

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 08**

**LYON VIDEO, INC. & VIDEO CREW
SERVICE, LLC**

Employer
And

Case 08-RC-258375

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF US AND CANADA, AFL-CIO**

Petitioner

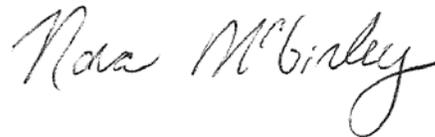
**ORDER RESCINDING JULY 3, 2020 DECISION AND DIRECTION OF ELECTION
AND ISSUING JULY 7, 2020 DECISION AND DIRECTION OF ELECTION**

On July 2, 2020, a Decision and Direction of Election issued in this case.

IT IS HEREBY ORDERED that the Decision and Direction issued on July 2, 2020 be, and it hereby is, rescinded.

IT IS FURTHER ORDERED that the attached Decision and Direction of Election shall be substituted for the Decision and Direction of Election that issued on July 2, 2020.

Dated: July 7, 2020



Nora McGinley, Acting Regional Director
National Labor Relations Board, Region 8
1240 E. 9th Street, Room 1695
Cleveland, Ohio 44199-2086

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Petitioner

DECISION AND DIRECTION OF ELECTION

Lyon Video, Inc. & Video Crew Service, LLC (collectively the “Employer”)¹, a single-integrated enterprise and a single employer, operate a basic cable television broadcasting network providing 24-hour sports programming.² The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of US and Canada, AFL-CIO (Petitioner) seeks to represent a unit of certain freelance broadcast technicians (hereinafter freelance employees) performing pre-production, production, and post-production work in connection with the telecasting of events at remote locations in Cuyahoga County, Ohio, which includes the Cleveland market.³ There are approximately 94 to 105 freelance technicians in the petitioned-for unit.⁴

While the Employer agrees that any unit found appropriate should include the petitioned-for employees,⁵ the Employer maintains that the unit must also include: (1) freelance technicians employed by the Employer who work throughout the State of Ohio, including the Columbus and Cincinnati, Ohio markets, (2) the Employer’s classifications of runner, production assistant, assistant director, assistant producer, tech manager, and make-up. There are approximately 266 employees in the unit proposed by the Employer.

¹ The Employer’s name appears as amended at hearing and on Board Exhibit 2.

² The parties stipulated, and I find, that Lyon Video, Inc. and Video Crew Service, LLC are a single integrated enterprise and a single employer within the meaning of the National Labor Relations Act (Act). In that regard, the parties stipulated, and I find, that there is a functional interrelation of operations, centralized control of labor relations, common management, and common ownership and/or financial control between the two entities.

³ Cleveland is located in Cuyahoga County.

⁴ The petition states that there are approximately 105 employees in the unit. However, the Employer’s list of employees for the petitioned-for unit includes 94 employees.

⁵ The parties stipulated that any unit found appropriate would include the petitioned-for employees classified as A1, A2, Audio Assistant, Camera Operator, Graphic Coordinators (Font Coordinator), Graphics Operator, Libero, Replay Operator (EVS), Score Box (Fox Box), Stage Manager, Statistician, Technical Director (TD), Utility, Video Operator (V1 & V2), Camera ENG (same as ENG Camera Operator), Parabolic Operator, Phone AD, RF Camera Operator.

A hearing officer of the Board held a hearing in this matter on May 12 and 13, 2020⁶, at which the parties were given the opportunity to present evidence and state their respective positions on the record. Additionally, the parties were given the opportunity to submit post-hearing briefs for my consideration. As explained below, based on the record and relevant Board law, I find that the record establishes that the petitioned-for unit in Cuyahoga County, Ohio constitutes a unit possessing a community of interest sufficiently distinct from the freelance employees employed by the Employer in the Columbus and Cincinnati markets under the standard set forth in *PCC Structural*s, 365 NLRB No. 160 (2017). However, I find that the record fails to establish that the petitioned-for unit's community of interest is sufficiently distinct from the runner, production assistant, assistant producer, assistant director, tech manager, and make-up classifications employed in Cuyahoga County.⁷ I will therefore direct an election comprised of the agreed-to classifications, as described in footnote five above, performing work at remote locations in Cuyahoga County, Ohio, including the runner, production assistant, assistant producer, assistant director, tech manager, and make-up classifications.

I. FACTS

Overview of the Employer's Operations.

The Employer operates a basic cable television broadcasting network providing 24-hour sports programming. As part of its operation, the Employer supplies freelance employees to clients, in the various job classifications discussed above, who work at different venues to assist the Employer's clients with the production and airing of broadcasts of sporting events or other entertainment events. The Employer's only facility is located in Columbus; it does not have facilities in either Cleveland or Cincinnati.

In the State of Ohio, the Employer primarily provides freelance employees to Fox Sports Ohio (FSO) to assist in the production and broadcast of sporting events involving: the Cleveland Indians (Indians) at Progressive Field and the Cleveland Cavaliers (Cavs) at Rocket Mortgage Fieldhouse in Cleveland; the Columbus Blue Jackets (Blue Jackets) at Nationwide Arena and the Columbus Crew (Crew) at Mapfre Stadium in Columbus; and the Cincinnati Reds (Reds) at Great American Ballpark and FC Cincinnati (FC Cincinnati), which currently plays its home games at Nippert Stadium on the campus of the University of Cincinnati.⁸ The Employer's employees are involved in broadcasting approximately 80 games for each of the Indians and the Reds, approximately 40 games for each of the Cavs and the Blue Jackets, and approximately 15-17 games for each of the Crew and FC Cincinnati. The Employer will occasionally provide crews for the broadcasting of collegiate basketball games in Ohio as well.

⁶ Hereinafter all dates occurred in 2020, unless otherwise noted.

⁷ The record reflects that there are 4 runners, 6 production assistants, and 1 make-up employee performing work in Cuyahoga County. While there was testimony regarding the job duties of the assistant director, assistant producer, and tech manager classifications, the record does not reflect how many individuals are employed in those classifications in Cuyahoga County.

⁸ The Indians and the Reds are baseball teams that play in Major League Baseball; the Blue Jackets, a hockey team, plays in the National Hockey League; the Cavs, a basketball team, plays in the National Basketball Association; and the Crew and FC Cincinnati are soccer teams that play in Major League Soccer.

