

## NLRB decides for Union, against PSO

In a historic decision issued in June by National Labor Relations Board (NLRB) Region 16 in Fort Worth, the US government found that musicians of the Plano Symphony Orchestra (PSO) are employees for labor law purposes – not independent contractors – and that PSO musicians have the right to choose to be represented by their Union in their relations with management.

The Regional Director's decision also upheld and affirmed decades-old NLRB rules that prove PSO is an employer and subject to US labor law since it exercises stringent employer control over its musicians and because PSO's annual budget of \$1.5 million exceeds NLRB's \$1 million jurisdictional threshold.

The NLRB ruling includes a directive that PSO submit to an NLRB-supervised secret ballot election among 110 eligible musicians to decide whether they wish to have Local 72-147 negotiate a collective bargaining agreement covering their services.

PSO had claimed that its orchestra consisted of some 240 musicians who were engaged on an on-call basis and worked so irregularly that no musicians should be eligible to vote.

If a majority of musicians vote in favor of the Union, PSO will be required under a court-enforceable mandate to bargain in good faith with Local 72-147 toward an acceptable agreement. The NLRB says it plans to hold the election this fall.

The Union was able to obtain federal intervention in April after an overwhelming number of PSO musicians authorized Local 72-147 to represent them for bargaining purposes. When PSO refused to recognize the Union's majority status in the orchestra, the matter was referred to the NLRB's regional office in Fort Worth.

PSO's attempt to avoid the Union centered on its practice of requiring all musician/employees to agree to perform services as independent contractors as a condition of employment. Independent contractors are excluded from the protections of US labor laws enjoyed by other workers, and are prohibited from seeking NLRB assistance to obtain Union representation and relief from employer unfair labor practices.

During a two-day hearing in May at the NLRB's regional headquarters in Fort Worth, two musicians testified for PSO against their Union, claiming their services were that of independent contractors because PSO conductor Hector Guzman did not instruct musicians how they should play.

One hostile musician witness, in a particularly misleading bit of testimony designed to imply that musicians are independent businesses and should be

classified as independent contractors rather than employees, claimed that PSO did not furnish sheet music for her performances.

In its 17 page written decision, the NLRB discarded the misrepresentations of the Plano Symphony and those of its witnesses. The NLRB agreed with Local 72-147 and believed the Union's credible witnesses who demonstrated conclusively that PSO is an employer subject to US labor law and obligated to abide the democratic will of its regularly engaged musician/employees concerning Union representation.

Well-known Dallas labor attorney Yona Rozen headed the Union's legal team. Witnesses for the Union included oboist Steve Petty, percussionists Steve Kimple and Jon Lee, trumpeter James Sims, and Union president Ray Hair.

The NLRB decision and copies of PSO's anti-union propaganda are posted online at [www.musiciansdfw.org](http://www.musiciansdfw.org).