OFFICIAL MINUTES

ICSOM Conference

September 5-8, 1973, Cincinnati, Ohio

First Session -- 2:30 P.M., September 5, 1973

ICSOM Chairman Ralph Mendelson called the meeting to order. ICSOM Secretary Robert Maisel called the roll of the member orchestras. Those orchestras represented were, by region, as follows:

Western -- Denver, Los Angeles, Oregon, San Francisco, Seattle

Southern -- Atlanta, Dallas, Houston, Kansas City, New Orleans, St. Louis

Central -- Chicago, Cincinnati, Cleveland, Detroit, Indianapolis, Minnesota, Pittsburgh

Eastern -- Baltimore, Boston, Metropolitan Opera, New York City Ballet, New York City Opera, New York, Philadelphia, Rochester, Syracuse, Washington National

Canadian -- Winnipeg

Absent orchestras were Honolulu, North Carolina, Chicago Lyric, Milwaukee, Buffalo, New Haven, Montreal, and Vancouver.

The Chairman introduced the hosts of this Conference, Al Meyers, representing the Cincinnati Symphony Orchestra, and Gene Frey, President of Local 1, AFM, Cincinnati, Ohio. Mr. Frey extended his hospitality and best wishes to the Conference.

The Chairman said that an invitation had been extended to Hal Davis, President, AFM, but Mr. Davis notified him that he regretted not being able to attend and was sending Dave Winstein of the International Executive Board, AFM, as his personal representative. Mr. Winstein was introduced and he thanked the delegates.

The Chairman introduced the other members of the ICSOM Executive Committee: Vice-Chairman Dave Smiley; Secretary Bob Maisel; Treasurer John Palanchian; Editor Senza Sordino Henry Shaw; and Regional Vice-Chairmen Crawford Best and Stanley Dombrowski. (Irving Segall did not arrive until later, and Jim Weaver was unable to attend.) He also introduced ICSOM Counsel Leonard Liebowitz and said that Phil Sipser would arrive shortly.

The Secretary submitted the 1972 Minutes, and they were approved, with "respect," last sentence on page 30, changed to "agree with."

The New Jersey Symphony Orchestra was admitted into membership in ICSOM.

The Chairman gave his report, beginning with a detailed account of the improved relationship between ICSOM and the AFM since the last Conference. This was accomplished through extensive and candid discussions between ICSOM and AFM officers and resulted in better communication, i.e., President Davis' giving ICSOM the Federation brief on the NLRB and other pertinent contracts and documents. Later discussions on various matters were very cordial, and ICSOM also was not only consulted on the recording negotiations but was able to serve as participating observers. ICSOM was also actively consulted on audition standards. Hence, this improved relationship prompted the decision to drop the Montreal petition (Motion #3) and Motion #4.

The implications of NLRB assertion of jurisdiction over symphony orchestras was to be commented upon later by ICSOM Counsel.

ICSOM's decision to press charges against conductors and soloists recording abroad without AFM permission was reported on. Twenty-two individuals were charged with violation of Article 24, Section 6-A of the By-Laws of the AFM. Some of these individuals were later found not to be members of the AFM, so they were not charged. The rest, however, with one exception (mitigating circumstances), were charged and went through the appropriate AFM procedures. The IEB dismissed charges against three, found nine guilty, and the penalties were reported in Senza Sordino, August 1973. Some conductors have since been denied permission; one conductor, however, previously fined, was later given permission to record abroad and ICSOM is investigating an apparent flagrant abuse of this permission. ICSOM is still seeking firmer Federation policy in this area.

The February 28 meeting in New York concerning the recording situation was initiated by a number of orchestra managers. Attending were orchestra delegates, local Union officers, Federation officers, and orchestra managers. After the managers had left, the chief topic was trade-off of services for recording; no conclusions were reached and an exchange of viewpoints seemed to constitute the chief value of this meeting. A caucus of orchestra delegates held the evening before also produced an exchange of views.

