

MEMBERS

NEWSLETTER

Make Every Musician Benefit from Efficient Responsible Service

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New York, NY

OUR CONTRACT WITH THE UNION

Union Bylaws

IN our analysis of union democracy and its importance to professional musicians, we should recognize the role of union bylaws in protecting the rights of members and giving them a voice in their union's affairs.

Unions need officers to handle day-to-day operations and to negotiate and administer contracts. Administrations come and go but we, as members, should continue to have input into union policies and contracts whoever is in power. Just as union contracts lay down parameters for pay and working conditions in the workplace, 802's bylaws establish basic membership rights and obligations. The bylaws are extensive and they contain many requirements and prohibitions.

Sometimes bylaws are proposed which, if adopted, could have a profound affect on our Union's policies, our membership rights and even our livelihoods. We owe it to ourselves to consider the impact bylaw changes might have on us as 802 members and working musicians.

It is essential for all of us to familiarize ourselves with bylaw proposals, attend meetings to help make a quorum (125 members) and to vote for, or against, each bylaw. If too few members show up to make a quorum, business cannot be conducted and, in most cases, 802's Executive Board is then empowered to adopt bylaws without a membership vote.

Board Bylaw Submitted

As it happens, the Executive Board has submitted a bylaw for the October 22 meeting. It is printed in the June issue of *Allegro* (which can be found on the 802 Web site). It would amend 802's Strike Fund bylaw in two ways. It would mandate the transfer of \$1,500,000 from the General Fund to the Strike Fund, increasing the Strike Fund's minimum balance from \$500,000 to \$2,000,000. It would apparently also disallow picketing payments except for "payments to individuals or to musicians unemployed" as the result of a strike, whether or not they actually picket.

Of course, musicians are busy with their careers, families and their lives but, too often, bylaw issues, like contract ratifications and elections, are decided by only a small minority of those whose interests are at stake. We urge you to make every effort to attend the October meeting.

MN

Using Allegro

ONE benefit of being in power at 802 is control of *Allegro*. This control has seldom been misused over the past 25 years but recent issues raise some concerns.

Coverage of the recent charges against officers is a good example. Advance notice of the charges meeting was printed only in a small box on the back page of *Allegro* but, after the charges were narrowly dismissed, they, and the issues underlying them, were prominently featured on 4 pages in the July/August issue.

In addition to the page 1 announcement of the dismissal (with a large, stylized exclamation point!), the president's and recording vice president's "reports" expressed their views on Radio City, the charges and charges in general. Although the complainant, John Babich, was repeatedly referred to by name in this issue, an article he submitted in response was denied space in *Allegro*.

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Special Film Meeting Held

ON Monday, July 21, an open meeting was held at Legacy Recording Studios (formerly Right Track Studios) on West 38th St. Many musicians received a letter or an e-mail invitation, presumably from the approximately 20 producers, contractors, composers, engineers, studio owners, Local 802 officials and 802 Recording Supervisor, Jay Schaffner, most of whose names were listed at the bottom of the letter. AFM President Tom Lee, Secretary-Treasurer Sam Folio and Canadian VP Bill Skolnik also attended. Also present was the deputy NY State Film Commissioner. According to Skolnik, reporting in *International Musician*, the meeting was actually organized by Local 802.

The meeting was moderated by recording engineer Lawrence Manchester (of Legacy) and by Schaffner. It had three purposes: 1.) To inform those attending about losses in New

York film scoring work, the closing of important NY recording studios and the danger of further studio closings; 2.) To screen slides showing the ups and downs of film earnings in New York and scale charts for certain London film sessions; and 3.) To discuss possible "solutions consistent with our standards and values to restore major recording work to New York."

Numbers Presented

It was pointed out that NY musicians' film income had hit a high of \$2,700,000 in 2006 but had dropped back to \$700,000 in 2007, while film industry spending in Connecticut was soaring. It is possible that Connecticut's now-expiring post production tax credits were a major cause of their increase.

The slides of London film scales showed that, although there are no "back-end" payments for

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Next Issue: **Broadway Buyouts**

Special Film Meeting Held

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secondary markets' uses of the tracks, their initial hourly scale rates are two to three times AFM scales. It was suggested that an AFM contract with similarly higher scales and no contributions to the Film Musicians' Secondary Markets Fund (FMSMF) might attract more independent and low-budget productions.

