

STATE OF NEW YORK
NEW YORK STATE EMPLOYMENT RELATIONS BOARD

In the matter of

OPERA COMPANY OF BROOKLYN

Employer

-and-

**LOCAL 802, ASSOCIATED MUSICIANS
OF GREATER NEW YORK, AMERICAN
FEDERATION OF MUSICIANS, AFL-CIO**

Union

51 SERB 01

CASE NO. SU-60042

APPEARANCES:

Edward J. Quigley, Esq.
For Respondent

And

Lori J. Pennay, Esq.
Akin Gump Strauss Hauer & Field LLP
Assisting Respondent Attorney

And

Harvey Mars, Esq.
For the Union

DECISION AND ORDER

On May 15, 2006, Michael Boyajian, Esquire, Trial Examiner, issued his Intermediate Report herein, a copy of which is annexed hereto and made a part hereof. He found that Respondent has engaged in the unfair labor practices alleged in the complaint.

Copies of the Intermediate Report were duly served on all parties. The Respondent filed exceptions thereto dated May 24, 2006.

The Board having considered the entire record in the proceeding, the Intermediate Report and the exceptions thereto, accepts the recommendations of the Trial Examiner and adopts his discussion of the evidence in the Intermediate Report as the opinion of the Board herein.

Upon its consideration of the entire record, the Board makes the following:

FINDINGS OF FACT

1. Respondent, the Opera Company of Brooklyn, is engaged in the operation of a not-for-profit opera company located at 600 W. 218 Street, New York County, State of New York 10034.
2. Associated Musicians of Greater New York, Local 802, AFM, AFL-CIO, herein called the Union, is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employees concerning grievances, terms or conditions of employment or of other mutual aid or protection.
3. On or about February 6, 2004, Respondent signed a Memorandum of Agreement recognizing the Union as the exclusive bargaining representative with respect to wages, hours, and other terms and conditions of employment and agreed to use only live musicians for all of its productions, performances and rehearsals, except upon the express written consent of the Union.
4. On April 13, 2004, the Union received a letter from the Opera Company of Brooklyn stating that it was repudiating the Memoranda of Agreement signed on February 6, 2006.

CONCLUSIONS OF LAW

Upon the basis of the foregoing, Findings of Fact and upon the entire record in this proceeding, the Board finds and concludes as a matter of law:

1. Respondent, the Opera Company of Brooklyn, is an employer within the meaning of Section 701, subdivision 2, of the Act.
2. Associated Musicians of Greater New York, Local 802, AFM, AFL-CIO is a labor organization within the meaning of Section 701, subdivision 5, of the Act.
3. By repudiating the Memorandum of Agreement signed by the Respondent on February 6, 2004, Respondent has engaged in unfair labor practices within the meaning of Section 704, subdivision 5 and 6 of the Act.

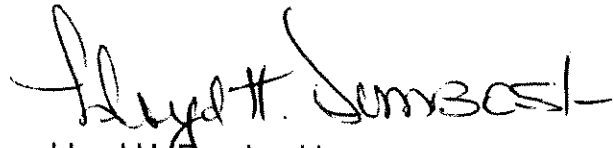
ORDER

Upon the basis of the foregoing Findings of Fact and Conclusion of Law and pursuant to Section 706, subdivision 3, of the New York State Labor Relations Act it is hereby

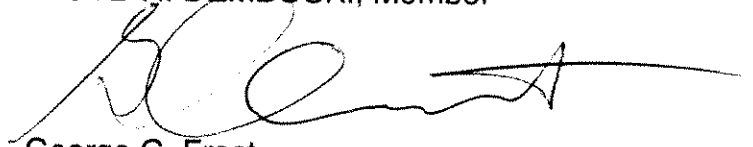
ORDERED, to

1. Cease and desist from refusing to bargain collectively in good faith with Local 802, Associated Musicians of Greater New York, American Federation of Musicians, AFL-CIO, as the exclusive bargaining representative of the performers hired by Respondents at their location at 600 W. 218 Street, New York County, State of New York 10034, in respect to rates of pay, wages, hours of employment, and other conditions of employment.
2. Cease and desist from refusing to recognize the signed Memorandum of Agreement entered into by the parties on February 6, 2004, and all of its provisions until such time as its provisions, including the future use of the virtual orchestra device, are bargained for in good faith and incorporated into a collective bargaining agreement negotiated by the parties.
3. Take the following affirmative action which we find is necessary to effectuate the policies of the Act:
 - a) Upon request by Local 802, Associated Musicians of Greater New York, American Federation of Musicians, AFL-CIO, bargain collectively with it as the exclusive bargaining representative of Respondents employees, employed for respondents performances, with respect to rates of pay, wages, hours of employment, and if an understanding is reached, embody it in a signed agreement with the Union.
 - b) Post immediately, in plain sight, and leave posted for a period of thirty (30) consecutive days from the date of posting in a conspicuous place on Respondents premises at 600 W. 218 Street, New York County and State of New York, where its employees customarily work or where Labor Department notices are usually posted, a copy of the notice to be affixed on top of a complete copy of this Decision and Order;
 - c) Notify the New York State Employment Relations Board in writing at 345 Hudson Street, Suite 8201, New York, N.Y. 10014 within ten (10) days from the date of service of this Order, what steps Respondents have taken to comply herewith.

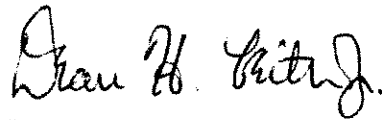
Dated: Albany, N.Y.
July 20, 2006



Lloyd H. Demboski
LLOYD H. DEMBOSKI, Member



George C. Frost
GEORGE C. FROST, Member



Dean H. Leith, Jr.
DEAN H. LEITH, JR., Member

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**LOCAL 802, ASSOCIATED MUSICIANS
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CASE NO. SU-60042

NOTICE TO EMPLOYEES

In accordance with the attached Decision and Order of the New York State Employment Relations Board, you are hereby notified that:

We will, upon request, bargain collectively with the Union as the exclusive bargaining representative of our employees, including employees hired for our performances, or hired through our location at 600 W. 218 Street, New York County, State of New York, 10034, and if an understanding is reached, we will embody it in a signed agreement with the Union.

Dated: Brooklyn, New York
August __, 2006

OPERA COMPANY OF BROOKLYN

By: _____

**THIS NOTICE MUST REMAIN POSTED
FOR THIRTY (30) DAYS.
IT MUST NOT BE ALTERED, DEFACED OR
COVERED BY ANY OTHER MATERIAL.**