The recording negotiations were in July, and Mendelson and Palanchian met with President Davis beforehand to discuss recommendations received from orchestras. When President Davis was told that orchestras generally are opposed to trade-offs, he contended that vocal minorities in orchestras often give ICSOM erroneous appraisals of true sentiments on issues; the results, however, of secret ballots received later supported ICSOM's appraisal, i.e., 19 of the 24 orchestras responding opposed trade-offs.

More cooperation from orchestras is still needed on filling out questionnaires and sending in recommendations to the Chairman. Only sixteen orchestras replied to the recording questionnaire. The orchestras should consult with their Locals, who, in turn, should send recommendations to the Federation.

Other items such as recording guarantees, symphonic rates, and chamber recording were discussed, and the final agreement with the industry will be dealt with more thoroughly later.

The AFM Symphony-Opera Orchestra Strike Fund was the next item on the Chairman's report. The trustees had been urged by the delegates at the Montreal Conference to be consistent toward both strike and lock-out situations and not exact paybacks of benefits. The trustees met in July and agreed to be as consistent as possible concerning strikes and lock-outs, but also agreed that an orchestra would not receive strike or lock-out benefits if it was employed during these situations. The trustees reiterated that an orchestra should be prompt and precise in reporting a strike or a lock-out potential.

Various orchestra members, Local Union officers, and personnel managers met at the Federation offices on March 1 to discuss audition standards. An attempt will be made to go into this matter more thoroughly later.

The Chairman next reported on the 1973 AFM Convention in Toronto. He attended as a guest of the AFM and was cordially received. The Convention's chief accomplishment was the raising of per capita dues from 6% to 8%, thus improving the Federation's financial base and perhaps even permitting it to extend some financial aid to ICSOM. Also some AFM By-Laws were amended: touring ballet companies no longer have to pay local taxes, a reciprocal exchange agreement with British musicians, which, while not immediately affecting AFM symphony musicians, may help to establish more rapport so that London recording rates might be changed to help the recording situation here.

ICSOM and the Partnership for the Arts continue to work together. The Senate appropriation this coming year for the arts was 160 million, 380 the following year, and 400 the third year. The House only appropriated 145 the first year and left open the second and third years; the hope, of course, is that the final bill will be restored to the Senate version. Unfortunately, not as much of this money goes to help established institutions such as symphony orchestras as had been anticipated, but the project is still commendable and deserves continued support.

The Chairman mentioned contract negotiations, noting that orchestras were in close touch with ICSOM during negotiations but did not always report their results after ratification. The settlements in Rochester, Portland, and Houston were applauded particularly because these orchestra won tough battles and such wins help other orchestras.

The Chairman concluded his report by commenting on ICSOM's extensive communication system: individual phone discussions with orchestras, conference calls with ICSOM officers on policy matters, ICSOM bulletins to orchestras, the ICSOM Directory, and, of course, Senza Sordino. He thanked the orchestras, ICSOM officers, and legal counsel for their cooperation, advice, and guidance.

The Vice-Chairman, David Smiley, gave his report: The Conductor Evaluation is still not being used by some orchestras, and many of them regret this omission when a new musical director is being considered, since their evaluations, together with those of other orchestras, could have been used to influence their Board in its determinations. The mechanism is have a form (as printed in Senza Sordino or supplied by Smiley) copied -- one thousand copies will be sufficient and inexpensive; make sure the orchestra fills out these forms on each conductor; make a tally sheet and send a copy to Smiley; this will be filed after being tallied on a master sheet of conductors, and upon request by the Committee Chairman on Committee stationery (to help ensure confidentiality) to Smiley, the combined evaluation of the conductor in question will be supplied. The Vice-Chairman concluded his report by noting that ICSOM now has four years of evaluations and the program has proven to be valuable to orchestras and managers; nevertheless, more orchestra cooperation is still needed to increase its value. He also emphasized that evaluations should be regularly made on musical directors and resident conductors.

Ted Dreher, head of the AFM Symphony Department, joined the Conference at this time, as did ICSOM Counsel Phil Sipser.

