

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 15

BIG MOOSE, LLC

and

HUMBERTO RECIO

CASE NO. 15-CA-19735

and

INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, LOCAL 478

CASE NO. 15-CB-5998

and

HUMBERTO RECIO

**RESPONDENT INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES, LOCAL 478'S
EXCEPTIONS TO DECISION BY ADMINISTRATIVE LAW JUDGE**

Respondent Union excepts to the Decision, Conclusions of Law (1 through 5), Remedy and Order issued by Administrative Law Judge Michael Marcionese on February 2, 2012 for the following respects and reasons, set forth below:

- I. **To The Judge's Findings And Conclusions That Were Based In Error By Crediting Only The Charging Party Humberto Recio's Version.**
 - a. To his failure to credit Recio's version of how employment ended on March 11, but acknowledged the events leading to ending employment on April 28 are "murkier and more difficult to resolve." (ALJ p. 11, lines 1-5).
 - b. To his failure to recognize the legal significance of the Written Deal Memo, which specifies "nothing herein contained shall constitute a 'run-of-the-show' guarantee. Oral understandings of any kind are not binding." (ALJ p. 3, lines 40-45).

- c. To his reliance on Recio's testimony that he was told [by Woods and Kevin Lang] he would be working the run of the show. (ALJ p. 3, lines 31-45; p. 8, line 19).
- d. To his reliance on Recio's testimony disputed by Woods and McHugh that Woods told Recio that he could not work until "his paperwork was straightened out." (ALJ p. 4, lines 6-9; p. 9, lines 25-27; p. 10, lines 3-5).
- e. To his reliance on Recio's testimony that was disputed by McHugh's and Woods' testimony that McHugh threatened Woods, telling him that McHugh "could make Woods['] life difficult." (ALJ p. 4, lines 9-11; p. 9, lines 27-28).
- f. To his reliance on Recio's disputed testimony that McHugh told him "you guys from Florida coming here and taking work." (ALJ p. 4, lines 20-28).
- g. To his reliance on Recio's recollection and misperception that Recio "recalled that McHugh told him he would not be allowed to return to work until his [transfer] application was complete." (ALJ p. 4, lines 27-28).
- h. To his failure to recognize the significance that McHugh helped Recio to complete a transfer application. (ALJ p. 4, lines 20-28). McHugh testified that he would re-submit Recio's application for membership at the next meeting and recommended that Recio bring references to help the vote. (ALJ p. 7, lines 46-51).
- i. To his reliance on Recio's unsubstantiated testimony and hearsay that alleged employer representative, Ferdinand Duplantier, who did not testify, allegedly offered Recio a job that Recio did not accept because McHugh told him that he could not work until his paper work was "straight." (ALJ p. 4, lines 37-41).
- j. To his unfair and unjust remedy against the Union based on hearsay that Recio having turned down jobs offer(s) allows a "double dip" in backpay for wages and benefits Recio would have earned on [Duplantier's] *Drive Angry*. (ALJ p. 12, lines 34-47).
- k. To his incorrect determination that there is no dispute that [Recio's] "employment ended March 11 after just four days." According to Earl Woods, Recio left or otherwise quit the job to pursue a career in professional wrestling. (ALJ p. 9, lines 19-33).
- l. To his reliance on Recio's inconsistent and self-serving testimony denying he did not voluntarily quit on March 11. (ALJ p. 10, lines 15-16; ALJ p. 5, lines 20-25).

- m. To his error in crediting Recio's recollection of the conversation with McHugh "while not free from doubt, . . . after his memory was refreshed, is consistent with other statements McHugh admitted . . ." (ALJ p. 10, lines 26- 35).
- n. To his failure to recognize the significance that the Union had internal obligations on members to report. "Recio's complaint in the e-mail appears to conflict with the testimony that McHugh told him on April 12 that he could return to work as long as he reported to McHugh." (ALJ p. 5, lines 29-33).

II. To The Judge's Findings And Conclusions That Were Based In Error By Unfounded And Impermissible Inferences.

- a. To his incorrect finding that the General Counsel has met its burden of proof that the Respondent Union caused Recio's termination on March 11. (ALJ p. 10, lines 18-24).
- b. To his incorrect and deficient inference that McHugh's conversation with Recio regarding Recio's former employment on three productions "clearly establishes McHugh's belief that, in order to work in Louisiana, Recio needed the Respondent Union's approval." (ALJ p. 9, lines 35-40).
- c. To his incorrect and deficient inference that steps taken to transfer residency from Florida to Louisiana places doubt on Recio's intention to pursue work as a professional wrestler. (ALJ p. 9, lines 43-45).
- d. To his incorrect and deficient inference that Recio left *Earthbound* before the production ended for employment with *Green Lantern* was because Recio expected to work for more than 5 days. (ALJ p. 9, lines 50-52; p. 10, line 1).
- e. To his incorrect and deficient analysis that causation was established between the Union's "demand" and the Employer's "action." (ALJ p. 10, lines 5-15).
- f. To his incorrect and deficient interference that "Woods reference [sic] to Recio's paperwork and his statement about McHugh made shortly after he admittedly spoke [over the phone] to McHugh about Recio, established the causation" and later stating that "Woods statement that Recio had to get his paperwork straightened out is evidence that McHugh's concerns over Recio's lack of work permit caused his termination." (ALJ p. 10, lines 4-6; p. 10, lines 12-14).
- g. To his erroneous inference that McHugh's "clear intent" was to ensure Recio obtained permission to work or completed the transfer of membership. (ALJ p. 10, lines 35-37).

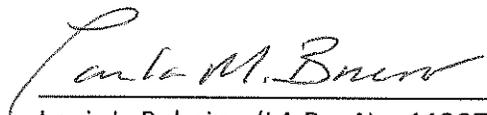
- h. To his incorrect and deficient analysis that based on what was “found to be a coercive statement made by McHugh at the March 17 meeting, I conclude that [Recio’s] rejection of the offer was coerced by the Respondents Union’s unlawful conduct.” (ALJ p. 10, lines 45-52).

III. To The Judge’s Findings And Conclusions, Based In Error Of Law, Which Failed To Support That The Union’s Internal Rules Constitute Coercion and Unfair Labor Practice.

- a. To his failure to recognize the significance that Recio worked freely in Louisiana without incident on several other films. (ALJ p. 2, lines 44-45).
- b. To his failure to credit McHugh’s testimony that internal requirements regarding work permits and transfers are “obligations of the membership and not requirements to be hired under the terms of the Union’s collective bargaining agreement with the Employer or any other employer.” (ALJ p. 6, lines 29-24).
- c. To his misapplication of law that the Union’s internal requirements constitute violations of the Act or interfere with an employee’s employment based on union membership. (ALJ p. 10, lines 37-41).
- d. To his misapplication of law to find the Union violated Section 8(b)(1)(A) when it preserves the right of a Union without an exclusive hiring hall to prescribe its own rules with respect to the acquisition or retention of union membership. (ALJ p. 12, lines 1-23).

Respectfully submitted,

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CERTIFICATE OF SERVICE

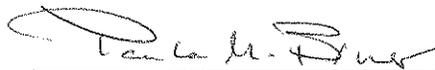
A copy of the foregoing Respondent International Alliance of Theatrical Stage Employees, Local 478's Exceptions to Decision by Administrative Law Judge has been sent by March 1, 2012 to:

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