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An Intolerable Situation in San Antonio

By Mary Ellen Goree, Negotiating Committee Chair, San Antonio Symphony

As all of ICSOM knows, the musicians of the San Antonio Symphony have been on an unfair labor practice strike since September 27, following management's unilateral declaration of impasse and imposition of intolerable terms on September 26.

During the summer of 2020, the musicians met with our management and board to negotiate drastic, pandemic-related modifications to our CBA for the 2020-2021 season only. In addition to a significant reduction in weeks and weekly salary, a clause was included allowing either side to request before January 15, 2021 to renegotiate the final year of the contract (2021-22), specifically due to the uncertainties of the pandemic. This reopener also included a requirement that we engage in Interest-Based Bargaining (IBB) through at least May 31, 2021 before either side could request a return to traditional bargaining.

The request to use IBB came from management, and everyone involved went through IBB training with FMCS facilitators in February 2021.

Negotiations for our third year reopener started slowly, partly because the musicians also requested to reopen our 2020-21 season Memorandum of Agreement after the Symphony Society of San Antonio (SSSA) received its second PPP loan, but also because the required IBB process was excruciatingly cumbersome. The MOA negotiations ended with no satisfaction to the musicians. We found the IBB process to be ineffective, and we did not have a positive experience with the FMCS mediators assigned to us. The musicians requested a return to traditional bargaining at the beginning of summer 2021.

It was only then that we finally understood what we were up against. Because the IBB process did not allow for any open discussion of proposals, we did not receive the SSSA's first proposal until the summer. It was jaw-dropping. Management's first proposal included a 50% pay cut (to just over \$17,000 base pay) for all 72 musicians. But they also presented an alternative proposal, with slightly higher pay, if we were willing to toss many of our colleagues under the bus by converting them to "B" contract players.

The ensuing negotiating sessions were frustrating and unproductive. On September 3, the musicians offered a proposal that would have included a 17% pay cut, including four new furlough weeks, along with a joint musician-management fundraising initiative. This was rejected out of hand. Management responded by issuing a "last, best, and final" offer (LBFO) that would

have created a core of 42 musicians with "A" contracts (\$24,000 base pay plus benefits) and a second class of 26 musicians with "B" contracts (\$11,250 guaranteed minimum, no health insurance, no benefits). Four currently vacant positions would be eliminated. The committee brought the LBFO to our colleagues for a vote, and it was unanimously rejected.

On September 26, management declared impasse and imposed the terms contained in the LBFO. Because management's declaration of impasse was unlawful—we were still willing to negotiate—and because we could not possibly work under those conditions, the musicians called an unfair labor practice strike on September 27.

It had become increasingly clear through the course of negotiations that our management was using the reopener

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A rally for the musicians of the San Antonio Symphony begins with a trumpet fanfare. The musicians have been on strike since September 27.

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Chairperson's Report

By Meredith Snow

A Pandemic in Review

We are just a few months shy of two years since the March 2020 pandemic shutdown. The SARS-CoV-2 virus and its variants are still with us but our orchestras have shown remarkable agility and resilience in the face of what could have been an industry-wide catastrophe.

The closures of our performance spaces were often mandated by state and county decree, but by mid-March of 2020, our orchestras were shut down across the country. At that point, we had no idea if we would be out for weeks or months. It quickly became clear that we would be negotiating temporary salary reductions. A few managements implemented force majeure. By the end of March, the passage of the Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act provided the first Paycheck Protection Program (PPP) money. Along with the continued support of our donors and the quickly negotiated COVID side-letter to our Integrated Media Agreement (IMA), we were ready for the next phase.

The spring months saw a flood of inventive and engaging online projects. Several orchestras were involved in airflow and aerosol risk assessment studies. ICSOM Counsel Kevin Case and Symphonic Services stayed busy issuing safety and negotiating guidance.

By July, a few orchestras had already ventured back into their halls to capture music for streaming—distanced with masks, lots of Plexiglas, and no audience. Houston and Dallas were among the first to retake the stage.

The spring also brought the cancellation of summer seasons for the vast majority of our orchestras. By now, most of our orchestras had cobbled together some sort of economic compromise, even if the pay was meager.

ICSOM held its first online conference in July where we saw a number of the virtual projects our orchestras had created, and we heard from Anthony McGill (New York Philharmonic) and Demarre McGill (Seattle Symphony) on using music and social media to highlight activism and race equity in our orchestras. A panel on workplace safety, led by Kevin Case, included Dr. Adam Schwalje; Dr. Carlos del Rio; and Larry Rick, PA-C.

By early fall, a handful of orchestras began performing indoors for live audiences. Dallas, Fort Worth, Houston, Kansas City, Detroit, Columbus, Florida, and Utah were among those open for business. On December 11, 2020, the FDA approved the Pfizer-BioNTech COVID-19 vaccine under emergency use authorization. The sense of relief made one almost giddy—it felt like the end was in sight.

Of course, none of this happened in a vacuum. The Biden/Harris ticket won the presidential election in November and the seeds of the Insurrection and The Big Lie were planted. Throughout the pandemic, we witnessed the devastating

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Diane Alarcon Photography



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Governing Board

Meredith Snow, Chairperson
Los Angeles Philharmonic
13610 Emelita Street
Van Nuys, CA 91401
818-786-3776
meredsnow@gmail.com

Paul Austin, President
Grand Rapids Symphony
561 Madison Avenue SE
Grand Rapids, MI 49503
616-304-0869
austinpaul@gmail.com

Laura Ross, Secretary
Nashville Symphony
1609 Tammany Drive
Nashville, TN 37206
615-227-2379 • Fax 615-259-9140
lar2vln@comcast.net

Mike Muszynski, Senza Sordino Editor
Indianapolis Symphony Orchestra
450 E Ohio Street, Apt. 114
Indianapolis, IN 46204
224-558-0342
mmuszynski@gmail.com

