

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

COLORADO SYMPHONY ASSOCIATION

and

**Cases 27-CA-140724
27-CA-155238
27-CA-161339
27-CA-179032**

**AMERICAN FEDERATION OF MUSICIANS OF
THE UNITED STATES AND CANADA , AFL-
CIO/CLC**

**COUNSEL FOR THE GENERAL COUNSEL’S REPLY BRIEF
IN SUPPORT OF ITS LIMITED CROSS-EXCEPTIONS**

Counsel for the General Counsel of the National Labor Relations Board (“the General Counsel” and “the Board,” respectively) submits this Reply Brief in Support of Its Limited Cross-Exceptions to the Administrative Law Judge’s Decision and Order (Decision) in this matter, pursuant to the Board’s Rules and Regulations, Section 102.46(e).

**GENERAL COUNSEL SEEKS RESTORATION OF THE STATUS QUO ANTE
FOR UNILATERAL CHANGES TO NATIONAL MEDIA RECORDING TERMS
WITHIN THE EXCLUSIVE BARGAINING JURISDICTION OF THE AFM**

In its Answer to the General Counsel’s Limited Cross Exceptions, the Colorado Symphony Association (Respondent) inaccurately argues that General Counsel’s exception seeks a remedy for allegations that Respondent engaged in direct dealing with musicians to the exclusion of the Denver Musicians Association (DMA), which were undisputedly withdrawn from the Complaint. The record reflects that the allegations referenced by Respondent with

respect to the DMA in Case 27-CA-168029 were withdrawn in the Third Amended Complaint. (GCX 1(oo).) General Counsel's only exception to Administrative Law Judge Geoffrey Judge Carter's (Judge Carter) decision is narrow and relates to the remedy for allegations that were not withdrawn, and not to any of Judge Carter's findings on the merits.

Specifically, General Counsel seeks a complete remedy for Respondent's unlawful unilateral changes to the national media status quo without giving notice or an opportunity to bargain to the American Federation of Musicians of the United States and Canada (AFM), the exclusive bargaining representative for Respondent's musicians on those issues. Respondent's responsive arguments to the contrary misrepresent the General Counsel's position, and should be rejected.

Judge Carter found that Respondent has a duty to bargain with the American Federation of Musicians (AFM) over national media. (ALJD 53.)¹ He correspondingly found that the DMA's local Negotiating Committee did not have the authority to bargain over changes to those national media terms, including the changes to studio recording sessions proposed to that Committee by Respondent's Trustee Jim Copenhaver in August of 2016. (ALJD 67-68.) Thus, Judge Carter found that Respondent had violated Section 8(a)(5) by implementing new working conditions for recording sessions, including changes to the break times, service length, and per-service crediting of recording sessions for national media as salaried local services, and then applying those new terms and rules to subsequent national and commercial recording sessions without bargaining with the AFM. (ALJD 67:35-69:17.)

¹ Reference to the Administrative Law Judge's decision are identified as "ALJD" and refer to the page and line of the ALJ's decision as page:ln. References to the underlying record are as follows: "Tr." refers to the transcript of the unfair labor practice hearing; "GCX" refers to the General Counsel's Exhibits.

As both the record and Judge Carter's findings reflect, the above changes to studio recording sessions were manifested in language negotiated and inserted into Article 6.3 of the DMA's local collective-bargaining agreement. (ALJD 35:4-36:1; GCX75, GCX97; 1025-39.) The record further reflects that Article 6.3 (D) & (E) previously embodied Respondent's obligation to follow the terms of the appropriate AFM national recording agreement for these services. This language was referred to locally as the "AFM boilerplate." (ALJD 36:24-25; Tr. 517-18; 542-45, 549; GCX53.) As Respondent knew, the DMA's Negotiating Committee did not have the authority to override or renegotiate Respondent's obligations vis-à-vis these national agreements, or to bargain for a change or deletion of this "AFM boilerplate," without the involvement of the AFM. Consistently, neither the DMA nor its Negotiating Committee had ever done so. (Tr.537-45, 872-75, 893-96, 965-67, 973, 996; GCX54.). Nevertheless, Judge Carter found that Respondent bypassed the AFM to deal with the DMA's Negotiating Committee to negotiate such changes to the DMA's collective-bargaining agreement, which it then applied to studio recording sessions for national commercial media projects. So it would elevate form over substance to allow these changes to national media to remain in place just because the language was inserted into the DMA's local collective-bargaining agreement. Thus, Respondent should be affirmatively and separately ordered to rescind these changes to national media production, even though the changes are embodied in the agreement with the DMA, in order to fully restore the status quo for national and commercial media recording sessions.

CONCLUSION

For the reasons stated, the Counsel for the General Counsel respectfully reiterates its request that the Board modify the Judge's Decision with respect to the Order and Notice language discussed in our Cross-Exceptions and Brief in Support thereof. In all other respects,

the Acting General Counsel agrees with the Judge's Decision and Order and urges the Board to adopt it.

DATED at Denver, Colorado, this 18th day of April 2018.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michelle Devitt", written over a horizontal line.

Michelle Devitt, Esq.
Counsel for the General Counsel
National Labor Relations Board, Region 27
Byron Rogers Federal Building
1961 Stout Street, Suite 13-103
Denver, CO 80294

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

COLORADO SYMPHONY ASSOCIATION

**and
AMERICAN FEDERATION OF MUSICIANS OF
THE UNITED STATES AND CANADA,
AFL-CIO/CLC**

**Cases 27-CA-140724
27-CA-155238
27-CA-161339
27-CA-179032**

**AFFIDAVIT OF SERVICE OF COUNSEL FOR THE GENERAL COUNSEL'S REPLY
BRIEF IN SUPPORT OF ITS LIMITED CROSS-EXCEPTIONS**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **April 18, 2017**, I served the above-entitled document(s) by **E-File** and **E-Mail** upon the following persons, addressed to them at the following addresses:

Gary Shinnors
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570
E-File

Jerome Kern
Colorado Symphony Association
1000 14th Street #15
Denver, CO 80204-2525
E-MAIL: jkern@coloradosymphony.org

Patrick R. Scully , Esq.
Sherman & Howard, LLC
633 17th Street, Suite 3000
Denver, CO 80202-3622
E-MAIL: pscully@shermanhoward.com

Jonathan M. Watson, Esq.
Sherman & Howard, LLC
90 S. Cascade Avenue, Suite 1500
Colorado Springs, CO 80903-1699
E-MAIL: jwatson@shermanhoward.com

Patricia Polach, Esq.
805 15th St NW Ste 1000
Washington, DC 20005-2286
E-MAIL: ppolach@bredhoff.com

Jeffery R. Freund
Bredhoff and Kaiser PLLC
805 15 Street NW Suite 1000
Washington, DC 20005
E-MAIL: jfreund@bredhoff.com

Rochelle Skolnick,
Director & Special Counsel
American Federation of Musicians of the
United States and Canada, AFL-CIO/CLC
1501 Broadway, Suite 600
New York, NY 10036-5501
E-MAIL: rskolnick@afm.org

April 18, 2017

Date

Monika Kurschen,
Designated Agent of NLRB

Name

/s/ Monika Kurschen

Signature