

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

BARTLE BOGLE HEGARTY, INC.

and

Case 02-CA-220370

SCREEN ACTORS GUILD-AMERICAN  
FEDERATION OF TELEVISION  
AND RADIO ARTISTS

*Joseph Luhrs, Esq.,*  
for the General Counsel.  
*Gregory J. Hessinger, Esq.,*  
for the Respondent.  
*Evan Hudson-Plush, Esq. and*  
*Olivia R. Singer, Esq.,*  
for the Charging Party.

DECISION

STATEMENT OF THE CASE

KENNETH W. CHU, Administrative Law Judge. This case was tried in New York, New York, on February 6, 2019. The record was held open for the submission of joint exhibits and the hearing record closed on March 12, 2019. The Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA or Union) filed the charge on May 14, 2018,<sup>1</sup> and the General Counsel issued the complaint on August 31. The complaint was amended on January 18, 2019 (GC Exh. 1(L)).<sup>2</sup> Bartle Bogle Hegarty, Inc. (BBH or Respondent), timely filed an answer denying the material allegations in the complaint (GC Exh. 1(I)).

On the entire record, including my observation of the demeanor of the witnesses,<sup>3</sup> and after considering the briefs filed by the parties, I make the following

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<sup>1</sup> All dates are in 2018 unless otherwise indicated.

<sup>2</sup> The exhibits for the General Counsel are identified as “GC Exh.” and Respondent’s exhibits are identified as “R. Exh.” Joint Exhibits are identified as “Jt. Exh.” The closing briefs are identified as “GC Br.” and “R. Br.” for the General Counsel and the Respondent, respectively, and “CP. Br.” for the Charging Party. The hearing transcript is referenced as “Tr.”

<sup>3</sup> Witnesses testifying at the hearing included David Viviano and Roy Rodriguez.

## FINDINGS OF FACT

## I. JURISDICTION AND UNION STATUS

5           The Respondent is a corporation with an office and place of business located in New  
 York, New York, and is engaged in the production of commercials. During the past 12 months,  
 the respondent has provided services in the course and conduct of its business operations valued  
 in excess of \$50,000 from its facility and has purchased and received goods and materials valued  
 10           in excess of \$5000 directly to points outside of the State of New York. The Respondent admits,  
 and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6),  
 and (7) of the Act.

          The Screen Actors Guild-American Federation of Television and Radio Artists (SAG-  
 AFTRA) is a labor organization within the meaning of Section 2(5) of the Act.

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## II. ALLEGED UNFAIR LABOR PRACTICES

## Background

20           The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the  
 National Labor Relations Act (Act) when about November 21, 2017, the Respondent withdrew  
 its recognition of the Union as the exclusive collective-bargaining representative of the  
 Commercials Unit and Radio Commercials Unit and has failed and refused to recognize and  
 bargain with the Union since about January 8, 2018.

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          The Union represents over 160,000 actors, broadcasters, recording artists, and other  
 media professionals (Jt. Exh. 1(3)). The Respondent is an advertising agency and employs these  
 performers and actors on commercials that it produces for its clients. In the advertising industry,  
 the Union negotiates multiemployer agreements with the Joint Policy Committee (JPC) of the  
 30           Association of National Advertisers-American Association of Advertising Agencies (ANA-  
 AAAA).<sup>4</sup> The JPC is authorized to act as the bargaining representative for the ANA-AAAA  
 membership, comprising of over 200 advertising agencies and about 100 advertisers. This  
 bargaining relationship has been in existence since 1955 (Tr. 92).<sup>5</sup>

35           There are two negotiated agreements (commercial and radio) relevant here, that govern  
 the terms and conditions of employment for the performers on commercials (Jt. Exh. 2).  
 Agencies and advertisers that do not authorize JPC to bargain on their behalf, instead, sign  
 independent agreements with the Union with the same terms and conditions of the negotiated  
 contracts. Upon reaching an agreement between the Union and JPC, the Union sends each direct  
 40           signatory copies of the new agreement and a “letter of adherence” (Jt. Exh. 1(12)). The direct  
 signatory may execute the letter of adherence, which binds it to the terms of the contracts (Jt.  
 Exh. 2).