The Secretary, Robert Maisel, gave his report, beginning with the reading of a letter sent to him by IEB member Max Arons, in which he conveyed to the delegates of ICSOM his sincerest wishes for a successful Conference. (Another letter conveying best wishes but received too late for reading at the Conference, was sent by Victor Fuentealba, Vice-President, AFM.)

The report continued with a brief resume of last year's activities: handling correspondence, participating in Conference calls, revising of ICSOM By-Laws, participating in meetings with the Federation (seconding the Chairman's observations on the improved relationship), helping Ted Dreher on getting Orchestra Chart information -- one problem still being lack of cooperation from some orchestras, writing and distributing the Motions Passed and the 1972 Minutes -- with an apology for the lateness of the Minutes and a promise to be more prompt next time.

Those delegates taping the Conference were asked to be discreet in this matter and were also reminded that they are the ICSOM correspondent for their orchestra until the next Conference and that their cooperation in communicating would be appreciated.

The Treasurer, John Palanchian, gave his report: He also seconded the Chairman's report on the improved relationship with the AFM. ICSOM's participation in the recording negotiations was a significant example of this improved atmosphere. The Treasurer's report as of July 31, 1973, was disseminated to the delegates (and hence will not be duplicated in full in these Minutes): The total assets of the Emergency Relief Fund were $16,220.15; the total receipts of the General Fund were $35,647.61; disbursements for Chairman, Vice-Chairman, Secretary, and Treasurer totaled $3,693.76; Senza Sordino $2,500.00; legal fees $14,000.00 (14 months); Honoraria $2000.00; lesser disbursement (Editor Vance Beach, Regional Vice-Chairmen, telephone, and Montreal Conference, miscellaneous) totaled $3,227.31. The total disbursements were $25,421.17. The balance was $10,226.54. The orchestra dues outstanding were approximately $3,834.00.

The Treasurer's report was approved.

The Editor of Senza Sordino, Henry Shaw, gave his report: The paid subscription list is impressive, ASOL, National Foundation for the Arts, various conductors, managers, AFM officers and locals, university music libraries, information-gathering institutions. Senza Sordino is still primarily oriented toward the orchestra musician, is an important link between ICSOM and the orchestras and the organ for dissemination of information from orchestras to orchestras.

There is still the chronic problem, however, in getting enough cooperation from the orchestras; i.e., not enough orchestra news -- not necessarily on negotiation results, but day-to-day news items. News sources are protected and nothing is printed which would jeopardize the Committee or the orchestra. Some orchestra correspondents have never contributed to Senza Sordino since its inception, but those who have are to be commended, especially Irv Segall of Philadelphia. Local 1 has been very generous with its office equipment.

Senza's balance at the beginning of the fiscal year was $138.00. The subscriptions yielded $238.00. ICSOM paid $2500.00 and Senza Sordino's cost was $2801.43 for six issues, with a balance of $74.63.

ICSOM Co-Counsel Leonard Liebowitz gave a report, prefaced with an emphasis on the availability of Counsel for advice to orchestra members in difficult legal situations with management; this help should be announced to all orchestras. Also, Henry Shaw was thanked for publishing the negotiation histories of many orchestras in Senza Sordino; these were very helpful.

A summary of activities and services performed for ICSOM by Sipser, Weinstock, Harper and Dorn for period September 1972 - September 1973 was presented to the delegates. (This summary, printed and distributed at the Conference, is appended to these minutes.)

ICSOM Counsel Phil Sipser recommended a book on symphony orchestras called Orpheus in the New World by Philip Hart and thought a reduced price could be gotten if enough symphony musicians were interested. He said that, as a result of his firm's now also representing museum employees, he had also looked through another book called Good Old Modern by Russell Lawrence, which examines museums; he quoted some outrageous remarks about symphony musicians on page 437: "... and the costs of culture keep going up. Not only have unions pushed wages up in symphonies, for example, but they've insisted on less rehearsal time and extra pay for playing difficult music. Culture is the least of their concern and community pride demands that funds to keep the orchestras going be found somewhere; not enough is found and so the number of programs and the amount of new music to be played are sharply cut. The analogy of the symphony with the problems not only of the modern museum but all art museums is not difficult to draw. Like the orchestras, the museums first have to cut back their programs, the number of special exhibitions, the hours the library is open, the funds expended on improving their archives and their educational programs."

