

MEMBERS

NEWSLETTER

Make Every Musician Benefit from Efficient Responsible Service

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ART FOR ART'S SAKE

Chamber Music and the Union

MOST musicians derive a degree of artistic satisfaction from their work in the music business. This is particularly true in fields where the music is the principal focus of the performance and even more so when it is music in which the musicians truly believe.

Possibly no musical activity is more rewarding than playing chamber music. As the name implies, chamber music can be performed in very small venues, even in the home, and by small groups of musicians. A virtually endless supply of music is available for string quartet, woodwind quintet, brass quintet and other standard and less conventional instrumental combinations, much of it written by the greatest composers in history.

The logistical advantages of chamber music performance make it ideally suited for exposing general audiences to truly fine music, even in local, informal venues.

Union Standards

However, possibly because of the artistic satisfaction and the cultural benefits of chamber music performance, otherwise union-

minded musicians are sometimes less, or not at all, concerned about Union scales and benefits when they have a chance to play it. This can be because very high-profile groups can command much higher fees than Union scales or, in the case of less prominent musicians, because the venues at which they perform cannot generate enough revenue to fund a Union concert.

The cost of a Union contract for a string quartet, woodwind or brass quintet, or other small chamber music concert can be thousands of dollars, given requirements for personnel manager/contractor, principal pay, pension, health benefits, cartage and mileage. Scale for a quartet concert can come to well over \$4,000 for the performance, 2 rehearsals, a sound check, pension and HBP. This could easily exceed the single concert budget of even a well-financed community association.

Other Motivations

The desire to play for the musical pleasure, the community's cultural enrichment or just to keep up performance skills often prompts even established freelancers to accept such engagements for little or no pay. Many musicians might

benefit from pension and health contributions but benefits are seldom available in this field and often the only alternative is to not work.

At the other end of the spectrum, some members of truly high-profile groups like the Juilliard and Guarneri String Quartets and others may not even be Union members. The earnings of these groups are much higher than Union scales and benefits may not be a real consideration for chamber musicians of this status since they may have coverage through their management or an institution where they are in residence. We should note, however, that among the most well-known NYC-based chamber groups, many of the players are currently Union members.

Solutions?

The Union has not yet found a way to make chamber music concerts economically feasible for small, community venues without the risk of undermining hard-fought standards for chamber music concerts done under freelance concert collective bargaining agreements. Also, sometimes there is a thin line between really hard-strapped venues or organizations and the more well-endowed ones that simply wish to cut corners by avoiding Union scales and benefits.

The value of chamber concerts lies in the elevated level of this music and the impor-

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Major Orchestra Contract Settlements

THE NY Philharmonic, Philadelphia Orchestra and Chicago Symphony — three of the "Big Seven" (the others: Boston, San Francisco, Los Angeles, and Cleveland) — concluded contract negotiations in September. All three managements gained more flexibility in tour and concert scheduling.

Philadelphia's 3-year contract's base pay goes to \$131,000/year in the last year and pension to \$75,000. Difficulties may arise in pension credits for some members because of the orchestra's transfer from its own fund to the AFM-EPF. Improvements were made in instrument insurance coverage and disability insurance benefits. Medical, dental, and vision benefits remain the same.

Chicago's 4-year contract's base pay goes to \$144,000 in its final 6 months (all raises are delayed to the 2nd half of the year). However, pension eligibility for full accrual goes from 30 to 35 years, and health plan player premiums, co-payments and deductibles also increase.

New York's 4-year contract's base pay goes to \$135,000 but all, including 1st-year untenured players, are paid \$1,000 more. Pension goes to \$70,000 in the 4th year and those retiring throughout the length of the contract will receive the maximum when it kicks in. A 5th year, bringing the base pay to \$140,000 (\$141,000 in actuality) and pension to \$75,000, is under consideration. An actuarial study to be undertaken

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ADDITIONAL PAYMENTS

The 'Back End'

OVER the years, the AFM has negotiated contract provisions in electronic media agreements which permit players and music preparation musicians to benefit from exploitation of recorded musical product when it continues to generate revenue after initial use.

