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September 3, 2009

Electronically Filed

Lester A. Heltzer, Executive Secretary  
Office of the Executive Secretary  
National Labor Relations Board  
1099 14th Street, N.W.  
Washington, D.C. 20570-0001

Re: DLC Corp., d/b/a Live Nation New England and  
International Alliance of Theatrical Stage Employees, Local 11  
Case No. 1-RC-22162

Dear Mr. Heltzer:

Pursuant to the National Labor Relations Board procedures for electronic filing, Petitioner International Alliance of Theatrical Stage Employees, Local 11 through its undersigned counsel, hereby files Petitioner's Opposition to the Employer's Request for Review of the Regional Director's Orders.

Thank you.

Very truly yours,

/s/Gabriel O. Dumont, Jr./

cc: Rosemary Pye, Regional Director, Region One  
(Via email)  
Elizabeth Cyr, Esq.  
(Via email)  
Lawrence D. Levien, Esq.  
(Via email)

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

**DLC CORP. d/b/a  
LIVE NATION NEW ENGLAND,**

Employer

And

**CASE NO.  
1-RC-22162**

**INTERNATIONAL ALLIANCE OF  
THEATRICAL STATE EMPLOYEES,  
LOCAL 11,**

Petitioner

**PETITIONER’S OPPOSITION TO EMPLOYER’S REQUEST FOR REVIEW  
OF THE REGIONAL DIRECTOR’S ORDERS**

Petitioner, International Alliance of Theatrical Stage Employees, Local 11 (“Local 11” or “Union”), submits the following opposition to the Request for Review submitted by the Employer, DLC Corp. d/b/a Live Nation New England (“DLC”), that has been filed in a transparent attempt to deny its employees timely bargaining rights.

Having clearly and egregiously violated the law by its conduct during the first election, *i.e.* paying eligible employees to vote, DLC now attempts to exploit an error on the part of a Board Agent during the rerun election to deny its employees the right to have a timely election so that its employees may have an opportunity to select a bargaining agent and to have a collective bargaining agreement in place for the 2010 season.

In support of its motion, DLC sets out four arguments that the Union will address in order below.

### **The Scheduled Election Does Not Violate Established Board Law.**

DLC argues that the Regional Director has scheduled the third election on days that DLC contends are not “at or near the peak of the [2009 Comcast Center] season” and that, therefore, the scheduled election “violates established law.” However, contrary to the assertion of DLC, the Region’s scheduling decision is not contrary to established Board law.

First, in making this argument, DLC fails to inform the Board that DLC argued successfully for the scheduling of the 2008 election well outside the time period that it considered its “peak season” in 2008.

In this regard, the initial election in this matter was conducted on June 13 and 14, 2008, at the Comcast Center.<sup>1</sup> Prior to the scheduling of the election, Region 1 requested that the parties submit position statements concerning, among other things, the scheduling of the election. *See* Exhibit A. As in its current Request for Review, DLC, in its March 17, 2008 position statement (*see* Exhibit B), responded by first noting that the Board traditionally conducts elections among seasonal employees “at or near the peak of the season;” and by then arguing that the election at the Comcast Center “must be held at or near the seasonal peak of the [Comcast] Center’s operations.”

DLC next informed the Region that “[b]ased on the historical data and [2008’s] preliminary schedule, it appear[ed] that the 2008 Tweeter Center seasonal peak [would] likely fall in late July or August.” Despite this fact, DLC suggested that the election be conducted on two days between June 13 and 15, 2008, arguing that its “proposed dates fall closely enough to the peak of the season such that the Board’s directive would not be undermined....”

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<sup>1</sup> At the time of the initial election, the venue was called the “Tweeter Center.”

Accordingly, by its own admission, the initial election in this matter was conducted, at the request of DLC, approximately six (6) weeks prior to the start of the 2008 Comcast Center “peak season.” As detailed below, the proposed dates for the third election, *i.e.* September 11 and 12, 2009, arguably fall within the Comcast Center’s 2009 “peak season.” In any case, it is clear that the September 2009 election dates are much “nearer” to the 2009 “peak season” than either the dates of the initial election or the rerun election that was conducted on June 19 through 21, 2009, also at the request of DLC.

In this regard, the following is the concert schedule for the 2009 Comcast Center season:

5/30	George Strait
6/03	NIN/JA
6/06	Phish
6/12	Brad Paisley
6/14	JamN Show
6/16	Aerosmith
6/19	New Kids
6/20	No Doubt
6/21	The Fray
6/25	Jimmy Buffett
6/27	Jimmy Buffett
6/28	Styxx
6/29	311 (make-up date)
6/30	Def Leppard
7/07	Judas Priest
7/18	Rock the Bells
7/21	Van’s Warped Tour
7/24	Nickelback
7/26	Toby Keith
7/29	Kid Rock
7/31	Depeche Mode
8/01	Incubus
8/03	Coldplay
8/04	Rockstar Energy
8/06	Blink 182
8/08	Snoop
8/18	Creed
8/19	Crue Fest

8/22	Bruce Springsteen
8/23	Bruce Springsteen
8/29	Allman Brothers
9/11	Kings of Leon
9/12	Rascal Flatts <sup>2</sup>

Based on the above, there were 16 concert dates between July 18 and August 29, 2009, which again supports DLC's March 2008 statement to Region 1 that its "peak season" at the Comcast Center, generally, is from the latter part of July through August. Accordingly, it is clear that an election conducted on September 11 and 12, 2009, at a minimum, would be "near" the peak season; and, therefore, contrary to the assertion of DLC in its Request for Review, the Region's scheduling decision does not conflict with established Board law. In addition, it can be reasonably argued that the eight-week period between July 18 and September 12, 2009, was/is the 2009 Comcast Center's "peak season" and, as such, the scheduled election falls within Comcast Center's "peak season."<sup>3</sup>

Second, a persuasive argument can be made that there is no "peak season" at the Comcast Center, in that the number of employees working at any one time is determined

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<sup>2</sup> Exhibit C is a Comcast Center employee's work schedule for the current season through the end of August.

