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**National Hot Rod Association (NHRA) and International Alliance of Theatrical Stage Employees, AFL-CIO.** Case 29-CA-254128

April 17, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN  
AND EMANUEL

This is a refusal-to-bargain case in which the Respondent, National Hot Rod Association (NHRA), is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and an amended charge filed on December 30, 2019 and January 9, 2020, respectively, by International Alliance of Theatrical Stage Employees, AFL-CIO (the Union), the General Counsel issued the complaint on January 30, 2020, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 22-RC-186622.<sup>1</sup> (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On March 3, 2020, the General Counsel filed a Motion for Summary Judgment. On March 6, 2020, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the General Counsel and the Union each filed a reply to the Respondent's response.

Ruling on Motion for Summary Judgment

The Respondent denies its refusal to bargain and contests the validity of the Union's certification of representative based on its objections to the election in the underlying representation proceeding.<sup>2</sup>

<sup>1</sup> 368 NLRB No. 26 (2019). In the underlying proceeding, Case 22-RC-186622 was consolidated for hearing with Cases 02-CA-185569, 22-CA-190221, and 22-CA-192686. The administrative law judge in the underlying proceeding was sitting as a hearing officer with respect to the representation issues. See Sec. 102.1(f) of the Board's Rules and Regulations; see also NLRB Casehandling Manual (Part 2) Representation Proceedings, Sec. 11424.1.

<sup>2</sup> In its answer, the Respondent denies the allegations in complaint par. 8, which alleges that since about September 13, 2019, the Re-

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).<sup>3</sup>

Accordingly, we grant the Motion for Summary Judgment.<sup>4</sup>

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a California corporation with an office and place of business located at 2035 Financial Way, Glendora, California, the only facility involved here, and is engaged in the business of sanctioning drag racing and producing the Mello Yello Drag Racing Series for telecast.

During the 12-month period preceding issuance of the complaint, which period is representative of its operations in general, the Respondent derived gross revenues in excess of \$500,000 and performed services valued in

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Respondent has failed and refused to recognize and bargain with the Union; and complaint pars. 9 and 11, which allege, respectively, that by this conduct the Respondent has been failing and refusing to bargain collectively and in good faith with the Union in violation of Sec. 8(a)(1) and (5) of the Act, and that this unfair labor practice affects commerce within the meaning of Sec. 2(6) and (7) of the Act. However, in its response to the Notice to Show Cause, the Respondent acknowledges that the procedural history of this case is accurately set forth in pars. 1 through 15 of the General Counsel's Motion for Summary Judgment. Par. 12 of the General Counsel's motion states that "On or about September 13, 2019, Respondent, verbally, by its attorney Daniel Murphy, failed and refused to recognize and bargain with the Union as the exclusive bargaining representative of the Unit." Accordingly, we conclude that the Respondent's denials of complaint pars. 8, 9, and 11 do not raise any issue warranting a hearing.

<sup>3</sup> In its response to the Notice to Show Cause, the Respondent acknowledges that the Board does not ordinarily permit a party to relitigate representation issues as a defense to an unfair labor practice proceeding. The Respondent argues, however, that the facts of this case present compelling reasons for the Board to reconsider its earlier decision overruling the Respondent's objections, contending that the decision places an inappropriate burden on voters to ensure the fairness of an election and raises serious questions about the integrity of mail ballot elections in Region 22. Having reviewed the facts and arguments presented by the Respondent in its response to the Notice to Show Cause, we find no basis for departing from our longstanding rule or disturbing our Decision and Certification of Representative in the underlying representation case.