Peter de Boor, Treasurer
Kennedy Center Opera House Orchestra
431 North Kenmore Street
Arlington, VA 22201
703-465-9157 • Fax 866-832-7838
pdeboor@gmail.com

Keith Carrick, Member at Large
Utah Symphony
1529 E Parkway Avenue
Salt Lake City, UT 84106
301-639-6614
keith.carrick@gmail.com

Alberto Suarez, Member at Large
Kansas City Symphony
3001 NW 59th Street
Kansas City, MO 64151
305-338-5411
albertsuarez@gmail.com

Daniel Sweeley, Member at Large
Buffalo Philharmonic Orchestra
30 Lakeside Court
West Seneca, NY 14224
716-553-9200
sweeleydan@gmail.com

Kenneth Thompkins, Member at Large
Detroit Symphony Orchestra
1199 Trevino Drive
Troy, MI 48085
248-828-3463
thompkinsken@gmail.com

Kevin Case, ICSOM General Counsel
Case Arts Law LLC
53 W. Jackson Blvd., Suite 209
Chicago, IL 60604
312-234-9926 • Fax 312-962-4908
kcase@caseartslaw.com

Subscriptions: \$10 per year, payable to *Senza Sordino*,
c/o Peter de Boor, Treasurer, 431 North Kenmore Street, Arlington, VA 22201.
Report delivery-related problems to Mike Muszynski, Editor, 450 E Ohio
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Remembering Michael Morgan (1957-2021)

By Kenneth Thompkins, ICSOM Member-at-large

Michael Morgan, the music director of the Oakland Symphony, died on August 20, 2021, at the age of 63. His death was caused by complications from a kidney transplant that he had received the previous May. When I think about Michael, I am astonished to realize how he has affected me despite the fact that we were really just acquaintances.

I, along with many other Black Americans, read a profile of Michael in a 1989 article in *Ebony* Magazine titled “The Mae-

stros: Black Symphony Conductors are making a name for themselves.” This article also featured profiles of James DePriest, Paul Freeman, Leslie Dunner, Tania León, and other notable Black conductors. In this brief profile Michael said, “Each generation of conductors paves the way for the next.” This is historically true, but Michael’s gift to us was that he inspired, influenced, and mentored

classical musicians of color for over thirty years.

I first became aware of Michael when he was an assistant conductor for the Chicago Symphony Orchestra from 1986 to 1993. At that time, I was a student at Northwestern University, and I attended Chicago Symphony Orchestra concerts frequently. I was in the audience in May 1987 when Michael stepped in for an ailing Georg Solti to conduct *Ein Heldenleben* and *The Rite of Spring* without rehearsal time with the orchestra. It was always thrilling to hear the CSO perform, but this occasion was unique and special. This was the classic “a star is born” moment that many of us have read about but rarely witness. Michael conducted the orchestra with assuredness, musicality, and a sense of purpose. It was a fabulous evening of music, and the sense of relief from the podium at the conclusion of the concert was palpable throughout the hall. For me it was especially gratifying and encouraging to see someone who looked like me performing at the highest level with one of the finest orchestras in the world.

Michael became the music director of the Oakland Symphony in 1991 and remained in this position until his death. He thoroughly enjoyed being ensconced in the Oakland community, frequently collaborating with local organizations to create an inclusive environment. The annual “Let Us Break Bread Together” concert featured a diverse array of musical styles featuring local musicians. The goal of creation of community through music was present throughout his tenure in Oakland. Michael said in a 2021 *The Oaklandside* interview, “Our primary question is ‘who’s not here?’ And we look around the room, and see who is not there.” He also stated in a 2013 *San Francisco Chronicle* interview, “To me, the notion of community building—of pulling various groups of people together—is at least as important as the music an orchestra plays.”

This outward look towards Michael’s community also led to Oakland Symphony’s educational programs, including



Michael Morgan (1957-2021)

Music for Excellence (MUSE). The MUSE program sponsored school visits by Oakland Symphony musicians as well as music lessons. While he thoroughly enjoyed working with young musicians, he was open-minded about music education’s role. In a 2013 *SFGATE* article he said, “I always say that the goal is not necessarily to train kids to be musicians . . . but if you talk to leaders of industry, many of them learned how to play instruments, and it does rub off on you. You learn how to learn things.”

Michael embraced the role of the orchestra as a reflection of its community, saying in a 2016 *San Francisco Chronicle* interview, “In Oakland, we’re very conscious of social justice issues . . . Oakland has always been about, and continues to be about, social change.” Many years prior to the current movement towards Diversity, Equity, and Inclusion in orchestras, Michael was regularly programming music of diverse composers, affirming that diversity uplifts and expands the canon of orchestral repertoire.

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Counsel's Column

By Kevin Case

Vaccination Policies: A Legal Morass Deepens

In my article for the March 2021 issue of *Senza Sordino*, “Immunizing Our Orchestras: Vaccine Mandates and the Law”, I discussed what appeared to be the thorniest issues at the time regarding mandatory vaccination policies in the workplace: whether such policies needed to be bargained; whether the Emergency Use Authorization (EUA) status of vaccines at that time afforded employees an exception; the medical or religious exemption and accommodation process; and the possibility that states might prohibit such policies in private employment. Some of those issues have been resolved; for example, the vast majority of union employers have indeed treated this as a bargaining issue, and EUA is now a moot point given full FDA approval for the three vaccines currently in use in the U.S.



Mike Korman

But as the topic of COVID-19 vaccination becomes evermore politicized, new issues have arisen. When I wrote that litigation on the question of religious exemptions in particular was “virtually guaranteed,” I should have broadened the scope of that prediction. Legal battles are erupting on all fronts. Here are some of the latest developments, some of which may be superseded by current events by the time this goes to print.