Sipser said that this author is not alone in such an appraisal of symphony musicians. The previous book cited also contains similar remarks (page 462): "To a very large degree, musicians have for the past generation, concentrated on economic issues to the virtual exclusion of their concern for the overall artistic function of the orchestras which they serve. Only in such matters as the evaluation of conductors and their desire to have these opinions considered by their employers, have they attempted to play a part in the musical ...." (Tape ran out at this point -- Sec'y)

Sipser thought that ICSOM should devote some time to discussion of how to deal with such remarks. This "garbage" should not be permitted to find its way into books on art because people reading them have no way of knowing the truth of the matter.

The Chairman announced that Robert Ryker, Canadian Vice-President, had left the Montreal Symphony to pursue a career as a conductor. Since he was not present, there would be no report on the Canadian Symposium and on Canadian orchestras. The Chairman asked that the Winnipeg delegate, John Miller, prepare a report.

The Chairman reported on the recording agreement: The Federation tried very hard to get some guarantees from the recording industry, but did not succeed. Also, a strenuous but unsuccessful attempt was made to get the industry to record non-recording orchestras. The industry just wanted to have rates lowered, but they would have to go from $95.00 down to $27.00 or $30.00 to be competitive with European rates, and this is obviously impossible. Rate concessions would not result in more orchestras making recordings but simply in having the recording orchestras make more recordings for less money. The Chairman gave details of the industry recording agreement proposals and said that the AFM negotiators and the orchestra observers rejected these proposals because they all represented concessions with nothing offered in return. At the next session, the industry asked for only one thing -- straight time to go through the fourth hour so that an LP could be done in one session, thereby cutting down on setting-up costs. This concession was granted because the amount lost by the musician would be negligible, and the industry said that this would mean more recording and also more recording possibilities for orchestras whose managements are interested in subsidizing recordings. The Chairman concluded by saying that this concession would not have been made by the Federation if the symphony musician observers had not been in favor of it.

John Palanchian pointed out that the concession means that the recording company can notify 60 members of, say a 100-piece orchestra that they will be needed for four hours at straight time; the remaining 40 players would be dismissed at the end of three hours. They would not, of course, receive any pay for the fourth hour. The industry said that this would make it more feasible to record smaller works. It remains to be seen whether or not this will be utilized.

<u>The report of orchestra-splitting</u> was given by Alfred Myers (Cincinnati): Questionnaires were sent to all ICSOM orchestras; twelve replied, and Denver and Pittsburgh replied later. A 15-page report was prepared, printed, and disseminated to the delegates. (This report, therefore, will not be duplicated in these Minutes.) James Weaver's summary was read: ICSOM should provide contract recommendations on splitting to orchestras; the following points were made: (1) splitting should not decrease the number of services of an orchestra; the work of the full orchestra should be maintained and even increased (except for 52-week orchestras); (2) the musicians should control splitting as much as possible; (3) the formation of an elite group should be avoided because of morale deterioration of the orchestra; also the effect of splitting on outside work for local musicians must be considered. Splitting has its positive aspects: acceleration of growth of season and wages; easier obtainment of new grants; services to audiences not able to accomodate a symphony orchestra; performances in new areas; more varied experience and opportunity for solo work for musicians. The importance of control over splitting needs reiteration.

The Chairman reported that the Music Performance Trust Fund Committee had not met. Sam Denov, one member of this committee, made a 34-page study of this matter; he has copyrighted this study and is hoping it will be published; he would not give ICSOM permission to reproduce it for study by the ICSOM officers and Counsel. The

Executive Committee will meet and discuss this matter and bring a recommendation to the delegates.

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Morning Session --10:00 A.M., September 6, 1973

The Chairman said that since there had been no report prepared by the Music Performance Trust Fund Committee, the matter would be dropped unless the delegates wished otherwise.