<sup>3</sup> In its Request for Review, DLC asserts that "[b]y the last few shows of the season, college students have left the local area to return to school, out-of-state employees have returned to their off-season homes, and local residents have begun their off-season jobs." There is no support in the record for DLC's claim that "college students have left the local area to return to school." In fact, there are few, if any, college students among the eligible voters.

In addition, DLC's other assertions defy logic. In this regard, the statement that "out-of-state employees have returned to their off-season homes" implies that out-of-state employees would travel distances and take up residence near the Comcast Center for the opportunity to work a couple of shows. This of course is ludicrous. Similarly, the statement that local residents have begun their off-season jobs" implies that voters leave their primary employment to have the opportunity to work a couple of shows which is, once again, an illogical proposition.

by the needs of the particular shows – not the time of the season.<sup>4</sup> Third, at no time during a Comcast Center season do all or even most of the eligible voters work a particular show. Fourth, in *Bogus Basin Recreation Ass’n.*, 212 NLRB 833 (1974), the principal decision relied on by DLC, the bargaining unit was comprised solely of seasonal workers, none of whom would have been employed on the date of the scheduled election.<sup>5</sup> Fifth, delaying the rerun election until the 2010 season would have the effect of disenfranchising some of the eligible voters who participated in the second election. Compare *Diamond Walnut Growers, Inc.*, 308 NLRB 933 (1992).

### **The Timing Of The Election Is Appropriate.**

DLC next complains that the rerun election should be delayed until the 2010 season to give DLC “sufficient time to overcome the taint of the objectionable conduct that rendered the prior election null and void.” However, DLC was handed a “gift” in that it was granted a rerun election not because there is any evidence of taint but because “the commission of an act by a Board Agent conducting an election which tends to destroy confidence in the Board's election process, or which could reasonably be interpreted as

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<sup>4</sup> For example, the 2009 Comcast Center concert season, when concluded, will have spanned a total of sixteen (16) weeks. Seventeen (17) concerts will have been played during the first eight (8) weeks of the season, while sixteen (16) concerts will have been held over the last eight (8) weeks of the season. This is hardly supportive of the notion that the Comcast Center has a “peak season.”

<sup>5</sup> *Six Flags Over Georgia, Inc.*, 215 NLRB 809 (1974), another decision cited by DLC, did not involve the issue of the appropriate date for the scheduling of the election. The decision, however, issued on December 14, after the Six Flag’s 1974 season had ended, thus precluding the holding of the election until the start of the next season.

Interestingly, in the third decision cited by DLC, *Libby, McNeill & Libby*, 90 NLRB 279 (1950), the Board directed that the election be conducted during a time period in which 400 to 450 seasonal employees would be working as opposed to a second “peak” period in which approximately 1,000 seasonal employees would be employed. In that case, the Board scheduled the election in the first time period because it believed that the seasonal workforce during the first period would be representative and would have the greatest interest in selecting the bargaining representative. Analogously, in the instant case, the only way for the Region to insure that the employees who voted in the second election will have their voices heard is to schedule the rerun election during the 2009 DLC season.

impugning the election standards we seek to maintain, is a sufficient basis for setting aside that election.” *Athbro Precision Engineering*, 166 NLRB 966 (1967).

In addition, it is the bargaining unit employees and not DLC who were harmed by the Board Agent misconduct in that they have been denied the certification of their collective bargaining agent not because the vote was tainted but because the Board requires that the integrity of its processes be maintained above all else. The Regional Director clearly was correct in not further punishing these employees by deferring the election until the 2010 season which would have meant that the employees would not have a collective bargaining agreement or even a bargaining agent in place during the 2010 Comcast Center season.

**The Regional Director Has Ordered That The Election  
Be Conducted Pursuant To The Correct *Excelsior* List.**

DLC next argues that the “correct” *Excelsior* List should be based on the 12-month period immediately preceding the issuance of the Supplemental DDE and not based on the 2008 calendar year. This argument merely is a “back door” attempt by DLC to get the rerun election postponed to the 2010 season. In this regard, in its Request for Review (at pp. 16-17), DLC argues as follows:

However, simply modifying the Regional Director’s eligibility standard for the September 11 and 12 election will not effectively remedy this problem given the shortened campaign and lack of working days remaining before the election. Such a change to the *Excelsior* List at this time will eliminate any opportunity for these 29 employees, who likely have not participated in previous representation elections, to fully understand the issue and seek information, from either DLC or the Local 11, related to the question of union representation. As such, the Regional Director’s determination of the appropriate eligibility formula must be reversed and the *American Zoetrope* and *Oak Mountain* standard must be adopted for an election during the 2010 season.