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<sup>4</sup> Roy Rodriguez, chief contract officer for the Union, testified that the JAC is comprise of  
 advertisers and advertising agencies (Tr. 85).

<sup>5</sup> Most of the findings of facts had been stipulated by the parties at the hearing (Jt. Exh. 1).

BBH is not a member of JPC but has always been a direct signatory to the radio and commercial contracts. The Respondent has recognized AFTRA as the exclusive collective-bargaining representative of the radio unit since September 28, 1999, and the SAG as the exclusive collective-bargaining representative of the commercial unit since November 16, 2000 (Jt. Exh. 1(8) and (10)). BBH continued to recognize the Union as the exclusive collective-bargaining representative and had signed letters of adherence to the CBAs every 3 years until November 21, 20017. At all material times, the CBAs defined the following employees of Respondent (commercials unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (Jt. Exh. 1(7))

All principal performers (including actors, singers, announcers, sound effects persons, narrators, specialty dancers, specialty acts, puppeteers, stunt performers, and pilots) and all extra performers employed in the production of commercials, as defined in the Collective bargaining agreement.

The CBAs also defined the following employees of Respondent (the radio commercials unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (Jt. Exh. 1(9)).

All actors, singers, announcers, and sound effects persons employed in the production of commercials made for use on the Internet or New Media for commercial sound recordings (including audio tape, wire recording, sound tracks), as defined in the collective bargaining agreement, and any other similar devices and others means for audio reproduction for radio or television broadcasting purposes only.

#### Respondent BBH Repudiates the 2013 Commercial Contracts and the Obligation to Bargain

On November 18, 2013, BBH was a signatory to the letters of adherence to the 2013 commercial contracts, which expired on March 31, 2016. In January 2016, the Union's national director, Lori Hunt, issued a 60-day notice that the existing commercials contracts were to expire on March 31 (Jt. Exh. 1 at par. 5). The union membership subsequently ratified the contracts extending them to March 31, 2019. On June 17, 2016, the Union sent the 2016 commercial contracts with a letter of adherence to all past signatories, including BBH. The Union sent a second letter to BBH on August 11, 2013, to sign the letter of adherence and again made additional inquiries to BBH on November 3, 7, 22, and 30, 2016 (Jt. Exh. 2 (W)(X)(Y)). BBH contends that it has no records of receiving the March 2016 termination or the 2016 commercial contracts, but it is not disputed that Sean McGee from BBH was in email contact with the Union about signing the letter of adherence (Jt. Exh. 2 (X)). It is also not in dispute that BBH continued to recognize and operate under the 2013 contracts until November 21, 2017.

The chief financial officer for BBH, Nikita Malhotra, replied to Lori Hunt by letter dated November 21, 2017 (Jt. Exh. 2 (Z) and, in part, stated

To date, BBH has continued to operate under the 2013 Commercials Contracts. However, effective immediately, BBH hereby terminates and repudiates the 2013 Commercials Contracts and any asserted obligation to bargain successor agreements with SAG-AFTRA, due to the absence of a permanent bargaining unit.

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The Union responded with a demand for bargaining letter on December 20, 2017. On January 8, 2018, counsel for the Respondent, Gregory Messinger, responded via email to the demand by contending that BBH had a right to repudiate the contracts because it did not maintain a permanent bargaining unit and the contracts were illegal prehire contracts (Jt. Exh. 1, par. 22; Jt. Exh. 2 (BB)).

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On April 19, 2018, the union director, Tracy Hyman, learned that BBH was producing a commercial involving a live bear. The Union sent an email to BBH's director of business affairs, Librado Sanchez, to request bargaining to ensure all necessary precautions were being taken to protect the actors. Sanchez responded via email, informing the Union that the commercial was non-union. Hyman responded via email on April 23, 2018, that BBH was still bound to the commercial contracts (Jt. Exh. 1 at par. 22; Jt. Exh. 2 (CC)).

