

Nevertheless, the Board properly determined that the General Counsel failed to establish jurisdiction here. As the Board noted, it is the burden on the General Counsel to establish jurisdiction by showing a substantial impact on interstate commerce, *SAG-AFTRA New York*, 370 NLRB at 1-2 (citing cases), and that to do so for a nonretail business the General Counsel must show a direct or indirect annual outflow or inflow across state lines of “at least \$50,000.” *Id.* at 2 (citing *Siemons Mailing Services*, 122 NLRB 81, 85 (1958)); *see Constr. & Gen Laborers Local 1177 (Qualicare-Walsh, Inc.)*, 269 NLRB 746, 746 (1984).

Here, the Board entered into evidence a commerce questionnaire only with respect to the employer Picrow Streaming. But that questionnaire did not provide any time frame for the business activity, so could not, as the Administrative Law Judge held, establish jurisdiction. *See SAG-AFTRA New York*, 370 NLRB at 1 & n.1 (noting that the General Counsel “agrees” with this conclusion). The ALJ nevertheless found jurisdiction because Picrow is a member of the multiemployer association the Alliance of Motion Picture and Television Producer (AMPTP). The Board reversed this finding, because, as the Board held, the General Counsel not only failed to plead this basis for jurisdiction, but failed to introduce specific data or figures to support it – “the record is simply devoid of evidence necessary to base jurisdiction on the combined volume of business of AMPTP’s members.” *Id.* at 2; *see id.* (“the judge *presumed* that the employers in the AMPTP met the commerce requirement”) (emphasis in original); *see Qualicare-Walsh*, 269 NLRB at 746 (dismissing for failure to present commerce “data” or “figures” and rejecting remand to permit General Counsel to introduce such evidence).

In his motion for reconsideration, the Charging Party can point to no extraordinary circumstances to justify modifying this decision. Instead, he argues that under “all [of the] considerations, the judge arrived at her correct *perception* – not a presumption – of

Board jurisdiction.” Mot. at 3 (emphasis in original). In other words, the Charging Party argues that the judge “perceived” that there was jurisdiction due to the number of employers in the AMPTP, the fact that the collective bargaining is national in scope and covers several employers in several states, and because SAG-AFTRA has 160,000 members nationwide. *Id.* at 2-3. The Charging Party, however, ignores the *only* salient fact – that the record lacks any evidence that any employer in the AMPTP (or the employers in aggregate) have at least \$50,000 of interstate inflow or outflow.² It is for this reason that the Board rendered its decision, which is the correct one, contains no material error, and need not be modified.

For the foregoing reasons, the Board should deny Charging Party’s motion for reconsideration.

Dated: New York, New York
September 23, 2020

Respectfully submitted,

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² Charging Party cites to *Stack Electric*, 290 NLRB 575 (1988) and *Carpenters Local 102*, 317 NLRB 1099 (1995), but those cases support SAG-AFTRA because in each case the General Counsel introduced evidence of, or the parties admitted to, the employers in aggregate having at least \$50,000 of inflow/outflow. *See Stack*, 290 NLRB at 579 (“employer-members . . . purchased and received at their facilities located within the State of Minnesota products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Minnesota”); *Carpenters Local 102*, 317 NLRB at 1101 (“Respondent admits, as follows: (a) During the past twelve months, the constituent employer-members of MEA . . . collectively purchased and received goods or services valued in excess of \$50,000 directly from suppliers located outside the State of California.”).

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2020, I caused a true and correct copy of the foregoing Response to Charging Party's Motion for Reconsideration to be served by electronic mail on:

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