The original petition in this case was filed in December 2007 in anticipation of the 2008 Comcast Center season. Because of first the gross misconduct of DLC, *i.e.* paying employees to come and vote, and secondly Board Agent misconduct, the employees have been denied the opportunity to have a bargaining representative and a collective bargaining agreement in place for two seasons, *i.e.* the 2008 and 2009 seasons. DLC is now asking that the Board, under the guise of complaining about the *Excelsior* List, delay the revote until the 2010 season which will result, at a minimum,<sup>6</sup> in the employees not having an opportunity to have a collective bargaining agreement in place until, at the earliest, the 2011 season – 3 and ½ years after the original petition was filed!<sup>7</sup>

In addition, the issue of the appropriate eligibility formula has already been litigated by the parties in this case. *See* January 16, 2008 DDE and March 13, 2008 Board Order denying DLC’s Request for Review.<sup>8</sup> As such, DLC’s argument is barred by the law of the case doctrine. *See, e.g., Teamsters Local 75, 349 NLRB 77 (2007)* (“Although the law of the case doctrine does not absolutely preclude reconsideration or reversal of a prior decision, such action should not be taken absent ‘extraordinary circumstances such as where the initial decision was clearly erroneous and would work a manifest injustice’”).<sup>9</sup> *See also Virginia Concrete Corp., 338 NLRB 1182, 1183 (2003)*

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<sup>6</sup> Based on its conduct, to date, it would be naïve to believe that DLC would not file objections to the conduct of an election held during the 2010 season and take appeals from the denial of those objections – thereby denying its employees the certification of a collective bargaining agent until sometime after the 2010 season.

<sup>7</sup> This case has already become an example of why the Employee Free Choice Act is necessary. It will become a “poster child” for those who support the passage of that act if the Board allows the rerun election to be delayed until the 2010 season.

<sup>8</sup> In seeking review of the Regional Director’s eligibility formula in this case, DLC clearly was aware that the Regional Director had based the eligibility formula on the calendar year preceding the election. *See* Exhibit D.

<sup>9</sup> DLC, in its Request for Review, does not even discuss the application of this doctrine.

(applying law of the case doctrine in a representation proceeding); *Technology Services Solutions*, 332 NLRB 1096, 1096 fn. 3 (2000) (recognizing that unpublished orders of the Board establish the law of the case in subsequent proceedings).

**DLC's Recusal Argument Has No Merit.**

DLC lastly argues that Region 1 should not be permitted to conduct the rerun election because of bias. DLC's argument is wholly without merit. As best can be discerned from its truncated argument, DLC is contending that Region 1 is biased because it failed to discover the Board Agent misconduct for several weeks; because the Regional Director's notification of the reason for the rerun election was published in accordance with the Case Handling Manual; and because the Region would not disqualify the previous Union observers. Simply stated, DLC cites no cases in support of its contentions because its contentions are specious.

**Conclusion.**

For the reasons set out above, the Petitioner, IATSE, Local 11, respectfully requests that the Board deny the Employer's Request for Review.

Respectfully submitted,  
For the Petitioner,  
IATSE, Local 11,

Date: September 3, 2009

/s/ Gabriel O. Dumont, Jr./

Dumont, Morris & Burke, P.C.  
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Boston, MA 02108  
(617) 227-7272  
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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**DLC CORP. d/b/a  
LIVE NATION NEW ENGLAND,**

Employer

And

**CASE NO.  
1-RC-22162**

**INTERNATIONAL ALLIANCE OF  
THEATRICAL STATE EMPLOYEES,  
LOCAL 11,**

Petitioner

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the Petitioner's Opposition to Employer's Request for Review of the Regional Director's Orders has this day been forwarded, via e-mail, to Elizabeth Cyr, Esq. and Lawrence D. Levien, Esq., counsel for DLC Corp. d/b/a Live Nation New England at [Ecyr@akingump.com](mailto:Ecyr@akingump.com) and [Llevien@akingump.com](mailto:Llevien@akingump.com) and to Rosemary Pye Regional Director, at [Rosemary.Pye@nlrb.gov](mailto:Rosemary.Pye@nlrb.gov).

September 3, 2009

*/s/ Gabriel O. Dumont, Jr./*



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
Region 1 Boston, Massachusetts  
10 Causeway Street, 6th Floor  
Boston, MA 02222-1072  
(617) 565-6700

March 7, 2008

**BY Fax and U.S. Mail**

Elizabeth Cyr, Esq.  
Akin, Gump  
1333 New Hampshire Avenue, NW  
Robert S. Straus Building  
Washington, DC 20036

Gabriel O. Dumont, Jr., Esq.  
Dumont, Morris, Burke PC  
14 Beacon Street, Ste. 300  
Boston, MA 02108

RE: DCL Corp., d/b/a Tea Party Concerts and/or Live Nation  
Case No. 1-RC-22162

Dear Ms. Cyr and Mr. Dumont:

By this letter I am requesting that you submit in writing to the Region by no later than close of business Friday, March 14, 2008, your clients' positions regarding the scheduling and mechanics of the election to be held in the above-referenced case. In the absence of any request from the parties to hold a mail ballot election, the Region plans to schedule a regular, in-person secret ballot election.