Job duties of those classification stipulated to be appropriately included in any unit directed, and their role in broadcasting events for FSO

Before the Employer assembles a crew to provide to clients, such as FSO, the Employer receives a pre-request from the client. The pre-request identifies the date of the event, the location of the event, and the classifications needed by FSO to produce and air the broadcast. The Employer, through its crewing coordinators, then begins the process of reaching out to rostered freelance employees to assemble a crew in accordance with the pre-request from FSO. The Employer often provides freelance employees to assist in broadcasting both the home feed and the visitor feed for each game. Thus, the Employer is often assembling two crews for each event broadcast.

In addition to providing employees, the Employer also supplies broadcasting equipment to FSO. For each home-feed broadcast, FSO provides its own producer, director, and on-air talent, and FSO will produce and direct the event's broadcast; it is FSO's show and they put it together. The Employer supplies the equipment and behind-the-scenes crew to assist and aid with the production of whatever event is being broadcast. In that regard, the Employer supplies a truck and 53-foot trailer that operates as a mobile studio.

Typically, FSO's director and producer work inside the trailer during the event's production, along with several of the employees supplied by the Employer. The Employer's technical director is the person who sits in the mobile unit in front of the large switcher where all of the sources (audio, video, etc.) enter the mobile unit and essentially puts the show together that is then broadcast to viewers. The replay operator (EVS) also sits in the mobile unit during the production, and is the individual responsible for operating television video tape recordings to edit, replay and record television broadcasts and video productions for the Employer and its clients. The A1 is tasked with mixing and operating audio equipment, and also works in the mobile unit. In addition, the graphics coordinator, graphics operators, libero, score box, V1 and V2 (video operator and assistant)⁹, and phone AD, all work in the mobile unit.

There are several freelance employee classifications that operate outside of the mobile trailer during production of the broadcast. The A2, who is a liaison between the A1 and everything taking place inside the venue, typically works outside of the mobile trailer. However, the A2 may work inside the trailer for shorter periods of time during the production.¹⁰ Employees working in utility classification, which is considered an entry level position, work outside the trailer and assist in cable runs, camera set up, and communications to capture television broadcasts and video productions. Additionally, the stage manager, who is involved with all rehearsal and staff dealing with on-air talent broadcast before and after an opening and during a live or taped show, also works in the venue, usually in the booth with FSO's on-air talent. Finally, the parabolic operator and the RF camera operator work outside of the mobile trailer.

Camera operators work inside the venue. The cameras used by the various camera operators are stored in the belly bay of the mobile trailer. Prior to a sporting event, camera

⁹ The VI and V2, video operator and assistant, may also work outside of the mobile unit due to the number of cables being run from the venue to the mobile trailer.

¹⁰ The records reflects that the A1 is an audio technician and the A2 is the assistant.

operators must retrieve the cameras from the mobile trailer, then begin the process of running the video cables from that trailer to the venue, as well as setting up the equipment. Certain cameras are handheld, while others are stationary at a precise location within the venue, and must be built and installed prior to the event beginning. Depending on whether a camera operator is working the home or visitor feed, camera operators will interact with the technical manager when they first arrive at the venue to discuss any issues that may be out of the ordinary for that particular broadcast, or to give a rundown of where the equipment is going inside of the venue. Throughout the broadcast production, camera operators communicate with the FSO director, and also Employer video operators, utility person, and occasionally the EVS/replay operator, technical personnel, and the FSO producer. Employees involved with the production, including most of the classifications involved herein, communicate with each other, as well as the FSO director and producer, through headsets and helmet packs. Generally speaking, the above classifications operate in the same manner whether the employee is working the home or visitor feed, with some variances. In some circumstances, the Employer only provides a production crew for a visitor feed as the visitor production arrives with its own mobile trailer and equipment. The crew size for the home feed is generally larger than for a visitor feed. For example, the record reflects that the crew size for a visitor feed for a Cavs broadcast ranges from 12 to 19 employees whereas the crew size for the home feed ranges from 23 to 34. Similarly, the crew size for the visitor feed for an Indians game ranges from 12 to 21 as compared to 22 to 32 for the home feed.

The Employer does not supply any supervision for events. All Employer freelance employees working on a particular event, such as an FSO event, take ultimate direction from either the FSO director or producer; they are in charge of the entire production. The above description of an event's production, and the freelance employees' roles in each production, is typical regardless of whether the Employer is working in Cleveland, Columbus, or Cincinnati, or with a client other than FSO.

Job duties of the employees in the disputed classifications.

As mentioned above, the parties dispute whether the runner, production assistant, assistant director, assistant producer, tech manager, and make-up classifications should be included with the classifications which the parties agreed should be included in any unit found appropriate.

A runner is typically an entry-level position that provides many different jobs and services to a production team, spending the majority of working time outside of the mobile unit. For any given event, a runner may furnish media members with their individual credentials, transport talent to and from the local airport, run errands such as picking up food and drinks for the onsite production crew, or may make copies of any documents if needed. If any member of the production team, including any of the freelance employees, needs something, but they cannot leave their work station, a runner can assist them with whatever is needed. For example, if there was something wrong with a crew member's headset, the runner may be asked to report to the camera location and inform the crew member of the problem. Runners work on the visitor feed. The record reflects that a stage manager, an agreed-to classification, may also be assigned to work as a runner.

A production assistant is also an entry level position, and performs very similar tasks as a runner, with the exception of work in the studio with the talent providing whatever tasks may be needed in the studio. Production assistants may work outside of the mobile unit as well. The record reflects that someone working in the agreed-to classification of utility also works as a production assistant.

The assistant producer and assistant director largely work side-by-side with the client's director and producer, respectively. They are typically individuals who just graduated from college and are on the lower end of the pay scale. In the case of a sporting event being broadcast by FSO, the assistant producer will help the FSO producer time in and out of commercial breaks, help in the tape room with the highlight reel, and generally help the producer throughout the production. Similarly, the assistant director works hand-in-hand with the FSO director, providing whatever essential services the director needs for the production. Both the assistant producer and assistant director work in the mobile unit during production.

The tech manager is someone who has been in the industry for a long time, and is very experienced in the craft. Tech manager pay, which is near the top of the pay scale, is reflective of that experience. The tech manager collaborates with the client and the engineers on the scope of the event and makes sure every technical issue is solved. If any issues arise during the production of an event, the tech manager is one of the first people to try and troubleshoot the issue so that the viewer has no idea that a technical problem is occurring. They spend their time during production both inside and outside of the mobile unit.

Lastly, employees in the make-up classification work mostly in the booth with the client's on-air talent, assisting the talent getting ready to appear on air. They ensure that the talent do not appear glared or too red before they go on camera, and generally make the on-air talent presentable by fixing off-centered ties, ironing clothes, applying make-up, etc.

