Jam Productions, Ltd., Event Productions, Inc., Standing Room Only, Inc., and Victoria Operating Co., a Single Employer *and* Theatrical Stage Employees Union Local No. 2, IATSE. Case 13–CA–284761

January 11, 2022

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN AND RING

This is a refusal-to-bargain case in which the Respondent, Jam Productions, Ltd., Event Productions, Inc., Standing Room Only, Inc., and Victoria Operating Co., a single employer, is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on October 19, 2021, by Theatrical Stage Employees Union Local No. 2, IATSE (the Union), the General Counsel issued the complaint on November 4, 2021, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 13–RC–160240.[1] (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On November 22, 2021, the General Counsel filed a Motion for Summary Judgment. On December 3, 2021, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain but contests the validity of the Union's certification of representative on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the Union unlawfully provided economic benefits to employees to induce them to support the Union and that the Regional Director's rulings as to the challenged ballots were erroneous. The Respondent further raises as an affirmative defense that the Board's Decision on Review and Order (371 NLRB No. 26 (2021)) affirming the Regional Director's Supplemental Decision and Certification of Representative was improper because it: disregarded Seventh Circuit precedent and the law of the case; is based on factual findings that are not supported by substantial evidence on the record; adopted a new legal standard for cases involving the grant of hiring-hall benefits during the critical period that is not rational and consistent with the Act; added an additional element to the employer's burden of proof to establish an inference of coercive timing; minimized the union's rebuttal burden in such cases; failed to recognize the impact of the discretionary nature of the hiring hall at issue and the union/hiring hall's failure to maintain records on an employer's ability to meet the proof burden imposed by the Board; and failed to draw appropriate adverse inferences against the union/hiring hall.

In addition, the Respondent denies that at all material times Jam Productions, Ltd., Event Productions, Inc., Standing Room Only, Inc., and Victoria Operating Co., have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as a single-integrated business enterprise, and denies that it is a single employer within the meaning of the Act. The Respondent also denies the appropriateness of the unit.

The Respondent admits, however, that it entered into a Stipulated Election Agreement in the underlying repre-

[1] Following an election held on May 16, 2016, in Case 13–RC–160240, the Regional Director, on June 20, 2016, overruled the Respondent's objection without a hearing, resolved a determinative number of challenged ballots, and issued a Certification of Representative. The Respondent filed a request for review, which the Board denied on January 5, 2017. On May 16, 2017, the Board granted the General Counsel's motion for summary judgment and found that the Respondent violated Sec. 8(a)(5) and (1) by failing and refusing to recognize and bargain with the Union. *Jam Productions, Ltd.*, 365 NLRB No. 75 (2017) (Case 13–CA–186575). The Respondent filed a petition for review with the United States Court of Appeals for the Seventh Circuit, and the Board filed a cross-petition for enforcement. On June 28, 2018, the court granted the Respondent's petition for review, denied the Board's cross-application for enforcement, and remanded this proceeding to the Board for a hearing on the Respondent's objection to the election. *Jam Productions, Ltd. v. NLRB*, 893 F.3d 1037 (7th Cir. 2018). On April 4, 2019, the Board, having accepted the court's opinion as the law of the case, reopened the representation case and remanded it to the Regional Director for further appropriate action. On September 20, 2019, the Regional Director, following a hearing, issued a Supplemental Decision and Certification of Representative overruling the Respondent's objection. On April 24, 2020, the Board granted the Respondent's request for review of the Regional Director's Supplemental Decision. On September 30, 2021, the Board issued a Decision on Review and Order, affirming the Regional Director's overruling of the objection for the reasons stated in its decision. *Jam Productions, Ltd.*, 371 NLRB No. 26 (2021).

sentation proceeding.[2] In that Stipulated Election Agreement, the Respondent stipulated that Jam Productions, Ltd., Event Productions, Inc., Standing Room Only, Inc., and Victoria Operating Co., constitute a single employer, and it further stipulated that the unit was appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The commerce section of the Stipulated Election Agreement specifically states that "[f]or purposes of the National Labor Relations Act, JAM Productions, Ltd., Event Productions, Inc., Standing Room Only Inc., and Victoria Operating Company, LLC, a single employer, with a place of business in Chicago, Illinois, is engaged in the business of producing concerts, shows, and events at venues . . . in Chicago, Illinois."[3] The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine in this proceeding the stipulation of single employer status and the appropriateness of the unit in the representation proceeding. We therefore find that the Respondent's denial that Jam Productions, Ltd., Event Productions, Inc., Standing Room Only, Inc., and Victoria Operating Co., constitute a single employer and its denial that the unit is appropriate do not raise any issue warranting a hearing in this proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.[4] We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.[5]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Based on its entry into the Stipulated Election Agreement described above, we find that Jam Productions, Ltd., Event Productions, Inc., Standing Room Only, Inc., and Victoria Operating Co., constitute a single employer within the meaning of the Act.

