

**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD**

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS,
LOCAL 11 (IATSE),

Petitioner

CASE NO. 01-RC-259999

and

NORTH SHORE MUSIC THEATER,

Employer

**PETITIONER’S OPPOSITION TO EMPLOYER’S REQUEST TO CONTINUE
NOTICE OF REPRESENTATION HEARING**

Now comes the Petitioner, IATSE, Local 11, and opposes the Employer’s request to continue the hearing to May 26, 2020.¹ As grounds for its opposition, Petitioner states the following:

1. The only issues preserved for hearing by the Employer’s Statement of Position are whether the Board has jurisdiction over the Employer; whether the employees who are the subject of the Petition have a reasonable expectation of returning from layoff; whether the election should be conducted manually or by mail; and the eligibility formula for the seasonal members of the run crew and spot ops. All these issues can be litigated while the theater remains closed.
2. As to the first issue, the Employer has checked the “no” box on the question, “Do you agree that the NLRB has jurisdiction over the Employer in this case?” However, the Employer concedes that it has annual revenue of \$1M or more, which is the retail jurisdictional standard.

¹ The Employer’s prayer for relief implies that it intends to seek further continuances until the theater is “open for business.”

Theatres, such as the Employer, are evaluated under the retail standards. *See, e.g., Fiddlehead Theatre Company, Inc.*, 2016 NLRB Reg. Dir. Dec. LEXIS 119 (“The Board has determined that employers who are engaged in producing plays for theatres have operations that are both retail and nonretail in character and have a substantial impact on interstate commerce when meeting either standard. *The League of New York Theatres, Inc.*, 129 NLRB 1429, 1432 (1961); *Musical Theater Association*, 221 NLRB 872 n.4 (1975).”). In addition, all the shows that the Employer presented in the last calendar year were non-Massachusetts productions for which the Employer certainly paid far more than \$50,000. Lastly, Petitioner is confident that the Employer sold to out-of-state residents far more than \$50,000 for tickets and concession goods.

3. The second issue is whether the employees have a reasonable expectation of returning from layoff. Accompanying this Opposition are three documents. First, is an April 9th email from the Production Manager to the Department Heads who are part of the petitioned-for bargaining unit. In the email, the Production Manager expressly states that the bargaining unit employees will be returning from layoff. In that email, the Production Manager also states that the Employer had applied for a PPP loan under the CARES Act. The second document is the application for such a loan. As expressly stated on the application, the Employer has attested that the loan proceeds will be used “to retain workers and maintain payroll.” Accordingly, it would be a serious federal crime if the Employer fails to return the employees to the workforce. The third document is a note with an attached COBRA Notice dated May 12, 2020 from the Employer to a bargaining unit employee. The note states that “our employees are very import[ant] to us.” This May 12th note does not refer to the employees in the past tense.

4. The third issue for hearing is whether the election should be conducted manually or by mail. Resolution of this issue clearly does not require that the theater be opened.

5. The last issue involves the eligibility formula for the seasonal run crew and spot ops. The appropriate formula is well-established in Region 1. *See, e.g., Fiddlehead Theatre Company, Inc., supra.*

6. While the Employer cannot conduct its business at this time, the Governor's order in no way limits Mr. Hanney's access into the theater facility or the access of a staff person in the event Mr. Hanney needs assistance in retrieving whatever documents he believes are required.

WHEREFORE, the Petitioner respectfully requests that the Regional Director deny the Employer's Request to Continue Hearing.

For the Petitioner,
IATSE, Local 11,
By its attorney:

/s/ Gabriel O. Dumont, Jr.

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May 15, 2020

CERTIFICATE OF SERVICE

The undersigned certifies that this day a copy of this Opposition has been served electronically on Bradford N. Louison, Esq. at blouison@lceplaw.com

/s/ Gabriel O. Dumont, Jr.

Gabriel O. Dumont, Jr.