<sup>4</sup> The Respondent's request that the complaint be dismissed is therefore denied.

excess of \$50,000 for entities in States other than the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

On July 29, 2019, the Board certified the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All broadcast technicians employed by the National Hot Rod Association including technical directors (TD Technical Director), associate directors (AD Associate Director, AD Satellite Feed), assistant producers (PRD Pit Producer, PRD Video Board), camera operators (HC Hard Camera, HH Handheld Camera), audio technicians (A1 Audio Lead), audio assists/assistants (A2 Audio Assist, SUB Sub Mixer), replay producers, videotape operators, digital recording device operators (EVS Replay Operator), video technicians (V1 Senior Video, V2 Video Operator), video technician assistants (Video Assist), graphics operators (VIZ Graphics Operator), graphics coordinators (GPSC Graphics Coordinator), bug operators (Bug Operator), runners (RNR Runner), and utility technicians (UTE Utility) performing work in connection with telecasting of live or recorded racing events at remote locations; but excluding all office clerical employees and professional employees, guards, and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

### B. *Refusal to Bargain*

The Union, by email dated August 23, 2019, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about September 13, 2019, the Respondent has failed and refused to recognize and bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing since September 13, 2019, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in

the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).<sup>5</sup>

## ORDER

The National Labor Relations Board orders that the Respondent, National Hot Rod Association (NHRA), Glendora, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Alliance of Theatrical Stage Employees, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) 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.

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

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

<sup>5</sup> In addition to the customary notice posting remedies, the General Counsel requests the additional remedy that the Respondent mail a copy of the notice to each unit employee. We deny this request because the General Counsel has not shown that this additional measure is needed to remedy the effects of the Respondent's unfair labor practices. See *Environmental Contractors, Inc.*, 366 NLRB No. 41, slip op. at 4 fn. 6 (2018); *On Target Security, Inc.*, 362 NLRB No. 31, slip op. at 2 (2015) (not reported in Board volumes); *First Legal Support Services, LLC*, 342 NLRB 350, 350 fn. 6 (2004).

All broadcast technicians employed by the National Hot Rod Association including technical directors (TD Technical Director), associate directors (AD Associate Director, AD Satellite Feed), assistant producers (PRD Pit Producer, PRD Video Board), camera operators (HC Hard Camera, HH Handheld Camera), audio technicians (A1 Audio Lead), audio assists/assistants (A2 Audio Assist, SUB Sub Mixer), replay producers, videotape operators, digital recording device operators (EVS Replay Operator), video technicians (V1 Senior Video, V2 Video Operator), video technician assistants (Video Assist), graphics operators (VIZ Graphics Operator), graphics coordinators (GPSC Graphics Coordinator), bug operators (Bug Operator), runners (RNR Runner), and utility technicians (UTE Utility) performing work in connection with telecasting of live or recorded racing events at remote locations; but excluding all office clerical employees and professional employees, guards, and supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facility in Glendora, California, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after 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 September 13, 2019.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 29 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.

<sup>6</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."

Dated, Washington, D.C. April 17, 2020

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John F. Ring, Chairman

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD  
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 benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Alliance of Theatrical Stage Employees, AFL-CIO, as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All broadcast technicians employed by the National Hot Rod Association including technical directors (TD Technical Director), associate directors (AD Associate Director, AD Satellite Feed), assistant producers (PRD Pit Producer, PRD Video Board), camera operators (HC Hard Camera, HH Handheld Camera), audio technicians (A1 Audio Lead), audio assists/assistants (A2

Audio Assist, SUB Sub Mixer), replay producers, videotape operators, digital recording device operators (EVS Replay Operator), video technicians (V1 Senior Video, V2 Video Operator), video technician assistants (Video Assist), graphics operators (VIZ Graphics Operator), graphics coordinators (GPSC Graphics Coordinator), bug operators (Bug Operator), runners (RNR Runner), and utility technicians (UTE Utility) performing work in connection with telecasting of live or recorded racing events at remote locations; but excluding all office clerical employees and professional employees, guards, and supervisors as defined in the Act, and all other employees.

NATIONAL HOT ROD ASSOCIATION (NHRA)

The Board's decision can be found at [www.nlr.gov/case/29-CA-254128](http://www.nlr.gov/case/29-CA-254128) 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.