The contractual obligation to make these payments is often called the 'back end.'

Jingles

The AFM's Television and Radio Commercial Announcements Agreement (jingle contract) calls for several different additional payments for various uses of recorded tracks including dubs, residuals, new use, etc. and, since 1988, initial use.

This system is based on general practice in broadcast advertising and agency fee structure. It provides payments to musicians for additional uses of the tracks and limits producers' costs to session and initial-use payments if there are no residuals.

Records

Since 1944, sound recording industry employers have been required by the AFM's Sound Recording Labor Agreement (SRLA) to contribute to the Music Performance Trust Fund (MPTF), now the Music Performance Fund (MPF). This contract provision constituted the first negotiated back-end payment: an annual contribution of a fractional percentage of the price of each record sold by the signatory record companies.

The rationale for this provision was to compensate musicians, at least to some extent, for the negative impact of phonograph record sale and use on live musical employment by creating a fund to co-sponsor live musical concerts in local areas across the country. The MPTF

provided modest employment opportunities to thousands of nonrecording musicians across the U.S. whose work was diminished by juke boxes, disk jockeys and other uses of records to replace live bands.

The Special Payments Fund

In 1961, the AFM agreed to the diversion of half of the annual contributions to the MPTF into a new fund: the Phonograph (now Sound Recording) Manufacturer's Special Payments Fund (SPF). This was a key component of the agreement under which the Musicians Guild of America (Guild) was to be dissolved and its members were to rejoin the AFM.

The SPF distributes these contributions to musicians who work under the SRLA. The distributions are not tied to the sales of the specific record(s) on which the musicians played but rather are paid in proportion to each musician's SRLA earnings annually over a five-year period (after which the musician's credit for these earnings ends). The fund's creation was a response to the AFM's 10-plus-year policy of negotiating increased contributions to the MPF instead of scale raises for recording musicians. This diversion of employer contributions away from recording musicians was the principal motivation for the formation of the Guild in the first place.

The SPF was the first instance of a negotiated back-end payment by employers which actually provided additional compensation for musicians working under an agreement.

The Film Fund

The Film Musicians Secondary Markets Fund (FMSMF), although similar to the Special Payments Fund, works somewhat differently. It receives contractually negotiated contributions from motion picture employers equal to 1% of producers' gross receipts from license fees and other income from sources beyond U.S. theatrical release of each motion picture. These include videotape, DVD, in-flight, cable and television broadcast rights as well as certain foreign distribution. The 1% amount is divided among all musicians who worked on a film in proportion to their scale income on the project.

Unlike the SPF, the FMSMF distributions are tied to the specific motion pictures on which the musicians worked and are calculated on the musicians' earnings from each film as long as it generates revenue.

Back-End Payments Tied to Use

All of these 'after-the-fact' payments share a key characteristic. Sound recording Special Payments contributions rise and fall with product sales and jingle residuals and FMSMF payments are triggered only when additional revenue-producing uses are made of the original product. In this way, musicians receive compensation when the employer derives addi-

tional income from their product and producers do not have to make back-end payments unless they open up additional revenue sources. Therefore, less successful jingle, record and film producers are safeguarded from having to make back-end payments.

Two AFM Video Game Contracts

In late 2006, the AFM's International Executive Board adopted two different video game recording agreements: one including reuse and other new-use provisions, and another promulgated one-off contract without additional payment requirements for new use or reuse of the music.

This was ostensibly done as an experiment to see which agreement worked better. However, it appears that there is no increased up-front pay in the one-off agreements signed so far. Moreover, reports have surfaced that in telephone inquiries to the AFM recording department, potential producers have only been told about the one-off agreements.

The concept of a modest level of musician participation in additional income generated from products on which they performed is certainly a reasonable one. The idea of raising producers' up-front costs to spare them additional paperwork later (before any additional revenue streams have arisen for a product) would seem to be undesirable from the producers' point of view.