Specifically, please submit your positions regarding the following:

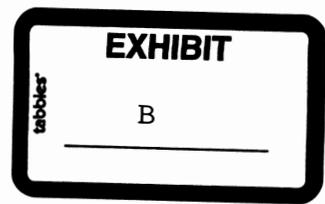
Approximately when is the Tweeter Center fully operational? Approximately when is the seasonal peak at Tweeter Center? Where is an appropriate locale for the election site at the Tweeter Center? What times do you suggest the election take place to accommodate the most voters? What day(s)? Are ballots or notices necessary in any languages other than English?

If you do not submit your positions regarding these factors and any other factors your client deems important, the Regional Director may make her determination about the scheduling and mechanics of the election without your input. Please do not hesitate to call with any questions. Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth M. Tafe".

Elizabeth M. Tafe  
Attorney



AKIN GUMP  
STRAUSS HAUER & FELD LLP

Attorneys at Law

ELIZABETH CYR  
202.887.4518/fax: 202.887.4288  
ecyr@akingump.com

March 17, 2008

VIA FACSIMILE & U.S. MAIL

Elizabeth Tafe  
National Labor Relations Board, Region 1  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Re: *DLC Corp. d/b/a Live Nation New England*, Case No. 1-RC-22162

Dear Ms. Tafe:

This letter sets out DLC's position regarding the scheduling and mechanics of the election to be held in the above-referenced matter. DLC proposes that a two-day manual election be conducted between June 13<sup>th</sup> and 15<sup>th</sup> at the Tweeter Center.

**The Election Should Be Conducted At or Near the Tweeter Center Seasonal Peak**

For nearly 60 years it has been the Board's "normal practice to direct the holding of an election in which seasonal employees are to vote, at or near the peak of the season." *Libby, McNeill & Libby*, 90 NLRB 279, 281 (1950). The Board adopted this practice to ensure that as many employees as possible are provided an opportunity to vote given the wide variations in seasonal workforces. *Id.*; *Six Flags Over Georgia, Inc.*, 215 NLRB 809, 810 (1974). Given the seasonal nature of DLC's operations, the representation election in this case must be held at or near the peak of the Tweeter Center's operations.

In *Bogus Basin Recreation Association*, the employer operated a seasonal ski resort in Idaho. 212 NLRB 833 (1974) (hereinafter "*Bogus Basin*"). The ski resort would typically open to the public between mid-November and early December and remain open until approximately mid-April, when the employer would close down its operations and terminate all seasonal employees. *Id.* The union filed a petition at the conclusion of the 1974 ski season seeking to represent a unit consisting solely of seasonal employees. *Id.* Despite the seasonal nature of the unit, the union sought an immediate representation election, which the employer opposed. *Id.* The Board held that the election must be held at or near the peak of the next skiing season. *Id.*

Elizabeth Tafe  
March 17, 2008  
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The factual circumstances surrounding the instant petition closely resemble those in *Bogus Basin*. In this case, DLC opposes an immediate election as the unit consists solely of seasonal employees, none of whom are currently employed at the employer's facility. Moreover, DLC's seasonal workforce is pulled from a broad and varied labor market that includes employees who may work and/or attend school out of state during the off-season. As such, Board law is well-settled that the election in this case must not be held prior to the start of the 2008 season and must be held at or near the seasonal peak of the Tweeter Center's operations.

The Tweeter Center is an open-air seasonal venue that operates between late May and mid-September each year. *See* Decision & Direction of Election p. 3. The peak of the Tweeter season typically occurs between July and August, depending on that season's performance schedule. DLC has attached to this letter a summary of the 2005, 2006, and 2007 Tweeter Center performance information to demonstrate the seasonal distribution of performances. While the performance schedule for the 2008 Tweeter season is not finalized, the schedule currently reflects the following preliminary information: 12 days are booked or reserved in May for possible events or performances, 17 days are booked/reserved in June, 25 days are booked/reserved in July, and 27 days are booked/reserved in August.<sup>1</sup> Based on the historical data and this year's preliminary schedule, it appears that the 2008 Tweeter Center seasonal peak will likely fall in late July or August.

Given the Board's directive to conduct elections involving seasonal employees at or near the peak of the seasonal operations, DLC proposes a two-day election held between June 13<sup>th</sup> and 15<sup>th</sup> at the Tweeter Center. These proposed dates fall closely enough to the peak of the season such that the Board's directive would not be undermined while maximizing voter involvement due to the high number of employees required for the events falling on the proposed dates. Performances by R.E.M., Tom Petty & the Heartbreakers, and Rush are confirmed on the proposed dates.<sup>2</sup> Each of these shows will require approximately 40-50 unit employees to

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<sup>1</sup> This information reflects a very preliminary schedule for the Tweeter Center that includes both confirmed bookings and bookings that are reserved but not yet confirmed. Reserved bookings are typically over-scheduled with the expectation that many will be canceled or go un-booked. This preliminary schedule also includes days that are reserved as rental events. A rental event is an event does not include a DLC-produced performance and thus, no stage crew employees will be used for the event. The 2008 schedule will eventually be reduced to the standard 35-40 shows per season that have historically been performed at the Tweeter Center. Thus, some of these reserved days are likely to change or be removed from the schedule but at this time, this preliminary information is all that is available for the 2008 season.

<sup>2</sup> These performance dates are confirmed for the 2008 season and will not be changed moving forward.