The OSHA Rule and Its Relevance

On November 5, the Occupational Safety and Health Administration (OSHA), at the direction of the Biden administration, issued its long-awaited vaccination rule in the form of an Emergency Temporary Standard (ETS). Despite the media coverage continually referring to it as such, it is important to note that this is not actually a “vaccine mandate.” The ETS requires that employers with more than 100 employees either adopt a mandatory vaccination policy (subject to the usual medical and religious exemptions) or require employees to be tested for SARS-CoV-2 at least once per week and be masked. It would be just as accurate—actually, more so—to describe the ETS as a testing-and-masking mandate, with exceptions for those who are vaccinated.

Predictably, lawsuits were immediately filed to stop implementation of the ETS. First to weigh in was the Fifth Circuit Court of Appeals, a conservative federal appellate court that hears cases from Texas, Mississippi, and Louisiana. A three-judge panel, two appointed by Donald Trump and the third by Ronald Reagan, issued a “stay” the very day after the ETS was issued, thus preventing it from going into effect.

On November 12, the same court reaffirmed its stay in a 22-page opinion that was striking in both its hostility towards the rule and its use of many of the same talking points we see in

conservative media outlets. *Bst Holdings, LLC v. OSHA*, No. 21-60845 (5th Cir. Nov. 12, 2021). In the judges’ view, the ETS is a “sledgehammer” that will “decimate [employers’] workforces (and business prospects).” The court speculated that the “true purpose” of the rule “is not to enhance workplace safety, but instead to ramp up vaccine uptake by any means necessary”; and at one point, the court even questioned whether “COVID-19 poses any significant danger to workers to begin with.” (However one feels about the ETS, downplaying the risk of a pandemic that has killed nearly 800,000 Americans is not a persuasive argument.) Mischaracterizing the ETS entirely, the court falsely stated that it forces workers to choose “between their job(s) and their jab(s),” completely ignoring that there is a testing/masking option for those who don’t want to make that choice. That a federal appeals court would make such a blatantly misleading statement is truly astonishing.

Since then, faced with lawsuits in all federal circuits, an obscure judicial “lottery” procedure resulted in reassignment of the case to the Sixth Circuit. The Sixth Circuit, which also leans conservative (but not as much as the Fifth Circuit), will now consider the merits of the ETS and determine whether it is a lawful exercise of federal authority. Regardless of the outcome, one hopes the court will be more measured in its analysis. Ultimately, the Supreme Court will likely have the final word.

When it comes to ICSOM orchestras, however, the validity or invalidity of the OSHA ETS is unlikely to make much of a difference. The majority of ICSOM orchestras already have bargained mandatory vaccination policies, most without a general testing alternative (though that alternative may be employed as an accommodation for a medical or religious exemption). Those that don’t maintain mandatory vaccination policies require testing for unvaccinated musicians.

This raises a question, though: if the OSHA ETS rule provides for either mandatory vaccination or mandatory masking and testing, why are most orchestras going beyond that and requiring vaccination for all musicians? After all, the ETS represents a pronouncement from the federal agency responsible for ensuring workplace safety, in an administration that is clearly committed to protecting workers during the pandemic. Why do more?

The answer, I believe, lies with the unique nature of the orchestral workplace. Half the musicians not only cannot wear masks, but research has shown that many of their instruments have the potential to emit aerosols at enhanced levels. Distancing and the use of smaller ensembles—the preferred solution last year—is not economically feasible on a long-term basis. So, up to 100 people are gathered together in close quarters for hours at a time, half of whom can’t wear masks and may have no choice but to emit potentially harmful amounts of aerosols, while their unmasked colleagues also take in great gulps of air containing those very same aerosols. When it comes to airborne infectious diseases, it would not be a stretch to consider an orchestra to be a high-risk workplace.

The OSHA ETS is relevant to our orchestras in one respect, however: musicians who apply and are approved for medical or religious exemptions, and seek an accommodation that

permits them to perform on stage, can point to the rule to support an argument that masking and testing sufficiently minimizes the risk to others. (More on that below.)

Legality of Mandatory Vaccination Policies for Private Employers

The first case to directly challenge the legality of a mandatory vaccination policy in private employment was filed in federal court by a group of nurses and other employees at Houston Methodist Hospital. In a succinct ruling denying a preliminary injunction against the policy, the judge concluded that the workers “can freely choose to accept or refuse a COVID-19 vaccine”; and if the choice is to refuse, they “will simply need to work somewhere else.” *Bridges v. Houston Methodist Hosp.*, No. Civil Action H-21-1774 (S.D. Tex. June 12, 2021).

Dozens of cases have been filed since. Nearly all reached the same result: where the policy at issue arose in the context of private employment, the courts denied the requested injunctions. See, e.g., *Smith v. Biden*, No. 1:21-cv-19457 (D.N.J. Nov. 8, 2021) (citing relevant cases). Where injunctions have been granted, the policies at issue affected public employees—i.e., government workers—and failed to provide for religious exemptions; and even then, some of those injunctions have been vacated on appeal. See, e.g., *We the Patriots USA, Inc., v. Hochul*, No. 21-2179 (2d Cir. Nov. 4, 2021).

Separately, a Biden administration rule requiring vaccination of healthcare workers whose employers receive Medicare or Medicaid funds was recently stayed. See *Commonwealth v. Biden*, No. 3:21-cv-00055-GFVT (E.D. Ky. Nov. 30, 2021). Such cases have no relevance to the issue of whether private employers can maintain vaccination policies; rather, as with the ETS rule, these cases turn on whether the federal government has the power to impose such policies.

For private-employment policies, most of the courts denying injunctions (and many legal scholars) have discussed the Supreme Court’s 1905 decision in *Jacobson v. Massachusetts*, 197 U.S. 11, in which the city of Cambridge, Massachusetts, implemented regulations requiring residents to be vaccinated against smallpox. Jacobson refused and was ordered to pay a \$5 fine. On appeal, the Supreme Court held that the regulation was lawful.

The case is not squarely on point because it deals with a State’s power to require vaccinations—not that of a private employer, which has far more authority to require vaccinations as a condition of employment, or the federal government, which has more limited powers. But the Court’s reasoning has proved persuasive to courts considering workplace vaccine mandates. It also is instructive because the arguments made by Jacobson, and the Court’s rejection of those arguments, are virtually identical to what we encounter daily on cable news and social media networks.

