

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

SAG-AFTRA NEW YORK (VARIOUS EMPLOYERS)

and

Case No. 02-CB-242132

BENJAMIN SCOTT HAUCK, An Individual

**COUNSEL FOR THE GENERAL COUNSEL'S ANSWERING BRIEF
TO THE RESPONDENT'S CROSS EXCEPTIONS**

Dated at New York, New York
This 8th Day of July 2020

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Region 2
26 Federal Plaza, Room 2614
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I. THE BOARD HAS JURISDICTION OVER THE AMPTP

The Administrative Law Judge correctly found that jurisdiction over Picrow may be established based on the aggregate business of the AMPTP, a multi-employer association which bargains with SAG AFTRA and other entertainment industry unions on its members' behalf. ALJD at 7:29, 6:13.¹

Respondent is party to a collective bargaining agreement with the Alliance of Motion Picture and Television Producers (herein AMPTP), a multi-employer association. Tr. 37:3 (Touretz). Respondent's Answer admits that the AMPTP has at all material times been an organization composed of various motion picture and television producers operating in, among others, the States of New York and California, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with labor organizations, including Respondent. *Compare* GC Exh. 1(c) (Complaint) *with* GC Exh. 1(e) (Answer). Respondent further admits that Picrow Streaming (herein Picrow) has "at all material times" been an employer-member of the AMPTP and has authorized the AMPTP to represent it in negotiating and administering collective-bargaining agreements with Respondent. *Id.* Additionally, Respondent stipulated that Picrow has at all material times been a California corporation with a principal place of business located in Los Angeles, California, and an office

¹ Reference to the ALJD shall be "ALJD at [page number:line number]. For instance, ALJD at 5:42-45 is a reference to page 5, lines 42 to 45 of the ALJD. References to the transcript shall be "Tr. [page:line number] (witness name)." References to Counsel for the General Counsel's Exhibits shall be "GC Exh. [number], [paragraph number, where relevant]." References to Respondent's Exhibits shall be "R. Exh. [number], [paragraph number, where relevant]." References to Joint Exhibits shall be "Jt. Exh. [number], [paragraph number, where relevant]." References to the Respondent's Answering Brief shall be "R Br., [page number, where relevant]." References to the General Counsel's Memo in Support of Exceptions shall be "GC Br., [page number, where relevant]."

and place of business located in Brooklyn, New York, and engaged in the business of providing postproduction sound services for television. Jt. Exh 1. Respondent also stipulated to the authenticity, admissibility, and truthfulness of a commerce questionnaire from Picrow dated February 4, 2019---less than four months prior to the filing of the charge in this case. Id; GC Exh. 1.

The record establishes that the AMPTP is currently composed of about 350 employer-members. Jt. Exh. 1, par. 2-3; Tr. 36:14-15, 37:1-6 (Touretz). Charging Party Benjamin Hauck (“Hauck”) worked for many of them, including Picrow, Jay Squared Productions, and Universal Television. Tr. 15:9-21, 16:1-3, 20:1-6 (Hauck); 36:14-15, 37:1-10 (Touretz); Jt. Exh. 1, par. 2-3.

The Board has previously asserted jurisdiction over the AMPTP. *Writers Guild of America, West, Inc. (Alliance of Motion Picture and Television Producers)*, 297 NLRB 92, 92 (1989) (employer-members of the AMPTP annually purchase goods and services valued in excess of \$50,000 directly from firms located outside the State of California). The Board has also repeatedly found that employer-members of this association satisfy the Board’s standard for the exercise of its jurisdiction. *See Local 40, Int’l Brotherhood of Electrical Workers*, 364 NLRB No. 7, slip op. at 1 (2016); *Big Moose, LLC*, 359 NLRB 300, 303 (2012); *James Troutman & Associates*, 299 NLRB 120, 121-22, 128 (1990); *American Broadcasting Co.*, 290 NLRB 86, 91 (1988); *Stage Employees IATSE Local 659 (Paramount Pictures)*, 276 NLRB 881, 882-83 (1985); *Directors Guild of America, Inc. (Universal Studios)*, 276 NLRB 626, 626, 629 (1985). General Counsel respectfully requests that the Board take judicial notice of these Board decisions and find jurisdiction over the AMPTP and its employer-members, including Picrow. *See World SS, Inc.*, 335 NLRB 1203, fn. 3 (2001) (ALJ took judicial notice of unreported case where Board asserted jurisdiction over Respondent).

In light of Respondent's admissions that it has bargained agreements with the AMPTP, the record evidence of the large number of employer-members, and record evidence that Picrow is a member of the AMPTP, General Counsel submits that Respondent's argument in respect to jurisdiction is disingenuous. The undisputed record evidence, together with the prior findings of jurisdiction over the AMPTP and its members, establish that Picrow's membership in the AMPTP satisfies the Board's jurisdictional standard.

II. THE BOARD HAS JURISDICTION OVER PICROW

While Picrow failed to check the box at the beginning of question 9 on the commerce questionnaire to specify whether the information provided was for the most recent calendar year, fiscal year, or twelve months, it can be inferred from the rest of the document that one of those time periods applied. Jt. Exh. 1. Picrow answered questions 9A through 9I confirming it provided services valued in excess of \$50,000 directly to customers outside the state and purchased and received goods valued in excess of \$50,000 from directly outside the state. Id. Picrow's failure to indicate the exact time period was merely a clerical error that should not be dispositive of the case.

Additionally, the fact that Picrow submitted the commerce questionnaire in connection with another matter is of no moment inasmuch as Respondent stipulated to the authenticity and admissibility of the questionnaire in this matter. R. Br. pg. 10-12; Jt. Exh. 1. Moreover, Respondent appears to be arguing that when a complaint is filed against a union, employers will have an obligation to provide additional commerce information in the form of an updated commerce questionnaire or witnesses at the hearing, though the employer has already provided such information in the recent past. This is unreasonable to ask of a non-party. Picrow is not a

party to this case but previously admitted to jurisdiction via submission of the commerce questionnaire in 2019. No further action should be required on their part. Therefore, the record established that the Board has jurisdiction over Picrow.

III. CONCLUSION

For the foregoing reasons, the Board should find that Picrow meets the Board's jurisdiction standard both on its own and as a member of the AMPTP.

Dated: July 8, 2020
New York, New York

Respectfully submitted,

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