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#### DISCUSSION AND ANALYSIS

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The counsel for the General Counsel argues that Respondent BBH violated Section 8(a)(5) and (1) of the Act when it withdrew recognition of the Union and then refused to bargain. The General Counsel maintains that BBH had a duty to bargain over the terms of a successor contract or sign the letters of adherence after it repudiated the terms of the commercial contracts on November 21, 2017 (GC Br. at 8, 9). Roy Rodriguez testified that the Union would demand bargaining in situations where an agency refuses to sign the letter of adherence and the agency would be a nonsignatory of the contract if the parties failed to reach an agreement (Tr. 87, 88).

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The Respondent does not dispute that under “normal circumstances” it would have had an obligation to recognize the Union as the exclusive representative of the BBH bargaining unit of performers and to bargain in good faith for a successor agreement upon the expiration of the 2013 commercial contracts in 2016. However, the Respondent presents two affirmative defenses in its refusal to bargain and repudiation of union recognition. First, the Respondent maintains that it has no duty to bargain for any successor agreements with the Union because Respondent does not employ a permanent bargaining unit (Respondent’s answer at GC Exh. 1(I)). The Respondent contends that upon expiration of the collective-bargaining agreement, the presumption of majority status for a 9(a) representative is rebuttable<sup>6</sup> and that BBH rebutted the presumption of the Union’s majority support of the employees in the bargaining units. Corelated

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<sup>6</sup> Sec. 9(a) of the Act provides that the employee representative that has been “. . . designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such a unit for the purposes of collective bargaining.” BBH had recognized the Union as the collective-bargaining representative for almost 20 years of its commercial and radio commercial units. Clearly, BBH has voluntarily recognized the Union as the unit employees’ 9(a) representative during this time. It is not disputed that the Union and the Respondent enjoyed a 9(a) relationship until the repudiation of the contract by the Respondent.

to this defense is the Respondent's argument that there is no obligation to bargain where an employer no longer employs a permanent bargaining unit ("one-man unit") and may unilaterally terminate the bargaining relationship without violating the Act. The second affirmative defense is that the Respondent has no duty to bargain because the commercial contracts are illegal prehire contracts (R. Br. at 12, 13).<sup>7</sup>

*The Respondent Refused to Recognize and Bargain with the Union*

Section 8(a)(5) of the Act requires an employer to provide its employees' representative with notice and an opportunity to bargain before instituting changes in any matter that constitutes a mandatory bargaining subject. It is an unfair labor practice and a violation of Section 8(a)(5) of the Act for an employer to refuse to bargain with the employees' representative. *NLRB v. Katz*, 369 U.S. 736 (1962); *Toledo Blade Co.*, 343 NLRB 385 (2004). As stipulated by the parties, the Respondent has recognized the Union as the exclusive bargaining representative of the commercial unit from November 16, 2000, to November 21, 2017, and with the radio commercial unit from September 28, 1999, to November 21, 2017 (Jt. Exh. 1 at par. 8 and 10).

As such, I find that the Respondent violated Section (a)(5) and (1) of the Act when the Union demand to bargain over a successor contract on December 20, 2017, and the Respondent refused to bargain. *Katz*, above.

In this instance, an employer may only withdraw recognition from a 9(a) representative when it shows that the union has lost majority support in the unit. Under this standard, an employer can defeat a postwithdrawal refusal to bargain allegation if it shows, as a defense, the union's actual loss of majority status. The burden by a preponderance of the evidence is on the party raising this affirmative defense to establish that the union has lost majority support. *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 725 (2001). Here, the Respondent concedes these points but maintains that the record irrefutably establishes that BBH does not employ any permanent employees, and therefore BBH has rebutted the Union's presumption of majority status under *Levitz*. The Respondent cites to *D&B Masonry*, 275 NLRB 1403, 1408 (1985), for the proposition that since BBH does not employ a permanent bargaining unit, BBH has rebutted the presumption of majority status. ("It is settled that if an employer employs one or fewer unit employees on a permanent basis that the employer, without violating [the Act], may withdraw recognition from a union, repudiate its contract with the union, or unilaterally change the employees' terms and conditions of employment without affording a union an opportunity to bargain") (R. Br. at 13).