The Secondary Markets Fund

Some speakers said they knew of producers who would gladly pay 2 or 3 times AFM scale for film sessions if they could avoid the 1% of producers' gross required by the AFM agreement for the FMSMF (this is the same kind of back-end payment that was the subject of the highly publicized Writers and Directors' Guild's successful negotiations.)

Eventually, a few speakers asked how any change could be made in AFM Film terms that would apply specifically to New York. The answer was that there is no way since AFM agreements are national in scope. It was also asked, since most of this work is done in California, why was there no one present from LA? This was not answered at the meeting but, according to LA film musicians, they were simply not invited.

Information Provided

As it turned out, one LA musician was at the meeting but not in the role of a musician. FMSMF Administrator Dennis Dreith, although not authorized to speak for LA musicians, did provide a great deal of information. He said that film work in LA is still strong, that contributions to the FMSMF had reached an all-time

high of over \$82 million in 2008 and that the gain was largely attributable to contributions from low-budget and independently produced films. He also said that, out of the approximately 90,000 AFM members, 15,000 musicians (17% of the AFM membership) and 3,000 beneficiaries receive yearly checks from the Fund.

One speaker said that he was an author of a new AFM video games agreement, with no back-end requirement, which had been used quite often. As we reported in 2006, this agreement was submitted to the AFM's IEB by Jay Schaffner as being from 802 but without the approval of the 802 Executive Board. It was approved by the IEB over the objections of the

that they only kick in if the product generates additional money. He added that following the London model by greatly raising session rates would be most harmful to the very employers we are hoping to attract: low-budget and independent producers.

It was suggested that the Union should regularly contact production companies which have scheduled post-production activities and inform them about the combined State and City tax credit of 35% for all post-production costs in New York.

Everyone at the meeting seemed genuinely concerned by the jeopardy in which NY studios and film musicians find themselves, but some more cynical musicians felt that the meeting's

focus on the FMSMF was an attempt to use the studio crisis to build support for new AFM film agreements without a back end, similar to the video game agreement in 2006.

Since several musicians who regularly receive FMSMF checks did not receive invitations to the meeting, it isn't clear how the list of invitees was put together. **MN**

Film Musicians' Survey

One indication of the extent to which the July 21 film meeting seemed intended to promote support for AFM film agreements with no Secondary Markets component was the "Survey" passed out at the meeting.

Obviously prepared with knowledge that speakers at the meeting would be suggesting that the Secondary Markets provision was a problem, the survey asked several questions about respondents' willingness to consider concessions of several kinds. Among these were giving up Secondary Markets benefits in exchange for an "up-front combined-use payment." Other questions suggested up-front combined-use payments for soundtrack albums and fixed rates for overdubbing and multiple doubles.

A few musicians said they thought the survey was written by Jay Schaffner but, since it refers to "the current practice of each double paying an increasing percentage amount" when, actually, AFM (and 802) agreements set doubling rates at decreasing percentages, it is doubtful that anyone with direct knowledge of the agreements created the survey.

It isn't clear why a survey of this kind was passed out at an informal meeting. Questions on such critical issues need to be directed to a bargaining unit rather than to an open meeting. Presumably, if enough people checked "yes" on the suggested concessions, the results could be used to claim that the concepts have member support.

This very possibility points up the fact that any legitimate unilateral Union proposal must reflect the views of the people who actually work under the agreement. That is one of the basic democratic foundations of representative unionism.

Recording Musicians Association, further straining the AFM's relationship with recording musicians. Although the intent of the cheaper one-off buyout agreements was to promote New York projects, much of the work under it was done by LA musicians, often for the same producers who had paid more under the previous contract.

Throughout the meeting speakers suggested that low-budget producers might turn nonunion film dates into AFM sessions if some accommodation could be made in the "back end." President Landolfi read a letter from a prominent NY orchestrator asking if "we" might be "pricing ourselves out" of the movie scoring business.

Another View

Another speaker pointed out that the "back-end" system helps keep initial costs down for low-budget sessions, that FMSMF payments are only about 1% of producers' gross, and

substitutes "tainting" the process. At the January Trial Board hearing, an 802 business rep testified that someone did indeed go on both sides of the audition screen during the audition.