The Chairman proposed interrupting the agenda order to go to Va under New Business -- nationwide group insurance annuities and pension plans. He asked Phil Sipser to address himself to this matter.

Sipser pointed out that additional benefits in pension plans and health and welfare plans can be obtained now with the same amount being put into these plans if they were consolidated; i.e., the more people participating in one health and welfare plan, the lower the cost of the benefits; conversely, the benefits would be substantially increased with the same amount of money. Ordinarily, management should be very interested in exploring the possibilities of this idea, but the problem is with vested interests in each community who would oppose this idea. "Exploration of the possibilities" should be the key phrase in discussions with management, recognizing the problems -- vested interests, possibility of unethical profits by managers of the larger plan, etc. Fortunately, the record of ICSOM and the AFM demonstrates that a large plan would be scrupulously administered; there would be competitive bidding by various insurance companies; also, hopefully, a rank and file committee from ICSOM would be appointed to oversee this plan. All of this would, of course, be done in consultation with the Federation. The first step must be authorization of the ICSOM Executive Committee to explore the possibilities of what it would mean to ten, fifteen, or twenty orchestras, who would be willing to pool all the contributions in return for a stated amount of benefits with health and welfare. This would re relatively simple; i.e., renegotiating the contract so that one common carrier is used for everyone; also, some additional items -- instrument insurance and other forms of insurance not now being carried -- might be added. It might be pointed out to those managements who are recalcitrant in cooperating in the exploration of these possibilities that, if it is possible to obtain dental insurance for the same amount of money now being contributed and they are not cooperating in this exploration, they they would have to come up with more money for this coverage from the sparse funds they contend they don't have. Persistence is necessary, but any rational management should be willing to cooperate in this exploration.

Sipser detailed the benefits of consolidating pension plans, one very important one being that, as a result of having much more money to invest with one investment agency, the yield assumption would be greatly increased; hence a great increase in benefits, i.e., each 1% raise in yield assumption means at least a 30% increase in benefits. This would not involve any increase at all in contributions by management; the simple pooling of money would raise the yield assumption. Since this is a bread-and-butter issue, orchestra musicians should have the right to seek to improve pension benefits. That is one reason why jointly administered pension plans are desirable. If Taft-Hartley had treated unions and managements equally, all pension plans would now be jointly administered. Unfortunately, there are many management-administered funds which are being mismanaged and their low yield assumption, however, does not necessarily increase benefits; some giant corporations recently increased their yield assumptions from 5% up to 7%, not to increase benefits but to lessen their contribution.

In summary, Sipser said that a pooled fund would immediately yield at least 25% increased benefits. The managements would not have to give up any of their rights; they would be given all the legal rights to jointly administer the fund. The result would bring about a small revolution in benefits. Also, the factor of portability could be worked in.

The AFM-EPW plan was discussed, and David Winstein pointed out that one big reason this plan does not have higher benefits is that the locals have a far too low percentage of employer contributions -- in many cases only 2%. If these percentages were raised to a realistic figure, the portability feature would be equal to that of any other plan.

The delegates instructed the ICSOM Executive Committee to explore the current status of individual pension, health, welfare, and instrument insurance funds and the possibilities of consolidating them for increased benefits.

The next order of business was orchestra reports on completed negotiations.

Los Angeles: The negotiation atmosphere was very good -- a forward-looking manager and attendance at all sessions by the President of the Association, which was very helpful. As an example of this spirit of cooperation, the three-year agreement -- $15, $15, and $25 -- exceeded the Pay Board guidelines, but both the union and management filed a petition for exemption and it went through with no problem. The scale before the new agreement was signed was $275 with 45 work-weeks and 5 weeks vacation. The new agreement is 45 and 5, 46 and 6, and 45 and 7 at $330.