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<sup>7</sup> The Respondent also contends in its answer that the complaint is time barred under Sec. 10(b) of the Act (Respondent's answer at Defenses: par. 3). I find that the complaint is not time barred. The charge in this complaint was filed on May 14, 2018, and timely served on the Respondent on May 17, 2018, within the statutory 6-month period (GC Exh. 1).

*Temporary Employees is an Appropriate Unit  
for Bargaining*

5           The Respondent does not challenge the initial recognition of the Union in 1999–2000, but now argues that the Union does not enjoy majority support because no permanent employees exist in November 2017 and BBH asserted its right to withdraw recognition at a moment in time where there were no permanent employees in the bargaining units (R. Br. at 28, 29). (Tr. 24, 25; R. Br. at 29).

10           Many industries employees worked with little or no expectation of continued employment and have still been able to engage in stable and successful collective bargaining as seen with performers/actors and construction workers. The issue is whether the appropriate eligibility formula was used to define the bargaining unit. Here, it is not disputed that the bargaining unit consists of temporary employees working under the terms of the commercial contracts on a production by production basis since 2000.<sup>8</sup>

15           The most widely held formula that the Board normally used for including (or excluding) employees in a unit was established in the *Davison-Paxon Co.*, 185 NLRB 21 (1970). There, the employer operates a total of 10 retail department stores throughout Georgia and South Carolina. The Board held that except for employees whose exclusion is required by established Board policy, such as temporary or seasonal employees, any contingent or extra employee who regularly averages 4 hours or more per week for the last quarter prior to the eligibility date has enough community of interest for inclusion in the unit and may vote in elections.

20           I find that the counsel for the General Counsel has shown by a preponderance of the evidence that BBH employed numerous employees during the material time with an average of more than one employee in each production. The “one-man” unit has no application in this situation since none of the employees of the cited bargaining units are permanent employees. As such, the applicable analysis is with a unit of solely temporary employees.<sup>9</sup>

25           The Respondent argues that under a formula established in *Davison-Paxon*, above, 23–24 (1970), an employee must have a sufficient regularity of employment to demonstrate a community of interest with unit employees “. . . if the employee averages 4 or more hours of work per week for the last quarter prior to the eligibility date.” Yet the Board has created alternate formulas for unique conditions of industries where special circumstances existed to allow the best employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in the terms and conditions of employment offered by the employer. The Respondent concedes that the NLRB has fashioned alternative eligibility formulas to consider the unique patterns of employment in the entertainment industry.

30           In *Kansas City Repertory Theatre, Inc.*, 356 NLRB 147 (2010), the Board held that musicians who work intermittently constituted an appropriate unit. The Board rejected the

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<sup>8</sup> Jt. Exh. 1 at par. 3.

<sup>9</sup> In any event, the record shows that the average cast size in 2016 was 2.6 and 3.9 in 2017, which eliminates the “one-man” unit argument (GC Exhs. 2 and 3).

argument that the musicians were all ineligible temporary employees, noting that many industries (such as acting and construction) in which there is successful collective bargaining despite employees who work intermittently with no expectation of continued employment with a particular employer; and (2) in cases where temporary employees were excluded, it was because they lacked a community of interest with the unit employees, and there are no cases in which a petition was dismissed solely because the unit sought was composed of temporary employees. The musicians in Kansas City Repertory Theatre, Inc. work at once, for a limited time, with no expectation of reemployment and are usually not rehired again. The Board recognized the uniqueness of the entertainment industry and reaffirmed its holding in the *Julliard School* decision. The Board applied what is known as the Juilliard formula and held in *Kansas City Repertory* that musicians who work intermittently constituted an appropriate unit.