For example, Jacobson insisted “that his liberty [was] invaded,” citing “the inherent right of every freeman to care for his own body and health in such way as to him seems best.” Justice Harlan, writing for the Court, disagreed: “the liberty secured by the Constitution . . . does not import an absolute right in each person to be, at all times and in all circumstances,

wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members.”

Justice Harlan declined to frame the debate as a choice between private liberty and common good; rather, he found the principle of “the common good” to be an essential component of liberty itself: “Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others.” As one federal district court summarized *Jacobson*: “Actual liberty for all of us cannot exist where individual liberties override potential injury done to others.” *Beckerich v. St. Elizabeth Med. Ctr.*, No. 21-105-DLB-EBA (E.D. Ky. Sept. 24, 2021).

Today, the increasingly angry debate over COVID-19 vaccination mirrors those very same arguments regarding individual liberty (the right to choose what we do with our own bodies) vs. the need to protect the common good (to keep others healthy, and to hasten the end of the pandemic). Is individual liberty paramount? Or do we, as citizens of a free society, have a responsibility to protect other free citizens from the consequences of our own exercise of liberty?

The debate is playing out in real time as GOP governors and legislatures in states like Florida and Texas issue executive orders or enact legislation prohibiting employees from maintaining mandatory vaccination policies. A recent Florida law imposes fines of up to \$50,000 per employee for businesses with vaccine mandates, unless exemptions are provided not only for health or religious concerns, but for a prior COVID-19 infection or “anticipated future pregnancy” (whatever that means); employees may also choose either periodic testing or wearing a mask in lieu of getting vaccinated.

Whether any of these laws or orders are legally enforceable is unclear. Generally, under the Supremacy Clause of the Constitution, federal laws preempt conflicting state laws; the federal OSHA ETS, therefore, should override these state laws and executive orders. But as discussed above, the federal rule is being challenged, and it remains to be seen whether it will survive. Again, the power afforded to the Federal government is not the same as that afforded to the States, which was clearly established in *Jacobson*; the federal government possesses only those powers specifically afforded by the Constitution. Whether the power to require vaccinations in private employment is one such power is hotly debated. All of this will be tied up in the courts for months, if not years.

As a result, employers with mandatory vaccination policies in certain states face a myriad of conflicting laws, executive orders, and regulations, with no clear answer as to what is actually “legal.” Some large corporations, including United Airlines and Southwest Airlines in Texas, have maintained their policies in the face of state action prohibiting them; but others, like Disney in Florida, have suspended their policies in light of the legal uncertainty. For now, the U.S. Chamber of Commerce is urging employers to comply with the OSHA ETS.

Some ICSOM orchestras may therefore find themselves with policies that on their face violate a state law or executive

Legal Morass continued from page 5

order, but that still may be deemed lawful at the end of the day. The good news is that it is the employer, not the orchestra committee or the union, who is primarily responsible for ensuring that its policies comply with the law. Management will need to consult its lawyers. As a practical matter, though, it would be a good idea to at least start the conversation with management if your orchestra is in one of these states.

Developments Regarding Exemptions

In my March 2021 *Senza* article, I discussed the legal landscape as it applies to employees seeking medical exemptions (under the Americans with Disabilities Act) or religious exemptions (under Title VII of the Civil Rights Act of 1964) to employer vaccine mandates. Nothing has changed in terms of the applicable legal standards: employers who approve an exemption must engage in the interactive process of reasonable accommodation, and can deny any accommodation that imposes undue hardship on the employer or creates a significant risk of substantial harm to others in the workplace.

But now we have the benefit of experience and have seen how orchestral employers are handling these exemption requests. The general approach, with some exceptions, seems to be two-fold: the employers are not questioning the legitimacy of the exemption requests, but they often deny an accommodation that would permit the unvaccinated musician to perform with the orchestra on stage on grounds that doing so represents a health risk to the other musicians (and thus undue hardship).

That suggests a belief among employers that they are on solid legal ground in denying an accommodation for safety reasons, as opposed to questioning the validity of the exemption request itself. They may have grounds for the latter, given that most medical experts agree that medical conditions that would prevent someone from getting vaccinated are incredibly rare, and that no major religion has advised its adherents to avoid vaccination.

But given the extremely broad legal definition of sincerely held religious beliefs—“moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views”—employers have shied away from objecting to the sincerity of religious exemption requests. But they are far less hesitant to deny accommodations. That is because, as I discussed in previously in *Senza Sordino*, the threshold for an employer to show “undue hardship” in the case of a religious exemption is far lower than in the case of a medical exemption. Following the Supreme Court’s 1977 decision in *TWA v. Hardison*, 432 U.S. 63, any hardship to the employer that is more than *de minimis* (the fancy legal term for “minimal”) is sufficient for an employer to deny a requested accommodation.

Recently, the EEOC confirmed that standard and also made clear that an increased safety risk can constitute “undue hardship” (see inset, right).

That standard will be challenged, and *TWA* may well be overruled by a Supreme Court that is now far more conservative than in 1977 and far more committed to protecting the free exercise of religion. But for now, the *de minimis* standard

for undue hardship is still the law, and employers are entitled to rely on it.

As noted earlier, though, exempt employees seeking accommodation may try to point to the OSHA ETS to support their request. Because the rule provides a testing-and-masking alternative to vaccination, an employee could argue that the federal agency with expertise in workplace safety has declared that alternative to be safe. That may provide an opening for an exempt string or percussion player—who can be masked at all times—to argue that they should be permitted to perform with the orchestra with frequent testing and (if practicable) distancing.

