

**The Juilliard School and Theatrical Protective Union  
Local No. 1, International Alliance of Theatrical  
Stage Employes and Moving Picture Machine  
Operators of the United States and Canada,  
AFL-CIO, Petitioner. Case 2-RC-16037**

January 7, 1974

**DECISION AND DIRECTION OF  
ELECTION**

BY MEMBERS FANNING, KENNEDY, AND  
PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Haywood E. Banks. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedures, Series 8, as amended, by direction of the Regional Director of Region 2, the case was transferred to the Board for decision. Briefs were filed by the Juilliard School<sup>1</sup> and Theatrical Protective Union, Local No. 1, International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, AFL-CIO.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in the case the Board makes the following findings:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. We find that the Petitioner is a labor organization within the meaning of the Act who claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The Petitioner seeks a unit of all stagehands (electricians, carpenters, and property men working on stage and/or in shops) employed by the Employer excluding students, guards, watchmen, and supervisors as defined in the Act.

The Juilliard School, herein referred to as the Employer, urges the Board to dismiss the petition on the ground that no unit is appropriate, since all of the

individuals sought to be represented are either supervisors or casuals. Alternatively, the Employer contends that the unit requested is inappropriate because it would fragment its stage department. The parties disagree as to the supervisory status of two employees and, if these two employees are found to be supervisors, whether their participation in union activities is grounds for dismissing the petition or delaying the election. Lastly, the parties disagree as to what eligibility formula should be adopted if the Board finds an appropriate unit.

The Employer is a nonprofit, degree granting, educational corporation chartered by the regents of the University of the State of New York in 1926. It maintains its principal office at the Lincoln Center in New York City. The Employer functions as an undergraduate and graduate school of music, drama, and dance. Its academic community consists of more than 200 faculty members and over 1,400 students.

To supervise and direct the technical and mechanical work required by the operatic, musical, dance, and dramatic productions, the Employer has employed a director of the stage department. The director supervises what the Employer refers to in its brief as a permanent staff of five men. This staff is assisted in its work by a group of employees whose numbers fluctuate from 0 to approximately 155 depending upon the phase of the academic year and the number of productions being presented. These support personnel, whom the Employer refers to as "per diem employees," work in four separate areas or shops at Juilliard. The parties agree that student employees are not to be included in any unit found appropriate.

The costume shop is responsible for executing and refurbishing all designed costumes, including shoes, hats, wigs, dresses, and suits. There are between 1 to 60 employees in this shop among the following classifications: costume shop assistant, costume finisher, tailor, draper, milliner, wardrobe mistress, costume shopper, makeup man, hairdresser, and dresser.

The property shop handles the purchasing, building, renting, maintaining, and storing of all props. There are between 1 to 12 employees in this shop depending upon the need in the following classifications: prop shopper, prop sculptor, prop builder, prop upholsterer, prop finisher, caster or moldmaker, prop laborer, and prop man.

The electric shop is responsible for the maintenance and functioning of all mechanical apparatus. There are between 1 to 20 employees involved in this work.

The carpentry shop is responsible for maintaining of the parties.

<sup>1</sup> The Employer has requested oral argument. This request is hereby denied as the record and briefs adequately present the issues and positions

shop facilities, tools, materials, hardware, and floors. Employees in this shop are involved in the building, maintenance, repairing, and storing of the scenic elements used in the Employer's productions. There are between 1 to 60 employees involved in these job functions depending on the need. Painters also work in the carpentry shop on an as need basis. Their number ranges between zero to six.

The Petitioner seeks a unit of carpentry, electrical, and property employees. The petition does not include the costume shop personnel. However, at the hearing the Petitioner expressed an interest in a unit including the costume personnel if the Board found such to be the appropriate unit.

The Employer contends that there is no sufficient nucleus of employees which the Board can appropriately find a unit. The Employer contends that the "per diem" employees are casuals. They work only on a need basis, and, according to the Employer, they have no expectation of future employment with the School. The "per diems" receive an hourly rate while permanent employees are on salary. They are not covered by Juilliard's major medical plans as are most of the permanent employees. They do not come under the School's group life insurance policy or its pension plan, and the identification card they receive is stamped "Temporary Employee."

