UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

TZ CHICAGO LLC, D/B/A TEATRO ZINZANNI

Employer

and

Case 13-RC-256049

CHICAGO FEDERATION OF MUSICIANS,
LOCAL 10-208 A.F.M.

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (Act), a hearing was held before a hearing officer of the National Labor Relations Board (Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.¹

I. DECISION²

IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining unit³:

¹ Upon the entire record in this proceeding, I find:
   1) The hearing officer’s rulings made at the hearing are free from prejudicial error and are 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.
   3) The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
   4) The Petitioner claims to represent the employees in the unit described in the Petition and the Employer declines to recognize the Petitioner.
   5) 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.

² The only issue appropriately raised at hearing was the eligibility formula. While both parties agree that the Juilliard formula generally applies to this type of employer, the Employer nonetheless states that unique circumstances exist wherein the formula should be altered to, 1) exclude musicians who are currently performing but will not be performing a few weeks following the election, and 2) include musicians who recently signed contracts with the Employer but will not work any performances until April 2020. I do not find the instant circumstances unique. The Juilliard formula is used in the theater industry to specifically address eligibility of employees who work on a production-by-production basis and the formula is appropriate in the instant matter.

³
Included: All full-time and regular part-time musicians employed by the Employer to play a musical instrument at a performance produced by the Employer at the performance location currently located at 32 W. Randolph, Chicago, IL.

Excluded: Non-instrumental stage performers, administrative staff, stage crew, production staff, box office employees, ushers, managerial employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

There are approximately 10 eligible voters in the unit.

II. CONCLUSION

Based on the foregoing and the entire record herein, I find that it is appropriate to conduct an election in the unit set forth above.

III. 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 Chicago Federation of Musicians, Local 10-208 A.F.M..

A. Election Details

Since both parties agree to a mixed mail-manual election, and because the employees' schedules are sporadic, I direct that the election be conducted by mixed mail-manual ballot.

For those employees voting in the manual ballot portion of the election, the election will be held on Saturday, March 7, 2020 from 5:00 p.m. - 6:00 p.m.

For those employees voting in the mail ballot portion of the election, the mail ballots will be mailed to these certain employees employed in the appropriate collective-bargaining unit. At 5:00 p.m. on Monday, March 9, 2020, ballots will be mailed to these voters from the National Labor Relations Board, Region 13, 219 S. Dearborn Street, Suite 808, Chicago, IL 60604. 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 by mail and do not receive a ballot in the mail by Friday, March 13, 2020, should communicate immediately with the

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3 The parties have agreed that the classification of Music Director may vote in the election, but such ballot(s) will be challenged since the eligibility of that classification has not been resolved. No decision has been made regarding whether the individual(s) in this classification is included in, or excluded from, the bargaining unit. The eligibility of individual(s) in this classification will be resolved, if necessary, following the election.
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National Labor Relations Board by either calling the Region 13 Office at (312) 353-7570 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 13 office on Tuesday, March 24, 2020 at 10:00 a.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

The appropriate eligibility formula to be applied is the one set forth in Juilliard School, 208 NLRB 153 (1974). Therefore, eligible to vote are those musicians described in the unit description above who have been employed by the Employer for two productions for a total of 5 working days over a 1-year period, or who have been employed by the Employer for at least 15 days over a 2-year period immediately preceding the issuance date of this decision.

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 appear in person at the polls.

As stipulated by the parties, also eligible to vote using the Board’s challenged ballot procedure are those individual(s) employed in the classification of Music Director whose eligibility remains unresolved.

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(1) 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 February 27, 2020. 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
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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.

The list shall be filed electronically with the Region and, if feasible, served electronically on the other parties named in this decision. The list can 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 non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

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
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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.


[Signature]
Peter Sung Ohr, Regional Director  
National Labor Relations Board, Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, Illinois 60604-2027