At all material times, Jam Productions, Ltd., an Illinois corporation with an office and place of business located at 207 W Goethe Street, Chicago, Illinois, has been engaged in the business of promoting and producing concerts, shows, and events by various performers, including at the Riviera Theatre, Park West Theatre, and Vic Theatre in Chicago, Illinois. During the calendar year preceding issuance of the complaint, a representative period, Jam Productions, Ltd., in conducting its business operations described above, derived gross revenues in excess of $500,000 and purchased and received at its Chicago, Illinois facilities goods and services valued in excess of $5000 directly from points outside the State of Illinois. We find that Jam Productions, Ltd. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[6]

At all material times, Event Productions, Inc., an Illinois corporation with an office and place of business located at 207 W Goethe Street, Chicago, Illinois, has been engaged in the business of supplying labor to third

[2] The complaint, at par. II (b), alleges that "[o]n September 30, 2015, Respondent entered into a Stipulated Election Agreement in Case 13–RC–160240 in which it stipulated JAM Productions, Ltd., Event Productions, Inc., Standing Room Only, Inc., and Victoria Operating Co., status as a single employer." The Respondent's answer admits that the parties entered into a Stipulated Election Agreement in Case 13–RC–160240, but also states that "it entered into the Stipulated Election Agreement solely for the purpose of avoiding the time and expense of a hearing to resolve contested issues in Case No. 13–RC–16240 (sic)." The Stipulated Election Agreement does not indicate that the stipulated facts are limited "solely" to resolving issues in the representation proceeding, and the Respondent has provided no evidence in support of this assertion.

[3] During the representation proceeding, the Respondent did not withdraw from the Stipulated Election Agreement, object to its status as a single employer, or challenge the appropriateness of the unit.

[4] Generally, in the absence of special circumstances, a respondent is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding. Having reviewed the affirmative defenses raised by the Respondent in its answer to the complaint regarding the Board's Decision on Review and Order (371 NLRB No. 26), we find no basis for departing from our longstanding rule or disturbing our Decision on Review in the underlying representation case.

[5] The Respondent's request that the complaint be dismissed and that it be awarded its costs, attorney's fees, and litigation expenses is therefore denied.

[6] The complaint also alleged that Jam Productions has been promoting and producing concerts, shows, and events by various performers "nationwide," but the Respondent denied this allegation, in both Case 13–CA–186575 and the instant proceeding. In addition, in the instant proceeding, the Respondent denies that in the calendar year preceding the issuance of the complaint, Jam Productions derived gross revenues in excess of $500,000, and purchased and received at its Chicago, Illinois facilities goods and services valued in excess of $5000 directly from outside the State of Illinois; and that at all material times, Jam Productions has been an employer engaged in commerce under the Act, "except as otherwise admitted or stated." However, the Respondent admitted each of the above allegations in its answer to the complaint in Case 13–CA–186575 and stipulated that it is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act in the Stipulated Election Agreement. Accordingly, we find that the Respondent's denials as to these allegations do not establish a factual issue warranting a hearing.

parties. During the calendar year preceding issuance of the complaint, a representative period, Event Productions, Inc., in conducting its business operations described above, derived gross revenues in excess of $500,000. We find that Event Productions, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[7]

At all material times, Standing Room Only, Inc., an Illinois corporation with an office and place of business located at 207 W Goethe Street, Chicago, Illinois, has managed operations at Park West Theatre in Chicago, Illinois. During the calendar year preceding issuance of the complaint, a representative period, Standing Room Only, Inc., in conducting its business operations described above, derived gross revenues in excess of $500,000. We find that Standing Room Only, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[8]

At all material times, Victoria Operating Co., an Illinois corporation with an office and place of business located at 207 W Goethe Street, Chicago, Illinois, operates the Vic Theatre in Chicago, Illinois. During the calendar year preceding the issuance of the complaint, a representative period, Victoria Operating Co., in conducting its business operations described above, derived gross revenues in excess of $500,000 and purchased and received at its Chicago, Illinois facilities goods and services valued in excess of $5000 directly from points outside the State of Illinois. We find that Victoria Operating Co. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[9]

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

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on May 16, 2016, the Regional Director for Region 13, on September 20, 2019, issued a Supplemental Decision and Certification of Representative in Case 13–RC–160240, certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time stage production employees employed by the Respondent at the Riviera, Park West, and Vic Theatres, but excluding production managers and crew leaders, office clerical employees and guards, professional employees and supervisors as defined in the Act.

