be used to save costs in sparsely populated areas in the western United States, he was met with strong resistance from employers, unions, and even his own agency. See NLRB, *NLRB Looks at Mail Ballot Elections Where Voters Scattered, Long Distances Involved*, NLRB 94-2000, 1994 WL 399801 (July 29, 1994); Daniel V. Yager, *NLRB Agency in Crisis* (1996). NLRB Region 6 Election Specialist Nina Rzymski responded in opposition to the expanded use of mail ballots stating in part:

> To put ballots into the mail along with junk mail, magazines, flyers, and perhaps to lay out in mail boxes seems to me to dilute the seriousness that our NLRB election process deserves. Receiving a mail ballot kit in the mail, though it does come with an instruction sheet explaining what the voter should do with his ballot, does not seem to me to attract the attention that this procedure should have. If a voter is unsure of something, who are they going to ask? If they are afraid of doing the wrong thing or voting the wrong way, or enclosing the ballot in the return envelope that is filled out incorrectly, they more times than not will procrastinate and find it easier not to vote. Not voting is always a person's right, but not voting out of confusion is more the fault of the mail ballot procedure than that entirely of the voter.

Daniel V. Yager, *NLRB Agency in Crisis*, 46 (1996) (quoting Nina Rzymski, NLRB Region 6, Election Specialist). The expanded use of mail ballots met further resistance later that year when the Board held that a mail ballot election involving "on-call" workers would be appropriate within the 134-square mile geographic area of the City of Atlanta. *Shepard Convention Serv., Inc.*, 314 NLRB 688 (1994). The D.C. Circuit Court of Appeals reversed on the grounds that the Board failed to provide a compelling reason to overrule the Regional Director's direction of a manual election. *Shepard Convention Serv., Inc. v. NLRB*, 85 F.3d 671 (D.C. Cir. 1996).

Nevertheless, the Board found by a 2-1 vote in *London's Farm Dairy* that a mail ballot election was appropriate where employees were spread across 4 locations, 225-miles apart. 323 NLRB No. 186 (June 20, 1997) (There the Board also noted that two of the locations were 199 and 130 miles from the NLRB regional office, which it concluded would require the Board agent to stay overnight and that Board agents would have to be paid a *per diem*). A year later, by a 3-2 vote of the full Board in *San Diego Gas*, the Board narrowly found a mail ballot election permissible where the 20-member voting unit worked in 8 locations, 80 miles apart, throughout southwest California. *San Diego Gas & Elec.*, 325 NLRB 1143 (1998).

This shift in Board policy was nearly complete when Chairman Gould sought to cement the expanded use of mail ballot elections by issuing four decisions on his last day in office, reaffirming the abuse of discretion standard under which the Board will review decisions of Regional Directors to conduct mail, manual, or mixed elections. *See M & N Mail Service, Inc.*, 326 NLRB No. 43 (Aug. 27, 1998); *Nouveau Elevator Industries, Inc.*, 326 NLRB No. 49 (Aug. 27, 1998); *North American Plastics Corp.*, 326 NLRB No. 70 (Aug. 27, 1998); and *GPS Terminal Services, Inc.*, 326 NLRB No. 71 (Aug. 27, 1998). As Board Members Hurtgen and Brame acknowledged in their dissent in *San Diego Gas*:

> The Board today continues on a path toward greater utilization of mail balloting. This process began in *Shepard Convention Services*, 314 NLRB 688 (1994). Although the Board's direction of a mail ballot election in that case was reversed by the D.C. Circuit, the Board, undaunted, continued on that path in *London's Farm Dairy*, 323 NLRB No. 186 (June 20, 1997), and *Reynolds Wheels*, 323 NLRB No. 187 (June 20, 1997). The misdirection continues today. We believe that this direction is contrary to the finest traditions of the Board, and is fraught with peril. We therefore dissent.