There is no record evidence that any of the above classifications are supervisors within the meaning of Section 2(11) of the Act.

The Employer's operations in Cleveland, Columbus, and Cincinnati, and the freelance employees that operate in each market.

As noted above, the Employer's operations are largely concentrated in three major markets in the State of Ohio: Cleveland, Columbus, and Cincinnati. The Employer occasionally provides freelance employees for events in smaller Ohio cities, such as Toledo, Bowling Green, Kent, Akron, Canton, and Dayton, and for collegiate events in Columbus.¹¹ However, the majority of its work stems from the broadcast of the professional sports teams in the aforementioned major markets. I take administrative notice of the fact that Cleveland and Columbus are separated by approximately 140 miles, Cleveland and Cincinnati are separated by approximately 250 miles, and Columbus and Cincinnati are separated by approximately 106 miles.

¹¹ Toledo, Bowling Green, Kent, Akron, Canton, and Dayton are not located in Cuyahoga County. The work in these smaller cities appears to be limited. For example, the record reflects that there was a two-day event in Canton on August 1 and 2, 2019, a two-day event in Fairlawn on February 8 and 9, a one-day event in Akron on March 6, and a one-day event in Dayton on March 8.

The Employer maintains a roster of employees, in the different classifications discussed above, in each of the major Ohio markets. When the Employer receives a pre-request from a client, it first seeks to fill the requested classifications with employees local to the market where the event will take place in order to save the client money. For example, when the Employer begins to fill a roster of employees for an Indians game, it first seeks to staff its roster with employees in the Cleveland market. If the Employer cannot find enough local employees to staff a production, or if the client makes a specific crew request, the Employer will offer available positions to employees in other Ohio markets. If it still cannot find enough employees in Ohio to fill available positions, the Employer will offer those positions to employees in other states. The Employer will occasionally bring in freelance employees from out-of-state when there is overlap between the professional teams' schedules, for instance if the Indians and Cavs have home games on the same day.

If a freelance employee in Cleveland, for example, had previously committed to an event but had to cancel, they would be expected to find their own replacement, and that largely occurs in the local market first. In this regard, the record reflects that when a Cleveland-area V1 had to cancel certain dates during 2019 that he had previously committed to, he offered to look for his own replacement for those events, and it was understood that his search would begin for replacements in Cleveland, only moving outside of Cleveland if he could not find anyone.

As the professional teams in Ohio release their schedules for their upcoming seasons, the Employer begins notifying local employees and asking them to look at the schedule and provide the dates that they are available to work. For example, on August 14, 2019, Josh Glenn, who works in Crewing/Mobile Operations for the Employer, emailed a Cleveland-area camera operator and said “[t]he 2019-20 Cavs season schedule is out...please take a look at it an [sic] email me back your availabilities.” By way of further example, on about January 9, that same camera operator received an email from Glenn that said “[p]lease see the attached [Indians] schedule and let me know what your availability is for the upcoming season.” The aforementioned Cleveland-area V1 and camera operation testified that the Employer only requests their full-season availability for Cleveland-area sporting events (Cavs and Indians)—they have never received full-season availability requests for any out-of-market professional sports team.

The record further reflects that on occasion, employees from Columbus or Cincinnati will work events for the Employer in Cleveland, and the same goes for Cleveland-area employees working in Columbus or Cincinnati. According to records furnished by the Employer to the Petitioner, there were approximately 5,000 shifts worked by Employer's employees in Cuyahoga County for the 2019-2020 season. A shift was equivalent to each game that each person worked - one employee working one day/shift. Of those 5,000 shifts, 145-150 were worked by employees not local to the Cleveland market. With respect to the Blue Jackets, the Employer staffed approximately 1,875 shifts during the 2019-2020 season, with 109 of those shifts being worked by employees from the Cleveland market. Additionally, during the 2019 Reds season, the Employer's freelance employees worked approximately 3,100 shifts, and only 31 of those shifts were staffed by employees from Cleveland. Moreover, one Cleveland-area camera operator testified at the hearing he could not remember the last time that he had traveled out-of-market for the Employer,

and a Cleveland-area V1 testified that he works out-of-market about 6 or 7 times per year, versus around 100 times in his home market.

The Employer analyzed the data differently, focusing on the percentage of broadcasts that included at least one employee outside the market where the event was held. Using the same data, the Employer highlights the following: 75 percent of the 2018/2019 Blue Jackets' broadcasts, 100 percent of the 2019/2020 Blue Jackets' broadcasts, and 100 percent of the 2019 and 2020 (one game) Crew broadcasts were staffed by at least one freelance employee from outside the Columbus market; 95 percent of the 2019 Reds' broadcasts were staffed by at least one freelance employee from outside the Cincinnati market; and 44 percent of the 2018/2019 Cavs' broadcasts, 21 percent of the 2019/2020 Cavs' broadcasts, and 23 percent of the 2019 Indians' broadcasts included at least one freelance employee from outside the Cleveland market.

Freelance employees' other terms and conditions of employment.

The Employer typically hires freelance employees at entry-level positions and allows them to get experience in their trade, or particular classification, until they have gained the necessary experience to be hired for events.¹² Freelance employees largely have the same terms and conditions of employment irrespective of whether they mainly work in Cleveland, Columbus, or Cincinnati. All employees either work eight or ten hour days, and are paid overtime should they meet the requisite number of hours. Each classification has an established wage rate. The Employer asserts that it has one handbook covering all freelance employees in the State of Ohio, and the bottom of its daily sign-in/sign-out sheet, in small writing, makes reference to employees being able to obtain a copy of that handbook.

If employees travel away from their home market to work for the Employer, they are entitled to additional compensation. The Employer provides per diem, mileage reimbursement, and often will pay for hotels for employees that travel to work out-of-market. Furthermore, the Employer offers continuing education and training opportunities every other year at its Columbus facility for both experienced and entry-level employees. However, those trainings are not mandatory, nor are they paid. Employees who do not reside in and around Columbus do not receive per diem or any travel-related reimbursements for traveling to the trainings.

Freelance employees are permitted to work for other employers; they are not tied to working solely for the Employer. Employees are also free to decline to work certain events or in certain cities, with the only consequence being that they may have opportunities dry up if they refuse to work too many events.

