

**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

**EXHIBITS FOR GENERAL COUNSEL'S MOTION TO TRANSFER AND  
CONTINUE CASE BEFORE THE BOARD AND MOTION FOR DEFAULT  
JUDGMENT**

# **EXHIBIT 1**

# **EXHIBIT 1**

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**New Jersey State Opera and American Federation of Musicians, Local 16.** Case 22–CA–029526

September 30, 2013

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA  
AND HIROZAWA

The Acting General Counsel seeks a default judgment in this case pursuant to the terms of a bilateral informal settlement agreement. A charge was filed by American Federation of Musicians, Local 16 (the Union), on July 8, 2010, against New Jersey State Opera (the Respondent), alleging that the Respondent violated Section 8(a)(5) and (1) of the Act. On October 29, 2010, prior to the issuance of a complaint, the Regional Director for Region 22 approved a bilateral informal settlement agreement. Thereafter, having concluded that the informal settlement agreement should be vacated and set aside, the Acting General Counsel issued a complaint, notice of hearing and order revoking informal settlement agreement on February 11, 2011, and an amended complaint, notice of hearing and order revoking informal settlement agreement on March 8, 2011. The Respondent filed an answer to the amended complaint on April 14, 2011.

Subsequently, the Respondent and the Union executed a new bilateral informal settlement agreement, which was approved by the Regional Director for Region 22 on May 22, 2012. Among other things, the settlement agreement required the Respondent to: (1) remit back wages in specified amounts owed to its unit employees under the terms of its collective-bargaining agreement with the Union; (2) remit a specified amount of contractual dues to the Union on behalf of its unit employees; and (3) post appropriate notices.

The settlement agreement also contained the following provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on March 8, 2011 in the instant case. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed

admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order *ex parte*, after service or attempted service upon the Charged Party/Respondent at the last address provided to the General Counsel.

By letter dated September 13, 2012, the Regional Director for Region 22 notified the Respondent that it was in noncompliance by failing to pay back wages and remit dues, as specified in the settlement agreement. The letter stated that unless the Regional Office received full backpay and dues remittance by September 27, 2012, the Regional Director would revoke the settlement agreement and reissue the complaint. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provisions of the settlement agreement, on April 29, 2013, the Regional Director reissued the amended complaint and the Acting General Counsel filed a Motion for Default Judgment with the Board. On May 1, 2013, 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 no response.<sup>1</sup> The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel

**Ruling on Motion for Default Judgment**

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by

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<sup>1</sup> By letter dated May 10, 2013, counsel for the Union advised the Board that the Union and the Respondent were meeting to discuss the terms of a new settlement, and requested that the Board hold this matter in abeyance until the parties determined whether a new settlement agreement could be reached. Thereafter, the Board was administratively advised by the Regional Attorney for Region 22 that the Region had heard nothing further from the parties, and that the Region was requesting that the Board resume processing the motion for default judgment. By letter dated August 19, 2013, counsel for the Union advised the Board that no settlement had been reached or appeared possible and requested that the matter no longer be held in abeyance.

refusing to fully remit back wages owed to its unit employees and refusing to remit dues on behalf of its unit employees to the Union. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that the Respondent's answer to the original amended complaint has been withdrawn and that all of the allegations in the reissued amended complaint are true.<sup>2</sup> Accordingly, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent, a New Jersey corporation, with an office and place of business in Newark, New Jersey, has been engaged in the operation of producing and performing operas.

At all material times, the Respondent derived gross revenues, excluding contributions which, because of the limitations by the grantor, are not available for operating expenses, in excess of \$1 million, and purchased and received at its Newark facility goods valued in excess of \$5000 directly from points outside of the State of New Jersey.

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

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act:

Bernard J. D'Avella, Jr.	Chairman
Jason Tramm	Musical Director

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All musicians and related crafts employed by Respondent in its musical productions, including in its May 21 and 23, 2010 production of *Porgy and Bess*.

Since about May 17, 2009, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as such by the Respondent. Such recognition has

been embodied in a collective-bargaining agreement, effective from May 17, 2009 through December 31, 2010.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Additionally, the following events took place:

1. Since about May 21, 2010, the Respondent has engaged in the following conduct in relation to its May 21 and May 23, 2010 performances of *Porgy and Bess*:

(a) Refused to pay its unit employees' contractual wages;

(b) Refused to remit contractual dues on behalf of its unit employees to the Union.

2. The subjects set forth in paragraph 1 relate to wages, hours, and terms and conditions of employment of the unit and are mandatory subjects for purposes of collective bargaining.

3. The Respondent engaged in the conduct described in paragraph 1 without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

4. In disposition of Case 22-CA-029526, the Respondent and the Union entered into informal Board settlement agreements, the most recent of which was approved by the Regional Director on May 22, 2012.

5. Since about September 27, 2012, and continuously thereafter, the Respondent has refused to fully comply with the settlement agreement described in paragraph 4 by refusing to fully remit back wages owed to its unit employees and by refusing to remit dues on behalf of its unit employees to the Union.

#### CONCLUSIONS OF LAW

1. By the conduct described above in paragraphs 1, 3, and 5, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of the Act, in violation of Section 8(a)(5) and (1) of the Act.

2. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to honor and comply with the terms and conditions of the May 17, 2009 through December 31, 2010 collective-bargaining agreement with the Union by paying unit employees the unpaid contrac-

<sup>2</sup> See *U-Bee, Ltd.*, 315 NLRB 667, 668 (1994).

## DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

tual wages for the May 21 and 23, 2010 performances of *Porgy and Bess*, and to make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F. 2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). In addition, in accordance with our decision in *Latino Express, Inc.*, 359 NLRB No. 44 (2012), we shall order the Respondent to reimburse the unit employees in an amount equal to the differences in taxes owed upon receipt of a lump-sum backpay payment and taxes that would have been owed had there been no discrimination against them. We shall also order the Respondent to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

Further, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to remit contractual dues on behalf of its unit employees to the Union, we shall order the Respondent to remit the contractual dues to the Union, with interest as prescribed in *New Horizons for the Retarded*, *supra*, compounded daily as prescribed in *Kentucky River Medical Center*, *supra*.<sup>3</sup>

## ORDER

The National Labor Relations Board orders that the Respondent, New Jersey State Opera, Newark, New Jersey, its officers, agents, successors and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

## 1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with American Federation of Musicians, Local 16, the Union, as the exclusive collective-bargaining representative of the employees in the following unit by failing and refusing to pay all contractual wages owed to unit employees under the terms of its May 17, 2009 through December 31, 2010 collective-bargaining agreement with the Union, in relation to the Respondent's May 21 and May 23, 2010 performances of *Porgy and Bess*:

<sup>3</sup> In his motion for default judgment, the Acting General Counsel requests that the Board "[i]ssue a Decision and Order against Respondent containing findings of fact and conclusions of law based on, and in accordance with, the allegations of the [reissued complaint], and provide a full remedy for the unfair labor practices alleged." Because it is unclear whether the amounts set forth in the settlement agreement (\$37,690.70 in backpay and interest, and \$1,049.24 in dues) constitute a full make-whole remedy, we leave to compliance a determination of the amount due the unit employees and the Union.

All musicians and related crafts employed by Respondent in its musical productions, including in its May 21 and 23, 2010 production of *Porgy and Bess*.

(b) Failing and refusing to remit contractual dues on behalf of its unit employees to the Union in relation to the Respondent's May 21 and May 23, 2010 performances of *Porgy and Bess*.

(c) 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) Honor and comply with the terms and conditions of the May 17, 2009 through December 31, 2010 collective-bargaining agreement with the Union, by paying the unit employees the unpaid contractual wages for the hours they worked, in relation to the Respondent's May 21 and May 23, 2010 performances of *Porgy and Bess*, that have not been paid since May 21, 2010, with interest, in the manner set forth in the remedy section of this decision.

(b) Make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, with interest, in the manner set forth in the remedy section of this decision.

(c) Compensate the unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(d) Remit contractual dues on behalf of its unit employees to the Union, in relation to the Respondent's May 21 and May 23, 2010 performances of *Porgy and Bess*, in the manner set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Newark, New Jersey facilities copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on

<sup>4</sup> 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 Judge

NEW JERSEY STATE OPERA

forms provided by the Regional Director for Region 22, 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.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 22 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. September 30, 2013

\_\_\_\_\_  
Mark Gaston Pearce, Chairman

\_\_\_\_\_  
Philip A. Miscimarra, Member

\_\_\_\_\_  
Kent Y. Hirozawa, 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

\_\_\_\_\_  
ment of the United States Court of Appeals Enforcing an Order of the  
National Labor Relations Board.

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 bargain collectively and in good faith with American Federation of Musicians, Local 16, the Union, as the exclusive collective-bargaining representative of our employees in the following unit by failing and refusing to pay all contractual wages owed to unit employees under the terms of our May 17, 2009 through December 31, 2010 collective-bargaining agreement with the Union, in relation to our May 21 and May 23, 2010 performances of *Porgy and Bess*:

All musicians and related crafts employed by us in our musical productions, including in our May 21 and 23, 2010 production of *Porgy and Bess*.

WE WILL NOT fail and refuse to remit contractual dues on behalf of our unit employees to the Union in relation to our May 21 and May 23, 2010 performances of *Porgy and Bess*.

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 honor and comply with the terms and conditions of our May 17, 2009 through December 31, 2010 collective-bargaining agreement with the Union, by paying the unit employees contractual wages for the hours they worked in relation to our May 21 and May 23, 2010 performances of *Porgy and Bess*, that have not been paid since May 21, 2010, with interest.

WE WILL make our unit employees whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, with interest.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL remit contractual dues on behalf of our unit employees to the Union in relation to our May 21 and May 23, 2010 performances of *Porgy and Bess*, with interest.

NEW JERSEY STATE OPERA

## **EXHIBIT 2**

## **EXHIBIT 2**

OFFICE OF THE CLERK

MARCIA M. WALDRON

CLERK



UNITED STATES COURT OF APPEALS

21400 UNITED STATES COURTHOUSE  
601 MARKET STREET

PHILADELPHIA, PA 19106-1790

Website: [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov)

TELEPHONE  
215-597-2995

December 17, 2014

Chairman  
National Labor Relations Board  
1099 14th Street, N.W.  
Washington, DC 20570

RE: NLRB v. New Jersey State Opera  
Case Number: 14-4199  
District Case Number: 22-CA-029526

Dear Sir or Madam

Enclosed herewith is the certified judgment in the above-captioned case(s). The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Kindly acknowledge receipt for same on the enclosed copy of this letter.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment or order is also enclosed showing costs taxed, if any.

Very truly yours,

A handwritten signature in cursive script that reads "Marcia M. Waldron".