325 NLRB 1143 (Hurtgen, Brame, dissenting).

While the longstanding policy in favor of manual elections has perhaps become nothing more than a hollow recitation, *San Diego Gas* remains the seminal standard and, when applying that standard to the instant case, a mail ballot election was not appropriate because the employees in this case are not "scattered", nor would a manual election require a substantial expenditure of agency resources.

3.2.1 The Election Unit Is Not Sufficiently Geographically "Scattered" to Warrant a Mail Ballot Election

In holding a mail ballot election was appropriate, the Regional Director cited to *San Diego Gas* because he determined that the eligible voters were "scattered" over a wide geographic area. (DDE at 3, citing *San Diego Gas*) ("In light of the dispersed geographic locations of employees' worksites and the significant expense to the Agency to conduct a manual election, I find that a mail ballot election is appropriate in this case.").

However, the voters in this case were not scattered. Ninety of the 93 eligible voters in this case work in locations 13 miles apart. Moreover, of the three employees that work furthest away(in Tacoma, WA): 1) Darren Brandenburg did not receive his voter kit in sufficient time to vote, 2) Eleicia Greene mailed a ballot that was never received by the Region, so her vote was not counted either, and 3) Wesley Mosier's initial voter kit was returned to the Region as undeliverable more than a week after it was mailed and he had to be mailed a second voter kit on or about November 19, 2015. Put simply, the mail ballot election process hindered, or disenfranchised entirely the very group of employees it was supposed to help.

The indisputable facts as applied to the law rejects the Regional Director's finding that the employees in this case are so geographically dispersed that a manual election would be "impractical." The Board's precedent calling for a manual election was appropriate. *Cf. Shepard*

Convention Serv., Inc. v. NLRB, 85 F.3d 671 (D.C. Cir. 1996) (refusing to enforce mail ballot election where employees worked at various venues across the city of Atlanta).

3.2.2 There Is No Evidence That a Mail Ballot Election Conserves Agency Resources In This Case

The Regional Director similarly abused his discretion in determining that there would be a "significant expense to the Agency to conduct a manual election." (DDE at 3). The only support offered for this contention is that the worksites where the manual election would be held "are not owned by the Employer, which would require the Agency to procure space to conduct elections at the election sites proposed by the Employer." (DDE at 3). However, Respondent offered up to four separate worksite locations in the Seattle area where it would provide private, secure conference rooms where a manual election could be held, free of charge to the Agency. Ten of Respondent's worksites are less than a mile from the NLRB's Seattle Regional Office, and all but one of the worksites are less than 12 miles from the Regional Office. The remaining worksite, the Tacoma Convention and Trade Center where only three employees are stationed, is only 25 miles from the Seattle Regional Office. There would be no reason for any Board agent to have to stay overnight at any location, nor would there be any reason why a Board agent could not quickly return to his or her office to perform work during the hours the election was not being conducted.

In sum, there is nothing in the record to support the Regional Director's determination that a manual election would result in a significant expense to the Agency, or even that it would result in any greater expense than a mail ballot election. Therefore, the Regional Director abused his discretion in making that determination.

3.3 The Election Must Be Set Aside Because There Is a Reasonable Doubt as to Its Fairness and Validity

"Board precedent holds an election must be set aside only if the evidence 'raises a reasonable doubt as to [its] fairness and validity.'" *Physicians & Surgeons Ambulance Serv., Inc. v. N.L.R.B.*, 477 Fed. Appx. 743, 744 (D.C. Cir. 2012) (quoting *Polymers, Inc.*, 174 NLRB 282, 282 (1969)). This is particularly true where, as in this case, an election is extremely close. *See Henderson Trumbull Supply Corp. v. N.L.R.B., Region 2*, 501 F.2d 1224, 1230 (2d Cir. 1974) ("Where, as here, an election is extremely close, even minor misconduct cannot be summarily excused on the ground that it could not have influenced the election.") (citing *NLRB v. Skelly Oil Co.*, 473 F.2d 1079, 1085 (8th Cir. 1973)). There is more than a reasonable doubt as to the validity of the election in this case.