II. THE LEGAL STANDARD

Petitioner is not required to seek a bargaining unit that is the only appropriate unit or even the most appropriate unit. The Act merely requires that the unit sought by Petitioner be *an* appropriate unit. *Wheeling Island Gaming*, 355 NLRB 637, fn. 2 (2010), citing *Overnite Transp.*

¹² The record does not reflect how employees are initially hired by the Employer, i.e. is there an interview process, who from the Employer conducts interviews, if there are any, or what the hiring process is. However, the Employer did present evidence that the hiring process does not differ by market.

Co., 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988). “The Board’s inquiry necessarily begins with the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends.” *The Boeing Company*, 368 NLRB No. 67, slip op. at 3 (2019).

In *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), the Board returned to the traditional community-of-interest standard for determining whether a unit is appropriate.¹³ In *PCC Structural*, the Board specifically found that the traditional community-of-interest test is the “correct standard for determining whether a proposed bargaining unit constitutes an appropriate unit for collective bargaining when the employer contends that the smallest appropriate unit must include additional employees.” *Id.* In each case, the Board is required to determine:

whether the employees are organized into a separate departments; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

PCC Structural, 356 NLRB No. 160 slip op. at 13, citing *United Operations, Inc.*, 338 NLRB 123 (2002). The Board must analyze “whether employees in the proposed unit share a community of interest *sufficiently distinct* from the interests of employees excluded from the unit to warrant a separate bargaining unit.” *PCC Structural*, 356 NLRB No. 160 slip op. at 11. (emphasis in original)

The Board has clarified that the traditional community-of-interest test, as articulated in *PCC Structural*, involves a three-step analysis.

First, the proposed unit must share an internal community of interest. Second, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Third, consideration must be given to the Board’s decisions on appropriate units in the particular industry involved.

The Boeing Company, 368 NLRB no. 67, slip op. at 3. “[T]he traditional community-of-interest standard is not satisfied if the interests shared by the petitioned-for-employees are too disparate to form a community of interest within the petitioned-for unit.” *Id.*, citing *Saks & Co.*, 204 NLRB 24, 25 (1973); *Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004). In step two of the analysis, “the Board must determine whether the employees excluded from the unit ‘have meaningfully distinct interests in the context of collective-bargaining that *outweigh* similarities with unit members.’” *The Boeing Company*, 368 NLRB No. 67, slip op. at 4. “[W]hat is required is that the Board analyze the distinct and similar interests and explain why, taken as a whole, they do or do not support the appropriateness of the unit.” *Id.*

¹³ Given that the Employer does not operate multiple facilities or locations, the traditional community-of-interest test, rather than the multi-facility test, is the applicable standard to be used in this case.

III. ANALYSIS

1. The petitioned-for unit does not share a community of interest sufficiently distinct from the interests of those employees in the runner, production assistant, assistant producer, assistant director, tech manager, and make-up classifications.

i. Step one of the Board's analysis: shared interests within the petitioned-for unit.

The parties stipulated that those classifications outlined above in footnote five of this Decision are appropriately included in any unit directed in this case.¹⁴ The Employer seeks to expand the unit, not contract it. Nonetheless, the Board requires that the petitioned-for unit share an internal community of interest prior to analyzing whether the disputed classifications should be included in any appropriate unit directed here. I find that those classifications stipulated by the Employer and Petitioner as being appropriately included in any unit share an internal community of interest.

Certainly the various positions have distinct skills, job functions, and perform distinct work, and there is no evidence of employee interchange among the classifications. However, the overwhelming evidence suggests that the employees do share an internal community of interest. The employees in the agreed-to classifications are, to a large degree, functionally integrated. Functional integration exists when employees in a unit sought work on different phases of the same product or a single service as a group. *Arvey Corp.*, 170 NLRB 35 (1968); *Transerv Sys.*, 311 NLRB 766 (1993). All agreed-to classifications here work as a crew towards the same goal—producing and airing sporting and entertainment event broadcasts. All are necessary to achieve that same goal; without one, the Employer could not successfully broadcast an event for its client. Furthermore, all of the agreed-to classifications work either eight or ten hour days, share the same terms and conditions of employment (outside of wages)¹⁵, and are supervised by the client's directors and producers.

Moreover, the record reflects that there are a number of contacts between the classifications. The technical director may interact with audio and video employees to diagnose any technical difficulties, and camera operators may interact with a number of classifications to ensure proper video feed for the event, or special segments within the event. Utility personnel interact with camera operators to assist in setting up cameras, running cable lines, and will also work with others to help with any technical difficulties. Additionally, many of the agreed-to classifications work alongside each other within the mobile unit, others work both inside the mobile and outside with those classifications operating within the venue, and all agreed-to classifications share common communication methods throughout the broadcast. See *Casino Aztar*, 349 NLRB 603 (2007).

¹⁴ Again, the stipulation covers the following classifications: A1, A2, Audio Assistant, Camera Operator, Graphic Coordinators (Font Coordinator), Graphics Operator, Libero, Replay Operator (EVS), Score Box (Fox Box), Stage Manager, Statistician, Technical Director (TD), Utility, Video Operator (V1 & V2), Camera ENG (same as ENG Camera Operator), Parabolic Operator, Phone AD, and RF Camera Operator.

¹⁵ While the evidence is not compelling, the record does not contain any evidence to refute the Employer's claim that all of its employees are governed by the same handbook.

Based on the foregoing, I find that the classifications that the Employer and Petitioner agree should be included in any unit found appropriate share an internal community of interest.

ii. Step two of the Board's analysis: shared interests between the agreed-to and the disputed classifications.

The Employer seeks to include the runner, production assistant, assistant producer, assistant director, tech manager, and make-up classifications. It argues that the disputed classifications support and continuously interact with the classifications that are in the proposed unit and are essential, integral parts of the broadcast. For the reasons that follow, I agree, and find that the distinct interests of the excluded classifications are insufficient to outweigh the similarities among the already agreed-to classifications. Accordingly, the runner, production assistant, assistant producer, assistant director, tech manager, and make-up classifications should be included in the bargaining unit.

Excluding the runner and production assistant from the agreed-upon classifications cannot be justified under a community of interest analysis. The runner and production assistants, along with the agreed-to classification of utility, are considered entry-level classifications. Although the runner and production assistants do not operate technical equipment used to actually produce the broadcast, they are still an integral part of the production process. When a client submits a pre-request for a production crew, it requests all needed classifications as a crew to support the production, in whatever capacity each classification is trained to do. Runners and production assistants take direction from, and are supervised by, the same client director and producer that supervise every other classification discussed herein. The record reflects that the runners and production assistants have the same terms and conditions as every other classification, aside from wage rates being lower as entry level positions.

