

MEMBERS

NEWSLETTER

Make Every Musician Benefit from Efficient Responsible Service

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DO FACTS MATTER?

Ignoring the Truth

LOCAL 802's officers seem to believe they can say anything they like, no matter how wildly false, while claiming that attempts by others to bring out the truth are "political." Their disregard for facts has taken many forms:

charges against officers. In none of them did the Executive Board (including the current Board) conduct a procedural review of the charges. There is a reason for this. Article V, Section 4(a) (that Dennison refers to) applies only to charges against members. Article V, Section 7 man-

officers are not authorized to prevent the processing of charges against themselves. By intentionally misleading the Executive Board as to the limits of its authority, they have put every Board member at risk of having charges filed against them.

Charges Against Officers

In a letter to member David Finck, about the October 7th Executive Board decision to reject his charges against Jay Schaffner and Mary Landolfi (see: "Records Destroyed" in this issue), Bill Dennison defended the Board's right to perform a procedural review of charges against officers, claiming "It's our view and I think it has long been the interpretation of the Union that all charges are covered by Article V, Section 4." A written opinion from 802 Counsel Harvey Mars reportedly supports Dennison's claim that the Board can throw out charges against officers.

This claim is not only incorrect, it is the opposite of the truth. Between 1980 and September 2008, there have been six instances of

BROADWAY BUYOUTS

FOR several years, 802 Recording Department Supervisor Jay Schaffner has negotiated Broadway Industrial Promotional agreements (BIPA's) under which musicians receive one-time payments for rights to promotional uses of cast album tracks such as TV commercials (jingles), including those used for road companies.

This has been controversial for several reasons. For example, if a show runs for more than a year, the up-front payment could be less than income lost from various uses permitted under the buyout. However, up-front payments made by shows that close within a month or two are likely to far exceed any lost future income.

Other problems cited: Musicians are not consulted, they are excluded from negotiation and ratification, and there are no "end dates" to the uses.

Recently, the League offered to negotiate a new media provision for the Broadway contract, similar to one recently accepted by Actors' Equity. Instead of compensating those who record the tracks, the League will pay a small (1% to 2%) increase in weekly performance scales. Rather than making a written proposal to Local 802, the League just provided a copy of the Equity terms to the Union.

So far, it appears that there is little member support for entering into negotiations in this area before the expiration of the current contract.

dates that charges against officers must be processed differently: by an elected Trial Committee, not by the Executive Board.

Dennison and Mars have access to the bylaws. They should be able to grasp the inescapable theme of Article V, Section 7, i.e.,

was actually presenting the proposal to the IEB that day, without Board approval, they immediately sent a fax to the IEB disavowing it. The minutes of both the 802 Board and the IEB for that date confirm the sending (and receipt) of

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Video Games Agreement

In his October *Allegro* report, Bill Dennison went out of his way to state that "In 2006 (actually under the prior administration) the Local 802 Executive Board asked the AFM to consider a new video game agreement with terms and conditions that more reflect the realities of that business."

Totally false! That Board certainly never "asked" the AFM to consider this cut-rate, "no back-end" agreement. On the contrary, on October 31, 2006, upon learning that Jay Schaffner

Orchestra Endowments and the Financial Crisis

THE current financial crisis has affected the endowments of virtually all U.S. symphony orchestras. The earnings from these endowments and, occasionally, portions of their principal, are used to bolster the orchestras' yearly budgets that also include revenue from ticket sales, city and state funding and yearly corporate and private philanthropic giving.

Recent numbers show a drop in the NY Philharmonic's endowment from \$205 million to \$178 million and the Philadelphia Orchestra's from \$220 million to \$160 million. Philadelphia's CEO James Undercofler has

cancelled a prestigious 2009 European festivals tour for lack of corporate sponsorship, leading to speculation that he is leaving his post after only three years because of trustee disapproval of the cancellation.

In a related development, NY City Opera's intended director, Gerard Mortier, has decided not to take up his position, citing the shortfall in the promised \$60 million budget from its Board. In addition to a smaller \$36 million budget and current \$15 million deficit, the Opera's season has been cancelled because of construction at the State Theatre. **MN**

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Next Issue: **The February Bylaw Meeting**

Records Destroyed

IN our last issue, we reported on a July 21 meeting at Legacy Studios that focused on encouraging more film scoring work in New York. Much information was presented at the meeting, including the facts that: (1) Important large NY recording studios have closed over the past year or so; (2) Fewer film scores were done in NYC last year; and (3) London film scales are 2 to 3 times as high as AFM scales (but new-use back-end payments are not required).