Respondent objected to conducting this election by mail ballot. Respondent also objects to the conduct of the election because as a result of flaws and irregularities in the Board's mail ballot procedures, a determinative number of eligible voters were disenfranchised by virtue of casting ballots that were not counted and/or by not having been provided ballots in time to have their vote counted and/or by not being provided ballots upon request. After all, "[t]he fundamental purpose of a Board election is to provide employees with meaningful opportunity to express their sentiments concerning representation for the purpose of collective bargaining." *Lemco Construction, Inc.*, 283 NLRB 459, 460 (1987).

Here, there is a reasonable doubt as to whether the decision to conduct the mail ballot election disenfranchised a determinative number of voters. As a result, there is a reasonable doubt as to whether the majority of the eligible unit actually voted in favor of representation, or whether employees were deprived of a meaningful opportunity to express their sentiments

concerning representation. Therefore, the election results should be set aside and a re-run election should be held.

3.3.1 The Election Results Should Be Set Aside in This Case

Eleicia Green mailed a ballot that was never received by the Region. Carlos Delgado mailed a ballot prior to the deadline that was not delivered until after the tally of ballots. Bryce Perry mailed the region a duplicate ballot that he did not receive until after the tally of ballots, because Perry himself did not receive the duplicate ballot until after the tally of ballots. Kevin Millen was disenfranchised because he changed addresses and received his ballot at his old address, but not in time to vote and return his ballot to the Region prior to the deadline. There is no evidence that Shawn Carter's duplicate ballot was provided to him in time to vote either. The Region was provided notice that Darren Brandenburg did not receive a ballot, but refused to send him a second ballot unless he contacted the Region directly. Drew Annen, Ritchie Garcia, Anthony Elliott and Darin Branshaw mailed ballots to the Region and to this day do not know why their votes were not counted. In an election decided by just three votes, the Region's mail ballot election prevented these ten individuals from having their vote count. The difference between voting for or against union representation was a mere three (3) votes. Any factor or combination of factors above is determinative of this election.

In declining to find that these issues with the mail system provide sufficient grounds to set aside the election in this case, the Region relies on *J. Ray McDermott & Co. v. NLRB* and *Versail Mfg., Inc.* for its position that the "disenfranchisement of eligible voters as a result of vagaries of postal service mail" does not necessitate overturning an election, and that there are substantial policy considerations favoring the finality of election results. *McDermott*, 571 F.2d 850, 855 (5th Cir. 1978), cert. denied 439 U.S. 893 (1978) ("It cannot be said that an election by

mail is per se invalid whenever a potentially decisive number of votes . . . is lost through the vagaries of mail delivery."); *Versail*, 212 NLRB 592 (1974) ("There must be some degree of finality to the results of an election, and there are strong policy considerations favoring prompt completion of representation proceedings.").

However, while issues with the mail may not require an election be set aside *per se*, they should require that the election be set aside in this case, and while there are strong policy considerations in favor of prompt completion of representation proceedings, they cannot be stronger than the policy considerations in favor of ensuring the validity and accuracy of the results in close elections such as this one.

Indeed, there are significant distinctions between this case and *McDermott*. In that case, the voting unit consisted of "[a]ll divers, tenders, and rack operators employed by the Respondent in its Diving Division; excluding all other employees, freelance divers and tenders, shop employees, dispatchers, office clerical employees, shop clerical employees, guards and supervisors as defined in the Act." *See McDermott*, 227 NLRB at 1350. At the time, McDermott engaged in marine construction operations in Alaska, California, Louisiana, the Bahamas and throughout the Gulf of Mexico, in Egypt, Qatar, Saudi Arabia, the United Arab Emirates, and the Arabian Gulf, in Australia, India, Trinidad, Brazil and Indonesia. The approximately 86 eligible voters in *McDermott* were truly "scattered" over a "wide geographic area," and a manual election was not practical. The mail ballot election in *McDermott* was essentially the best election process the NLRB could provide in a tough situation; the same cannot be said for the mail ballot election in this case.