But it’s not that simple, of course. The employer will also need to consider a host of other factors affecting the safety of other musicians. Again, the orchestra is a unique workplace that was not specifically contemplated by the OSHA ETS, and a testing-and-masking alternative isn’t as effective when so many employees in the workplace cannot wear masks. Employers would need to take into account the placement of the unvaccinated musician in the orchestra; the efficiency of the ventilation system; whether the musicians perform on stage or in a pit; the level of community transmission of COVID-19 (which, unfortunately, is rising again in many places); the emergence of new variants like Omicron; and so on. And again, because the threshold for “undue burden” for religious exemptions is so low under current law, any demonstrable increase in the risk to others might provide the employer with a legally defensible basis to deny that kind of accommodation.

The Supreme Court has held that requiring an employer to bear more than a “de minimis,” or a minimal, cost to accommodate an employee’s religious belief is an undue hardship. Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer’s business—including, in this instance, the risk of the spread of COVID-19 to other employees or to the public.


*Courts have found Title VII undue hardship where, for example, the religious accommodation would **impair workplace safety**, diminish efficiency in other jobs, or cause coworkers to carry the accommodated employee’s share of potentially hazardous or burdensome work.*

(emphasis added)

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L>

Conclusion

Issues regarding COVID-19 vaccination in ICSOM orchestras continue to be divisive and difficult to resolve. At the 2021 ICSOM Conference in Pittsburgh, I urged the delegates to make every effort to view these issues objectively. The goal of any mandatory vaccination policy must be to ensure workplace safety—period. There are sources to look to in making that determination, including medical experts and guidance from agencies like the CDC and the EEOC. Fear and emotion must be taken out of the equation. The purpose is not to penalize those who make choices with which many may disagree, but to do what is in the best interests of the bargaining unit as a whole.

It is possible that the worst of the pandemic is behind us, even with the new Omicron variant. Perhaps the combination of mass vaccination, prior COVID-19 infections among the unvaccinated, and new therapeutics will finally transform COVID-19 to an endemic disease. In the meantime, we all do the best we can. That includes lawyers and courts who must navigate an ever-changing legal landscape. 

President's Report

By Paul Austin

Women in ICSOM: A History

As ICSOM approaches its 60th anniversary, it was enlightening for me to review the role that women have played in our organization.

Upon reading the minutes of our early conferences in the 1960s, it was noticeable that almost no women were mentioned. Of course this would be reflective of the small number of women in ICSOM orchestras at that time, but it was good to see that there was a female presence at the first ICSOM Conference. Bonnie J Lake (Baltimore Symphony Orchestra) was in attendance as an observer.

However, it wasn't until the late 1960s when there was mention of women as ICSOM Delegates: Bernice Beckerman (Minnesota Orchestra) in 1967, Linda Hoes (Honolulu Symphony) in 1968, and Nancy Bodycomb (San Antonio Symphony) in 1969.

Even before the introduction of the Equal Rights Amendment in 1972, ICSOM had been making firm statements about fairness in employment for women. Delegates at the 1970 ICSOM Conference in Chicago unanimously accepted a resolution, noted in the conference documents as follows:

"ICSOM went on the record as being in support of equal rights for women in all employment, and specifically in the field of symphony, opera, and ballet orchestras, with this position to be suitably publicized."

In the early 1980s, ICSOM orchestras continued to address issues faced by women in the field. Dr Gilda Greenberg (West-

ern Michigan University) spoke at the 1981 conference in Milwaukee regarding her research for the American Symphony Orchestra League, which included fair auditions for and cultural attitudes about women. A January 1982 *Senza Sordino* article by Henry Shaw (Cincinnati Symphony Orchestra) provided this data: of the 3881 ICSOM musicians in 44 member orchestras at that time, 1150 were women. In other words, nearly one-third of ICSOM musicians were women, a tremendous leap since ICSOM's founding twenty years earlier!

During the 1980s, delegates began electing women to positions on ICSOM's Governing Board. Melanie Burrell (Denver Symphony Orchestra) was ICSOM's first female Chairperson. Today Meredith Snow (Los Angeles Philharmonic) is ICSOM Chairperson, and she has held this position since 2016.

Melanie Burrell was also ICSOM's first President, a position which was created in 1984. She has been ICSOM's only female President.

Three women have been ICSOM Secretary: Nancy Page Griffin (Seattle Symphony Orchestra), Lucinda Lewis, (New Jersey Symphony Orchestra), and Laura Ross (Nashville Symphony), who is currently serving in her nineteenth year as ICSOM Secretary.

Five women served in this role of ICSOM Treasurer: Melanie Burrell, Penny Anderson Brill (Pittsburgh Symphony Orchestra), Florence Nelson (New York City Opera), Carolyn Parks (Kennedy Center Opera House Orchestra), and Stephanie Tretick (Pittsburgh Symphony Orchestra).

There have been two female *Senza Sordino* Editors: Deborah Torch (San Antonio Symphony) and Marsha Schweitzer (Honolulu Symphony).

When the Member-at-Large position was created in 1984, two women were among the first to be elected: Bernice Beckerman (Houston Symphony) and Cathy Compton (Detroit Symphony Orchestra). Over the years, this list grew to include Ellen McGlone, (San Antonio Symphony), Florence Nelson, Carolyn Parks, Stephanie Tretick, Mary Plaine (Baltimore Symphony Orchestra), Lynn Rosen (Utah Symphony), Nancy Stutsman (Kennedy Center Opera House Orchestra), Meredith Snow (Los Angeles Philharmonic), Cathy Payne (San Francisco Symphony), Gail Kruvand (New York City Opera), Jennifer Mondie (National Symphony Orchestra), and Kimberly Tichenor (Louisville Orchestra).

In addition to current Governing Board members Meredith Snow and Laura Ross, other women hold important positions within ICSOM today.

Julie Edwards (Utah Symphony) is our chief Moderator for ICSOM's Orchestra-L and Delegate-L email lists, a job she has held since 2018 (and which started with a tricky, but well-executed migration of hosting services). Julie also served as Conference Coordinator for the 2019 ICSOM Conference in Park City UT.

Barbara Corbato (Grand Rapids Symphony) was named Administrator of ICSOM's online Conductor Evaluation Program (CEP) in 2017. She researched and developed our CEP which was launched in January 2018. Barbara remains the contact when a delegate requests a survey as well as when a manager requests the results.