In *Julliard School* 208 NLRB 153 (1978), the court created a formula on who should be considered a part of a bargaining unit during an election dispute. The Board rejected the employer's argument that no unit was appropriate and over what eligibility formula should be adopted to determine an appropriate unit because a group of per diem employees were hired on a need basis and had no expectation of future employment with the employer and the performers were noted on their identification cards as temporary employee. The Board found that many of these employees worked for periods of a time that showed repetitive employment that reasonably allow them to anticipate reemployment in the foreseeable future. Despite the employer not using a rehire list, these employees were all hired from the same labor market and some work for as long as 35 weeks. Special circumstances were found to exist because the employer conducted relatively few productions each year with three or four performances at the most and they relied predominantly on per diem employees. The Board held that given the number and length of the employer's stage productions and the employment pattern that resulted from it, that voting eligibility would be granted to those that have been employed during two productions for a total of 5 working days over a 1-year period or who have been employed for at least 15 days over a 2-year period.

In *Medion, Inc.*, 200 NLRB 1013 (1972), the employer was involved in the film industry and the employees were hired for a production that for a day duration. Once the production is finished the employees are laid off without any promise reemployment. When work is available again the employer will rehire those that were satisfactory. Based on the irregular pattern of employment, the Board recognized the responsibility to devise an eligibility formula which will protect and give voting rights to those with a reasonable expectancy of further employment with the employer. Upon consideration of the employer's industry and the described employment pattern the Board decided that the appropriate formula would be two productions for a minimum of five working days during the year. In *Medion*, the appropriate formula was at least two productions for a minimum of 5 workings days during the year preceding the issuance of the Board's decision.

In *American Zoetrope Productions, Inc.*, 207 NLRB 621 (1973), the issue raised was the eligibility regarding the bargaining unit. The employer was involved in motion pictures and in some cases exclusively commercials. The employees in this industry were hired for a production; in certain cases, only for a day's work and then they were laid off without any promise or indication of reemployment. When work became available the employer recalled those who have proved satisfactory in the past. The Board continued to hold that based on an irregular

pattern of employment, it was the responsibility of the Board to create an eligibility formula which will protect and give full effect of voting rights to those that have a reasonable expectancy of further employment (employees worked two productions over a 1-year period were considered part of the bargaining unit in question). The Board held the *Medion* formula was appropriate to the extent that it requires two productions during the 1-year period. However, as most of the provided jobs were only 1-2 days, there was a good chance that employees will have worked two productions, but not 5 working days. The Board held that having been reemployed and having completed the last job is a more significant factor of the likelihood of future employment than the total number of days worked. This allowed for the elimination of the 5-day requirement based on the circumstances of the employment pattern. It was held that fewer days worked was still compatible with a reasonable expectancy of future employment.<sup>10</sup>

My review of the performers employed by BBH from 2008-2018 shows multiple employees working more than one production per year and several employees working for BBH in multiple years (Jt. Exhs. 3, 4, and 5). David Viviano, chief economist for the Union, testified that he compiled a list of all employees during the material time who had worked for BBH. He stated that the record identified the employees and the individual payments made to each employee under the commercial contracts with BBH.<sup>11</sup> The record shows the name of the employee, the date of production, the session payroll date and the production date. The signatory for the paid performances was BBH (Tr. 30–37). The records show over 150 performers in 2016 and over 100 performers in 2017 working on BBH productions and over 50 employees working more than once in 2016 and 41 performers on multiple day productions in 2017(Jt. Exh. 5(A)). The record further shows that several employees also worked on productions for BBH in multiple years, thus establishing the likelihood of future employment (Jt. Exh. 5).<sup>12</sup>

Accordingly, I find that a sufficient number of temporary employees contracted by BBH throughout the years, and particularly in 2016 and 2017, to establish an appropriate unit for

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<sup>10</sup> In *Columbus Symphony Orchestra*, 350 NLRB 523 (2007), the Board applied the more traditional formula under *Davison-Paxon* involving a symphony orchestra. However, Columbus Symphony Orchestra was a year-round 46-week schedule enterprise with a full-time staff and a complement of as-needed employees, clearly distinguishable from this situation. Similarly, the Respondent's reliance on member Miscimarra's dissent in *David Saxe Productions*, 364 NLRB No. 100 (2016), is not persuasive since any prehire inquiry is relevant only at the time of recognition and not after successive contracts. Additionally, in *David Saxe*, the production had not yet open and the Respondent here is an on-going enterprise with numerous productions.