More Musicians Benefit

The motion picture industry continues to provide lucrative employment for a substantial number of full-time film session musicians who are the primary beneficiaries of the FMSMF. However, thousands of other musicians whose principal work is in other fields, do, or have done, film work from time to time so that the Fund's benefits extend to a large number of musicians in New York and elsewhere. More than 15,000 musicians receive checks from the FMSMF each year.

This is true in the jingle and sound recording fields, as well. The number of musicians who work full time in these fields is a fraction of those in the 1960s and '70s. Partly for this reason, the benefits of jingle residuals and the sound recording SPF are no longer limited to a small group of "recording musicians" but are enjoyed in varying degrees by musicians from Lincoln Center, Broadway and many other areas.

The Value of the Back End

The value of these ancillary payments points to the wisdom of negotiating them years ago. They are clearly more valuable to those of us who do this work than any possible front-end scale increases which, even if they could be negotiated, would be likely to discourage employment and the filing of AFM contracts, especially by lower profile producers. **MN**

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Editorial Staff: Michael Comins

Jack Gale

Marilyn Reynolds

Bill Rohdin

Design/Production: Grubb Graphics

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Health Plan Participation

EARLIER this year, many questions were circulating about 802's new health plan and the possibility of large numbers of theatre musicians failing to qualify for the new Plan A+ due to insufficient performances played.

To our knowledge, the report on the number of Broadway musicians who have qualified for the plan, expected in September, was not issued. Musicians who have said they fear that the absence of the report might be an indication of disappointing numbers should remember that special "imputed" credits were given to theatre musicians during the first quarter of 2007 to compensate for lower contributions over the three months before the new higher contractual levels began in April. It should also be pointed out that musicians in several running shows were "grandfathered" for automatic hospitalization coverage.

As a result of these adjustments, it is very unlikely that very many Broadway players would have failed to qualify for the plan, so far. Members should also remember that, even if they take off enough to fall below the 5.7 shows necessary to provide Plan A+, as long as they do enough outside-covered work, those contributions could help them achieve eligibility.

Another concern of members, the possible failure of other bargaining units to increase HBP contribution to Plan A+ levels, thereby

jeopardizing the Fund itself, is also probably unjustified. If other fields don't negotiate Plan A+ level contributions, the losses to the plan should be largely made up by lower benefit obligations to those musicians. Vice President Dennison recently told the Theatre Committee that there are now 150 more HBP participants.

A third concern has been that regular musicians might lose hospitalization coverage if they take off more than an average of 2.3 shows per week during an eligibility period. Although this could be a possibility, especially when the grandfathered shows close, musicians who receive HBP contributions from outside work may still qualify for hospitalization.

A more significant point for a report on the numbers of musicians qualifying for Plan A+ will be next April when new shows will be running and the imputed credits will no longer be a factor. Hopefully, if everyone keeps track of their contributions and adjusts their attendance patterns accordingly, most Broadway musicians should be able to maintain coverage.

The total cost of Plan A+ is currently \$8,600 per year. This is more than \$5,000 above the cost of the old Plan A, but it does provide more coverage in terms of an increased benefit cap (from \$50,000 to \$250,000), broader prescription drug coverage, more liberal out-of-network coverage and the hospitalization component.

No Grievance in Babich Case

THE 802 Executive Board has decided not to grieve Radio City Music Hall's "failure to rehire" longtime Music Hall bassist and Union activist John Babich. The decision was apparently based on the majority of the Board's opinion that there is no evidence that the dismissal violated federal labor law protections.

The National Labor Relations Act prohibits the termination of employees because of their

union activity. Many Radio City Orchestra members and others familiar with the case believe that Babich was targeted for termination by management based on his Union activities.

As a member of both the Radio City Orchestra Committee and the Local 802 Executive Board, Babich was highly visible during the virulently contentious Radio City negotiations in 2005. He was also directly involved in several Union actions at that time which clearly provoked management's anger.