Marcia M. Waldron, Clerk

By: Carmella, Case Manager  
267-299-4928

cc: Linda Dreeben, Esq.  
Harvey S. Mars, Esq.  
Mr. Alfred Lembo  
Mr. Bernard D'Avella  
Mr. Louis D'Amico

UNITED STATES COUR OF APPEALS  
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

NEW JERSEY STATE OPERA

Respondent

BCO-014

No. 14-4199

Board Case No.  
22-CA-029526

JUDGMENT ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

Before: AMBRO, JORDAN and KRAUSE, Circuit Judges

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, New Jersey State Opera, its officers, agents, successors, and assigns, enforcing its order dated September 30, 2013, in Case No. 22-CA-029526, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, New Jersey State Opera, its officers, agents, successors, and assigns, shall abide by said Order (See attached Order and Appendix).

Mandate shall issue forthwith.

BY THE COURT

s/ Thomas L. Ambro, Circuit Judge

Dated: December 17, 2014

CLW/cc: Linda Dreeben, Esq.

Harvey S. Mars, Esq.

Mr. Alfred Lembo

Mr. Bernard D'Avella

Mr. LOuuis D'Amico

12/17/14

NATIONAL LABOR RELATIONS BOARD

v.

NEW JERSEY STATE OPERA

**ORDER**

New Jersey State Opera, Newark, New Jersey, its officers, agents, successors and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Cease and desist from

- (a) Failing and refusing to bargain collectively and in good faith with American Federation of Musicians, Local 16, the Union, as the exclusive collective-bargaining representative of the employees in the following unit by failing and refusing to pay all contractual wages owed to unit employees under the terms of its May 17, 2009 through December 31, 2010 collective-bargaining agreement with the Union, in relation to the Respondent's May 21 and May 23, 2010 performances of *Porgy and Bess*:

All musicians and related crafts employed by Respondent in its musical productions, including in its May 21 and 23, 2010 production of *Porgy and Bess*.

- (b) Failing and refusing to remit contractual dues on behalf of its unit employees to the Union in relation to the Respondent's May 21 and May 23, 2010 performances of *Porgy and Bess*.
- (c) 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) Honor and comply with the terms and conditions of the May 17, 2009 through December 31, 2010 collective-bargaining agreement with the

Union, by paying the unit employees the unpaid contractual wages for the hours they worked, in relation to the Respondent's May 21 and May 23, 2010 performances of *Porgy and Bess*, that have not been paid since May 21, 2010, with interest, in the manner set forth in the remedy section of this decision.

- (b) Make the unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, with interest, in the manner set forth in the remedy section of this decision.
- (c) Compensate the unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.
- (d) Remit contractual dues on behalf of its unit employees to the Union, in relation to the Respondent's May 21 and May 23, 2010 performances of *Porgy and Bess*, in the manner set forth in the remedy section of this decision.
- (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (f) Within 14 days after service by the Region, post at its Newark, New Jersey facilities copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 22, 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.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 22 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.

## APPENDIX

### NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS ENFORCING AN 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 bargain collectively and in good faith with American Federation of Musicians, Local 16, the Union, as the exclusive collective-bargaining representative of our employees in the following unit by failing and refusing to pay all contractual wages owed to unit employees under the terms of our May 17, 2009 through December 31, 2010 collective-bargaining agreement with the Union, in relation to our May 21 and May 23, 2010 performances of *Porgy and Bess*:

All musicians and related crafts employed by us in our musical productions, including in our May 21 and 23, 2010 production of *Porgy and Bess*.

WE WILL NOT fail and refuse to remit contractual dues on behalf of our unit employees to the Union in relation to our May 21 and May 23, 2010 performances of *Porgy and Bess*.

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 honor and comply with the terms and conditions of our May 17, 2009 through December 31, 2010 collective-bargaining agreement with the Union, by paying the unit employees contractual wages for the hours they worked in relation

to our May 21 and May 23, 2010 performances of *Porgy and Bess*, that have not been paid since May 21, 2010, with interest.

WE WILL make our unit employees whole for any loss of earnings and other benefits suffered as a result of our unlawful conduct, with interest.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL remit contractual dues on behalf of our unit employees to the Union in relation to our May 21 and May 23, 2010 performances of *Porgy and Bess*, with interest.

## NEW JERSEY STATE OPERA

# **EXHIBIT 3**

# **EXHIBIT 3**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

\*\*\*\*\*  
NEW JERSEY STATE OPERA \*  
\*  
\*  
and \* CASE NO. 22-CA-029526  
\*  
\*  
AMERICAN FEDERATION OF MUSICIANS \*  
LOCAL 16 \*  
\*  
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**COMPLIANCE SPECIFICATION AND NOTICE OF HEARING**

The National Labor Relations Board, herein called the Board, issued a Decision and Order on September 14, 2013, in the above-captioned case, directing that New Jersey State Opera, its officers, agents, successors and assigns, herein referred to as Respondent, take certain affirmative action, including to make 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 May 23, 2010 performance of *Porgy and Bess*, in violation of Section 8(a)(1) and (5) of the National Labor Relations Act. The Board's Decision and Order was enforced in full by the United States Court of Appeals for the Third Circuit on December 17, 2014.

As a controversy presently exists over the amount of backpay due under the terms of the Court enforced Board Order, the Regional Director of the National Labor Relations Board for

Region 22, pursuant to authority duly conferred upon him by the Board, hereby issues this Compliance Specification and alleges as follows:

1. The gross backpay due the discriminatees is the amount of earnings they would have received but for the discrimination against them. The backpay period begins on May 21, 2010, and ends on May 23, 2010. The names of the unit employees who are owed backpay are listed on the attached Addendum in columns A and B.

2. At all material times, Respondent and the American Federation of Musicians, Local 16, herein called the Union, were parties to a collective-bargaining agreement with effective dates of May 17, 2009, through December 31, 2010, which sets forth rates of pay for employment the unit employees would have received from Respondent during the backpay period.

