

**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**

Case 27-CA-140724
27-CA-155238
27-CA-161339

and

**DENVER MUSICIANS ASSOCIATION
LOCAL 20-623, AMERICAN FEDERATION
OF MUSICIANS OF THE UNITED STATES
AND CANADA, AFL-CIO/CLC**

Case 27-CA-179032

**MOTION FOR RECONSIDERATION AND MOTION TO INCLUDE PETITION TO
REVOKE PAPERS IN OFFICIAL RECORD**

Colorado Symphony Association (“Employer,” “Respondent,” or “CSA”), by and through its attorneys, Sherman & Howard L.L.C., pursuant to Section 102.48(d)(1) of the Rules and Regulations of the National Labor Relations Board (“Board”), hereby files this Motion For Reconsideration And Motion To Include Petition To Revoke Papers In Official Record.

On August 14, 2020, Colorado Symphony Association (“Employer,” “Respondent,” or “CSA”) petitioned to revoke the Compliance Officer’s Subpoena Duces Tecum, No. B-1-1-A0791X (“Subpoena”). On September 4, 2020, the Counsel for the General Counsel filed an Opposition to the Petition to Revoke. On September 22, 2020, pursuant to Section 102.31 of the Rule and Regulations of the Board, CSA filed a Reply to Counsel for the General Counsel’s Opposition for the purpose of clarifying its position regarding the projects that were found to be

performed pursuant to the June 23, 2014 contract proposal implemented on October 20, 2014. Attached hereto as **Exhibit A**. On September 24, 2020, the Office of the Executive Secretary of the Board rejected CSA's Reply pursuant to Section 102.24(c) stating:

Section 102.24(c) of the Board's Rules and Regulations provides in relevant part: "a party that has filed a motion may file a reply to an opposition to its motion within 7 days of receipt of the opposition."

Here, Counsel for the General Counsel filed an Opposition to Respondent's Petition to Revoke Investigative Subpoena Duces Tecum B-1-1A0791X on September 4, 2020. However, the Respondent did not file its Reply Brief until September 22, 2020. Accordingly, the Reply Brief is untimely under Rule 102.24(c) and will not be forwarded to the Board for consideration.

Letter Rejecting Reply Brief (Sept. 24, 2020). This Motion for Reconsideration is made in regard to the Office of the Executive Secretary's rejection of CSA's Reply To Counsel For The General Counsel's Opposition To CSA's Petition To Revoke Supplemental Subpoena Duces Tecum. Further, this Motion to Include the Petition To Revoke Papers In Official Record is made to adopt the Petition to Revoke, the Counsel for the General Counsel's Opposition to the Petition to Revoke, and the Reply To Counsel For The General Counsel's Opposition To CSA's Petition To Revoke into the official record of this case.

The Office for the Executive Secretary's citation to Section 102.24(c) of the Rules and Regulations, however, does not govern replies or responses to an opposition to a Petition to Revoke. CSA did not file "a motion" as contemplated by Section 102.24, and thus did not file a Reply to any motion. Instead, Section 102.31 governs Petitions to Revoke. Section 102.31 does not provide a time limit or deadline in filing a reply or response to any opposition filed to the originally filed Petition to Revoke. Accordingly, CSA respectfully disagrees with the application of Section 102.24(c) of the Rules and Regulations as the basis to reject CSA's Reply To Counsel For The General Counsel's Opposition To CSA's Petition To Revoke Supplemental Subpoena Duces Tecum.

For the reasons stated above, CSA respectfully requests the Office for the Executive Secretary to Reconsider its rejection of CSA's Reply To Counsel For The General Counsel's Opposition To CSA's Petition To Revoke Supplemental Subpoena Duces Tecum. CSA further requests that the Petition to Revoke, the Counsel for the General Counsel's Opposition to the Petition to Revoke, and the Reply To Counsel For The General Counsel's Opposition To CSA's Petition To Revoke into the official record of this case.

Respectfully submitted this 24nd day of September, 2020.