Landolfi claims that, at the 2005 negotiations, no proposals were "made by the Committee or the Union about the conditions of the open performance interviews" (auditions). This is contested by Radio City Committee members who say that they did make such proposals during the negotiations.

Nowhere in her report did Landolfi mention the devastating impact on these negotiations caused by the efforts of Dennison, Schaffner and herself to get 802 to sign (and publish in the *N.Y. Times*) a letter claiming that the Union lied to the public in saying that Radio City was trying to cut musicians pay. This unprecedented behind-the-scenes pressure (including an Executive Board motion to sign the letter) placed 802 negotiators in the drastically weakened position which led to the horrific contract. **MN**



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AT 802's regularly scheduled June 11 membership meeting, charges filed by former Radio City bassist John Babich against Executive Board member Jay Schaffner, for revealing what Babich considered to be his private communication to the Executive Board, were dismissed by a vote of 75 to 69. Several older musicians who attended the meeting felt it was the most poorly conducted 802 meeting in the past 30 years.

Amended Charges Disallowed

Babich had submitted amended charges clarifying the circumstances surrounding his charges. Since they cited exactly the same acts, bylaws and charges, they were hardly "new" but, because they were submitted more than 60 days (a time limit imposed by the bylaws) after he learned of Shaffner's action, a question was raised as to whether Babich should be allowed to read them.

In view of the extreme latitude given to all of the other speakers, and since the "amended charges" only involved a few additional words Babich would read in presenting the charges, this issue was hardly a critical one. Nevertheless, lengthy dissertations on the subject were delivered by both the parliamentarian and 802 Counsel Harvey Mars causing a total of nearly 30 minutes to be devoted to this one issue. Almost a third of the meeting's overall time was spent on speeches by the parliamentarian and both Union counsel. As a result of this and the meeting's 5 PM start time, enough members had to leave for work, before the vote was taken, that the outcome could have been affected.

Intrusions By the Chair

Shortly after a motion was made to dismiss the charges, President Landolfi interrupted

the debate to say that "The only issue on the floor is whether or not Schaffner violated confidentiality in the e-mail." This is actually the question an elected committee was to have decided, not the membership meeting! When this statement provoked a "point of order" that the Chair had misstated the motion (which was "to dismiss the charges"), she

Charges Dismissed

ruled the maker of the "point of order" "out of order."

Later in the meeting, after a speaker said that the member to whom Schaffner had divulged the e-mail "was very close to the major employer at Radio City," Landolfi announced that she was "going to allow Counsel Mars to address the fact that . . . it's just been alleged that" (the member referred to) "is a member of management."

This misrepresentation of a speaker's statement and the apparent attempt to interrupt the membership debate with another legal dissertation was particularly disturbing, coming from the Chair of the meeting.

When the subject of the Union's obligation to protect the confidentiality of a member's complaint about an employer's handling of an audition was raised, Landolfi again interjected "Point of order!" "The e-mail was about a member, not about the employer." When reminded that the subject of Babich's e-mail was "the conduct of the auditions" (management's responsibility), Landolfi argued that "the matter of the audition is part of the amended charges, not part of the charges." This remark seemed to reveal the underlying reason that the administration didn't want the amended charges read.

All of these arguments, misstatements and efforts to inject herself into the debate, appeared to violate the necessary impartiality of the Chair at such meetings and to undermine the objectivity of the discussion.

Digressive Arguments

Near the end of the meeting, VP Dennison made a passionate claim that "there is no way that this e-mail is considered confidential," further stating that it contained "insulting allegations" and "slander" against a member. He also reiterated a common theme of his: that "these kind of charges and countercharges and nonsense, in my view, has to stop so we can get on with the business of this Union." It is not clear what time the "Union" spent on these charges other than the less than two hours that this meeting took.

Despite growing concern about losing the quorum before a membership vote could be taken, 802 Counsel Englestein took the floor to speak about the legal dangers of *not* dismissing the charges!