Notwithstanding the above, the record shows that many of these employees work for periods of time which indicate repetitive employment and which permit them reasonably to anticipate reemployment in the near or foreseeable future. The Employer hires from the same labor market and some of these "per diems" work for as long as 35 weeks. Although it uses no rehire list, we find that the Employer makes a practice of hiring employees who are experienced with the facilities at Juilliard and have proven through past performance their capacity to perform their job functions. The record shows that all "per diems" are hired as needed, generally between October and May, are paid an hourly wage, work essentially the same hours, may use some of the same tools as others in the stage department, and work in close proximity during productions. They receive free tickets to the Employer's productions, have access to the food and locker facilities, as well as the music and reading libraries. We find therefore that they possess sufficient interest in employment conditions

to warrant their inclusion in the unit we find appropriate.<sup>2</sup>

The Employer also contends that, if the "per diem" employees are found by the Board to be entitled to representation, such representation must occur within the framework of a bargaining unit which encompasses the entire stage department. Petitioner, on the other hand, has petitioned for a unit which includes the entire stage department except the costume shop personnel.

Unlike our dissenting colleague, we find that only a departmentwide unit is appropriate. Member Fanning and the Petitioner do not seek to exclude costume shop personnel in order to preserve craft skills;<sup>3</sup> rather, the exclusion of such personnel is sought in order to preserve historical patterns of representation in the New York City "legitimate theatre" industry.<sup>4</sup> We find such reasoning unpersuasive since, in our view, Juilliard's stage department and New York City's legitimate theatre industry are just not comparable with respect to those characteristics relevant to the determination of an appropriate pattern of representation.

Unlike the legitimate theatre, Juilliard's theatrical productions are not extravagant commercial undertakings which may run for many weeks and which employ large, highly experienced casts. Instead, Juilliard's stage department and the productions it sponsors are designed to serve as a training adjunct to the School's nonprofit educational function. Such productions provide students with an opportunity to apply both on stage and off stage that which they have been taught in the classroom. Accordingly, Juilliard stages relatively few productions each year which run for three or four performances at the most.

The fundamental differences between the commercial nature of the productions created by the legitimate theatre, and the educational nature of the productions created by Juilliard's stage department, are clearly reflected in the methods utilized in putting their performances together. In both, the backstage work is divided into the four categories described above—electrical, property, carpentry, and costume. In the legitimate theatre industry, much of this work—and virtually all of the costume work—is not done at the theatre at all but is contracted out to independent shops which utilize their own employees and which perform identical specialized services for all theatres in the city. When the assigned work is

<sup>2</sup> *Queen City Railroad Construction, Inc.*, 150 NLRB 1679; *Daniel Construction Company Inc.*, 133 NLRB 264; and *Cavendish Record Manufacturing Company*, 124 NLRB 1161.

<sup>3</sup> Such a contention could not be made in any event since the record in the companion case, *The Juilliard School*, 2-RC-16154, which we hereby officially notice, indicates that the overwhelming majority of costume shop personnel are not journeymen, are not licensed, and have never participated in a formal apprenticeship program.

<sup>4</sup> Although Petitioner attempts to bolster its position by pointing out that it has a contract with every legitimate theatre in the greater New York City area, none of which covers costume employees, we note that in a recent Board decision, *Medion, Incorporated*, 200 NLRB No 145, the International Alliance of Theatrical Stage Employees, with which the Petitioner is affiliated, successfully urged the Board to approve a much wider unit, including costume employees.

completed, the end product is sent to the theatre for the performances. Thus, given this method of staging a production, it is not surprising that union representation has developed along specialized shop lines rather than on a theatre-by-theatre basis encompassing all employees who participate in staging a production.