Terry Johnson

Putting Away the Mute

By Mike Muszynski

Indianapolis Symphony Orchestra



After a lot of consideration, I decided to title this column with a mute joke, since my predecessor, Peter de Boor titled his column *Dropping the Mute*, and since I really appreciate puns. In the end, as a bassoonist, mutes are an unfamiliar and generally unwanted hindrance—why do with a mute what you could do with a reed? Still, although I share Peter's reluctance to speak about myself, I'd like to take a moment as your new Editor of *Senza Sordino* to explain why this new position feels so personal to me.

In 2009, I started my professional career in the Atlanta Opera and the Atlanta Ballet Orchestras, two members of the Regional Orchestra Players Association. At some early point in my tenure in both of those organizations, an overworked colleague asked if I wanted to become the ROPA representative. I didn't really know what I was getting into, but I had the sense that there was a way to serve my fellow musicians beyond showing up and playing bassoon.

My first ROPA conference was eye-opening, because I was introduced to a vast group of people working beyond the concert hall to promote orchestral music and its players. That summer, I met Ray Hair, Debbie Newmark, Rochelle Skolnick, Paul Austin, Nathan Kahn, Randy Whatley, and many other influential people with whom I still collaborate today.

Service as ROPA delegate also made me a part of the Atlanta Opera Orchestra's negotiating committee (which made me grateful for the ROPA negotiation workshop). Though I was nervous participating so early in my career, it was a good introduction into the process, and I eventually served on three negotiation committees (even chairing one) in my short time with the opera orchestra.

When I joined the Indianapolis Symphony Orchestra, I asked to become the delegate to ICSOM as soon as I was eligible.

The most eye-opening moment of my time in ICSOM so far came at the conference in Utah in 2019. It became clear that our next negotiation in Indianapolis would be contentious, but also that many of the resources and people we would call upon during a difficult negotiation were literally in the room with me.

During a town-hall session, I asked how many people had been part of a work stoppage in their career. Not having experienced it myself (and worried for what would come in Indianapolis), it was in large part a personal question. About half of the delegates raised their hands.

Is it an inevitability that we will all suffer some sort of work stoppage in our careers? Maybe. But for some reason, it was comforting to know that so many people in that room not only understood first-hand, but were also committed enough to the collective good that they continued to serve.

In the most general sense, we all suffered some sort of work stoppage during 2020. But even for those of us who suffered the COVID-19 shutdown most acutely, the music never stopped. Most orchestras continued making music, and in places where management abdicated entirely, musicians filled the silent void on their own.

When my own orchestra went on hiatus, I complained to Paul Austin that I felt useless because there was so little for me to add to the discussions happening on our delegate zoom calls. His response changed my outlook: ICSOM is a place to share information and ideas, no matter what is happening in your orchestra (or not). That flow of information is vital, whether it happens among the Governing Board, between delegates, or through the stories that we tell in *Senza Sordino*.

We are in a different era than those who have come before us. There are tools at our disposal to provide clear, truthful information to vast numbers of people in ways that would have sounded impossible even just twenty years ago, when Facebook was a platform for college students and Twitter was a 140-character curiosity.

We must continue to spread that information—our truth—as widely as possible. It is a privilege to publish your stories in *Senza*, and I look forward to serving as your editor. <

AFM-EPF Report

By Laura Ross, AFM-EPF Trustee

During the 2021 ICSOM Conference in Pittsburgh, a few topics raised in our American Federation of Musicians and Employers' Pension Fund (AFM-EPF) report appeared to be of particular interest. The first was the Pension Estimator, which can be found on the AFM-EPF website at www.afm-epf.org. The second involved information about participants who are divorced when applying for their pension benefit. Lastly, I've included a reminder about post retirement survivor benefits that bears repeating.

As a participant, you can log into your individual account to find all sorts of information, to sign up to receive pension notices via email rather than hard copy, and to check your pre-retirement beneficiaries. You'll also have access to the Pension Estimator where you can see an approximate monthly benefit and how that could change depending on the date you begin benefits or whether you choose an option that provides a benefit to your spouse or other Joint Annuitant after your death. The Pension Estimator uses your contribution information and also allows you to enter estimated projected future contributions.

In 2007, ICSOM Delegates adopted a resolution asking the AFM-EPF to develop a transactional website and later advocated for a Pension Estimator that would allow participants to view their anticipated benefit between the ages of 55 (when early retirement can begin) through age 65. (As a practical



James I. Green


matter, though, most symphonic musicians are unable to take a pre-age 65 early retirement benefit without retiring from their orchestra.) While the AFM-EPF Pension Estimator included this anticipated benefit calculator on launch, a later feature allowed participants to add further anticipated contributions if they are a number of years from retirement. Until recently, estimates did not go beyond age 65, so any participant wanting to defer their benefit for another few years would have to call the Fund Office for an estimate. We were thrilled to announce this past summer that the Fund has further enhanced the Estimator, which will now calculate your benefit through age 72, when distribution is mandatory under IRS rules.

If you have not registered for the website, you will need your six-digit Pension ID (PID) number that can be found on your annual covered earnings statement (or you can contact the Fund Office at 212-284-1311).

The topic of divorced participants applying for their retirement benefit also was discussed. Divorce decrees and divorce settlements sometimes contain conditions pertaining to a participant's pension benefit. In order to assure a pension is properly divided, the participant and ex-spouse must obtain a special document called a Qualified Domestic Relations Order (QDRO). The Fund Office must have a copy of the divorce documents and any QDRO when a participant is applying for their pension benefit because Fund attorneys need time to review them to assure the benefit is paid properly. Failure to provide these documents during the application process can potentially delay your initial pension distribution.

The Fund Office recommends that if you divorce before applying for your pension benefit, send a copy to the Fund at the time of your divorce so it will be in your file (and one less document to look for) to hasten the path of your application. The QDRO Procedure and a model QDRO to make the process faster and easier are available on the website or by request to the Fund Office.