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March 17, 2008  
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complete the load-in, show, and load-out work calls.<sup>3</sup> Moreover, given the tight scheduling of these events, DLC will be forced to use different employees to staff the shows on back-to-back days in order to avoid any employee accumulating excessive hours in a 24-hour period.<sup>4</sup>

DLC proposes that there be two voting sessions per day to accommodate employees working the early, load-in shifts and the later, load-out shifts. There are several locations at the Tweeter Center that could be used as a voting area including the crew room/lounge and the conference room in the management offices. DLC is also aware of some Spanish-speaking employees included in the voting unit who may require Spanish-language ballots.

In its letter dated March 14, 2008, Petitioner Local 11 asserted that the long-standing practice of holding elections at or near peak season for seasonal operations does apply here because DLC operates venues other than the Tweeter Center that are not seasonal or do not share the same seasonal schedule. The case law clearly states, however, that this practice is appropriate for elections “in which seasonal employees are to vote.” *Libby, McNeill & Libby*, 90 NLRB 279, 281 (1950). Thus, the Region’s focus must be on the employees eligible to vote and not the employer’s operations.<sup>5</sup> According to DLC payroll records, approximately half of the employees eligible to vote in this election have not worked for DLC at the Orpheum during the 2007-2008 season. In fact, numerous unit employees work for DLC only at the Tweeter Center due to other employment and school commitments that occur between September and May. Thus, Local 11’s claim that the bargaining unit employees are not seasonal employees is false and unsubstantiated.

#### **A Manual Ballot Election is Most Appropriate**

Local 11 has proposed that the Regional Director conduct a mail ballot election in this case and that such an election could be conducted immediately.<sup>6</sup> A mail ballot election, however,

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<sup>3</sup> Approximately 80-100 different unit employees could be scheduled over this 2-day period.

<sup>4</sup> If the proposed dates are unacceptable, DLC proposes July 18<sup>th</sup> and 19<sup>th</sup> as alternatives. The back-to-back shows on these dates present similar scheduling needs as are discussed above for June 13<sup>th</sup> through 15<sup>th</sup>.

<sup>5</sup> Moreover, if Local 11 wanted the employer’s operations at other venues to be considered, it could have sought a larger unit covering employees at all DLC venues. Rather, Local 11 chose to file a petition covering only Tweeter Center employees and not including other DLC venues. As such, only DLC’s Tweeter Center operations should be considered to determine the appropriate timing of the election for the petitioned-for unit.

<sup>6</sup> It should be noted that the Board practice, discussed above, of holding elections with seasonal employees at peak season does not distinguish between manual and mail ballot elections. It would be inappropriate to deviate

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is inappropriate in this matter. It is the Board's longstanding policy that representation elections, as a general rule, should be conducted manually. *See* NLRB Representation Casehandling Manual Section 11301.2. The Board has adopted this practice because historically voter turn-out is higher at manual elections and because the requisite laboratory conditions surrounding the election are more difficult to maintain during a mail ballot election. *San Diego Gas & Electric*, 325 NLRB 1143, 1146 (1998); *Brink's Armored Car, Inc.*, 278 NLRB 141 (1986).

The Board has acknowledged that in certain circumstances a mail ballot election is appropriate when factors are present that are likely to inhibit voter participation if the election is conducted manually. *San Diego Gas & Electric*, 325 NLRB 1143 (1998). Numerous factors can be considered as part of this analysis, however, the Board has identified two factors that normally suggest the propriety of using a mail ballot: 1) where eligible voters are scattered over a wide geographic area; 2) where eligible voters maintain substantially varied work schedules such that they are not present at a common location at common times. *Id.* at 1145.

In Case 1-RC-22005, DLC supported the use of a mail ballot election given the number of venues covered by the petition and the combination of seasonal and year-round employees in the unit. The petitioned-for unit in this case, however, is sufficiently different such that a mail ballot election is no longer appropriate. Specifically, the employees are no longer scattered amongst ten different venues throughout the metro-Boston area and the employee schedules are no longer substantially varied. Because of the smaller scope of the petitioned-for unit, a manual election can easily be conducted over consecutive performance days during the Tweeter Center season. An election conducted over consecutive show days allows for maximum voter participation while better maintaining the laboratory conditions necessary for a valid representation election. As such, there is no basis for a mail ballot election in this case.

Moreover, a mail ballot election in this instance would act to disenfranchise DLC employees and decrease the number of employees able to participate in the election. As the record reveals, DLC employs numerous employees that reside out-of-state or work on touring productions during the off-season but annually return to Massachusetts for the Tweeter Center season. Moreover, DLC employs many students that likely maintain different addresses during the school year and the summer. Due to the seasonal nature of its operations, however, DLC does not maintain year-round contact information for its employees. Rather, DLC has information sufficient to contact these employees during the Tweeter Center season and for this reason would likely not be able to provide accurate addresses for all of the unit employees. It is

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from well-established Board precedent and determine that an immediate mail ballot election is appropriate in this case, despite a clear directive to conduct this type of election at the employer's seasonal peak.

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March 17, 2008  
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well-settled that a mail ballot election should be conducted when it acts to increase voter turnout. In this scenario, where voter participation will decrease if the election is conducted by mail, it is highly inappropriate to conduct the election via mail ballot. For these reasons, it is abundantly clear that given the nature of DLC's work and workforce the election must be conducted manually.

Thank you for your consideration.