Unlike in *McDermott*, 90 of the 93 eligible voters in this case work in locations 13 miles apart and a manual election could have easily been held. The *McDermott* election was also

conducted in 1978, at a time when regular mail played a much greater role in individuals' lives for purposes of communicating, paying bills, or browsing advertisements, before the widespread use of email, the internet and smart phones. The mail ballot election in this case was also conducted during the last three weeks of November, a busy time for the Post Office which results in increased mailing error and delays, and a time when many eligible voters were travelling out of town to see family (e.g., Mr. Delgado travelled to Miami, Florida).

The Board has set aside mail ballot elections in similar cases where problems with the mail ballot procedures resulted in voter disenfranchisement. In *Star Baking Co.*, 119 NLRB 835 (1957) the Board found that, having not received a mail ballot, the employee at issue did not have an adequate opportunity to vote. Both parties agreed that it "was not feasible for him to vote manually" because the employee was stationed 45 miles from the polling place. *Id.* at 836. The Board set aside the election and directed a re-run election be held, stating:

> [I]t is the responsibility of the Board to establish the proper procedure for the conduct of its elections, which procedure requires that all eligible voters, not merely a representative number, be given the opportunity to vote. It is particularly important to remedy the failure to discharge this responsibility where, as here, the vote of the employee who failed to receive a ballot could have affected the results of the election.

Id.; *see also Security '76*, 272 NLRB 201 (1984) (seven undelivered mail ballots tantamount to a failure to provide notice and an adequate opportunity to vote); *Oneida County Community Action Agency*, 317 NLRB 852 (1995) (Region's failure to mail duplicate ballots to two employees could have affected the result and necessitated setting aside the election); *North American Aviation*, 81 NLRB 1046, 1048, n.9 (1949) (overturning election where reasonable doubt existed as to whether all employees were given a fair opportunity to vote).

In this case, where the election should have been conducted manually, significant and potentially determinative issues with the mail ballot procedure should be given greater weight in

determining whether an election should be set aside. *North American Aviation*, 81 NLRB at 1048-1049 (Even acknowledging "the normal hazards of conducting an election by mail, the Board may find that all the facts, taken together, require that an election be set aside.").

3.3.2 The Regional Director Committed Prejudicial Error in Failing to Include a Grace Period Between the Deadline to Return Ballots and the Tally of Ballots

The case law relied upon in support of its decision not to count late-arriving ballots is not applicable to this election dispute. In *Classic Valet Parking*, 363 NLRB No. 23 (October 23, 2015) the Board declined to count ballots that arrived after the tally of ballots. The deadline for the Board to receive ballots in that case was June 2nd, while the tally of ballots did not occur until June 4th. *Id.* Over the dissent of Member Miscimarra, the Board declined to count the late-arriving ballots explaining:

> The Board's rule already permits acceptance of mail ballots arriving after the date they are due, whatever the reason for the delay, as long as they are received before the scheduled ballot count. Thus, the rule provides a grace period for receipt of late ballots. At the same time, by excluding mail ballots received after the grace period expires, the Board's rule effectuates the substantial policy considerations favoring finality of election results.

Id.