Just as the stage manager works in the booth with the client's on-air talent, the runner can be tasked with chauffeuring that talent to and from the airport. Similarly, because a production assistant has some experience working in the booth, if any equipment or anything else is needed in the booth, the production assistant can fulfill the request. If any member of the production team, from the client's director and producer, to any of the Employer's freelance employees, needs something but is unable to leave their work location, the runner is tasked with supporting and assisting them. Thus, there is a high degree of functional integration and employee contact among the agreed-to classifications and the runner and production assistant. There is also evidence that employees in the agreed-to classifications of stage manager and utility work as runners and production assistants. Taken as a whole, I find that the runner and production assistants' integration and close contact with the already agreed-to classifications, along with the similarities in supervision and their terms and conditions of employment, outweigh any distinct interests these classifications may have.

Similarly, the community-of-interest analysis supports a finding that the assistant director and producer classifications should be included in the unit in this matter. The assistant director and assistant producer work side-by-side with the client's director and producer, respectively. The assistant producer may work with the producer to produce highlight reels, which likely necessitates working alongside the EVS/replay operator to create the required content. Given that they work

so closely with the client's producer and director, they are supervised by the same individuals that supervise every other classification included herein. They work in the same mobile unit as many of the other included classifications. They are hired for the same production that every other crewed member is hired for. And as with the others, the assistant director and assistant producer have the same terms and conditions of employment, apart from their place on the pay scale. While the assistant director and producer have distinct job duties and functions that separate them from the other classifications, and there is no evidence of employee interchange amongst these classifications, those differences are outweighed by the similarities in terms and conditions of employment that they enjoy with the other classifications.

Finally, the make-up and tech manager classifications also share a community of interest with the other classifications included herein such that it cannot be found that their interests are sufficiently distinct from the other classifications to warrant excluding them from this unit. A Cleveland-area camera operator testified that he reports to the tech manager when he arrives for an event to discuss anything out of the ordinary with respect to the event or the venue. The same camera operator also testified that he will communicate with the tech manager at the end of the event regarding the break down of cameras. The record also reflects that the tech manager is responsible for ensuring there are no technical difficulties during the production of the broadcast, and works to troubleshoot any issues that may arise. Consequently, tech managers are instrumental in the production, and very clearly are functionally integrated with the other classifications and have contact with other unit employees throughout the production, along with client contact. They are also supervised by the same client personnel that are responsible for supervising the other classifications involved in this case, and have the same terms and conditions of employment.

The make-up classification also belongs in the unit. The make-up classification works with on-air talent in the booth to ensure that they are presentable and ready for live camera work. Employees in the make-up classification work in the same location within the venue as the stage manager, a classification that the parties agree should be included in any unit found appropriate. Production assistants also may work in the booth, and the runners are often tasked with transporting the talent from the airport to the venue, the same talent that make-up employees work with in the booth. As with the other employees in the classifications discussed herein, the record reflects that make-up employees are ultimately responsible to the client's director and producer, and they share the same terms and conditions of employment. Moreover, excluding the make-up classification would be especially arbitrary considering there is only one make-up employee in the Cleveland market.¹⁶

Based on the foregoing, I find that the runner, production assistant, assistant producer, assistant director, tech manager, and make-up classifications do not share a sufficiently distinct community of interest to warrant excluding them from this unit. On the contrary, while each classification described above has distinct job functions and skills with little evidence of employee interchange, the overwhelming evidence shows that each classification is necessary for the client's production to be successful and run smoothly. Each classification works as a crew towards a single product—the client's broadcast of live events. See *Casino Aztar, Arvey Corp., Transerv Sys.*,

¹⁶ See *Klochko Equipment Rental*, 361 NLRB No. 49, slip op. at 1 fn. 1 (2014) (Board is reluctant to leave a single employee out of a unit where that would result in that employee being unable to exercise Section 7 rights to representation).

supra. Any distinct interests that the disputed classifications have are overwhelmingly outweighed by the similarities amongst the classifications, specifically the large degree of functional integration and employee contact, the common supervision, the common terms and conditions of employment, and the fact that all classifications are needed to provide the client with the contracted services.

iii. Step three of the Board's analysis: Board's decisions on similar units within the same industry.

The Board does not have specific guidance for units within this industry. I take administrative notice, however, of *Fox Sports Net Florida, Inc.*, 12-RC-228892, Regional Director's Decision and Direction of Election (November 6, 2018), where runners were included in the petitioned-for unit with many of the same included classifications here. Additionally, in *National Hot Rod Assoc.*, 369 NLRB No. 60 (2020), associate directors, associate producers, and runners were included in a unit with many of the same classifications involved in the agreed-to classifications here. While in *Fox Sports Net Florida, Inc.* and *National Hot Rod Assoc.*, the parties stipulated to the inclusion of those classifications, the unit found appropriate herein is consistent with prior cases before the Board.

Based on the foregoing, I find that the disputed classifications will be included in an appropriate unit.

2. Freelance employees in Cleveland share a community of interest that is sufficiently distinct from the freelance employees located in Columbus and Cincinnati.

i. Step one of the Board's analysis: shared interests within the Cleveland unit found appropriate above.

As required by the Board, the first part of the community-of-interest analysis begins by analyzing the shared interests within the proposed Cleveland bargaining unit. As discussed above, the classifications agreed-to by the parties, along with the disputed classifications which I have found belong in the same unit, share a sufficient community of interest.

ii. Step two of the Board's analysis: shared interests between the Cleveland freelance employees and the employees who primarily work in other markets.

Applying the Board's community-of-interest test, I find that the Cleveland freelance employees do share a community of interest that is sufficiently distinct from the freelance employees that are located in and about Columbus and Cincinnati. I find that the Cleveland freelance employees have "meaningfully distinct interests in the context of collective bargaining that outweigh [their] similarities with" the employees in other parts of the State, and thus the employees located in and around Columbus and Cincinnati are properly excluded. *PCC Structurals, Inc.*, supra at slip op. 13.

First, the record does not reflect whether the Employer has any operational or departmental divisions. Instead, the record discloses that the Employer maintains a roster of employees in the

various classifications discussed herein for each major market in Ohio, and uses those rosters to build crews based on client needs for each event in each location. In other words, while there is no apparent departmental division amongst the freelance employees with the Employer, there is a very clear geographic division. Accordingly, this factor weighs in favor of finding appropriate a separate unit of Cleveland freelance employees.