Discussions on auditions and renewals consumed 75% of the negotiations, especially renewals, because even with the safeguards, the orchestra did not want the conductor to have the ultimate say;

therefore, a plan was worked out which included all the previous safeguards but had the additional feature of a seven-man auditions and renewals committee, each with one vote; the conductor has three votes. A majority vote with no abstentions permitted decides the issue. In the event of a tie, another vote is taken sixty days later, and the conductor has four votes this time, thus making a tie impossible. The audition procedure was changed; i.e., the conductor still has the right to hire the player he wants, but at the end of the probationary period, the retention of the player must meet with the agreement of the conductor and the committee; otherwise, the player is not retained.

A new pension plan was negotiated, in which benefits were increased over three years from $265 monthly to $500; the plan is now non-contributory, with return of past employee contributions. One of the features of the new plan is the elimination of a fixed retirement age. Also, the plan is jointly administered and the pension committee was instructed to reinvest the funds in long-term bonds yielding 7½%.

The most important contract improvement in working conditions was an increase in 5-day weeks (the previous contract only guaranteed six or eight 5-day weeks): 1st year - 25 5-day weeks, 2nd year - 31 5-day weeks, 3rd year - 35 5-day weeks. Most of these off-days are consecutive.

The report was concluded with the observation that, for the first time in many years, negotiations were concluded before the expiration of the old contract.

Washington National: The new three-year contract culminates in 52 weeks and $305 with 6 weeks vacation. Insurance benefits were increased; the number of 9-service weeks were reduced, with none in the final year. There were improvements in doubling, per diem and, for the first time, a guaranteed number of 5-day weeks.

An Artistic Advisory Committee was formed, consisting of two members of the orchestra committee and three from the players committee. The pension was made non-contributory with a guaranteed annual contribution by management of $53,100. Management tried very hard to eliminate the players committee (which rules on dismissals, demotions, etc.), but was unsuccessful. They were, however, allowed more orchestra-splitting; i.e., three-way instead of two. Management was quite hostile during negotiations, but after the contract was signed, an agreement was reached whereby board members would observe the next negotiations, which should improve matters; the orchestra felt that this was one of the most important gains reached in these negotiations.

Rochester: The new three-year contract had a cut in weeks for the first year because of problems with the State Arts Council; there was a 10-week cut -- from 41 to 31, but the loss in dollars was made up in non-economic areas. The weeks went up to 38 the second year with a $20 increase, 38 the third year with another $15 raise. Minimum yearly salary the first year was $7285; second year $9690; and third year will be $10,260. Weekly minimum is $235, $255, and $270. Pension benefits were doubled, and a good dismissal clause was obtained. Also, a new conductor selection clause stipulates that the hiring of a resident conductor has to be on the basis of an agreement between management and the orchestra. Other gains include an auditions committee, the right to choose the personnel manager, and an operations and development committee patterned after Seattle.

Philadelphia:: The three-year contract has a scale of $330, $340, and $350. The $2000 recording guarantee was retained; per diem went to $30; the pension plan became non-contributory with almost $400,000 returned to the musicians. A seniority bonus system was instituted. Better major medical coverage was obtained, and the delegate stressed the importance of a thorough investigation of plans because the difference between a deductible and non-deductible plan can mean a great deal of money. Group life insurance was increased to $20,000. Touring conditions were also improved.

Baltimore: The three-year contract culminates in 44 weeks and $250 minimum. The negotiations were very difficult, principally because of the protracted non-response from management. The orchestra went on an eleven-week strike. On the matter of conductors: the orchestra lost three conductors and hired three conductors; these selections were made on the basis of the Conductor Evaluation, and the delegate stressed the seriousness with which management treated these evaluations.

Kansas City: The delegate gave a detailed recital of the calamities which descended upon his orchestra, chiefly the loss of eight weeks during the '70-'71 season; i.e., from 34 weeks down to 26. The following year was 23 weeks at $200 per week. Then a three-year contract was signed: 26 weeks at $205; 32 at $205 with full family medical coverage; 38 at $210 with 2 weeks paid vacation. Some other important gains were a good force majuere clause (the old one was too full of holes and was partly responsible for the previous difficulties) and a non-renewal and audition committee, plus an agreement on artistic consultation. Now, however, there is a big dispute over the dismissal of eight players which will test some of these new contractual gains. The issue will be arbitrated. The delegate concluded his report by praising the legal counsel of Sipser and Liebowitz.