[7] The complaint also alleged that Event Productions has been engaged in the business of supplying labor, including stagehands, for concerts, shows, and events by various performers at its venues including the Riviera Theatre and Vic Theatre in Chicago, Illinois, and that during the calendar year preceding the issuance of the complaint, Event Productions purchased and received at its Chicago, Illinois facilities goods and services valued in excess of $5000 directly from points outside the State of Illinois. The Respondent denied these allegations in both Case 13–CA–186575 and the instant proceeding. In addition, in the instant proceeding, the Respondent denies that in the calendar year preceding the issuance of the complaint, Event Productions derived gross revenues in excess of $500,000, and that at all material times, Event Productions has been an employer engaged in commerce under the Act, "except as otherwise admitted or stated." However, the Respondent admitted each of the above allegations in its answer to the complaint in Case 13–CA–186575 and stipulated that it is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act in the Stipulated Election Agreement. Accordingly, we find that the Respondent's denials as to these allegations do not establish a factual issue warranting a hearing.

[8] The complaint also alleged that Standing Room Only has been engaged in the business of promoting special events including fundraisers, weddings, and corporate parties at venues including the Park West Theatre in Chicago, Illinois, and other venues in and around Chicago, Illinois, and that during the calendar year preceding the issuance of the complaint, Standing Room Only purchased and received at its Chicago, Illinois facilities goods and services valued in excess of $5000 directly from points outside the State of Illinois. The Respondent denied these allegations in both Case 13–CA–186575 and the instant proceeding. In addition, in the instant proceeding, the Respondent denies that in the calendar year preceding the issuance of the complaint, Standing Room Only derived gross revenues in excess of $500,000, and that at all material times, Standing Room Only has been an employer engaged in commerce under the Act, "except as otherwise admitted or stated." However, the Respondent admitted each of the above allegations in its answer to the complaint in Case 13–CA–186575 and stipulated that it is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act in the Stipulated Election Agreement. Accordingly, we find that the Respondent's denials as to these allegations do not establish a factual issue warranting a hearing.

[9] The complaint also alleged that Victoria Operating Co. has been engaged in the business of providing stagehands at the Vic Theater in Chicago, Illinois, but the Respondent denied this allegation in both Case 13–CA–186575 and the instant proceeding. In addition, in the instant proceeding, the Respondent denies that in the calendar year preceding the issuance of the complaint, Victoria Operating Co. derived gross revenues in excess of $500,000, and purchased and received at its Chicago, Illinois facilities goods and services valued in excess of $5000 directly from outside the State of Illinois; and that at all material times, Victoria Operating Co. has been an employer engaged in commerce under the Act, "except as otherwise admitted or stated." However, the Respondent admitted each of the above allegations in its answer to the complaint in Case 13–CA–186575 and stipulated that it is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act in the Stipulated Election Agreement. Accordingly, we find that the Respondent's denials as to these allegations do not establish a factual issue warranting a hearing.

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

B. Refusal to Bargain

On October 5, 2021, the Union, by email to the Respondent's legal representative, requested that the Respondent meet to bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since about October 18, 2021, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

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

CONCLUSION OF LAW

By failing and refusing since October 18, 2021, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

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

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

ORDER

The National Labor Relations Board orders that the Respondent, Jam Productions, Ltd., Event Productions, Inc., Standing Room Only, Inc., and Victoria Operating Co., a single employer, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Theatrical Stage Employees Union Local No. 2, IATSE as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

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

> All full-time and regular part-time stage production employees employed by the Respondent at the Riviera, Park West, and Vic Theatres, but excluding production managers and crew leaders, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Post at its Chicago, Illinois facility copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 18, 2021.

[10] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 11, 2022

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Lauren McFerran, Chairman

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Marvin E. Kaplan, Member

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John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Theatrical Stage Employees Union Local No. 2, IATSE as the exclusive collective-bargaining representative of our employees in the bargaining unit.

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

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

> All full-time and regular part-time stage production employees employed by us at the Riviera, Park West, and Vic Theatres, but excluding production managers and crew leaders, office clerical employees and guards, professional employees and supervisors as defined in the Act.

JAM PRODUCTIONS, LTD., EVENT PRODUCTIONS, INC., STANDING ROOM ONLY, INC., AND VICTORIA OPERATING CO., A SINGLE EMPLOYER

The Board's decision can be found at www.nlrb.gov/case/13-CA-284761 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.