By contrast, the Regional Director in this case did not provide a grace period between the deadline to submit the ballots and the tally of ballots. Such a grace period is even more important here because the vote was taken during the holiday mail season (including "Black Friday" shopping advertisements and packages) and when employees often see family and friends or otherwise take time away from work during the holiday season. Moreover, if an employee's ballot was determined to be void for failure to sign the envelope, as in the cases of Bryce Perry and Carlos Delgado, the employee would not have sufficient time to receive a duplicate ballot and mail that second ballot to the Region before the deadline. This is just the

type of issue anticipated by Board Agent Rzymski above. ("If a voter is unsure of something, who are they going to ask? If they are afraid of doing the wrong thing or voting the wrong way, or enclosing the ballot in the return envelope that is filled out incorrectly, they more times than not will procrastinate and find it easier not to vote."). Therefore, late-arriving ballots in this election should be opened and counted as well. *See Kerrville Bus Co.*, 257 NLRB 176 (1981) (finding late-arriving ballots should be opened and counted so long as they were mailed at a time when it could be reasonably anticipated they would be received by the Board in a timely manner through the normal course of the mails).

The Regional Director erred in scheduling the ballots to be tallied on the same date as the deadline for their return. At a minimum, any ballot mailed/postmarked on or before November 30, 2015 should be counted. We understand from speaking with the Board Agents that three ballots in the Board's possession meet this criteria and they are of a sufficient amount that these ballots may determine the outcome of the election.

3.3.3 Unsigned Envelopes that Contain Another Envelope with a Completed Ballot Should Be Counted

Board procedure requires an eligible voter to sign the back of the envelope (the yellow envelope) that contained another envelope (the blue envelope) that contains the ballot. However, there is no requirement as to *where* on the envelope the employee is required to sign nor is there any verification of the employee's signature against other records. It is not a process intended to prevent voter fraud, nor would it establish that the envelope was not tampered with once sealed. Rather, there is a control number on each envelope that is used to verify that the specific employee ballot received was in fact received from that employee. The signature requirement is therefore an unnecessary impediment to a free election, and purports to fix a problem that does not exist. Neither Carlos Delgado, nor Bryce Perry (who voted twice) would have had to sign

their respective ballots if the election were not conducted by mail. "Not voting is always a person's right, but not voting out of confusion is more the fault of the mail ballot procedure than that entirely of the voter." Rzymski, *supra*. Therefore, the votes of Bryce Perry, Carlos Delgado and any other ballot received by the Region from a voter who did not sign the outer envelope should be counted.

4. CONCLUSION

For each and all of the foregoing reasons, it is clear that the Regional Director abused his discretion in directing a mail ballot election because the employees' work locations are not sufficiently scattered, and because there is no evidence that a manual election would have resulted in a significant expense to the Agency. The evidence further shows that in an election decided by just three votes, the mail ballot election process prevented at least ten employees from voting. Bryce Perry, Carlos Delgado, Kevin Millen, Drew Annen, Darin Branshaw, Shawn Carter, Eleicia Greene, Darren Brandenburg, Anthony Elliott and Ritchie Garcia were prevented from having their vote count because of flaws and irregularities in mail ballot procedures that are not present in a manual election. Therefore, the Employer respectfully requests that the Board set aside the election results and that a re-run election be conducted manually at the earliest possible date.

Respectfully submitted,

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EXHIBIT I

Michael Willats

From: McConnell, Carolyn <Carolyn.McConnell@nlrb.gov>
Sent: Friday, February 12, 2016 7:14 PM
To: David Shankman; Dmitri Iglitzin; Katelyn Sypher
Subject: 19-CA-167454, PSAV

Parties:

This case is being held in abeyance pending the Board's ruling on the request for review in 19-RC-167141.

Sincerely,

Carolyn McConnell
Field Attorney | National Labor Relations Board | Region 19
United States Government
2948 Jackson Federal Building, 915 Second Ave., Seattle, WA 98174
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The NLRB encourages all parties to file documents electronically through our online E-File system: https://mynlrb.nlrb.gov/portal/nlrb.pt?open=512&objID=202&mode=2

EXHIBIT 4

EXHIBIT J

TO

REGION 19 REGIONAL DIRECTOR
DAVID SHANKMAN, ESQ.
DMITRILGLITZIN, ESQ.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AUDIO VISUAL SERVICES GROUP, INC.,
d/b/a PSAV PRESENTATION SERVICES
Employer

and 19-RC-161471

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 15
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election and the Decision on Challenges and Objection and Certification of Representative is denied as it raises no substantial issues warranting review.[1]

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

Dated, Washington, D.C., May 19, 2016.