Afternoon Session -- 2:30 P.M., September 6, 1973

The Chairman outlined the serious situation in Cleveland and introduced a member of the Cleveland delegation, Gino Raffaelli, former ICSOM Treasurer.

Gino related the two major problems facing Cleveland: (1) a very hard-nosed management and (2) a difficult relationship with the Local. Management is quite aware of the historic friction between the orchestra and the Local, and hence negotiations are much more difficult.

The relationship with the Local seems, however, to be improving. For the first time, the orchestra is being allowed to have legal counsel of its choice in negotiations. The orchestra has chosen Sipser, and the Local seems to be cooperating with the orchestra committee very well.

Therefore, the biggest problem is that the orchestra and the Local are still facing the same intractable management, which, three years ago, forced to orchestra to sign a poor contract. However, the orchestra and the Local now have the unity they did not have then and are much better equipped to fight.

Gino concluded by saying that Cleveland would probably need help from other orchestras and hoped that measures could be agreed upon to help Cleveland, if such support becomes necessary.

Bert Siegel, Chairman of the Cleveland Orchestra Committee, said that the orchestra is preparing for a serious battle and is actively seeking local support. Support from ICSOM orchestras is now being sought, not simply to help Cleveland but to prevent a disaster which could adversely affect all future orchestra negotiations.

Another committee member, Emilio Llinas, commented that there have been persistent rumors that orchestra managers have collectively determined that the gains made by orchestras, largely as a result of ICSOM, would have to be stopped; moreover, according to these rumors, the defeat of the Cleveland orchestra three years ago seemed to orchestra managers to be a victory over the upward trend in ICSOM orchestras; therefore, the negotiation tactics employed by the Cleveland management would tend to be emulated, especially if another "success" were to be enjoyed in the next contract. The spirit of the orchestra, however, is better now, and ICSOM's support would be a great morale booster.

Phil Sipser gave a detailed analysis of the Cleveland situation; i.e., the imbalance of the power relationship between the orchestra and management, and emphasized the need for a national program of support by ICSOM and the AFM.

He proposed that the delegates apprise their orchestras of the serious nature of the situation, its implication for all orchestras, and ask that each member voluntarily start weekly donations of $5, $10, or $15, starting in October. If the Federation and AFM Locals gave added support, the impact on the Cleveland management would be pronounced.

Sipser concluded by saying that these advance preparations do not mean that the Cleveland orchestra wants a strike; it wants to avoid one, but wants management to understand that it is prepared to wage a fight if all else fails.

In response to questions, Sipser said that he did not expect orchestras involved in negotiation to participate in this program until after the conclusion of their negotiations.

Stanley Dumbrowski, Pittsburgh, went on record as being in favor of massive support of Cleveland.

There was extensive discussion on presentation of the situation to orchestras and methods of collecting donations.

Bert Siegel, Cleveland, outlined some of the steps his orchestra is taking to get community support: enlisting the help of various media people, giving home musicals with a presentation of the situation, and enlisting support from political figures. Also, Strike concerts are being planned.

Warren Claunch, St. Louis, cited his orchestra's success during its last strike in enlisting the support of local rock groups. He found them to be very interested in and sympathetic toward the symphony musicians. They were willing to donate their services to give benefit rock concerts for the orchestra.

Herb Greenberg, Minnesota, proposed that a collection be taken immediately for Cleveland. This was done, and the Cleveland delegation was presented with almost five hundred dollars.

It was resolved unanimously that: WHEREAS the history of collective bargaining for at least the last six years in Cleveland has demonstrated clearly that the Musical Arts Association, in its efforts to deny the members of the Cleveland Orchestra benefits which have been negotiated in comparable orchestras, and WHEREAS the current negotiations have thus far shown that the MAA is still unwilling to bargain in good faith, and WHEREAS the outcome of these negotiations in Cleveland will again, as in the past, have profound effects on orchestra negotiations throughout the nation, and WHEREAS Cleveland has become a symbol for managements in many other cities in their efforts to retard the progress which has been made by symphony, opera and ballet musicians, and WHEREAS as a consequence the outcome of the Cleveland negotiations is of vital importance to us all, NOW THEREFORE BE IT RESOLVED that (1) ICSOM pledge full support for the members of the Cleveland Orchestra; (2) such support must include full financial as well as moral support from their own players; (3) member orchestras are urged to seek support from their local unions and the AF of M, including financial support; (4) a special issue of Senza Sordino should be issued devoted to this problem, setting forth the Cleveland story, as soon as possible.