Sincerely,

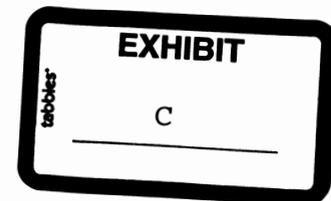


Elizabeth Cyr

## Tweeter Center Performance Information

### Number of DLC Events Per Month

	2005	2006	2007
May	5	3	5
June	15	7	8
July	10	7	7
August	9	13	11
September	3	11	4
Total	42	41	35



**2008 Work Schedule and Earnings Data**

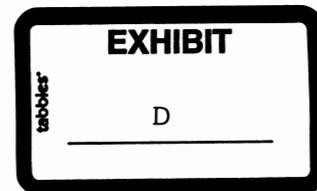
Starting Mileage:

Date	Venue	Employer	Show	Tax	Start	Finish	Reg Hrs	OT Hrs	Wage	Total
4/11/2008	Tweeter Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0		
4/11/2008	Tweeter Center	Live Nation	orientation	Tax	7:00 PM	10:00 PM	3	0		
4/15/2008	Tweeter Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0		
4/16/2008	Tweeter Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0		
4/22/2008	Tweeter Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0		
4/23/2008	Tweeter Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0		
4/23/2008	Tweeter Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0		
5/1/2008	Tweeter Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0		
5/2/2008	Tweeter Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0		
5/6/2008	Tweeter Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0		
5/13/2008	Tweeter Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0		
5/15/2008	Tweeter Center	Live Nation	Kanye West	Tax	7:00 AM	2:00 AM	8	11		
5/18/2008	Tweeter Center	Live Nation	KISS Party	Tax	2:00 PM	2:00 AM	8	4		
5/30/2008	Tweeter Center	Live Nation	Jam'N pre-rig	Tax	1:00 PM	1 x 4hr mini	5	0		
5/31/2008	Tweeter Center	Live Nation	Summer Jam 94.5 st	Tax	9:00 AM	2:00 AM	8	9		
6/1/2008	Comcast Center	Live Nation	WBCN River Rave	Tax	6:00 AM	1:00 AM	8	11		
6/4/2008	Comcast Center	Live Nation	Eric Clapton	Tax	9:00 AM	1:00 AM	8	8		
6/7/2008	Comcast Center	Live Nation	Tim McGraw	Tax	10:00 AM	2:00 AM	8	8		
6/8/2008	Comcast Center	Live Nation	Mansfield HS Grad.	Tax	8:00 AM	9:00 PM	8	1		
6/10/2008	Comcast Center	Live Nation	anti-union rally	Tax	7:00 PM	1 x 4hr mini	4	0		
6/13/2008	Comcast Center	Live Nation	REM	Tax	8:00 AM	2:00 AM	8	10		
6/14/2008	Comcast Center	Live Nation	Tom Petty	Tax	8:00 AM	2:00 AM	8	10		
6/15/2008	Comcast Center	Live Nation	Rush	Tax	9:00 AM	1:00 AM	8	10		
6/20/2008	Comcast Center	Live Nation	Iron Maiden	Tax	8:00 AM	2:00 AM	8	10		
6/22/2008	Comcast Center	Live Nation	Stevie Wonder	Tax	8:00 AM	2:00 AM	8	10		
6/24/2008	Comcast Center	Live Nation	Dave Matthews 1	Tax	8:00 AM	12:00 AM	8	8		
6/25/2008	Comcast Center	Live Nation	Dave Matthews 2	Tax	2:00 PM	2:00 AM	8	4		
6/28/2008	Comcast Center	Live Nation	Pearl Jam 1	Tax	8:00 AM	12:00 AM	8	8		
6/30/2008	Comcast Center	Live Nation	Pearl Jam 2	Tax	7:00 PM	2:00 AM	8	0		
7/12/2008	Comcast Center	Live Nation	John Mayer	Tax	9:00 AM	1:00 AM	8	8		
7/14/2008	Comcast Center	Live Nation	Projekt pre-rig	Tax	8:00 AM	12:00 AM	8	8		
7/15/2008	Comcast Center	Live Nation	Projekt pre-rig	Tax	8:00 AM	12:00 AM	8	8		
7/16/2008	Comcast Center	Live Nation	Projekt Revolution	Tax	8:00 AM	3:00 AM	8	11		
7/18/2008	Comcast Center	Live Nation	311	Tax	8:00 AM	1:00 AM	8	9		