[1] Member Miscimarra believes the instant case highlights some of the inherent disadvantages associated with conducting a mail-ballot election rather than a manual election, especially considering that four ballots mailed by four eligible voters were never received by the Region, and the Region did not count three other ballots received after the tally was conducted. Each of these problems involved a potentially determinative number of ballots, given that the tally was 36-33 in favor of the Union. However, Member Miscimarra agrees that the Regional Director did not abuse his discretion in conducting a mail-ballot election. He further believes that the instant case is materially different from *Classic Valet Parking*, 363 NLRB No. 23 (2015), and *Premier Utility Services, LLC*, 363 NLRB No. 159 (2016), two cases in which Member Miscimarra dissented based on this view that fundamental breakdowns in the mail-ballot election warranted rerun elections. In this case, Member Miscimarra concurs with the denial of review based on the high level of participation in the election, the relatively small (though possibly determinative) number of voters who were potentially disenfranchised, and the absence of substantial irregularities in the Region's adherence to the Board's mail-ballot procedures.

EXHIBIT K

From: Dmitri Iglitzin
Sent: Monday, January 04, 2016 12:11 PM
To: 'David Shankman'
Cc: Katelyn Sypher; 'Sal Ponce'; 'Mylor Treneer'
Subject: PSAV Presentation Services 19-RC-161471

David:

Pursuant to Section 8(d) of the NLRA, IATSE Local 15 hereby formally requests that PSAV commence meeting with it on the earliest practical date to negotiate and execute an agreement relating to the wages, hours, and other terms and conditions of employment of the bargaining unit of PSAV employees that was recently certified by the NLRB (referenced above).

Mylor Treneer, Business Agent for IATSE Local 15, will be the union representative for these negotiations. Please let Mylor know who will be his counterpart at PSAV, so he can discuss the scheduling of these negotiations.

Thank you very much,

Dmitri Iglitzin
Counsel for IATSE Local 15

Dmitri Iglitzin | Schwerin Campbell Barnard Iglitzin & Lavitt, LLP | 206.257-6003 | www.workerlaw.com

Union Representation - Strategic Organizing - Campaign Finance

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Katelyn Sypher

From: Katelyn Sypher
Sent: Monday, May 23, 2016 2:50 PM
To: 'David Shankman'
Cc: Dmitri Iglitzin
Subject: IATSE Local 15 - PSAV

David,

Now that the Board has denied PSAV's request for review of all Region 19 pre-election and election-related determinations, will PSAV honor its obligations under the Act and come to the table to bargain a first contract with Local 15?

Please let us know what dates the Employer has available for a first bargaining session.

Best regards,

Katelyn Sypher | Schwerin Campbell Barnard Iglitzin & Lavitt LLP | 206.257.6021 | www.workerlaw.com
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EXHIBIT L

Jennifer Woodward

From: Katelyn Sypher
Sent: Tuesday, May 24, 2016 10:57 AM
To: 'David Shankman'
Cc: Dmitri Iglitzin
Subject: RE: IATSE Local 15 - PSAV

David,

I've spoken with Mylor and he confirms that he's been in touch with Jason to confirm June 10 for the rigging negotiation session. The Local could do June 9 for the first techs bargaining session, if that works for PSAV – let me know. If the parties need to look at other dates for the tech session, I propose we hand over the scheduling to Mylor and Jason.

Thanks,

Katelyn Sypher | Schwerin Campbell Barnard Iglitzin & Lavitt LLP | 206.257.6021 | www.workerlaw.com
This communication is intended for a specific recipient and may be protected by the attorney-client and work-product privilege.
If you receive this message in error, please permanently delete it and notify the sender.