Another issue that was not covered in detail at the conference but is important to remember is that once you begin receiving your pension benefit, you cannot change your form of payment or, if applicable, the person you designated as your Joint Annuitant. As a reminder, at the time you retire, you may select a Single Life Benefit or a Joint and Survivor Benefit with either 50% or 75% payable after your death to the person you designate as your Joint Annuitant. (If you're married at that time, you need your spouse's consent to choose certain options.) If you choose one of the survivor benefit options, you cannot change your Joint Annuitant after you begin benefits, even if you were to divorce later. There are slightly different rules for additional contributions you are credited with for work after you retire and you should check with the Fund Office if you have questions about these rules.

Much of this information can be found on the AFM-EPF website. Trustees and Fund Staff are working to add more information to help provide answers. Please be sure to contact the Fund Office with any questions or comments, or reach out to your AFM-EPF Union Trustees. 

Pandemic Review *continued from page 2*

economic and racial inequities that put our fellow citizens of color at risk of their lives.


How are our orchestras responding to this injustice? In January 2021 ICSOM, along with the National Alliance for Audition Support (NAAS), the League of American Orchestras and New World Symphony created Recommended Audition and Tenure Guidelines (www.AuditionAlliance.org) to promote greater access for musicians of color. Now that we are once again able to hold auditions, will we examine our audition and tenure processes and implement change? Will we make our stages and institutions more inclusive? Certainly, our programming is already more diverse than it was a year ago, but we have much still to address.

Amidst the ongoing chaos in our country, the Biden Administration hit the ground running on Inauguration Day. The vaccine rollout began immediately and March saw the passage of the American Rescue Plan Act (ARPA) which included federal money for our AFM Multi-Employer Pension Plan. Pension fund benefit reductions will no longer be necessary. The AFM along with the Player Conferences Council (ICSOM, ROPA, RMA & TMA) was part of a massive, years-long, lobbying effort to pass pension relief legislation. It worked.

By March 2021 most orchestras had finished, or were in the process of, negotiating safety protocols for an anticipated return to work. Discussion of potential vaccine mandates was becoming the hot topic of the day. Most orchestras were already streaming smaller ensembles, masked and distanced, but the vaccine would be a paradigm shift in our ability to return to work and for our audiences to return to our halls. March also saw the launch of a handful of on-demand streaming services, BSONOW, NYPhil+, CSOTv and SFSymphony+, among them. The second round of PPP and the Shuttered Venue Operators Grant (SVOG) money was made available through the passage of ARPA.

By the start of summer, the vast majority—upwards of 90%—of our ICSOM musicians were fully vaccinated. Summer seasons were in full swing. ICSOM boldly held its yearly conference live—hosted by the Pittsburgh Symphony Orchestra and Local 60-471—with the option to Zoom into the conference from home. In August, the San Diego Symphony Orchestra opened their new outdoor venue, The Rady Shell, on the San Diego waterfront. Four months later, they are still playing there to full audiences.

We are now well into our second season with the shadow of SARS-CoV-2 lurking in the wings. Many of us are still working under side-letters at reduced pay but those are gradually expiring. The provisions for free media under the IMA COVID-19 side letter are also expiring. We revert back to the original IMA—but not for long, as the IMA expires in June of 2022. Negotiations for a successor agreement begin this spring/summer as do contract negotiations for nearly half our ICSOM orchestras whose CBAs will expire in 2022. San Antonio Symphony remains on strike as of this writing.

There is a rough road ahead for us and for our country. We will come through it as we have come through the past 21 months—by holding firm and holding together. 

San Antonio continued from page 1



San Antonio Symphony orchestra negotiating committee chair Mary Ellen Goree speaks at the October 29 rally

provision in the 2020 MOA not as a way to deal with uncertainties related to the pandemic, but as an excuse to address what they deemed to be long-standing problems in the organization. This is evidenced by the fact that the SSSA has been proposing an A/B orchestra as far back as 2007. So, along with the strike, the musicians filed a grievance with the SSSA for violation of the reopener provision, as well as unfair labor practice charges with the NLRB. Both the grievance and the charges are currently in process.

It's important to note that these events are transpiring after decades of financial mismanagement on the part of the SSSA along with a lengthy history of musicians being asked for and agreeing to take pay cuts, with assurances every time that those cuts would enable our board and management to get their house in order moving forward.

We are also still living with the fallout of the cannibalization of our endowment in the 1990s to pay salaries—a short-sighted move that not only wiped out our endowment for the future, but also alienated a number of very generous donors



Member-at-large Keith Carrick delivers a message of solidarity at the October 29 rally

who had expected to fund the symphony in perpetuity, not just keep the lights on.

So what now? Up to this point, our management and board has been resistant to any suggestion that their plan will result in the destruction of the Symphony, despite all evidence. Musicians are already leaving for greener pastures. Public opinion is squarely in the musicians' corner. We need a change in our leadership's direction, or more directly, a change in leadership.

ICSOM Supports San Antonio

Keith Carrick, ICSOM Member-at-large

On October 29 I had the opportunity to attend a rally in support of the San Antonio Symphony musicians on behalf of ICSOM. It was a chance for me to pass on the support of all ICSOM members for the SAS musicians, and to hear from those musicians directly.

The energy in the crowd was palpable, especially given that management had announced the cancellation of the musician's health insurance the day before. Even while setting up, it was easy to feel the excitement and dedication of everyone involved, from those distributing T-shirts, to those crafting signs.

The evening began with a trumpet fanfare and a reminder of what is at stake in this fight, in stark contrast to the empty Tobin Center across the street. How heartbreaking it must be to return to your hall only to be told you cannot even walk on the sidewalk in front without being accused of trespassing.

After the fanfare came a set of speeches from myself, members of local organizations and government, the AFL-CIO, ICSOM Delegate Debbie Brooks (in town from Fort Worth), and AFM President Ray Hair. It was inspiring to hear from such a wide variety of people, and to know that these musicians are not in this fight alone.