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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2020, a true and correct copy of the foregoing **MOTION FOR RECONSIDERATION REGARDING CSA’S REPLY TO COUNSEL FOR THE GENERAL COUNSEL’S OPPOSITION TO CSA’S PETITION TO REVOKE SUPPLEMENTAL SUBPOENA DUCES TECUM** was E-filed with the NLRB E-Filing System and served via email, to the following:

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Via E-file

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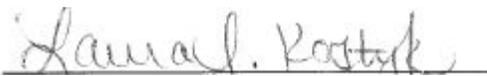
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A handwritten signature in cursive script, reading "Laura J. Kostyk", written in black ink on a white background. The signature is positioned above a horizontal line.

Laura J. Kostyk, Practice Assistant

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Case 27-CA-179032

**REPLY TO COUNSEL FOR THE GENERAL COUNSEL’S OPPOSITION TO CSA’S
PETITION TO REVOKE SUPPLEMENTAL SUBPOENA DUCES TECUM**

On August 14, 2020, Colorado Symphony Association (“Employer,” “Respondent,” or “CSA”) petitioned to revoke the Compliance Officer’s Subpoena Duces Tecum, No. B-1-1-A0791X (“Subpoena”). On September 4, 2020, the Counsel for the General Counsel filed an Opposition to the Petition to Revoke. CSA provides this brief Reply to Counsel for the General Counsel’s Opposition for the purpose of clarifying its position regarding the projects that were found to be performed pursuant to the June 23, 2014 contract proposal implemented on October 20, 2014.

Counsel for the General Counsel asserts that “Subpoena Request No. 1 seeks documents relevant to specific named projects (“Copland,” “Banner Saga 2,” “The Rendezvous” and “Beethoven’s Ninth Symphony”) that *the Region already knows Respondent compensated under*



the provisions of its unlawfully implemented June 23, 2014 contract proposal, because they were discussed in the underlying Judge's decision. The requested documents are relevant to determining how bargaining unit employees would have been compensated on the named projects under the *status quo ante* terms of the IMA, or other applicable AFM national agreement, had Respondent not applied its June 23, 2014 contract proposal.” Opposition at 7-8 (emphasis added). Further, Counsel for the General Counsel asserts the same argument for the following projects: “The Flaming Lips,” “The Raven” “Bela Fleck,” “One Republic,” “Mason Bates,” and “Light in the Void.” Opposition at 10. The Counsel for the General Counsel summarily states without citation to the record, that “the remedy encompasses backpay owed for each instance that Respondent has applied the unlawfully implemented June 23, 2014 contract proposal until Respondent ceases and desists from doing so.” *Id.* at 11.

The Counsel for the General Counsel *assumes* that the listed projects were implemented under the June 23, 2014 Contract Proposal (“Implemented Offer”), however, Counsel of the General Counsel has never proved that the projects were performed pursuant to the Implemented Offer. There is no evidence in the record suggesting that these projects were litigated in the underlying Unfair Labor Practice Charge, let alone any record evidence that the projects were, in fact, performed under the Implemented Offer. Indeed, none of the named projects were performed under the terms of the implemented offer and it is undisputed that they were not litigated as alleged separate unilateral changes in violation of the *status quo*. Contrary to the Counsel for the General Counsel’s assertions, the projects that are sought in the Subpoena are not relevant to the Compliance proceedings. Therefore, CSA’s Petition to Revoke the Subpoena should be granted for the reasons stated in its original Petition and provided herein.

Respectfully submitted this 22nd day of September, 2020.



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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2020, a true and correct copy of the foregoing **REPLY TO COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO CSA'S PETITION TO REVOKE SUPPLEMENTAL SUBPOENA DUCES TECUM** was E-filed with the NLRB E-Filing System and served via email, to the following:

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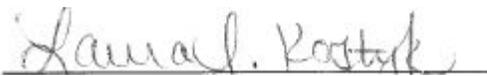
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A handwritten signature in cursive script, reading "Laura J. Kostyk", is written over a horizontal line.

Laura J. Kostyk, Practice Assistant