3. Gross backpay is the wages the bargaining unit employees would have earned working for Respondent during the backpay period but for Respondent's unlawful actions. Gross backpay is based on the collective-bargaining agreement's wage rate and are listed in the attached Addendum in Column I.

4. Respondent made partial payments toward the backpay owed on various dates since the Board's Order issued. These payments are reflected in the attached Addendum in Columns J, K and AA.

5. Respondent has failed to remit the contractual dues it owes to the Union on behalf of unit employees for the backpay period. The amount owed for dues is \$1,049.

6. Despite efforts to obtain full compliance with the Board's Order, Respondent has failed to pay the full amount owed.

7. Respondent's obligation under the Board's Order, as enforced by the Circuit Court, to make whole discriminatees for monetary losses, and minus payments made to them, is \$23,986, as reflected at the bottom of Column AB in the attached Addendum.

8. Respondent failed to pay interest and excess tax liability on backpay owed pursuant to the Court enforced Board Order and currently owes \$5,290 in interest and \$213 in additional tax liability, as reflected at the end of Columns AH and AJ in the attached Addendum. Interest and tax liability continue to accrue until full payment is made.

### SUMMARY

Summarizing the facts and calculations specified above, Respondent's obligation under the Board's Order to make the discriminatees whole for monetary losses will be fulfilled by payment in the amount of \$23,986, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and plus excess tax liability to the date of payment, pursuant to the Board Order. The estimated interest calculated through August 31, 2015, is \$5,290 and the estimated tax liability through the same date is \$213, but both continue to accrue until full payment is made. The total amount owed through August 31, 2015 is \$29,489.

### ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20, 102.21, and 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. The answer must be **received by this office on or before September 14, 2015, or postmarked on or before September 13, 2015.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to <http://www.nlr.gov>, click on **File Case Documents**, enter the NLRB Case

Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in

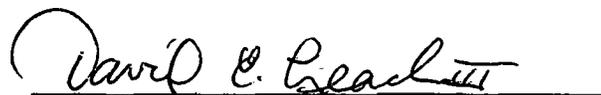
detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT** on the 14<sup>th</sup> day of October, 2015 at 10:00 a.m., at 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this compliance specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: August 24, 2015



David E. Leach III  
Regional Director, Region 22  
National Labor Relations Board  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, NJ 07102

Attachments



Addendum

	A	B	I	J	K	M	Z	AA	AH	AI	AJ
2		<b>CASE NAME:</b>		New Jersey State Opera							
3		<b>CASE NUMBER:</b>		22-CA-29526							
4						Interest Through					
6	<b>Claimant Last Name</b>	<b>Claimant First Name</b>	<b>Gross Backpay</b>	<b>Payments Made 9/10 &amp; 12/10</b>	<b>DOL Payment Made 12/11</b>	<b>Balance of BP Due as of 12/15/11</b>	<b>12/14/12 Payment</b>	<b>Backpay Balance Outstanding</b>	<b>Tax Liability to 8/31/2015</b>	<b>Backpay Owed as Of 8/31/2015</b>	<b>Total Interest Owed as of 8/31/2015</b>
7	Babich	John	1097.00	177.96	177.96	741.08	240.47	500.61	\$5	\$500.61	\$116.51
8	Bajamjian	David	983.00	177.96	177.96	627.08	203.98	423.10	\$4	\$423.10	\$99.50
9	Basile	Frank	1,135.36	207.84	218.23	709.29	231.01	478.28	\$4	\$478.28	\$113.53
10	Batchelder	Donald	1,088.40	195.68	205.46	687.26	223.72	463.64	\$4	\$463.64	\$109.45
11	Bogardus	Karen	245.00	48.02	50.42	146.66	47.83	98.73	\$1	\$98.73	\$24.30
12	Brons	Ruth	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
13	Bryant	Jerry	998.20	180.94	189.99	627.27	204.24	423.03	\$4	\$423.03	\$100.21
14	Burward-Hoy	Kenneth	1,179.60	213.56	224.24	741.80	241.27	500.63	\$5	\$500.63	\$116.27
15	Carano	Vincent	1,293.60	213.56	224.24	855.80	278.03	677.77	\$5	\$577.77	\$135.31
16	Cecere	Anthony	182.40	35.76	37.55	109.09	35.60	73.49	\$1	\$73.49	\$17.69
17	Centanni	Barry	2,479.60	213.56	224.24	2041.80	657.76	1384.04	\$13	\$1,384.04	\$304.22
18	Cianciosi	Dennis	1,135.36	207.84	218.23	709.29	231.01	478.28	\$4	\$478.28	\$113.53
19	Cohen	Alan	928.00	164.24	172.62	591.14	192.36	398.78	\$4	\$398.78	\$94.40
20	Connelly	John	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
21	Columbia	Marya	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
22	Conrad	Karen	831.00	148.18	155.59	527.23	171.60	355.63	\$3	\$355.63	\$84.67
23	D'Amico	Louis	2,500.00	490.00	514.50	1495.60		1495.60		\$1,495.50	\$0.00
24	Davies	Mark	1,179.60	213.56	224.90	741.14	241.32	499.82	\$5	\$499.82	\$119.27
25	Duncan	Dorothy	1,135.36	207.84	218.23	709.29	231.01	478.28	\$4	\$478.28	\$113.53
26	Edelman	Douglas	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
27	Foley	Richard	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
28	Fowler	Jonathan	1,293.60	213.56	224.24	855.80	278.03	677.77	\$5	\$577.77	\$135.31
29	Goeres	Lucille	959.52	173.36	182.03	604.13	196.62	407.61	\$4	\$407.61	\$96.33
30	Goodale	Julie	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
31	Grimaldi	Gary	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
32	Hannauer	Kathy	679.00	118.38	124.30	436.32	141.93	294.39	\$3	\$294.39	\$69.25
33	Hems-Lee	Rebecca	831.00	148.18	155.59	527.23	171.60	355.63	\$3	\$355.63	\$84.67
34	Hereema	Susan	983.00	177.96	177.96	627.08	204.00	423.08	\$4	\$423.08	\$99.50
35	Jorgensen	Alfred	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
36	Kimura	Joseph	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
37	Konk-Kwak	Byung	1,968.00	355.94	373.74	1236.32	402.54	833.78	\$8	\$833.78	\$198.17
38	Lantz	Janet	831.00	148.18	155.59	527.23	171.60	355.63	\$3	\$355.63	\$84.67
39	Levy	Valerie	831.00	148.18	155.59	527.23	171.60	355.63	\$3	\$355.63	\$84.67
40	Macdonneck	Theresa	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
41	Maren	Susan	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
42	Milando	Patrick	997.20	177.82	177.82	641.66	208.60	432.96	\$4	\$432.96	\$102.02
43	Moe	Karla	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
44	Mole	Laura	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
45	Mott-Gale	Martha	831.00	148.18	155.59	527.23	171.60	355.63	\$4	\$355.63	\$84.67
46	Mulvaney	Tom	998.00	177.96	177.96	642.08	208.77	433.31	\$4	\$433.31	\$102.08