Rallies like this are important for morale and are a chance to reinvigorate and rededicate everyone to the fight for a fair contract. It can be easy to give in to apathy or hopelessness in situations like these—it's important to remind everyone why they, and we, are fighting back.

There is a clear connection between what's happening in San Antonio and what's happening across the country in the AFM and other Unions. Every orchestra in ICSOM should take note of what can happen when your management decides to put profit over product, or when they simply don't seem to care about you at all.

What would you do in a situation like that? Would you simply let your managers walk all over you, or would you choose to fight like these musicians have? And, what does it say about our society in general, that wealthy members of our community will support spending hundreds of millions of public dollars building a concert hall, but resist paying for health insurance and fair wages?

Unions across the country continue to fight for fair contracts, just like in San Antonio. Everyone deserves a living wage, health care, a comfortable retirement, and respect, and we all have an obligation to fight anything less.

Michael Morgan continued from page 3




Michael Morgan conducting the Oakland Symphony in 2019 at the Paramount Theater in Oakland, CA

Violin soloist and former member of the New Jersey Symphony, Kelly Hall-Thompkins, had a long fruitful musical relationship with Michael. In an article for *Violinist.com*, she writes, “Not only did I play my first Tchaikovsky Violin Concerto as a soloist with him, but through his vast knowledge of the Black composers that many in the field are only now beginning to seek out, I discovered and played my first notes of symphonies by Florence Price, William Dawson, Olly Wilson, and contemporary composers such as Carlos Simon.”

What really strikes me about Michael Morgan is the importance of his presence—the presence of a Black man inhabiting spaces and positions where there are very few Black people. His excellence and desire to show that orchestras are relevant not only impacted the community of Oakland, but a whole generation of musicians of color. His career spanned multiple musical communities, conducting the world’s finest orchestras, conducting musicians in youth orchestras, and performing public school engagements. His work with musicians of color as music director of the Gateways Festival, as well as conducting the Sphinx Orchestra and Chineke! Orchestra, was truly invaluable to the musicians in those organizations. He made himself available for musicians seeking counsel and encouraged budding talents towards developing professional careers.

Damon Gupton, Principal Guest Conductor of the Cincinnati Pops (who also maintains an acting career) said in a Facebook post, “He was always encouraging of both of my career pursuits, supportive and inviting. He’d write me after seeing me on TV or in some movie as well as when I performed concerts or got new appointments. Congratulating. Proud.”

Michael Morgan was so present that you could say it was commonplace. It is refreshing to think of someone with such extraordinary gifts as normal and ordinary, given his willingness to broadly share his talents across communities, races, and types of ensembles.

Though Michael is no longer with us, his influence will be felt for many years to come. As Michael did, let us all look around the room and ask ourselves, “Who’s not here?” and then act to include and celebrate our diversity. 

Women in ICSOM continued from page 7

Established in 2005, the ICSOM website was completely redesigned in 2012 by current webmaster Martha Warrington (Oregon Symphony). Thanks to her work, the US Library of Congress includes our website in their Professional Arts Web Archive which preserves our materials and permits access to researchers world-wide.

The history of ICSOM is documented clearly in *More Than Meets The Ear: How Symphony Musicians Made Labor History* by Julie Ayer (Minnesota Orchestra). This is a must-read book for all orchestral musicians in order to discover what led to the founding of ICSOM, as well as providing many fascinating facts and interesting stories.


Currently our industry has a growing female presence. Last month the Dallas Symphony held its third annual Women in Classical Music symposium, a five-day event with panel discussions and performances. In October, Women in Lutherie, an organization that provides support to female makers of string instruments, held its first annual conference.

The Atlanta Symphony Orchestra just announced the appointment of Nathalie Stutzmann as their new Music Director; she joins the ranks of current ICSOM conductors JoAnn Falletta (Buffalo Philharmonic Orchestra), Eun Sun Kim (San Francisco Opera Orchestra), and Xian Zhang (New Jersey Symphony Orchestra), and former Music Directors Marin Alsop (Baltimore Symphony Orchestra and Colorado Symphony), Catherine Comet (Grand Rapids Symphony), and JoAnn Falletta (Virginia Symphony Orchestra).

Beyond these lists, there are many women who have served in leadership roles as ICSOM Delegates and Committee Chairs, AFM National and Local officers, ROPA and OCSM Presidents and Executive Board members, and our attorneys. It is clear to see that women in our field have had and continue to have a strong and impressive leadership presence.

However, it is wise to note that representation does not always guarantee inclusion and equity. For example, despite the growing ranks of female conductors, the vast majority remain male. The ranks of concertmasters and Principal musicians also are still predominantly male.

Our work is not done. ICSOM encourages and supports women in all leadership roles of our orchestras, ranging from musician committees to board chair. Our membership is composed of extremely talented people whose gifts are needed beyond their music stands. Let’s be sure that those abilities are put to good use, for the good of us all.

I challenge our organization to continue to be mindful of its mission of building fairness and belonging. Hearing and centering the voices of women while also striving to build equity is an important way to recognize and honor all of their contributions: past, present, and future. 

For more information about Julie Ayer’s book
*More Than Meets The Ear:
How Symphony Musicians Made Labor History*
visit <https://julieayer.com>

Save the Date

60th Annual ICSOM Conference

August 24-27, 2022

Grand Rapids, MI

More information to follow at icsom.org/conferences

Reminder: Printed copies of the ICSOM Directory will be provided in 2022. We rely on you and your orchestra's delegate to verify the information that will be printed in the Directory.

If you have moved, or you would like to verify your information, please contact your orchestra delegate or check your own information at the Directory website (<http://icsom.info>). The printed directories and mailed issues of *Senza Sordino* rely on accurate address information. Please take a moment to make sure your information is up-to-date.



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Senza Sordino
Mike Muszynski, Editor
450 E Ohio Street, Apt 114
Indianapolis, IN 46204

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