<sup>11</sup> The Respondent questions the accuracy of the data proffered by the General Counsel when Viviano was cross-examined by counsel for the Respondent (Tr. 47; R. Br. at 31–33). The Respondent argues that the specific time sheets included in the production reports would have definitively establish the number of commercials, sessions and hours of worked (R. Br. At 7). However, the overall record in GC Exhs. 2 and 3 shows, even if there were some inaccuracies in the data, a pattern that BBH has employed more than one performer per year and rehired performers in multiple years. I would also note that the specific time sheets that Respondent contends are more accurate data were in the custody of BBH and could have been proffered by the Respondent in rebuttal to the records introduced by General Counsel.

<sup>12</sup> For example, Michael M., RJK, Steve K., William M., James O., James L. and others worked for BBH in multiple years from 2002–2018.

bargaining.

*The Commercial Contracts are not “Pre-Hire” Agreements*

5           The Respondent argues that the commercials and radio commercials contracts are pre-hire agreements that impose the terms of the contracts on performers before they are hired and for future productions.

10           This assertion is faulty for the simple reason that once a union wins majority support in an election, any new employees would be in the appropriate bargaining unit. Because of the unique work pattern in the entertainment industry, the commercials contracts would apply to all employees, including future and temporary performers, in the appropriate job classifications, on all productions. As noted above, since the counsel for the General Counsel has shown at least 41 performers hired by BBH in 2017, the year BBH repudiated the contract, the Respondent has not  
15 shown that the Union had lost majority support, let alone that there were no employees in existence in November 2017 to repudiate the contract.

20           The Respondent also argues that it should not be estopped in asserting the pre-hire arrangements because it had long ago waived any right to object to the bargaining units recognized by the parties. The Respondent cites to a 2001 General Counsel’s advice memorandum in *Children’s Miracle Network* (CMN), 2001 WL 1782903, Case No. 31–CA–25115 (2001), where CMN sought to withdraw recognition of the union and refuse to bargain over a term in the contract because certain individuals were not statutory employees under the Act. In the advice memorandum, the NLRB Division of Advice noted that “The Board  
25 will not obligate an employer to bargain with a Union on behalf of a unit that could not have been certified under the Act. This advice memorandum is distinguishable from the instant complaint since *Children’s Miracle Network* involves an issue as to whether certain individuals are statutory employees under the Act. Here, majority status has been recognized years ago and individuals who are temporary and nonpermanent employees have been recognized as  
30 appropriately in the bargaining units. Of course, an employer has the right to withdraw recognition at any time so long as there is good-faith doubt and the evidence shows that a union had lost majority support. No such offer has been demonstrated. In any event, the General Counsel’s advice memorandum is not precedential authority and not binding on the Board, citing to *Fun Striders, Inc.*, 250 NLRB 520 (1980), and *Midwest Television* on the Board, citing to *Fun  
35 Striders, Inc.*, 250 NLRB 520 (1980), and *Midwest Television, Inc.*, 343 NLRB 748, 768 fn 21 (2004).<sup>13</sup>

40           Accordingly, I find that the Respondent violated Section 8(a)(5) and (1) of the Act when it withdrew recognition of the Union as the Section 9(a) collective-bargaining representative of BBH’s unit employees and subsequently refused to bargain with the Union.

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<sup>13</sup> To be perfectly clear, the Respondent’s argument that the Union’s role is more “akin to a Section 8(f) representative than a Section 9(a) representative albeit without the statutory sanction” (R. Br. at 22) is without merit because 8(f) presumption of majority status applies exclusively to the construction industry.

## CONCLUSIONS OF LAW

1. The Respondent, Bartle Bogle Hegarty, Inc., is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times, the Union has been the designated exclusive collective-bargaining representative of the following employees constituting a unit (commercials unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All principal performers (including actors, singers, announcers, sound effects persons, narrators, specialty dancers, specialty acts, puppeteers, stunt performers, and pilots) and all extra performers employed in the production of commercials, as defined in the Collective bargaining agreement.