Survey forms had been placed on each chair asking if musicians would consider up-front payments for doubling and new use payments.

Some attendees were appalled that discussions of reducing or eliminating back-end payments were going on with several employers in the room. President Landolfi and Recording Supervisor Jay Schaffner were present and spoke at the meeting, which had ostensibly been called by a group of recording engineers and studio owners. It was later learned that 802 had organized the meeting. Four IEB members were also present.

Change of Direction

At midpoint, the tenor of the discussion shifted from “We have to lower our costs to attract film work” to “How will raising up-front pay bring more low-budget projects to NY?” At that point, many attendees were seen amending their survey answers and it seemed that the survey results might not support cutting the back-end (as was apparently hoped by the meeting’s organizers).

Some musicians were anxious to see the survey results. One of them, prominent bassist David Finck who was upset upon learning (from an article in *International Musician*) that the meeting had actually been organized by Local 802, went to Schaffner to see the survey results. According to Finck, Schaffner first said the survey couldn’t be located, then that they were “useless” because some people filled out

more than one of them. (There was only one survey form on each of the approximately 70 chairs in the room when people arrived.)

Destroying the Evidence

After messages and visits to Schaffner, asking who wrote, authorized and distributed the unsigned survey and what its purpose was, Finck reports that Schaffner said, “I’m not going to tell you.” He eventually directed Finck to President Landolfi who also said the survey was “useless” but would not say who was responsible for it, claiming that her assistant, Joel LeFevre, had already told him. LeFevre later acknowledged to Finck that he had actually destroyed the surveys because, when he “asked around” if anybody needed them, no one responded. He didn’t say whom he asked.

Finck, who is not a member of the Concerned Musicians, MEMBERS Party, RMA or any other association of 802 members, then filed charges against Schaffner and Landolfi for making false statements to him and for permitting or causing 802 records to be destroyed.

Ignoring the Bylaws

These charges were rejected by the 802 Executive Board (which has no authority under the bylaws to reject charges against officers; see: “Ignoring the Truth” in this issue) on the grounds that they were not timely.

All of the charged violations were well within the 60-day statute of limitations for fil-

ing charges against officers but, incredibly, the Board concluded that, because Finck mentioned the July 21 meeting (as background information), his actual charges, based on allegations of making false statements and causing the destruction of the records in August, were time-barred.

Ill-advised as the survey was, once collected, it was the Local’s property and should have been available to 802 members. It looks very much like these officers were hoping for survey results showing member support for buyouts and acted to suppress the actual results. Destruction of this material certainly appears to have been an “act of bad faith.” **MN**

GAYLE DIXON

We are saddened to report that violinist Gayle Dixon, a founding member of the MEMBERS Party and longtime social and community activist, passed away on Sunday, November 23, 2008 due to complications from cancer. Gayle was widely loved and respected by her friends and colleagues.

In addition to her extensive performing and recording career, Gayle served the membership of Local 802 for almost a decade, first as the Clerk of the Trial Board (1985–86) and then for six years on the Executive Board (1987–93).

We mourn her loss and we will miss her greatly.

— Local 802 Dodges a Bullet —

During discussions held in the absence of a quorum for Local 802’s October 22 bylaw meeting, Financial VP Jay Blumenthal and Controller Ira Goldman had some surprising good news. They reported that, in September of this year, much of 802’s capital was moved into T-Bills and other fixed-income instruments in preparation for transferring the funds to a new financial advisor. As an unintended but gratifying result, the severe market decline over the past months has had a greatly reduced impact on Local 802’s assets.

Talking Back

IN recent years, many of the letters received by *Allegro* have been political in one way or another, some supportive and some critical of the administration. Quite often, critical letters which are published are accompanied by administration responses. Although some members feel that responses are an unfair use of incumbent power, there are cases in which they can be appropriate. For example, if letter-writers have misstated or misunderstood a fact or an event, a clarification is useful.

Still, there are two aspects of the current administration’s approach to responding to letters that we believe are abuses of this prerogative. The following is based on our view of the proper use of this power:

1. Responses should not be as long (or longer than) the letter. This section is set aside

for members to express their views, not for officers to write new “articles” attacking the writer or the writer’s ideas.