From: David Shankman [mailto:DShankman@shankmanleone.com]
Sent: Tuesday, May 24, 2016 10:55 AM
To: Katelyn Sypher
Cc: Dmitri Iglitzin
Subject: RE: IATSE Local 15 - PSAV

Please advise regarding below. We asked Mylor a week ago if not longer and there has been no response.

David Shankman
Shankman Leone, P.A.
707 Franklin St.
5th Floor
Tampa, Florida 33602
Phone (813)223-1099
Facsimile (813) 223-1055
Direct: (813)252-7971
Shankman|Leone Attorneys

From: David Shankman
Sent: Monday, May 23, 2016 8:14 PM
To: Katelyn Sypher <sypher@workerlaw.com>
Cc: Dmitri Iglitzin <iglitzin@workerlaw.com>
Subject: RE: IATSE Local 15 - PSAV

Katelyn, thanks for the note. We were waiting to hear back from Mylor regarding an agreed date for negotiations for the rigging contract but hadn't heard back. Since then, the NLRB decision was issued so I wanted to find out if we had enough time on June 9-10 or whether we wanted to block off some other dates. Should we handle that through you or through Mylor (he never got back to our RVP that he was working with). Please advise.

David Shankman

Shankman Leone, P.A.
707 Franklin St.
5th Floor
Tampa, Florida 33602
Phone (813)223-1099
Facsimile (813) 223-1055
Direct: (813)252-2971
Shankman|Leone
Attorneys

From: Katelyn Sypher [mailto:sypher@workerlaw.com]
Sent: Monday, May 23, 2016 5:50 PM
To: David Shankman <DShankman@shankmanleone.com>
Cc: Dmitri Iglitzin <iglitzin@workerlaw.com>
Subject: IATSE Local 15 - PSAV

David,

Now that the Board has denied PSAV's request for review of all Region 19 pre-election and election-related determinations, will PSAV honor its obligations under the Act and come to the table to bargain a first contract with Local 15?

Please let us know what dates the Employer has available for a first bargaining session.

Best regards,

Katelyn Sypher | Schwerin Campbell Barnard Iglitzin & Lavitt LLP | 206.257.6021 | www.workerlaw.com
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If you receive this message in error, please permanently delete it and notify the sender.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Joint Motion and Stipulation of Facts was served on the 13th day of October, 2016, on the following parties:

E-File:

The Honorable Gerald Etchingham
Associate Chief Judge
National Labor Relations Board
Division of Judges
901 Market St., Ste. 300
San Francisco, CA 94103

E-mail:

David Shankman, Attorney
Shankman Leone, P.A.
707 N. Franklin St., 5th Fl.
Tampa, FL 33602
DShankman@shankmanleone.com

Katelyn Sypher, Attorney
Schwerin, Campbell, Barnard,
Iglitzin & Lavitt LLP
18 West Mercer St., Ste. 400
Seattle, WA 98119
sypher@workerlaw.com

Kristy Kennedy

Kristy Kennedy, Office Manager

ATT. D

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH

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

and

Case 19-CA-167454

INTERNATIONAL ALLIANCE OF
THEATRICAL
STAGE EMPLOYEES, LOCAL 15

ORDER GRANTING JOINT MOTION, APPROVING STIPULATION OF FACTS, POSTPONING 10/25/16 HEARING INDEFINITELY, REASSIGNING ALJ AND SETTING DUE DATE FOR POST HEARING BRIEFS

On October 13, 2016, the parties submitted a joint motion to transfer proceedings to the Division of Judges together with the stipulation of facts and supporting exhibits. The joint motion waives a hearing and seeks findings of fact, conclusions of law, and an appropriate order based upon the stipulation of facts and briefs submitted by the parties. The joint motion is hereby **GRANTED** and the stipulation of facts and supporting exhibits are **APPROVED.** In addition, the parties have waived a hearing before an administrative law judge and, as a result, the October 25, 2016 hearing in this case is **POSTPONED** indefinitely.

