

Material Available from ICSOM Legal Counsel

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Over the years a number of decisions, rulings, and statutes have had a significant impact on symphony, opera and ballet musicians throughout the US and Canada. Many of these continue to affect the membership of ICSOM, ROPA, and OCSM. It is not possible to include all of the pertinent documents in the ICSOM *Delegate Manual*. Copies of rulings and statutes can be obtained from ICSOM legal counsel.

Contract Language

“St. Louis” Clause. This provision modifies the standard union security clause (the provision which requires all musicians in an orchestra, in a non-right-to-work state, to join or pay the equivalent of dues to the Union). It requires each musician to pay, in addition to regular union dues (general and work dues), orchestra dues, and ICSOM or ROPA dues, as a condition of employment. Before these clauses became wide-spread, their legality was challenged before the National Labor Relations Board at least three times. In every case, the NLRB decision upheld the legality of this provision.

Peer Review. A unique contract procedure for deciding non-renewal cases exists in many forms and variations in some 65 orchestra contracts in the US and Canada. This procedure gives a peer review committee, composed of musicians in the orchestra, to have significant input to such decisions. In many cases the committee has “final and binding” authority, but the language of such provisions must be carefully drawn. Any orchestra negotiating such a procedure, or seeking to modify its current language, should check with ICSOM legal counsel.

Court Decisions

A number of court decisions, including some from the US Supreme Court, have had profound implications for classical musicians.

Home Practice Studio Case. In 1983, the case of the tax deduction taken by a group of Metropolitan Opera Orchestra musicians for their home practice studio was decided by the US Supreme Court in favor of the musicians, allowing musicians everywhere to claim a deduction for rooms at home in which they practice. A few years later, the same court seemed to overrule its decision in a slightly different case involving another professional, thus effectively ending that deduction. A few years later, however, a federal district court in California ruled in favor of a musician, and based its decision on the Supreme Court’s decision in the Met Opera case, which it found had not been overruled.

The Violin Bow Tax Deduction. A few years ago, a courageous violinist in the New York Philharmonic took a tax deduction for the depreciation of a very expensive bow. When the deduction was denied by IRS, he personally took them on in court. After spending thousands of his own dollars in legal fees, and achieving success in convincing a district court judge that it was a legitimate deduction, musicians in many orchestras and in Local 802 in New York raised enough money to almost fully reimburse him for those legal fees.

Alabama Symphony Bankruptcy. One of the earliest bankruptcy cases under the then-new Bankruptcy Code involved the Alabama Symphony. Specifically, it involved the interpretation of the new statutory procedure for an employer to seek to have the court reject the collective bargaining agreement. The law created by that decision remains a solid and important precedent for orchestras, and other employers and unions, today.

Louisville Symphony Bankruptcy. In December 2010, the Louisville Symphony filed for bankruptcy. The Bankruptcy Court rejected the employer's claim that it needed to set aside the collective bargaining agreement. As of the time of this update, the case is still ongoing.

Federal Statutes

Certain federal statutes have a direct and immediate impact on the symphonic workplace, thereby requiring all musicians to understand them and, of course, to be in compliance.

Drug-Free Workplace Act. This federal statute applies to any organization or employer which receives federal grants, and therefore applies to most orchestras. As its name implies, it requires the organization to develop, publish, and enforce policies and procedures for assuring the absence of illegal drugs in the workplace.

Family Medical Leave Act. This statute grants employees of certain employers the right to take unpaid leave for up to 12 weeks to care for emergency family situations. These types of emergencies can range from pregnancies to serious illnesses or accidents. It is unclear as to whether or not this Act applies to symphony, opera and ballet musicians, but many orchestras have voluntarily incorporated the statute into their collective bargaining agreements.

Genetic Information Nondiscrimination Act of 2008 (GINA). This federal statute prohibits discrimination in employment and in group health care plans based on genetic information.

Patient Protection and Affordable Care Act (PPACA). This federal statute is a comprehensive health care reform law that imposes many requirements on group health plans and plans in the individual market. The law is complicated, but in general, it prohibits discrimination on the basis of preexisting conditions for children under 19, requires plans to cover dependents through age 26, abolishes lifetime limits on essential health services and gradually eliminates annual limits for essential health services and for some plans, requires plans to cover preventive care at no cost, requires that plans cover out-of-network emergency services on the same basis as in-network emergency services, requires choice of primary care provider and eliminates any requirement for referrals for ob-gyn services.

Sexual Harassment and Other Employment Discrimination. These statutes have as much applicability to the not-for-profit symphonic workplace as they do to the private, for-profit sector. Employers are required to formulate and distribute to all employees a written statement of policy on sexual harassment, providing a general definition of prohibited conduct and describing the procedure to be followed if an employee believes he or she is being victimized.

Immigration

The AFM has been granted significant input by the relatively recent immigration laws when the issue involves foreign orchestras or musicians entering and performing in the U.S. For questions about the procedure, and for the criteria for immigration, contact ICSOM legal counsel.