Next, the skills necessary to perform the job functions and work in any one of the classifications involved in this case do not vary by geographic location. Thus, an A1 in Cincinnati performs the same work and functions as an A1 in Cleveland. The record does not specifically contain evidence related to training needed for each of the classifications, outside of the Employer's offering of non-mandatory training every other year, but it is clear that each classification performs a specific function, with most working on specific equipment. Those job functions and pieces of equipment do not vary by location such that, for example, a V1 that primarily works in Cleveland can fill a V1 opening in Columbus without any apparent limitations.

There does not appear, however, to be significant overlap between employees in the Cleveland unit and all excluded employees. As will be discussed below in more detail, there is minimal evidence that employees from Columbus and Cincinnati work events in Cleveland, and vice-versa, thus there is very little evidence of overlap between Cleveland freelance employees and those employees who primarily work in Columbus and Cincinnati. Notwithstanding the minimal evidence of employee overlap, on balance, I find that inquiry into the distinct skills and training, distinct job functions and performance of distinct work weighs in favor of finding an indistinct community of interest between the Cleveland freelance employees and those in other Ohio markets.

Third, there is very little evidence of functional integration, employee contact, or interchange amongst the Cleveland-area freelance employees and employees in Columbus and Cincinnati. There are significant geographic distances between the Cleveland venues and the Columbus and Cincinnati venues. According to records of 5,000 Employer-staffed events (one person/one shift) in Cleveland, only 145-150 of those shifts were staffed by an employee who primarily worked in a market outside of Cleveland. Additionally, only 109 of approximately 1,875 shifts in Columbus were filled by Cleveland-area freelance employees, and even less—approximately 31 out of 3,100 shifts—scheduled in Cincinnati were staffed by Cleveland-area employees. A Cleveland-area V1 testified that he might work 6 or 7 events out of the Cleveland market, as compared to approximately 100 to 120 events in Cleveland. A Cleveland-area camera operator testified that he could not specifically recall the last time he worked in Columbus for the Employer.

The Employer's attempt to re-frame the above evidence is unavailing. The Employer argues that the evidence shows that most event productions staffed by it in 2018 and 2019 had at least one out-of-market employee on the crew. The Employer's analysis is not an accurate reflection of the degree of interchange between the Cleveland-area freelance employees and those who primarily worked outside the Cleveland market. The Employer's analysis is based on the percentage of broadcasts that included at least one employee outside the market where the event was held. However, the number of days/shifts that employees worked outside their respective markets is the relevant inquiry in determining the frequency of employee interchange in this case.

Even when examining the records by broadcasts rather than shifts, the overwhelming evidence suggests that employee interchange between the Cleveland market and the other Ohio markets is minimal. The Employer argues that 44 percent of the Cavs 2018/2019 broadcasts and 21 percent of the Cavs 2019/2020 broadcasts included at least one freelance employee from outside the Cleveland market. The records, which include broadcasts from February 25, 2019 until March 8, 2020, reflect that of the 10 Cavs 2018/2019 broadcasts, 6 broadcasts did not include any freelance employees from outside the Cleveland market and 3 included just one employee from outside the Cleveland market.¹⁷ Similarly, while 8 of the 38 Cavs 2019/2020 broadcasts included employees from outside the Cleveland market, 4 of those 8 included just one employee from outside the market. Moreover, the records reflect that only 6 freelance employees from outside the Cleveland market worked more than one Cavs broadcast from February 2019 until March 8, and 2 of those 6 worked just 2 broadcasts while the remainder worked 3.

Similarly, of the 78 Indians 2019 broadcasts,¹⁸ 14 included employees from outside the Cleveland market. However, of those 14 broadcasts, 9 included just one employee from outside the Cleveland market. In addition, the records reflect that only 3 freelance employees from outside the Cleveland market worked more than 2 Indians broadcasts during the 2019 season.

Moreover, when employees did work shifts outside of their primary market, they did so voluntarily—the Employer does not mandate that employees work outside of their primary market. “Such voluntary interchange is given less weight in determining if employees from different locations share a common identity.” *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999), citing *D&L Transportation*, 324 NLRB 160, 162 fn. 7 (1997). Also, there is no evidence of permanent employee interchange. Thus, these three factors weigh in favor of finding the Cleveland freelance employees to have a sufficiently distinct community of interest such that a separate unit is appropriate.

Additionally, when in-market and out-of-market employees work together on a particular event, their terms and conditions of employment differ. In that regard, when Cleveland-area employees work an Indians’ series, they are paid their daily wage rate, subject to overtime if applicable. If that same event is staffed by an employee from the Columbus area, for example, that employee is not only entitled to the daily wage rate, but also per diem, mileage reimbursement, and hotel reimbursement. For an Indians’ home series that may last three or four games in a row against a single opponent, those additional benefits will significantly alter the terms and conditions enjoyed by the in-market employees versus the out-of-market employee. Accordingly, when Cleveland-area employees work with out-of-market employees, the terms and conditions are sufficiently distinct, and as such, this factor weighs in favor of finding a separate bargaining unit for Cleveland-area employees.

Lastly, there is no evidence in the record that Cleveland-area employees, when working in Cleveland, are supervised by the same FSO or other client representatives that supervise the Columbus and Cincinnati-area employees. Of course, when an out-of-market employee voluntary

¹⁷ Although the Employer’s brief stated that there were 9 Cavs games broadcast in 2018/2019, the records reflect there were ten.

¹⁸ Although the Employer’s brief states that FSO broadcast 75 Indians games, the records reflect that there were 78 games.

works an event in Cleveland, he or she will be supervised by the same individuals supervising the Cleveland-area employees. However, as evidenced above, the record here indicates that each market is to a large degree staffed by freelance employees from in that market. Therefore, for a vast majority of events staffed by the Employer, Cincinnati-area employees are supervised by client representatives in Cincinnati, Columbus-area employees are supervised by client representatives in Columbus, and Cleveland-area employees are supervised by client representatives in Cleveland. The record does not support a finding that Cleveland-area employees are supervised by Columbus or Cincinnati client representatives outside of the few occasions where they voluntarily accept an out-of-market assignment. Consequently, this factor weighs in favor of finding that the Cleveland employees appropriately constitute a separate and distinct bargaining unit.

Based on the foregoing discussion, and taken as a whole, the community-of-interest analysis required in step two of the Board's analysis convincingly establishes that the Cleveland-area employees enjoy a community of interest sufficiently distinct from those employees located in other markets. Thus it is appropriate, and I find, that the Cleveland-area employees constitute a separate and distinct bargaining unit from those employees who primarily work in other major Ohio markets.

iii. Step three of the Board's analysis: Board's decisions on similar units within the same industry.