All parties are herewith **NOTIFIED** that this matter is reassigned to Administrative Law Judge Mary M. Cracraft of the San Francisco Branch Division of Judges and briefs on the merits of this case shall be submitted to Administrative Law Judge Laws on or before the close of business, ***Thursday, November 17, 2016***, and will be carefully considered prior to the issuance of her decision and recommended order consistent therewith as provided by the Board's Rules and Regulations section 102.35(a)(9). All filings and rulings in connection with the joint motion to hear the case on stipulation are hereby made a part of the record herein and a full index of the record will be appended to the decision at the time of issuance. Section 102.111 of the Board's Rules and Regulations will govern the timeliness of briefs.

Dated: October 13, 2016, San Francisco, California.

Gerald M. Etchingham
Associate Chief
Administrative Law Judge

Served by facsimile and email upon the following:

For the NLRB:
Carolyn McConnell, Esq., Fax: 206.220.6305
Carolyn.McConnell@nlrb.gov

For the Respondent:
David Shankman, Esq.
Michael Willats, Esq., Fax: 813.223.1055
Email: DShankman@shankmanleone.com

For the Charging Party
Katelyn Sypher, Esq., Fax: 206.378.4132
Email: sypher@workerlaw.com

ATT. E

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

AUDIO VISUAL SERVICES GROUP, INC. d/b/a
PSAV PRESENTATION SERVICES

and **Case 19-CA-167454**

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 15

ORDER DEFERRING BRIEF DUE DATE ON STIPULATED RECORD
ERRATUM TO ORDER GRANTING JOINT MOTION APPROVING STIPULATION

By Order of October 13, 2016, the parties' joint motion to transfer the above proceedings to the Division of Judges was granted; the stipulation of facts was approved; the hearing set for October 25, 2016, was postponed; and a due date for briefing the stipulated record was set. At the time of this Order, Respondent's Motion for Summary Judgment was pending before the Board. Consultation today revealed that Respondent does not wish to withdraw the motion for summary judgment in order to proceed with the stipulated record. Accordingly, the parties are advised that briefing on the stipulated record, currently set for Thursday, November 17, 2016, is suspended until the Board rules on the Motion for Summary Judgment. If the Board grants summary judgment, the stipulated record proceeding will be moot. If the Board denies summary judgment, briefing on the stipulated record will be set for a date 21 days following the Board's ruling. A separate Order will issue at that time.

The Order of October 13, 2016, is corrected at the third line of paragraph two to change the name "Laws" to "Cracraft."

SO ORDERED.
Dated: October 14, 2016, San Francisco, California.

Gerald M. Etchingham
Associate Chief
Administrative Law Judge

Served by facsimile and email upon the following:

For the NLRB:
Carolyn McConnell, Esq., Fax: 206.220.6305
Carolyn.McConnell@nlrb.gov

For the Respondent:
David Shankman, Esq.
Michael Willats, Esq., Fax: 813.223.1055
Email: DShankman@shankmanleone.com

For the Charging Party
Katelyn Sypher, Esq., Fax: 206.378.4132
Email: sypher@workerlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Counsel for the General Counsel's Response to Order to Show Cause and Motion for Summary Judgment was served on the 23rd day of November, 2016, on the following parties:

E-File:

Gary Shinners, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570

E-mail:

David Shankman, Attorney
Shankman Leone, P.A.
707 N. Franklin St., 5th Fl.
Tampa, FL 33602
DShankman@shankmanleone.com

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Schwerin, Campbell, Barnard,
Iglitzin & Lavitt LLP
18 West Mercer St., Ste. 400
Seattle, WA 98119
sypher@workerlaw.com

Kristy Kennedy

Kristy Kennedy, Office Manager