Orchestra committee members can sometimes become the focus of management hostility toward the Union during negotiations. This danger is significantly heightened when

the member in question is also a Union board member and especially when he or she has taken high-profile positions in opposition to management proposals.

Babich has filed a charge with the NLRB against Radio City and has also filed a charge of failure of the duty of fair representation against Local 802.

We strongly disagree with the Executive Board's decision in this matter because we believe that Babich was indeed targeted for dismissal because of his Union activity. We also believe that the Union should go to bat for all of its members and particularly for rank-and-file committee members who take such risks in serving their colleagues. **MN**

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IN what some veteran theatre musicians believe may be an unprecedented situation on Broadway, *The Farnsworth Invention*, a new 'play with music' produced by Steven Spielberg, is slated to go into the Music Box theatre on November 15 using recorded underscoring exceeding 50 minutes duration. The full running time of the show is not known but, with 50 minutes of music and assuming occasional stops, it is likely that this music is an integral part of the entire show.

Of course, most dramatic plays do not use music at all but, under Local 802's League agreement, if musicians are employed, the theatre's orchestra minimum does not apply. Recorded music is also permitted under the agreement with the proviso that it must be recorded under the terms of the AFM Sound Recording Agreement.

Historically, plays with live music have generally employed only a handful of musicians. Recorded music, in most cases, has been largely incidental music or used to replicate a radio broadcast or phonograph record within the context of the play. According to the Internet Broadway Database, there have been only 19 plays with music in the past thirty years. It's reasonable to assume that some of these plays

may have used recorded music but there is no definitive information as to how much music these productions actually used.

Even in shows where incidental music occupies only 15 minutes or less during a performance, the use of live music is esthetically preferable and more in keeping with the high standards Broadway audiences deserve. There



is at least an ostensible rationale for using recordings when they provide only occasional music but when underscoring exceeds 20 minutes, there is very little, if any, justification for not using live musicians.

The music for this show was initially recorded at nonunion sessions in mid-September. When 802 learned of the project, the Union's recording department entered into negotiations with the producers to require the

filing of AFM contracts and to establish additional payments for the musicians who recorded the music.

The final deal provided that the musicians would be paid AFM SRLA rates for the sessions and, after 6 initial weeks, be paid \$200 or \$400 per week (depending on the number of sessions played) thru the 20th week of performances. Although the 802 Executive Board was informed of the situation, the matter was not brought to them for their input.

To the extent that 802's League agreement is silent on the amount of recorded music that can be used in a play with music, the Union might not ultimately have had sufficient grounds to require the employment of live musicians in this case, but the fact remains that the use of so much recorded music in a Broadway production may set a very dangerous precedent for us. It is also disturbing that such a gifted and respected producer as Steven Spielberg is apparently willing to forego a live orchestra when the music is such a pervasive part of his otherwise live production.

It is good that the musicians who recorded the music will be paid this additional money, but even they are disturbed by the use to which the recording is to be put. **MN**

Contract Settlements

(continued from page 1)

by management and the orchestra committee will determine if this can be achieved without significant additional cost to management. Management-paid healthcare will be maintained providing costs do not outstrip management's contracted funding increases.

In a private negotiation concerning the Philharmonic's substitutes, the Landolfi administration broke a long-standing precedent for

subs to be paid the orchestra's base pay by negotiating a diversion of substitute salary money into 802's fledgling health plan (subs receive 802's benefits, not the Philharmonic's). Should the contract's 5th year not materialize, the subs will be paid \$100/week less than the base. It is not clear how the orchestra's amorphous substitute pool was polled before this negotiation took place.

Two other well-established orchestras also concluded September contract negotiations — Detroit (5 years) and Minnesota (3 years). **MN**

Chamber Music and the Union

(continued from page 1)

tance of exposing audiences to it. There are many reasons to try to find ways to make this kind of concert workable with Union standards. Perhaps, with input from musicians who work in this field, the Union might be able to create a special category for lower profile chamber concerts. There is, however, little the Union can do to address these concerns without that kind of musician involvement. **MN**

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