As noted above, the Board has not provided guidance regarding bargaining units within this industry. However, I note that in *Fox Sports Net Florida, Inc.*, supra, the Regional Director, applying *PCC Structural's.*, found that a unit of South-Florida freelance broadcast technicians, comprised of many of the same employee classifications involved herein, had a sufficiently distinct community of interest from their counterparts employed in Central Florida. On July 23, 2019, the Board agreed with the Regional Director's finding and denied the employer's request for review. Accordingly, finding that the Cleveland-area freelance employees constitute a separate bargaining unit from those employees who primarily work in other major Ohio markets is consistent with cases before the Board.

IV. CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, as stipulated by the parties, and it will effectuate the purposes of the Act to assert jurisdiction therein.¹⁹

¹⁹ The parties stipulated in Board Exhibit 2, and I find, that Lyon Video, Inc. is an Ohio corporation, and Video Crew Service, LLC, a subsidiary of Lyon Video, Inc., is an Ohio limited liability corporation, and both have an office and place of business located at 2091 Arlingate Lane, Columbus, Ohio, and both operate a basic cable television broadcasting network providing 24-hour sports programming. In conducting their operations during the

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and claims to represent certain employees of the Employer.

4. No collective-bargaining agreement covers any of the employees involved in this proceeding, and no other bar exists to conducting an election.

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.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time freelance employees employed by Lyon Video, Inc. and Video Crew Service, LLC, a single employer, including A1, A2, Audio Assistant, Camera Operator, Graphic Coordinators (Font Coordinator), Graphics Operator, Libero, Replay Operator (EVS), Score Box (Fox Box), Stage Manager, Statistician, Technical Director (TD), Utility, Video Operator (V1 & V2), Camera ENG (same as ENG Camera Operator), Parabolic Operator, Phone AD, RF Camera Operator, Runner, Production Assistant, Assistant Director, Assistant Producer, Tech Manager, and Make-up performing work at remote locations in Cuyahoga County, Ohio; excluding all other employees, office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

V. 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 International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of US and Canada, AFL-CIO.

A. Election Details

The parties disagree as to the most appropriate method for conducting this election. The Employer contends that a manual election is appropriate, and that the parties can work to find a location suitable for holding that type of election in Cleveland. Conversely, Petitioner argues that a mail ballot election with a 16-business day voting window is the most appropriate voting method in this case. Petitioner argues that the Employer does not have a facility in the Cleveland area, and the voters in this election are “scattered” in that their physical locations and work schedules are not consistent.

past 12-month period, both Lyon Video, Inc. and Video Crew Services, LLC derived gross revenues in excess of \$100,000 and purchased and received at their facilities in the State of Ohio, goods valued in excess of \$50,000 directly from points located outside the State of Ohio.

I find that a mail ballot election in this case is the most appropriate voting method. It is longstanding Board practice that Regional Directors are afforded discretion in determining the method of balloting for representation elections. See *Halliburton Services*, 265 NLRB 1154 (1982); see also *Manchester Knitted Fashions*, 108 NLRB 1366 (1954) (stating that the Regional Director has the discretion to determine the time and place for an election). Specific to instances where mail or mixed manual-mail ballot elections are being contemplated, the Board has stated:

[w]hen deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are ‘scattered’ because of their job duties over a wide geographic area; (2) where eligible voters are ‘scattered’ in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress.

San Diego Gas & Electric, 325 NLRB 1143, 1145 (1998). The Board further defined scattered “to apply in any situation where all employees cannot be present at the same place at the same time.” *San Diego Gas & Electric*, 325 NLRB at 1145, fn. 7. A Regional Director’s exercise of the broad discretion afforded by the Board in selecting the appropriate mechanics for an election will not be overturned “unless a clear abuse of discretion is shown.” *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998), citing *San Diego Gas & Electric*, 325 NLRB at 1144, fn. 4.

The Employer, here, does not have a physical location in Cleveland. Thus, those employees that primarily work for the Employer in the Cleveland area do not report to a common location at common times. Instead, they report to sport and entertainment venues depending on the schedule of the event. By the Board’s definition, the employees who will be eligible to vote in this election are “scattered.” Moreover, a mail ballot election in this case is even more appropriate given the COVID-19 pandemic, and will avoid the various health and safety uncertainties surrounding gatherings of employees in an indoor, confined space such as in a hotel or conference room.

Accordingly, the election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective bargaining unit. At 4:45p.m. on July 17, 2020, ballots will be mailed to voters by the National Labor Relations Board, Region 8, from its office at 1240 E. 9th Street, Room 1695, Cleveland, Ohio 44199-2086.²⁰ Voters must sign the outside of the envelope in which the ballot is returned. Any ballots received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by July 24, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 8 Office at (216) 522-3715 or our national toll free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be comingled and counted at the Region 8 office, 1240 E. 9th Street, Room 1695, Cleveland, Ohio on August 10, 2020, at 2:00 p.m. In order to be valid and counted, the

²⁰ The Union has waived 5 days of the 10-day requirement for the voter list.

returned ballots must be received in the Region 8 office prior to the counting of the ballots. Due to the above-described extraordinary circumstances of the COVID-19 pandemic, I further direct that the ballot count will take place remotely through a video platform, such as Zoom, FaceTime, Skype, or similar medium, to be determined by the undersigned Regional Director. Additionally, given our future uncertainty caused by the COVID-19 pandemic, and the often in-flux federal, state, and local government regulation of businesses, offices, and the movement of people, I further direct that the aforementioned ballot count date may be postponed should it become necessary to do so.

The parties have agreed, and I conclude, it is appropriate that the Notice of Election and ballots will be in English.

B. Voting Eligibility

The parties stipulate, and I find, that the appropriate formula for determining eligibility is the Julliard Formula, i.e. all employees who have been employed by the Employer during 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. *Julliard School*, 208 NLRB 153 (1974). Thus, eligible to vote are those in the unit who worked for the Employer on two productions for a total of 5 working days over a 1-year period preceding March 22, 2020, or a total of 15 days over a 2-year period immediately preceding March 22, 2020.²¹

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.

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.

²¹ The record reflects that employees have not worked since March due to the COVID-19 pandemic. The most recent payroll period ending date is March 22, 2020.

To be timely filed and served, the list must be *received* by the regional director and the parties by July 9, 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 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.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.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 nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

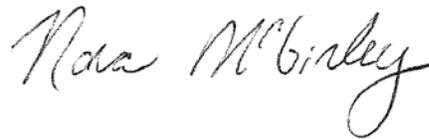
RIGHT TO REQUEST REVIEW

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 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.nlr.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.

