

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BEXAR COUNTY PERFORMING ARTS CENTER  
FOUNDATION D/B/A TOBIN CENTER FOR THE  
PERFORMING ARTS

AND

CASE 16-CA-193636

LOCAL 23, AMERICAN FEDERATION OF MUSICIANS

ORDER DENYING MOTION FOR RECONSIDERATION

The Charging Party's Motion for Reconsideration of the Board's Decision and Order, reported at 368 NLRB No. 46 (2019), is denied.<sup>1</sup> The Charging Party has not identified any material error or demonstrated extraordinary circumstances warranting reconsideration under Section 102.48(c)(1) of the Board Rules and Regulations.<sup>2</sup>

Dated, Washington, D.C., December 11, 2019

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JOHN F. RING,

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CHAIRMAN

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MARVIN E. KAPLAN,

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MEMBER

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<sup>1</sup> The Charging Party filed a brief in support of its Motion for Reconsideration. The Respondent filed a response in opposition.

<sup>2</sup> The Charging Party asserts that the new access standard for off-duty employees of an onsite contractor announced in the Board's Decision and Order is "legally infirm" because it would bar many off-duty contractor employees from exercising their rights under *Republic Aviation Corp v. NLRB*, 324 U.S. 793 (1945). We find no merit in the Charging Party's contention. As the Charging Party acknowledges, the D.C. Circuit recognized that the Supreme Court has never decided whether contractor employees have *Republic Aviation* rights to engage in organizational activities in nonwork areas during nonwork time. *New York-New York, LLC v. NLRB*, 676 F.3d 193, 196 (D.C. Cir. 2012) (quoting *New York New York, LLC v. NLRB*, 313 F.3d 585, 590 (D.C. Cir. 2002)), cert. denied 133 S. Ct. 1580 (2013). Moreover, in the underlying decision, we thoroughly explained our reasoning for adopting the new standard. The Charging Party and our colleague contend that we made a material error in the underlying decision, but there was no material error under Sec. 102.48(c)(1). To the contrary, they merely disagree with our conclusions. Accordingly, we deny the Charging Party's Motion for Reconsideration.

WILLIAM J. EMANUEL, MEMBER

(SEAL)

NATIONAL LABOR RELATIONS BOARD

MEMBER McFERRAN, dissenting.

For the reasons stated in my dissent from the Board's underlying decision, I believe that the Charging Party has demonstrated "material error" in the decision. Accordingly, I would grant the motion for reconsideration.

LAUREN McFERRAN, MEMBER

NATIONAL LABOR RELATIONS BOARD