7/19/2008	Comcast Center	Live Nation	Steve Miller Band	Tax	9:00 AM	1:00 AM	8	8
7/22/2008	Comcast Center	Live Nation	3 Doors Down	Tax	8:00 AM	2:00 AM	8	10
7/23/2008	Comcast Center	Live Nation	Van's Warped Tour	Tax	7:00 AM	11:00 PM	8	8
7/25/2008	Comcast Center	Live Nation	Rock The Bells pre-r	Tax	8:00 AM	4:00 PM	8	0
7/26/2008	Comcast Center	Live Nation	Rock The Bells show	Tax	8:00 AM	3:00 AM	8	11
7/31/2008	Comcast Center	Live Nation	The Police	Tax	10:00 AM	2:00 AM	8	9
8/2/2008	Comcast Center	Live Nation	Maroon 5/Counting C	Tax	8:00 AM	1:00 AM	8	9
8/3/2008	Comcast Center	Live Nation	Boston	Tax	9:00 AM	1:00 AM	8	8
8/5/2008	Comcast Center	Live Nation	Rockstar Energy May	Tax	9:00 AM	2:00 AM	8	9
8/6/2008	Comcast Center	Live Nation	Jack Johnson	Tax	8:00 AM	2:00 AM	8	10
8/7/2008	Comcast Center	Live Nation	Jonas Brothers	Tax	9:00 AM	1:00 AM	8	8
8/8/2008	Comcast Center	Live Nation	O.A.R.	Tax	10:00 AM	2:00 AM	8	8
8/13/2008	Comcast Center	Live Nation	RadioHead	Tax	8:00 AM	2:00 AM	8	10
8/15/2008	Comcast Center	Live Nation	Rod Stewart	Tax	10:00 AM	2:00 AM	8	8
8/16/2008	Comcast Center	Live Nation	Allman Brothers	Tax	9:00 AM	2:00 AM	8	9
8/17/2008	Comcast Center	Live Nation	Toby Keith	Tax	8:00 AM	2:00 AM	8	10
8/19/2008	Comcast Center	Live Nation	Journey	Tax	8:00 AM	2:00 AM	8	10
8/22/2008	Comcast Center	Live Nation	Motley Crue	Tax	9:00 AM	2:00 AM	8	9
8/23/2008	Comcast Center	Live Nation	Kid Rock/Lynyrd Sky	Tax	8:00 AM	2:00 AM	8	10
9/4/2008	Comcast Center	Live Nation	Jimmy Buffett 1	Tax	8:00 AM	11:00 PM	8	7
9/6/2008	Comcast Center	Live Nation	Jimmy Buffett 2	Tax	11:00 AM	10:00 PM	8	3
9/13/2008	Comcast Center	Live Nation	Rascal Flatts	Tax	8:00 AM	2:00 AM	8	10
9/17/2008	Comcast Center	Live Nation	Farm Aid pre-rig	Tax	2:00 PM	10:00 PM	8	0
9/18/2008	Comcast Center	Live Nation	Farm Aid pre-rig	Tax	8:00 AM	12:00 AM	8	8
9/19/2008	Comcast Center	Live Nation	Farm Aid pre-rig	Tax	10:00 AM	2:00 AM	8	8
9/29/2008	Comcast Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	
9/30/2008	Comcast Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	
10/3/2008	Comcast Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	
10/7/2008	Comcast Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0
4/23/2009	Comcast Center	Live Nation	Set-up	Tax	9:00 AM	5:00 PM	8	0
4/24/2009	Comcast Center	Live Nation	Set-up	Tax	10:00 AM	6:00 PM	8	0
4/24/2009	Comcast Center	Live Nation	orientation	Tax	7:00 PM	10:00 PM	3	0
4/27/2009	Comcast Center	Live Nation	Set-up	Tax	9:00 AM	5:00 PM	8	0
4/28/2009	Comcast Center	Live Nation	Set-up	Tax	9:00 AM	5:00 PM	8	0
4/29/2009	Comcast Center	Live Nation	Set-up	Tax	9:00 AM	5:00 PM	8	0
4/30/2009	Comcast Center	Live Nation	Set-up	Tax	9:00 AM	5:00 PM	8	0
5/7/2009	Comcast Center	Live Nation	tech-day	Tax	2:00 PM	6:00 PM	4	0

