

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

NEW JERSEY STATE OPERA

and

Case 22-CA-029526

AMERICAN FEDERATION OF MUSICIANS, LOCAL 16

**MOTION TO TRANSFER AND CONTINUE CASE BEFORE THE BOARD AND
MOTION FOR DEFAULT JUDGMENT**

COMES NOW Counsel for the General Counsel pursuant to Sections 102.24, 102.50, 102.54 and 102.56 of the Board's Rules and Regulations, Series 8, as amended, and moves that the proceedings in the above-captioned case be transferred to the Board for a final determination on the basis of the pleadings previously filed. Attached to this Motion as exhibits, and incorporated herein by reference, are copies of the Amended Compliance Specification and Notice of Hearing and other relevant documents described below.

Counsel for the General further moves that, upon transfer of the proceedings to the Board, the Board issue an appropriate Order to Show Cause why this motion should not be granted and, that unless Respondent shows good cause for failing to file an Answer to the Amended Compliance Specification and Notice of Hearing within the time specified by Section 102.56 of the Board's Rules and Regulations, all the allegations contained in the Amended Compliance Specification and Notice of Hearing be deemed to be admitted as true and an Order entered providing for an appropriate remedy, without the holding of a hearing or without taking evidence in support of the allegations in the Amended Compliance Specification and Notice of Hearing.

In support of this Motion, the General Counsel offers the following:

1. On September 30, 2013 the Board issued its Decision and Order in *New Jersey State Opera*, 360 NLRB No. 5, directing the New Jersey State Opera, herein Respondent, take certain affirmative action, including making whole all employees for their losses resulting from Respondent's unlawful refusal to pay unit employees the unpaid contractual wages for the hours they worked in relation to Respondent's May 21 and 23, 2010 performances of *Porgy and Bess*, in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, herein the Act. A copy of the Board's Decision and Order is attached hereto as Exhibit 1.
2. On December 17, 2014 the United States Court of Appeals for the Third Circuit enforced the Board's Decision and Order in full. A copy of the Third Circuit Judgment is attached hereto as Exhibit 2.
3. On August 24, 2015 the Regional Director of Region 22 of the Board, pursuant to the authority duly conferred upon him by the Board, issued a Compliance Specification and Notice of Hearing, herein Specification, in this matter. A copy of the Specification is attached hereto as Exhibit 3. Said Specification was served on Respondent by certified mail on August 24, 2015. Proof of Service of the Specification is attached hereto as Exhibit 4. Respondent failed to file an Answer to the Compliance Specification.
4. On October 26, 2015, the Regional Director of Region 22 of the Board, pursuant to the authority duly conferred upon him by the Board, issued an Amended Compliance Specification and Notice of Hearing, herein Amended Specification, in this matter. A copy of the Amended Specification attached hereto as Exhibit 5. The Amended Specification was served on Respondent by certified mail on October 26, 2015. Proof of service of the Amended Specification is attached hereto as Exhibit 6. Pursuant to Section 102.56 of the Board's Rules

and Regulations, the Amended Specification notified Respondent that it must file an Answer within 21 days of the date of the Amended Specification. The Amended Specification notified Respondent that if no Answer was filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations of the Amended Specification are true.

5. The Amended Specification informed Respondent that its Answer was due on or before November 16, 2015, or postmarked on or before November 15, 2015. Respondent failed to file its Answer.

6. By letter dated December 14, 2015 from the Regional Director, sent by regular mail, the Region informed Respondent that the deadline for receipt of its Answer to the Amended Specification was extended until the close of business, December 21, 2015. The letter reiterated that if Respondent did not file its Answer by the deadline the Region would file a Motion for Default Judgment. A copy of the Region's December 14, 2015 letter is attached hereto as Exhibit 7.

7. Despite having been advised of the consequences, Respondent failed to file an Answer to the Amended Specification.

8. Section 102.56(a) of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

Each respondent alleged in the specification to have compliance obligations shall, within 21 days from the service of the specification, file an original and four copies of an answer thereto with the Regional Director issuing the specification, and shall immediately serve a copy thereof on the other parties. The answer to the specification shall be in writing, the original being signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed, and shall contain the mailing address of the respondent.

9. Respondent, having been duly served, has failed and refused to file an Answer to the Amended Specification. Therefore, pursuant to Rule 102.56(c), all allegations in the Amended Specification should be deemed admitted as true and the Board should find that no issue of fact exists warranting or requiring a hearing.

10. Accordingly, Counsel for the General Counsel respectfully submits that this matter is appropriate for final determination upon default judgment without a hearing and that a final Order should be entered in accordance with the allegations of the Amended Specification, without taking evidence.

Dated at Newark, New Jersey this 24th day of December, 2015.



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CERTIFICATION OF SERVICE

This is to certify that copies of the foregoing Motion to Transfer and Continue Case Before the Board and Motion for Default Judgment filed on behalf of the General Counsel have been duly served this date as follows:

ELECTRONIC FILING

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Dated at Newark, New Jersey
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