2. It is one thing for a general article to be unattributed (there is, after all, an Editorial Board to take responsibility for such articles). It is quite another thing for a “response” to a letter to raise arguments with the writer and be yet attributed only to “the Administration.” There are 21 people in 802’s “Administration” and, if a member writes about something an officer has written, a response should be made by that officer.

Allegro is not a political entity like the MEMBERS Party or the Concerned Musicians. We believe that anonymous responses to *Allegro* letters should not challenge the ideas of members who write in. Such arguments should be reserved for signed articles.

The incumbents’ power to control the content of *Allegro* is quite enough without their misuse of the “Musicians’ Voice” pages. **MN**

MEMBERS NEWSLETTER

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As we reported earlier this year, widespread member dissatisfaction with Recording Department Supervisor Jay Schaffner's repeated violation of the terms of the Limited Pressing Agreement (LPA), in allowing cast albums to be recorded at LPA rates despite the agreement's clear prohibition of its use for that purpose, led to a July 6, 2007 meeting where this issue was discussed at length.

There was virtually unanimous opposition to the use of the LPA for cast albums of any kind, and to the 802 Recording Department's history of encouraging employers to utilize the greatly reduced standards of that agreement. A typical cast album recorded under the LPA can pay less than one-third of the AFM's Sound Recording Labor Agreement (SRLA) rates and these sessions do not generate Special Payments credits for the musicians. After the discussion, President Landolfi announced that she would appoint a committee to study the problem and recommend a solution.

Limited Pressing Committee?

Although it was ostensibly assembled to find a way to accommodate Off-Broadway cast albums in some way other than using the LPA, the new committee was somewhat inappropriately named the "Limited Pressing Committee."

Landolfi appointed Schaffner to chair the committee and many months passed before the committee members actually met. Once the meetings actually began, Schaffner argued for continued use of the LPA and opposed including Special Payments credits for Off-Broadway cast albums, claiming that the RMA would object to such credits. Committee members Jennifer Holt and Tino Gagliardi labored for several months to develop workable alternatives. In consideration of Schaffner's view-

point, the committee's proposal to the 802 Executive Board offered three options, one of which included modifying the LPA to permit its use for some Off-Broadway cast albums.

The Result

Many months after the committee's recommendations were accepted by the 802 Executive Board, a notice in the November 2008 *Allegro* announced IEB approval of an amendment to the LPA that would permit cast albums for Off-Broadway shows, including those for NYC League of Resident Theatres (LORT) productions, to be recorded under that agreement. This was not what the committee had recommended and the notice was greeted with shock and anger among theatre musicians who read it.

Error Acknowledged

It was learned shortly thereafter, however, that the notice was incorrect and that Tony-eligible, high-budget or high-ticket-priced Off-Broadway productions will *not* be permitted to use the LPA for cast albums. Although this news will be a relief to musicians, thousands of copies of the erroneous information were circulated in *Allegro* and many employers will have seen it.

Although many Off-Broadway cast albums will still be recorded under the LPA, changes in that agreement's working conditions (referencing provisions in the SRLA) will help to increase musicians' overall pay and a provision for a bump-up to SRLA standards (presumably including Special Payments credit), if a production is upgraded to Broadway or Tony eligibility, will be a welcome improvement in musicians' compensation for Off-Broadway albums. **MN**



RMA and AFM-IEB Meet in LA

On Wednesday and Thursday, October 22 and 23, 2008, the leadership of the Recording Musicians Association, and the AFM's International Executive Board (IEB), met in Los Angeles. The meetings were described by the RMA International as cordial, frank, and freewheeling.

IEB participants were AFM President Tom Lee, International Vice President Harold Bradley, Vice President from Canada Bill Skolnik, Secretary-Treasurer Sam Folio, and Executive Officers Ray Hair, Billy Linneman, Bob McGrew, Joe Parente and Erwin Price.

RMA International President Phil Ayling, First Vice President Bruce Bouton, Secretary Marc Sazer, Treasurer Greg Jamrok, Executive Officer Lee Levin and Executive Officer and Nashville RMA President Dave Pomeroy represented the RMA International Board.

Joining them were officers and representatives of various RMA chapters. From New York, Juliet Haffner and Tino Gagliardi; RMA Florida President Dan Warner; from Nashville, Tom Wild; and from Los Angeles, Pete Anthony (RMALA President), Mark Graham, Jennie Hansen, Jay Rosen, Sue Ranney, Sarah Thornblade, Neil Stubenhaus and Jen Kuhn.

