

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

JAM PRODUCTIONS, LTD., EVENT  
PRODUCTIONS, INC., STANDING ROOM ONLY,  
INC., AND VICTORIA OPERATING CO.,  
A SINGLE EMPLOYER  
Employer

and

Case 13-CA-186575  
13-RC-160240

THEATRICAL STAGE EMPLOYEES UNION  
LOCAL NO. 2, I.A.T.S.E.  
Petitioner

ORDER REMANDING

Based upon a petition in Case 13-RC-160240 filed on September 17, 2015, and pursuant to a Stipulated Election Agreement approved by the Regional Director on September 30, 2015, an election was conducted on May 16, 2016, among a unit of stage production employees employed by the Employer at its Riviera, Park West and Vic theaters in Chicago, Illinois.<sup>1</sup> The Tally of Ballots showed 22 for and 10 against the Petitioner, with a determinative number of challenged ballots. After the election, the Employer timely filed an objection alleging that the Petitioner unlawfully provided economic benefits to employees to induce them to support the Petitioner by referring them for “premium work” at other performance venues in the Chicago area where the Petitioner has collective bargaining relationships with the respective employers. In its accompanying offer of proof, the Employer specifically alleged that, during the last six weeks of the critical period before the election, the Petitioner granted to employees in the former Riviera crew a significantly higher number of referrals to lucrative “union” jobs, and that granting those referrals impermissibly influenced the outcome of the election under such cases as *Mailing Services, Inc.*, 293 NLRB 565 (1989). On June 20, 2016, the Regional Director overruled the Employer’s objection without a hearing, resolved a determinative number of challenged ballots,<sup>2</sup> and issued a Certification of Representative. The Employer filed a request for review, which the Board denied on January 5, 2017.

On May 16, 2017, the Board granted the General Counsel’s motion for summary judgment and found that the Employer violated Sec. 8(a)(5) and (1) of the Act by failing and

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<sup>1</sup> Processing of the representation case was held in abeyance for several months, pending the resolution of an unfair labor practice charge in Case 13-CA-160319 which alleged that on September 21, 2015, the Employer discharged unit employees who were employed at the Riviera Theatre (“the Riviera crew”) in violation of Sec. 8(a)(3) and (1) of the Act. The “critical period” in Case 13-RC-160240 therefore ran from September 17, 2015, to May 16, 2016. *Ideal Electric & Mfg. Co.*, 134 NLRB 1275 (1961).

<sup>2</sup> The Regional Director sustained 12 challenges; the revised Tally of Ballots showed 22 for and 10 against the Petitioner, with 9 nondispositive challenged ballots.

refusing to recognize and bargain with the Petitioner as the unit’s exclusive representative. *Jam Productions, Ltd.*, 365 NLRB No. 75 (2017). The Employer refused to comply with the Board’s Order and filed a petition for review with the United States Court of Appeals for the Seventh Circuit, and the Board filed a cross-petition for enforcement.

On June 28, 2018, the court granted the Employer’s petition for review, denied the Board’s cross-application for enforcement, and remanded this proceeding to the Board. *Jam Productions, Ltd. v. NLRB*, 893 F.3d 1037 (7th Cir. 2018).<sup>3</sup> The court concluded that the Employer had presented sufficient evidence in its offer of proof—namely, that there was a “dramatic increase” in early April 2016 in the number of job referrals to the 21 voters who were formerly in the Riviera crew—to warrant an evidentiary hearing on its objection. *Id.* at 1044-1045. Although the court acknowledged that Regional Directors are obligated to hold a hearing only when the objecting party makes a sufficient prima facie showing of objectionable conduct, *id.* at 1044, it also stated that “it makes little sense to expect the employer to prove its case, especially without power of subpoena, to the Regional Director before a hearing will be granted,” *id.* at 1046, quoting *NLRB v. Service American Corp.*, 841 F.2d 191, 195 (7th Cir. 1988). The court accordingly remanded the case for a hearing on the Employer’s objection.

On September 18, 2018, the Board advised the parties that it had accepted the court’s remand and invited the parties to file statements of position. Subsequently, the Employer and the Petitioner each filed a timely statement of position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having accepted and considered the court’s opinion as the law of the case, as well as the parties’ statements of position,<sup>4</sup> we find that the issues raised by the court can best be resolved by remanding this proceeding to the Regional Director for further analysis in light of the court’s opinion, including reopening the record and conducting a hearing<sup>5</sup> to receive evidence regarding whether the Petitioner increased the number of job referrals to the 21 voters in the former Riviera crew during the last six weeks of the critical period and, if so, whether such referrals constituted an improper “inducement” to win employees’ support in the representation election, as well as any additional evidence the Regional Director deems relevant in evaluating the Employer’s objection.

Accordingly, we reopen Case 13-RC-160240 and remand the case to the Regional Director for Region 13 for further appropriate action consistent with this Order, including reopening the record and the issuance of a Supplemental Decision on the Employer’s objection.

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<sup>3</sup> The court affirmed the Regional Director’s disposition of the challenged ballots.

<sup>4</sup> The Employer’s statement of position asks the Board to direct that its anticipated subpoenas duces tecum be returnable before the hearing. The Petitioner’s statement of position asks the Board, in part, to reject “[a]ny effort by [the Employer] to expand the scope of this matter on remand” by “trawl[ing] endlessly through the Union’s business records fishing for irregularities.” We decline to pass on these subpoena issues, which may be addressed to the Regional Director under Sec. 102.66(f) and 102.69(c)(iii) of the Board’s Rules.

<sup>5</sup> Based on the express language of the court’s remand, there is no merit to the Petitioner’s suggestion that the Board should, at this juncture, limit its remand to directing further “investigation” by the Regional Director.

ORDER

IT IS ORDERED that Case 13-RC-160240 is reopened, and the case is remanded to the Regional Director for Region 13 for further appropriate action consistent with this Order Remanding.

JOHN F. RING, CHAIRMAN

LAUREN McFERRAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., April 4, 2019.