	A	B	I	J	K	M	Z	AA	AH	AI	AJ
6	Claimant Last Name	Claimant First Name	Gross Backpay	Payments Made 9/10 & 12/10	DOL Payment Made 12/11	Balance of BP Due as of 12/15/11	12/14/12 Payment	Backpay Balance Outstanding	Tax Liability to 8/31/2016	Backpay Owed as Of 8/31/2016	Total Interest Owed as of 8/31/2016
47	Pakin-Kim	Lanny	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
48	Pintaualle Tracy	Marie	831.00	148.18	155.59	527.23	170.60	366.63	\$3	\$356.63	\$84.73
49	Poulson	Alice	831.00	148.18	155.59	527.23	171.60	366.63	\$4	\$355.63	\$84.67
50	Robinson	Christa	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
51	Rudin	Joel	831.00	148.18	155.59	527.23	171.60	366.63	\$4	\$355.63	\$84.67
52	Schiller	Alan	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
53	Shadel	William	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
54	Sirinian	Sebu	1,179.60	213.56	224.24	741.80	203.97	537.83	\$5	\$537.83	\$123.40
55	Siroky	Brad	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
56	Steinberg	David	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
57	Yu	Yen	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
58		<b>Total:</b>	<b>\$54,104.00</b>	<b>\$9,515.10</b>	<b>\$9,822.66</b>	<b>\$34,766.24</b>	<b>\$10,780.63</b>	<b>\$23,985.61</b>	<b>\$213.00</b>	<b>\$23,985.61</b>	<b>\$5,289.96</b>
59											
60	* Louis D'Amico has waived any additional backpay or interest owed to him.										
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# **EXHIBIT 4**

# **EXHIBIT 4**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

*Marius*  
*(R. King)*

NEW JERSEY STATE OPERA

and

Case 22-CA-029526

AMERICAN FEDERATION OF MUSICIANS,  
LOCAL 6

**AFFIDAVIT OF SERVICE OF COMPLIANCE SPECIFICATION AND NOTICE OF HEARING (with forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **August 24, 2015**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

**CERTIFIED MAIL**

ALFRED LEMBO  
NEW JERSEY STATE OPERA  
199 SCOLES AVE  
CLIFTON, NJ 07012-1125

*5230-RTS*  
*9-1-15*  
*#8*

BERNARD D'AVELLA  
199 SCOLES AVE  
CLIFTON, NJ 07012-1125

LOUIS D'AMICO  
AMERICAN FEDERATION OF  
MUSICIANS, LOCAL 6  
444 NORTHFIELD AVE  
WEST ORANGE, NJ 07052-3012

HARVEY S. MARS, ESQ.  
LAW OFFICE OF HARVEY S. MARS, LLC  
322 WEST 48TH STREET, 6TH FLOOR  
NEW YORK, NY 10036-1308

August 24, 2015

Date

*Glenda Freeman*

Enter NAME, Designated Agent of NLRB

Name

*Glenda Freeman*

Signature

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BERNARD D'AVELLA  
199 SCOLES AVE.  
CLIFTON, NJ 07012-1125



9590 9401 0043 5168 7125 92

2. Article Number (Transfer from service label)

7013 3020 0001 8525 2148

PS Form 3811, April 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature  Agent  
 *G. Freeman*  Addressee
- B. Received by (Printed Name) *G. Freeman* C. Date of Delivery
- D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

RTS  
8-24-15  
*48*

3. Service Type  Priority Mail Express®  
 Adult Signature  Registered Mail™  
 Adult Signature Restricted Delivery  Registered Mail Restrict Delivery  
 Certified Mail®  Return Receipt for Merchandise  
 Certified Mail Restricted Delivery  Signature Confirmation™  
 Collect on Delivery  Signature Confirmation Restricted Delivery  
 Collect on Delivery Restricted Delivery  Restricted Delivery

*mauser*

Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ALFRED LEMBO  
NEW JERSEY STATE OPERA  
199 SCOLES AVENUE  
CLIFTON, NJ 07012-1125