Loose Balloting Procedures

The voting process itself was also a matter of concern as Union reps walked through the more than 130 milling members, passing out handfuls of ballots in an alarmingly haphazard manner. In previous meetings, ballots have been issued at the door as members signed in so that it was clear that each member got one, and only one, ballot.

The sloppy balloting process, the extensive use of the meeting's limited time by both counsels offering lengthy (and obviously pro-dismissal) opinions, and the Chair's repeated injection of herself into the debate were quite frustrating and demoralizing to many of the members who attended the meeting. **MN**

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A Disturbing Pattern

THE recent film meeting at Legacy Studios (See: "Special Film Meeting Held" in this issue) was the latest in an odd pattern of events over the past 3 years. All of these developments involved the idea of eliminating back-end payments to recording musicians.

Video Games Music

A few years ago, 802 Recording Department Supervisor (and Executive Board member) Jay Schaffner appointed a committee which focused on, among other things, video games music. Their recurring theme appeared to be the presumption that requirements for payments to musicians for new uses of the music (back-end payments) were discouraging use of the AFM video game contract and that a contract without a back end could bring in more Union work, particularly in New York.

In late 2006 Schaffner and a few of his committee members attended an International Executive Board (IEB) meeting at which terms for a new AFM video games agreement were to be adopted. Without the approval or knowledge of the 802 Executive Board, Schaffner presented his committee's "no back-end" agreement as a "Local 802 proposal." The RMA had also submitted proposed terms including the customary fees for doubling, overdubbing, etc. as well as for new-use payments. Incredibly, the IEB decided to adopt both agreements.

California Dissidents

At about the same time, in California, a new group of LA musicians, The Committee For a More Responsible Local 47 (formed in

early 2005), began advocating new AFM motion picture agreements which would offer buyout (no back end) deals to producers. Highly hostile to the RMA, this committee has suggested that less busy musicians would get more Union film work if buyout agreements were available and that the Film Musicians Secondary Markets Fund (FMSMF) benefits only about 200 elite musicians who do the bulk of AFM film work. (Actually, about 18,000 AFM members and beneficiaries receive annual checks from the fund.)

With the Fund in place, AFM film work is thriving, compared to sound recording, jingles, live television and other electronic media industries, belying the idea that the FMSMF is a problem. All-time high contributions to the Fund, exceeding \$82,000,000 this year, and the increase in contributions generated by independent films, would seem to indicate that the Fund is working as intended.

Food For Thought

At the recent film meeting, the theme was repeated, once again, that the "back end" (the FMSMF) might be the reason that New York film work declined last year and that important studios have gone out of business.

A few things should be understood before musicians and Union officials start trying to "restore" NY film work by cutting new use.

1). New York was a film music center, only in the early 1930s and in the mid 1990s, when the era of synthesized movie scores ended and there was not enough studio space in LA to handle the resurgence in large film orchestras.

2). Recent swings in annual NY film earnings could be reversed by just one or two movies, more or less, in a year.

3). FMSMF contributions are not triggered unless additional income (beyond theatrical release) is generated by the product.

4). The idea of avoiding FMSMF "paperwork" is misguided since these payments are normally handled by payroll companies and similar payments are required by Writers and Directors Guilds, among others.

Unanswered Questions

Several questions have not been answered and are seldom raised:

1). If the FMSMF is a problem, why is so much film work done under AFM contracts?

2). Why have contributions to the Fund grown so greatly?

3). How would eliminating the Fund bring work to New York?

4). What would happen to film work in New York (and elsewhere) if AFM film-scoring scales were doubled or tripled à la London?

5). Who are the producers who would "gladly" pay double or triple scale up front to avoid FMSMF "bookkeeping"?

6). Why did so much of the work under the new "no back-end" video games agreement go to California musicians?

7). How much of an increase in NY video games sessions occurred since 2006?

8). What efforts are being made by Local 802 to contact producers planning post-production activity to inform them of the 30% State and 5% City tax credits available for film scoring in New York City?

Why, Then?

It's unlikely that Tom Lee or Jay Schaffner have not thought of these things. It is also doubtful that their antipathy toward the Recording Musician's Association is so great that they would permit member support for FMSMF to be undermined to the detriment of both the musicians' interests and the Union's solvency. Still, there must be some reason that this anti back-end idea keeps coming back. **MN**

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