4. At all material times, the Union has been the designated exclusive collective-bargaining representative of the following employees constituting a unit (the radio commercials unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All actors, singers, announcers, and sound effects persons employed in the production of commercials made for use on the Internet or New Media for commercial sound recordings (including audio tape, wire recording, sound tracks), as defined in the collective bargaining agreement, and any other similar devices and others means for audio reproduction for radio or television broadcasting purposes only.

5. By unilaterally withdrawing recognition of the Union as the 9(a) collective-bargaining representative of the Respondent's employees and subsequently refusing to bargain with the Union, the Respondent has violated Section 8(a)(5) and (1) of the Act.

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

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent shall be ordered to recognize and bargain with the Union, notify the Union in writing of any changes made in the unit employees' wages, hours, and other terms and conditions of employment after November 21, 2017. Specifically, the Respondent shall be required to make whole its employees for any losses they suffered or expenses they incurred, including all contractually required contributions to the Union's benefit funds, after November 21, 2017. Any monetary losses suffered by the employees shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Further, upon request of the Union, rescind any unilaterally implemented changes made since November 21, 2017 and restore all benefits, wages, hours, and other terms and conditions enjoyed by the unit employees prior to November 21, 2017.

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## ORDER

On these findings of facts and conclusions of law and on the entire record, I issue the following recommended<sup>14</sup>

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The Respondent, Bartle Bogle Hegarty, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

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(a) Unilaterally implementing changes to the unit employees' wages, hours, and other terms and conditions of employment after November 21, 2017.

(b) Refusing to recognize and bargain with the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the policies of the Act.

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(a) Upon request of the Union, rescind the unilaterally implemented changes in the unit employees' wages, hours, and other terms and conditions of employment after November 21, 2017.

(b) Make all affected employees whole for any losses they incurred by virtue of these changes in their wages, hours, and other terms and conditions of employment, including all contractually required contributions to the Union's benefit funds, after November 21, 2017, with interest, in the manner set forth in the remedy section of this decision for any losses they suffered or expenses they incurred as a result of the unlawful action by Respondent.

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(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of reimbursement of costs incurred as a result of the change in the employees' health care insurance under the terms of this Order.

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(d) Within 14 days after service by the Region, post at its place of business at 32 Avenue of the Americas, New York, New York 10013, copies of the attached notice marked "Appendix A."<sup>15</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after

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<sup>14</sup> If no exceptions are filed as provided by Sec. 102.46 and if no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>15</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 21, 2017.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 15, 2019



Kenneth W. Chu  
Kenneth W. Chu  
Administrative Law Judge

**APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefits  
and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain collectively with the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) by unilaterally implementing any changes made to the unit employees' wages, hours, and other terms and conditions of employment after November 21, 2017, without first giving notice to the Union and an opportunity to bargain over the changes of the employees in the following units:

All principal performers (including actors, singers, announcers, sound effects persons, narrators, specialty dancers, specialty acts, puppeteers, stunt performers, and pilots) and all extra performers employed in the production of commercials, as defined in the Collective bargaining agreement (commercial unit).

All actors, singers, announcers, and sound effects persons employed in the production of commercials made for use on the Internet or New Media for commercial sound recordings (including audio tape, wire recording, sound tracks), as defined in the collective bargaining agreement, and any other similar devices and others means for audio reproduction for radio or television broadcasting purposes only (radio commercials unit).

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request of the Union, rescind the unilaterally implemented changes in the unit employees' wages, hours, and other terms and conditions of employment after November 21, 2017, and make all affected unit employees whole for any losses they incurred by virtue of these changes in their wages, hours, and other terms and conditions of employment, including all contractually required contributions to the Union's benefit funds, after November 21, 2017.

WE WILL make you whole for any losses that you suffered or expenses you incurred because of the unlawful action taken against you, with interest.

Bartle Bogle Hegarty, Inc.

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

National Labor Relations Board Region 2  
26 Federal Plaza, Room 3614  
New York, New York 10278  
Hours of Operation: 8:45 a.m. to 5:15 p.m.  
212-264-0300

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/02-CA-220370](http://www.nlr.gov/case/02-CA-220370) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 212-264-0300.