9590 9401 0043 5168 7125 85

2. Article Number (Transfer from service label)

7004 2890 0001 4944 7494

PS Form 3811, April 2015 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

- A. Signature  Agent  
 *G. Freeman*  Addressee
- B. Received by (Printed Name) *G. Freeman* C. Date of Delivery
- D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type  Priority Mail Express®  
 Adult Signature  Registered Mail™  
 Adult Signature Restricted Delivery  Registered Mail Restrict Delivery  
 Certified Mail®  Return Receipt for Merchandise  
 Certified Mail Restricted Delivery  Signature Confirmation™  
 Collect on Delivery  Signature Confirmation Restricted Delivery  
 Collect on Delivery Restricted Delivery  Restricted Delivery

Domestic Return Receipt

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To: **BERNARD D'AVELLA**  
199 SCOLES AVE  
CLIFTON, NJ 07012-1125  
City, State, ZIP+4

Postmark Here: **MIDTOWN STATION NEWARK, NJ 07102B AUG 24 2015**

PS Form 3800, August 2006 See Reverse for Instructions

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Sent To: **ALFRED LEMBO**  
NJ STATE OPERA  
199 SCOLES AVE  
CLIFTON, NJ 07012-1125  
City, State, ZIP+4

Postmark Here: **MIDTOWN STATION NEWARK, NJ 07102B AUG 24 2015**

PS Form 3800, June 2002 See Reverse for Instructions

8472 5258 1000 020E E102

4450 444 7000 0990 4007

# **EXHIBIT 5**

# **EXHIBIT 5**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

\*\*\*\*\*

NEW JERSEY STATE OPERA

and

AMERICAN FEDERATION OF MUSICIANS  
LOCAL 16

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CASE NO. 22-CA-029526

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**AMENDED COMPLIANCE SPECIFICATION AND NOTICE OF HEARING**

The National Labor Relations Board, herein called the Board, issued a Decision and Order on September 14, 2013, in the above-captioned case, directing that New Jersey State Opera, its officers, agents, successors and assigns, herein referred to as Respondent, take certain affirmative action, including to make 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 May 23, 2010 performance of *Porgy and Bess*, in violation of Section 8(a)(1) and (5) of the National Labor Relations Act. The Board's Decision and Order was enforced in full by the United States Court of Appeals for the Third Circuit on December 17, 2014.

As a controversy presently exists over the amount of backpay due under the terms of the Court enforced Board Order, the Regional Director of the National Labor Relations Board for Region 22, pursuant to authority duly conferred upon him by the Board, hereby issues this Amended Compliance Specification and alleges as follows:

1. The gross backpay due the discriminatees is the amount of earnings they would have received but for the discrimination against them. The backpay period begins on May 21, 2010 and ends on May 23, 2010. The names of the unit employees who are owed backpay are listed on the attached Addendum in columns A and B.

2. At all material times, Respondent and the American Federation of Musicians, Local 16, herein called the Union, were parties to a collective bargaining agreement effective May 17, 2009 through December 31, 2010 and which sets forth rates of pay the unit employees would have received from Respondent for employment during the backpay period.

3. Gross backpay is the wages the bargaining unit employees would have earned working for Respondent during the backpay period but for Respondent's unlawful actions. Gross backpay is based on the collective-bargaining agreement's wage rate and is listed in the attached Addendum in Column I.

4. Respondent made partial payments toward the backpay owed on various dates since the Board's Order issued. These payments are reflected in the attached Addendum in Columns J, K and Z.

5. In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014), discriminatees due backpay from Respondent are entitled to be compensated for the adverse tax consequences of receiving the lump-sum backpay. If not for the unfair labor practice committed by Respondent, the backpay awards for the discriminatees would have been paid in 2010 rather than paid in the year Respondent makes final payment in this case. The backpay for this case should have been earned in 2010 rather than exclusively in 2015.

6. In order to determine what the appropriate excess tax award should be, the amount of federal and state taxes needs to be determined for the backpay as if the monies were paid when they were earned during the backpay period, as described below in paragraph 7. Also, the amount of federal and state taxes needs to be calculated for the lump sum payment if the payment was made this year, as described below in paragraph 7. The excess tax liability was calculated as the difference between these two amounts.

7. The amount of Taxable Income is based on the calculations for backpay in this compliance specification for 2010 and is summarized in the attached Addendum in Column AA. Using this Taxable Income, taxes were calculated using the federal and state tax rates for the appropriate year. The federal rates are based on discriminatees filing taxes as Single.

8. The amount of taxes owed for 2010 would have been the amounts set forth in the attached Addendum in Column AH.

9. The total amount of the lump sum award that is subject to this excess tax award is set forth in the attached Addendum in Column AI. The lump sum amount is based on the backpay calculations described in this specification.

10. Respondent has failed to remit the contractual dues it owes to the Union on behalf of unit employees for the backpay period. The amount owed for dues is \$1,049.

11. Despite efforts to obtain full compliance with the Board's Order, Respondent has failed to pay the full amount owed.

12. Respondent's obligation under the Board's Order, as enforced by the Circuit Court, to make whole discriminatees for monetary losses, and minus payments made to them, is \$23,986, as reflected at the bottom of Column AI in the attached Addendum.

13. Respondent failed to pay interest and excess tax liability on backpay owed pursuant to the Court enforced Board Order and currently owes \$5,290 in interest and \$213 in additional tax liability, as reflected at the end of Columns AJ and AH in the attached Addendum. Interest and tax liability continue to accrue until full payment is made.