At Juilliard, on the other hand, the productions are organized in a manner more reflective of their functions as a training vehicle for students. In order to provide students with maximum exposure to all facets of staging productions, none of the work is contracted out. All work is performed at the theatre itself under the overall direction of an individual who enjoys faculty status. The fact that all of the work is performed under a single roof in and around the stage area has resulted in an overlapping of responsibilities between the four shops not characteristic of legitimate theatres, and in many instances has given rise to an assembly-line type operation. In fact, there have been instances in which employees in the carpentry and property shops have reported directly to the head of the costume shop. Obviously, this integration of operations, and the community of interest which it thereby creates among the employees, would not be possible under the procedures which currently prevail in the legitimate theatre industry.

In our view, the mere fact that both Juilliard and the legitimate theatre contribute to New York City's entertainment industry does not require us to ignore the fundamental differences underlying the nature of those contributions. Accordingly, we find<sup>5</sup> that under the circumstances of this case the appropriate unit under Section 9(b) of the Act is:

All stage department employees including all electricians, carpenters, and property men working on stage or in shops and all employees engaged in the manufacture, repair, and alteration of costumes including makeup men, hairdressers and dressers, and all scene painters; excluding students, guards, watchmen and supervisors as defined in the Act.

There remains to be settled the status of employees Maher and Mulvain. The Employer contends that

both are supervisors; Petitioner contends they are employees.

Maher and Mulvain head the electrical and carpentry shops respectively. The Employer contends that they have and exercise full authority to set schedules, assign work, grant leaves of absence and time off, reprimand, and discharge experienced "per diems" and decide which "per diems" should be laid off. According to the Employer's witness, they effectively recommend raising salaries, increasing the work force by hiring "per diems," adjust grievances, submit timesheets, and purchase materials and supplies on their own initiative.

The Petitioner argues that these two employees work full time doing the same work and wearing the same clothes as other carpenters and electricians and earning practically the same weekly salary as the "per diems." These two individuals testified that they receive overtime pay, have never been advised that they were supervisors, and have never attended supervisors' meetings. The Petitioner contends that the evidence shows that both men act as conduits in the hiring and laying off of employees, but that they never take action on their own initiative or effectively recommend same.

After carefully reviewing the entire record we conclude that the evidence on which to base a decision with respect to the supervisory status of these two employees is conflicting. Consequently, we shall vote these two employees subject to challenge.<sup>6</sup>

The parties are also in disagreement with respect to voting eligibility requirements. The Petitioner requests a standard that would allow to vote all employees who have worked 30 or more days in each of the last two "seasons" of the Employer. The Employer suggests a standard that would allow all employees who have worked 4 days over a 2-year period to vote.<sup>7</sup>

Upon consideration of the number and length of the Employer's stage productions and the employment pattern resulting therefrom, we believe that the most useful formula would be one that accords voting eligibility to 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.

<sup>5</sup> The petition herein will not be dismissed as the Petitioner has expressed an interest in the unit found appropriate.

<sup>6</sup> It is unnecessary for us to resolve the supervisory status of Maher and Mulvain for purposes of considering the Employer's contention that their participation in union activities constitutes sufficient grounds for dismissing the petition or delaying the election. The record indicates that their union activities consisted primarily of peaceful picketing on a picket line established after the filing of the petition herein. In view of the limited scope

of their activities, and in view of the open opposition of the Employer to Petitioner's organizing efforts, we find that the conduct of Maher and Mulvain would not warrant a deviation from our normal election procedures even if they were determined to be supervisors. Cf. *WKRK-TV, Inc.*, 190 NLRB 174, enf'd, 470 F.2d 1302 (C.A. 5, 1973).

<sup>7</sup> The formula requested by the Employer was amended in its brief, filed in Case 2-RC-16154, to read as above.

[Direction of Election<sup>8</sup> and *Excelsior* footnote omitted from publication.]

MEMBER FANNING, dissenting in part:

I agree with the majority finding that the so-called “per diem” employees have a sufficient degree of interest in employment conditions in the stage productions of this professional school to warrant their inclusion in bargaining units. However, I believe that the broad unit found appropriate herein and the consequent dismissal of the petition in Case 2-RC-16154 for a separate costume unit deviate from a longstanding pattern of collective bargaining in this industry.