All discussions were "off the record" and no joint statement is planned at this time. Before adjourning there was a commitment made to schedule an additional meeting between Federation and RMA representatives at the earliest mutually convenient time.

Although no such meeting has been scheduled to date, the RMA and its chapters are hopeful that progress can be made between the parties and will be proceeding on an optimistic basis. **MN**

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Going Public

IN September, President Landolfi informed theatre musicians that the League had approached 802 about a new media clause in the Broadway contract, similar to one recently negotiated with Actors' Equity.

Landolfi gave out a summary of the Equity deal, which included unlimited capture (in HD Video) of rehearsals and/or performances (including entire performances) and unrestricted promotional use of that material worldwide in perpetuity. In return, the League gave Broadway actors a 1% salary increase, rising to 1.5% and 2% in the second and third contract years.

Although there had been no "formal" proposal to 802, Landolfi asked if theatre musicians would favor negotiation of an Equity-type media deal. The general response has been that musicians would be willing to consider a media proposal if one were offered.

The proposal that Landolfi received at a meeting with League representatives was the same Equity summary that musicians had already seen. However, she was able to communicate to the League that the Equity deal would not work for musicians without some alterations to address differences between the needs of actors and musicians. She later said that the ball was now in the League's court.

Then came the November President's Report in *Allegro*.

Lecturing Members

In her report on the possible media deal, Landolfi implied that those theatre musicians who had opposed the idea had acted in a "fool-hardy" manner and had rendered a "knee jerk" negative response to the idea. She also implied that they had reacted "in anger, or perhaps fear, rather than reason."

She said that 802 was divided into two camps, one that viewed the idea "with suspicion" and another that had "reacted more positively," when in fact the majority of musicians appeared to be in one camp — the "wait-for-a-proposal" camp.

One troubling part of her report was her statement: "I find myself more in agreement with

the latter group." With this she appeared to signal that 802's president supports management's idea. There is nothing wrong with a Union officer having a different opinion or arguing with members' views but, making such statements in a published journal rather than through in-person discussions with musicians, risks compromising the Union's negotiating position. **MN**

Ignoring the Truth

(continued from page 1)

the fax. The IEB minutes state: "President Lee advised that a fax had been received from the Executive Board of Local 802, NY, NY, advising that the video game agreement proposal previously presented by Recording Supervisor Schaffner had not yet been reviewed and approved by Local 802's Executive Board."

Correction Sought

On this October 14, members of the 2006 Executive Board visited the current Board to convey their concern about being accused of seeking this agreement (which had greatly aggravated the conflict between the AFM and the RMA). They presented the relevant minutes and expressed their expectation that a correction would be printed in *Allegro*. However, without addressing the evidence, Dennison insisted that he meant what he wrote in his report, while the rest of the Board simply sat silently. No correction was printed.

Equally false was a response to a letter on this issue, published in the November *Allegro*, in which an anonymous spokesperson for "the Administration" made the false claim that the 2006 Board "voiced no objection" to the video game proposal "until the eve of the 2006 Local 802 elections..." As documented above, objection was certainly "voiced" on the very day the proposal was made!

RMA Input?

In her October president's report, Mary Landolfi questioned RMA objections to actions of the AFM Finance Committee at the '07 Convention, claiming "the RMA had the same access to the Finance Committee" as did other player conferences. On November 18, Executive Board member Andy Schwartz brought the 802 Board a copy of a letter sent to Landolfi a month earlier by Portland Symphony ICSOM Delegate Fred Sautter who served with Landolfi on that Finance Committee.

In his letter (to which Landolfi had not responded), Sautter pointed out that, although the RMA did have access to the pre-convention committee which was charged with recommending a financial plan to the Convention, that committee's report was never submitted to the AFM Finance Committee.

He also reminded Landolfi that, at the Finance Committee meeting, AFM Counsel Jeff Freund summarily cut off RMA representative Phil Ayling before he could make his presentation. Sautter concluded: "Equal access is likely not the case." When Schwartz presented the letter (which Sautter had sent to him) to the Board, a harsh tirade ensued, devoted entirely to attacking Schwartz, with no consideration at all given to examining the facts.

It seems clear that, whatever the Concerned Musicians leadership is concerned about, it is not the truth. **MN**

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