#### SUMMARY

Summarizing the facts and calculations specified above, Respondent's obligation under the Board's Order to make the discriminatees whole for monetary losses will be fulfilled by payment in the amount of \$23,986, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and plus excess tax liability to the date of payment, pursuant to the Board Order. The estimated interest calculated through August 31, 2015 is \$5,290 and the estimated tax liability through the same date is \$213, but both continue to accrue until full payment is made. The total amount owed through August 31, 2015 is \$29,489.

#### ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20, 102.21, and 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. The answer must be **received by this office on or before November 16, 2015, or postmarked on or before November 15, 2015.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to <http://www.nlr.gov>, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website

informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT on December 1, 2015 at 10:00 a.m.**, at 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this compliance specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: October 26, 2015 at Newark, New Jersey



\_\_\_\_\_  
David E. Leach III  
Regional Director, Region 22  
National Labor Relations Board  
20 Washington Place, 5<sup>th</sup> Floor  
Newark, NJ 07102

Attachments

	A	B	I	J	K	M	Z	AA	AH	AI	AJ
2		<b>CASE NAME:</b>	New Jersey State Opera								
3		<b>CASE NUMBER:</b>	22-CA-29526								
4											
5											
6	Claimant Last Name	Claimant First Name	Gross Backpay	Payments Made 9/10 & 12/10	DOL Payment Made 12/11	Balance of BP Due as of 12/15/11	12/14/12 Payment	Backpay Balance Outstanding	Tax Liability to 8/31/2015	Backpay Owed as Of 8/31/2015	Total Interest Owed as of 8/31/2015
7	Babich	John	1097.00	177.96	177.96	741.08	240.47	500.61	\$5	\$500.61	\$116.51
8	Bajamijam	David	983.00	177.96	177.96	627.08	203.98	423.10	\$4	\$423.10	\$99.50
9	Basile	Frank	1,135.36	207.84	218.23	709.29	231.01	478.28	\$4	\$478.28	\$113.53
10	Batchelder	Donald	1,088.40	195.68	205.46	687.26	223.72	463.54	\$4	\$463.54	\$109.45
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12	Brons	Ruth	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
13	Bryant	Jerry	998.20	180.94	189.99	627.27	204.24	423.03	\$4	\$423.03	\$100.21
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16	Cecere	Anthony	182.40	35.76	37.55	109.09	35.60	73.49	\$1	\$73.49	\$17.69
17	Centanni	Barry	2,479.60	213.56	224.24	2041.80	657.76	1384.04	\$13	\$1,384.04	\$304.22
18	Cianciosi	Dennis	1,135.36	207.84	218.23	709.29	231.01	478.28	\$4	\$478.28	\$113.53
19	Cohen	Alan	928.00	164.24	172.62	591.14	192.36	398.78	\$4	\$398.78	\$94.40
20	Connelly	John	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
21	Columbia	Marya	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
22	Conrad	Karen	831.00	148.18	155.59	527.23	171.60	355.63	\$3	\$355.63	\$84.67
23	D'Amico	Louis	2,500.00	490.00	514.50	1495.50		1495.50		\$1,495.50	\$0.00
24	Davies	Mark	1,179.60	213.56	224.90	741.14	241.32	499.82	\$5	\$499.82	\$119.27
25	Duncan	Dorothy	1,135.36	207.84	218.23	709.29	231.01	478.28	\$4	\$478.28	\$113.53
26	Edelman	Douglas	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
27	Foley	Richard	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
28	Fowler	Jonathan	1,293.60	213.56	224.24	855.80	278.03	577.77	\$5	\$577.77	\$135.31
29	Goeres	Lucille	959.52	173.36	182.03	604.13	196.62	407.51	\$4	\$407.51	\$96.33
30	Goodale	Julie	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
31	Grimaldi	Gary	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
32	Hannauer	Kathy	679.00	118.38	124.30	436.32	141.93	294.39	\$3	\$294.39	\$69.25
33	Hems-Lee	Rebecca	831.00	148.18	155.59	527.23	171.60	355.63	\$3	\$355.63	\$84.67
34	Hereema	Susan	983.00	177.96	177.96	627.08	204.00	423.08	\$4	\$423.08	\$99.50
35	Jorgensen	Alfred	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
36	Kimura	Joseph	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
37	Konk-Kwak	Byung	1,966.00	355.94	373.74	1236.32	402.54	833.78	\$8	\$833.78	\$198.17
38	Lantz	Janet	831.00	148.18	155.59	527.23	171.60	355.63	\$3	\$355.63	\$84.67
39	Levy	Valerie	831.00	148.18	155.59	527.23	171.60	355.63	\$3	\$355.63	\$84.67
40	Macdonneck	Theresa	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
41	Maren	Susan	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
42	Milando	Patrick	997.20	177.82	177.82	641.56	208.60	432.96	\$4	\$432.96	\$102.02
43	Moe	Karla	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
44	Mole	Laura	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
45	Mott-Gale	Martha	831.00	148.18	155.59	527.23	171.60	355.63	\$4	\$355.63	\$84.67
46	Mulvaney	Tom	998.00	177.96	177.96	642.08	208.77	433.31	\$4	\$433.31	\$102.08