In the commercial theatre industry costume work is generally contracted out to businesses which do exclusively such work and are not connected with specific theatres. Consequently, employees of those independent shops have been represented separately from the stage department employees of the theatres. In fact, the Petitioner in Case 2-RC-16154, a theatrical costume local of the ILGWU, represents employees in many of these shops, and the Petitioner herein, the stagehands local of IATSE, states in its brief that it has a contract for representing the stage department employees as a separate unit with every legitimate theatre in the Greater New York City area.<sup>9</sup>

The Employer’s stage and equipment facilities are large and sophisticated. On the level of the opera stage, level B, are the carpentry shop, electrical shop, and property shop, functioning as a group of employees distinct from those of other employees of the School. This grouping has long existed as the representation pattern of stage carpenters, electricians, and property men in the theatrical industry.<sup>10</sup> It is the existing contract unit at the nearby Metropolitan Opera Company, which like Juilliard is a nonprofit organization housing all four stage department shops under one roof.

Contrary to the majority belief that all work is performed “in and around the stage area” most costume work is performed in the costume shop on level D, two floors above the stage. The costume shop’s hand and machine sewers, milliners, tailors, bootmakers, etc., have skills totally unlike those of carpenters, electricians, and stage property men. There is separate supervision for the costume shop and separate hiring for it. Unpersuasive, indeed, is

<sup>8</sup> As the Petitioner’s original showing of interest was for a unit smaller than the unit in which an election is being directed, the Direction of Election is subject to an administrative determination by the Regional Director for Region 2 of the Petitioner’s interest in the unit found appropriate herein.

<sup>9</sup> The majority relies on *Medion, Incorporated*, 200 NLRB No. 145, wherein the International Alliance of Theatrical Stage Employees agreed with the adoption of a broad unit including some wardrobe and makeup

the majority’s reliance on lack of evidence of craft skills or of traditional departmental status, on close proximity of all four shops instead of just the three stagehands shops, and on minimal overlapping of duties between costume employees and stagehands.

The majority has adopted the Employer’s ambiguous argument that stage department work at Juilliard has in many instances given rise to an “assembly-line type operation.” Apparently this refers to the few occasions when employees of different shops will work independently on a particularly technical or elaborate prop. This is nothing more than employees of separate departments performing their own skills and does not support the majority’s findings that it indicates an “overlapping of responsibilities.”

The majority’s reliance as evidence of employee integration upon the belief that employees in the “carpentry and property shops” have reported directly to the head of the costume shop is misplaced. The costume supervisor testified in Case 2-RC-16154 that he could not remember a carpenter or property department employee ever coming to the costume shop and performing work on the manufacture, repair, or maintenance of costumes. The record indicates a few instances where a prop was made to the costume supervisor’s specifications, and the costume supervisor testified as to one instance when he told carpenters the dimensions for canes and shoes made for the costume department. I do not believe this type of incidental instruction can be relied on to support a finding of employee integration between the costume shop and the carpentry and prop shops.

The productions of the School, though sponsored academically, take place in the heart of the New York entertainment industry—except when on tour—and are a part of it. For needed production personnel the School draws upon the industry’s employees. I can see no reason to depart from the established pattern of bargaining by insisting that costume employees be bargained for together with a separately appropriate unit of stage carpenters, stage electricians, and stage property men. Ultimately the effect of this decision ignoring well-established bargaining patterns will be felt by other professional schools of the performing arts located in urban centers. Costume employees who divide their time between commercial work and school work will have

employees. That case involved a different industry and a unit agreed upon, in relevant part. As the unit issue was not litigated in *Medion*, it is questionable whether the factors present in that case are comparable to those present in the instant case.

<sup>10</sup> The Board has had occasion to recognize this type of unit in the television industry *National Broadcasting Company, Inc.*, 89 NLRB 1289, 1305

to belong to an additional union, not one which has traditionally represented their separate skills.

In view of the persuasive factors militating against

the broad unit determination made herein, I would find appropriate the separate units requested, here and in Case 2-RC-16154.