5/11/2009	Comcast Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0
5/12/2009	Comcast Center	Live Nation	tech-day	Tax	9:00 AM	5:00 PM	8	0
5/17/2009	Comcast Center	Live Nation	KISS 108 Party	Tax	8:00 AM	2:00 AM	8	10
5/30/2009	Comcast Center	Live Nation	George Strait	Tax	7:30 AM	2:00 AM	8	10.5
6/3/2009	Comcast Center	Live Nation	NIN/JA (Nine Inch N	Tax	11:00 AM	2:00 AM	8	7
6/5/2009	Comcast Center	Live Nation	Norton HS Graduatio	Tax	9:00 AM	9:00 PM	8	4
6/6/2009	Comcast Center	Live Nation	Phish	Tax	8:00 AM	2:00 AM	8	10
6/7/2009	Comcast Center	Live Nation	Mansfield HS Gradu	Tax	9:00 AM	5:00 PM	8	0
6/8/2009	Comcast Center	Live Nation	Mansfield Middle Sch	Tax	4:00 PM	10:00 PM	6	0
6/12/2009	Comcast Center	Live Nation	Brad Paisley	Tax	8:00 AM	2:00 AM	8	10
6/13/2009	Comcast Center	Live Nation	Jamn pre-rig	Tax	10:00 AM	6:00 PM	8	0
6/14/2009	Comcast Center	Live Nation	JamN Show	Tax	9:00 AM	1:00 AM	8	8
6/15/2009	Comcast Center	Live Nation	Aerosmith pre-rig	Tax	10:00 AM	2:00 PM	4	0
6/16/2009	Comcast Center	Live Nation	Aerosmith show	Tax	8:00 AM	3:00 AM	8	11
6/19/2009	Comcast Center	Live Nation	New Kids	Tax	9:00 AM	2:00 AM	8	9
6/20/2009	Comcast Center	Live Nation	No Doubt	Tax	9:00 AM	2:00 AM	8	9
6/21/2009	Comcast Center	Live Nation	The Fray	Tax	8:00 AM	2:00 AM	8	10
6/24/2009	Comcast Center	Live Nation	311	Tax	7:30 AM	12:00 AM	8	9.5
6/25/2009	Comcast Center	Live Nation	Jimmy Buffett 1	Tax	7:30 AM	12:00:00 AM	8	8.5
6/27/2009	Comcast Center	Live Nation	Jimmy Buffett 2	Tax	1:00 PM	2:00 AM	8	5
6/28/2009	Comcast Center	Live Nation	Styx	Tax	7:30 AM	3:00 AM	8	11.5
6/29/2009	Comcast Center	Live Nation	311 Makeup date	Tax	10:00 AM	2:00 AM	10	8
6/30/2009	Comcast Center	Live Nation	Def Leppard	Tax	7:30 AM	2:00 AM	10	10
7/7/2009	Comcast Center	Live Nation	Judas Priest	Tax	7:30 AM	1:00 AM	8	9.5
7/18/2009	Comcast Center	Live Nation	Rock The Bells in on	Tax	6:30 AM	10:30 AM	4	0
7/21/2009	Comcast Center	Live Nation	Van's Warped Tour	Tax	7:00 AM	11:00 PM	8	8
7/24/2009	Comcast Center	Live Nation	Nickelback	Tax	7:00 AM	1:00 AM	8	10
7/26/2009	Comcast Center	Live Nation	Toby Keith	Tax	7:00 AM	2:00 AM	8	11
7/29/2009	Comcast Center	Live Nation	Kid Rock	Tax	7:30 AM	2:00 AM	8	10.5
7/31/2009	Comcast Center	Live Nation	Depeche Mode	Tax	8:00 AM	1:00 AM	8	10
8/1/2009	Comcast Center	Live Nation	Incubus	Tax	10:00 AM	2:00 AM	8	8
8/3/2009	Comcast Center	Live Nation	Coldplay	Tax	8:00 AM	2:00 AM	8	10
8/4/2009	Comcast Center	Live Nation	Rockstar Energy May	Tax	8:00 AM	2:00 AM	8	10
8/6/2009	Comcast Center	Live Nation	Blink 182	Tax	7:00 AM	2:00 AM	8	11
8/8/2009	Comcast Center	Live Nation	Snoop	Tax	8:00 AM	1 x 4hr mini	4	0
8/18/2009	Comcast Center	Live Nation	Creed	Tax	7:00 AM	2:00 AM	8	11
8/19/2009	Comcast Center	Live Nation	Crue Fest	Tax	8:00 AM	3:00 AM	8	11

8/22/2009	Comcast Center	Live Nation	Bruce Springsteen 1	Tax	8:00 AM	12:00 AM	8	8
8/23/2009	Comcast Center	Live Nation	Bruce Springsteen 2	Tax	12:00 PM	2:00 AM	8	6
8/29/2009	Comcast Center	Live Nation	Allman Brothers	Tax	8:30 AM	1:00 AM	8	8.5



AKIN GUMP  
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May 14, 2008

VIA EMAIL & U.S. MAIL

Gene Switzer  
National Labor Relations Board, Region 1  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Re: *DLC Corp. d/b/a Live Nation New England, Case No. 1-RC-22162*

Dear Mr. Switzer:

My client received the election notices that must be posted at the Tweeter Center in advance of the election in the above-referenced matter. A review of the notices, however, revealed that the description of eligible employees included on the notice and, presumably, in the election notices sent to the voting unit is confusing and inaccurate. My client is concerned that these notices will cause unnecessary confusion amongst employees and act to disenfranchise voters.

In the Regional Director's Decision, the eligible voters were described as follows: "Eligible to vote are those in the unit who were employed on at least two shows during the calendar year immediately preceding the date of this Decision..." (RD Decision & Direction of Election, January 16, 2008, p. 8). The election notice states that "[a]ll full-time and regular part-time stage hands...who were employed during the payroll period ending January 23, 2008" are eligible to vote. The notice fails to reference the two-show eligibility requirement or that those shows need to have been worked in the calendar year prior to the Decision. Moreover, the reference to the January 23<sup>rd</sup> pay period is misplaced. The Regional Director's Decision was issued on January 16, 2008 and identified the eligibility period as the calendar year immediately preceding the Decision.

As you are aware, the Tweeter Center is a seasonal venue that does not operate during the winter months and, therefore, did not employ any unit employees during the payroll period ending January 23, 2008. We feel that the failure to accurately describe the eligibility requirements in addition to this reference to the January 23<sup>rd</sup> pay period will cause a great deal of confusion as to which employees are, in fact, eligible to vote.

Gene Switzer  
May 14, 2008  
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For the reasons set out above, my client is concerned that these communications from the Region will cause confusion and act to disenfranchise individuals who are eligible to vote but may not realize they have qualified to do so. We feel that it is imperative that the Region remedy these errors as quickly as possible in order to ensure that a fair election is conducted on June 13<sup>th</sup> and 14<sup>th</sup>. At a minimum, we request that the Regional Director immediately send corrected election notices to the voting unit and provide corrected notices to be displayed at the Tweeter Center, as well as take any additional steps that are deemed necessary to remedy these errors.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Cyr", written in a cursive style.

Elizabeth Cyr

cc: Robert Rebord  
Gabriel Dumont