	A	B	I	J	K	M	Z	AA	AH	AI	AJ
6	Claimant Last Name	Claimant First Name	Gross Backpay	Payments Made 9/10 & 12/10	DOL Payment Made 12/11	Balance of BP Due as of 12/15/11	12/14/12 Payment	Backpay Balance Outstanding	Tax Liability to 8/31/2015	Backpay Owed as Of 8/31/2015	Total Interest Owed as of 8/31/2015
47	Pakin-Kim	Lanny	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
48	Pintaualle Tracy	Marie	831.00	148.18	155.59	527.23	170.60	356.63	\$3	\$356.63	\$84.73
49	Poulson	Alice	831.00	148.18	155.59	527.23	171.60	355.63	\$4	\$355.63	\$84.67
50	Robinson	Christa	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
51	Rudin	Joel	831.00	148.18	155.59	527.23	171.60	355.63	\$4	\$355.63	\$84.67
52	Schiller	Alan	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
53	Shadel	William	1,179.60	213.56	224.24	741.80	241.53	500.27	\$5	\$500.27	\$119.30
54	Sirinian	Sebu	1,179.60	213.56	224.24	741.80	203.97	537.83	\$5	\$537.83	\$123.40
55	Siroky	Brad	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
56	Steinberg	David	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
57	Yu	Yen	983.00	177.96	177.96	627.08	203.97	423.11	\$4	\$423.11	\$99.50
58		<b>Total:</b>	\$54,104.00	\$9,515.10	\$9,822.66	\$34,766.24	\$10,780.63	\$23,985.61	\$213.00	\$23,985.61	\$5,289.96
59											
60	* Louis D'Amico has waived any additional backpay or interest owed to him.										
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**Sec. 102.56** *Answer to compliance specification.*

(a) *Filing and service of answer; form.*—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.

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

(d) *Extension of time for filing answer to specification.*—Upon the Regional Director's own motion or upon proper cause shown by any respondent, the Regional Director issuing the compliance specification and notice of hearing may by written order extend the time within which the answer to the specification shall be filed.

(e) *Amendment to answer.*—Following the amendment of the specification by the Regional Director, any respondent affected by the amendment may amend its answer thereto.

# **EXHIBIT 6**

# **EXHIBIT 6**

*Maurice (P.A.K.)*

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22

NEW JERSEY STATE OPERA

and

Case 22-CA-029526

AMERICAN FEDERATION OF MUSICIANS,  
LOCAL 6

**AFFIDAVIT OF SERVICE OF: Amended Compliance Specification and Notice of  
Hearing  
(with forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **October 26, 2015**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

**CERTIFIED MAIL**

ALFRED LEMBO  
NEW JERSEY STATE OPERA  
199 SCOLES AVE  
CLIFTON, NJ 07012-1125

BERNARD D'AVELLA  
199 SCOLES AVE  
CLIFTON, NJ 07012-1125

LOUIS D'AMICO  
AMERICAN FEDERATION OF  
MUSICIANS, LOCAL 6  
444 NORTHFIELD AVE  
WEST ORANGE, NJ 07052-3012

HARVEY S. MARS, ESQ.  
LAW OFFICE OF HARVEY S. MARS, LLC  
322 WEST 48TH STREET, 6TH FLOOR  
NEW YORK, NY 10036-1308

October 26, 2015

Date

*Glenda Freeman*

Enter NAME, Designated Agent of NLRB

Name

*Glenda Freeman*

Signature

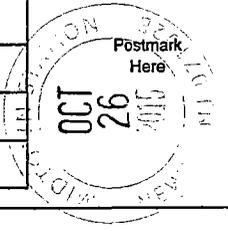
7013 3020 0001 8525 0502

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$



Sent To **BERNARD D'AVELLA**  
**199 SCOLES AVENUE**  
Street, Apt. No. or PO Box No. **CLIFTON, NEW JERSEY 07012-1125**  
City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

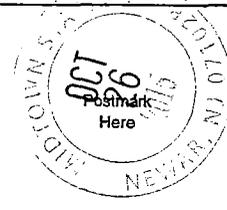
7013 3020 0001 8525 0550

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$



Sent To **FRED LEMBO**  
**NEW JERSEY STATE OPERA**  
Street, Apt. No. or PO Box No. **199 SCOLES AVENUE**  
**CLIFTON, NEW JERSEY 07012-1125**  
City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

# **EXHIBIT 7**

# **EXHIBIT 7**



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 22  
20 WASHINGTON PL  
FL 5  
NEWARK, NJ 07102-3127

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (973)645-2100  
Fax: (973)645-3852

December 14, 2015

ALFRED LEMBO  
NEW JERSEY STATE OPERA  
199 SCOLES AVE  
CLIFTON, NJ 07012-1125

BERNARD D'AVELLA  
199 SCOLES AVE  
CLIFTON, NJ 07012-1125

Re: NEW JERSEY STATE OPERA  
Case 22-CA-029526

Dear Mr. Lembo and Mr. D'Avella:

An Amended Compliance Specification and Notice of Hearing in the above case issued on October 26, 2015. The Order states that pursuant to Section 102.56(d) of the Board's Rules and Regulations, the Respondent must file an answer and that the answer must be received by this office on or before November 16, 2015 or postmarked on or before November 15, 2015. To date, no answer has been received by this office.

This is to advise you that the time to file an answer has been extended until December 21, 2015. If an answer is not received by the close of business on that date, a Motion for Default Judgment will be filed.

Please feel free to call me at (973) 645-3240 if you have any questions in this matter.

Very truly yours,

David E. Leach III  
Regional Attorney

cc: BERNARD D'AVELLA  
105 RENSSELAER RD  
ESSEX FIELDS, NJ 07021-1400

BERNARD D'AVELLA, CHAIRMAN  
OR CURRENT CHAIRMAN  
NEW JERSEY STATE OPERA  
50 PARK PL STE 1041  
NEWARK, NJ 07102-4301