Dated: July 7, 2020



Nora McGinley, Acting Regional Director
National Labor Relations Board, Region 8
1240 E. 9th Street, Room 1695
Cleveland, Ohio 44199-2086

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**LYON VIDEO, INC./VIDEO CREW SERVICE,
LLC, A SINGLE EMPLOYER**

Employer

and

Case 08-RC-258375

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF US AND CANADA, AFL-CIO**

Petitioner

AFFIDAVIT OF SERVICE OF: Decision and Direction of Election

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on July 7, 2020, I served the above-entitled document(s) by email upon the following persons, addressed to them at the following addresses:

chad@lyonvideo.com

Chad Synder , President
LYON VIDEO, INC./Video Crew Service,
LLC, a single employer
2091 Arlingate Lane
Columbus, OH 43228

stacia@lyonvideo.com

Stacia Fritchie
LYON VIDEO, INC./Video Crew Service,
LLC, a single employer
2091 Arlingate Lane
Columbus, OH 43228

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Josh Glenn
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ahealy@iatse.net

Adrian D. Healy , Esq./Associate Counsel
International Alliance of Theatrical Stage
Employees, AFL-CIO
207 W.25th St. 4th Floor
New York, NY 10001

July 7, 2020

Date

Kimberly Wallace
Designated Agent of NLRB

Name

/s/ Kimberly Wallace

Signature



United States of America
National Labor Relations Board



NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

CHALLENGE OF VOTERS: An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

METHOD AND DATE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 4:45 p.m. on Friday, July 17, 2020, ballots will be mailed to voters from the National Labor Relations Board, Region 08 office located at 1240 E 9TH ST, STE 1695, CLEVELAND, OH 44199-2086. 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 and did not receive a ballot in the mail by Friday, July 24, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 08 Office at (216)303-7400 or (216)522-3715.

All ballots will be comingled and counted at the Region 08 Office virtually, on a platform such as Zoom, FaceTime, Skype, or similar medium, to be determined by the undersigned Regional Director, at 2:00pm on Monday, August 10, 2020. In order to be valid and counted, the returned ballots must be received in the Region 08 Office prior to the counting of the ballots.



United States of America
National Labor Relations Board



NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

VOTING UNIT

EMPLOYEES ELIGIBLE TO VOTE:

All full-time and regular part-time freelance employees employed by Lyon Video, Inc. and Video Crew Service, LLC, a single employer, including A1, A2, Audio Assistant, Camera Operator, Graphic Coordinators (Font Coordinator), Graphics Operator, Libero, Replay Operator (EVS), Score Box (Fox Box), Stage Manager, Statistician, Technical Director (TD), Utility, Video Operator (V1 & V2), Camera ENG (same as ENG Camera Operator), Parabolic Operator, Phone AD, RF Camera Operator, Runner, Production Assistant, Assistant Director, Assistant Producer, Tech Manager, and Make-up performing work at remote locations in Cuyahoga County, Ohio who worked for the Employer on two productions for a total of 5 working days over a 1-year period preceding March 22, 2020, or a total of 15 days over a 2-year period immediately preceding March 22, 2020.

EMPLOYEES NOT ELIGIBLE TO VOTE:

Those not eligible to vote are: All other employees, office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

	<p>UNITED STATES OF AMERICA National Labor Relations Board 08-RC-258375</p>	
<p>OFFICIAL SECRET BALLOT For certain employees of LYON VIDEO, INC. AND VIDEO CREW SERVICE, LLC</p>		
<p>Do you wish to be represented for purposes of collective bargaining by INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF US AND CANADA, AFL-CIO?</p>		
<p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</p>		
<p>YES</p> <input type="checkbox"/>	<p>NO</p> <input type="checkbox"/>	
<p>DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY. MARK AN "X" IN THE SQUARE OF YOUR CHOICE ONLY. If you make markings inside, or anywhere around, more than one square, you may request a new ballot by referring to the enclosed instructions. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted. The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p>		



United States of America
National Labor Relations Board
NOTICE OF ELECTION



FORM NLRB-4175
(5-20)

United States of America
National Labor Relations Board

**Instructions to Eligible Employees Voting
By United States Mail**



INSTRUCTIONS

1. MARK YOUR BALLOT IN SECRET BY PLACING AN **X** IN THE APPROPRIATE BOX. DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY.
2. IF YOU SUBMIT A BALLOT WITH MARKINGS INSIDE, OR ANYWHERE AROUND, MORE THAN ONE SQUARE, YOUR BALLOT WILL NOT BE COUNTED. YOU MAY REQUEST A NEW BALLOT BY CALLING THE REGIONAL OFFICE AT THE NUMBER BELOW.
3. IT IS IMPORTANT TO MAINTAIN THE SECRECY OF YOUR BALLOT. DO NOT SHOW YOUR BALLOT TO ANYONE AFTER YOU HAVE MARKED IT.
4. PUT YOUR BALLOT IN THE BLUE ENVELOPE AND SEAL THE ENVELOPE.
5. PUT THE BLUE ENVELOPE CONTAINING THE BALLOT INTO THE YELLOW ADDRESSED RETURN ENVELOPE.
6. SIGN THE BACK OF THE YELLOW RETURN ENVELOPE IN THE SPACE PROVIDED. TO BE COUNTED, THE YELLOW RETURN ENVELOPE MUST BE SIGNED.
7. DO NOT PERMIT ANY PARTY – THE EMPLOYER, THE UNION(S), OR THEIR REPRESENTATIVES, OR AN EMPLOYEE-PETITIONER – TO HANDLE, COLLECT, OR MAIL YOUR BALLOT.
8. MAIL THE BALLOT IMMEDIATELY. NO POSTAGE IS NECESSARY. For further information, call the Regional Office at: (216) 522-3715 or (216) 303-7400

TO BE COUNTED, YOUR BALLOT MUST REACH THE REGIONAL OFFICE

BY August 3, 2020



United States of America
National Labor Relations Board
NOTICE OF ELECTION



RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist a union**
- **Choose representatives to bargain with your employer on your behalf**
- **Act together with other employees for your benefit and protection**
- **Choose not to engage in any of these protected activities**
- **In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).**

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- **Threatening loss of jobs or benefits by an Employer or a Union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched**
- **Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a Union or an Employer to influence their votes**

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (216)522-3715 or visit the NLRB website www.nlr.gov for assistance.