Dave Winstein, of the IEB, proposed that each orchestra give a benefit concert for Cleveland, citing the material advantages as well as the ensuing publicity. In the matter of the Strike Fund, he pointed out that the Fund is woefully under-funded; it should be vastly larger, and contributions should be increased so that a musician on strike could receive up to his working salary for a certain period of weeks so that managements would pay much more attention to a strike threat.

The Chairman announced the present status of the Strike Fund: \$143,137.84 has been paid out (Cleveland - \$24,650; Dallas - \$6,900; Baltimore - \$53,475; Indianapolis - \$32,000; Cincinnati - \$18,800; Houston - \$7,312). The balance as of July 17 was \$86,844.86 plus the \$250,000 from the Federation.

Back to the Cleveland situation, Ted Dreher suggested that the Local look into getting support from the Central City Labor Council and the Ohio State Labor Council.

Phil Sipser proposed that if it appears in November that a strike in Cleveland is inevitable, the Met Opera Orchestra, Philadelphia, New York Philharmonic, and Boston orchestras, plus other participants, try to arrange to have an extravaganza in Madison Square Garden in support of the Cleveland Orchestra, in concert with all of the other activities going on around the country as proposed by Dave Winstein; the TV coverage would be extensive, and a fantastic amount of money would be raised.

The Chairman outlined the present state of negotiations of the New York City Opera Orchestra. Len Liebowitz supplied some additional details.

The meeting continued with a report by Indianapolis: At the completion of the previous contract, which was for five years, the season was 36 weeks and \$179 per week; the last negotiations were very difficult, and finally the orchestra went on strike for nine weeks; after the intercession of the Mayor and after a new manager had been promised, the orchestra went back to work, but the new manager did not get to assume control. However, a four-year contract was signed: 38 weeks, 40, 42, 43 with an agreement to go to 46 weeks if the maintainence fund drive went over a certain amount; the scale was $210, $225, $240, $260, plus major medical and a non-contributory pension plan the fourth year. The situation has improved, i.e., there is a new manager and a better board. The Local was very helpful and cooperative during negotiations and paid part of the legal expenses. Moreover, it looks as if the 3% work dues will be cut back to 2%.

The Oregon Symphony report was given; the orchestra is on a per-service basis, but if were working as many services as the contract orchestras, the weekly scale would be $236. (Oregon plays four services per week.) The orchestra had a six-week strike and excellent media coverage. Some ICSOM literature was mailed to board members, and Jim Weaver, ICSOM Western Area Vice-Chairman, was very helpful in keeping up the morale of the orchestra. Ralph Mendelson was also very helpful. The negotiations were protracted and difficult, i.e., the president of the symphony board was intractible and refused to discuss the situation of TV, refused to bring in a Federal mediator, etc. He finally resigned from the negotiations, and it was then possible to reach a settlement.

The Detroit Symphony Orchestra report was given (the details of the completed negotiations had been reported in Senza Sordino); the delegate, Steve Edwards, read a report detailing the new pension plan: non-contributory with return of contributions, increased benefits, earlier retirement, deferred vested benefits and disability benefits pro-rated on the new $300 minimum monthly benefit. An effort is being made to educate the musicians on actuarial computations before the next negotiations.

The Houston Symphony Orchestra report was given: the orchestra had its first work-stoppage in its history; management refused the orchestra's play-and-talk offer, and a 20-day lockout followed. The orchestra had a big PR program -- outdoor concerts, etc., and had excellent cooperation from the Local; the Association was put on the unfair list. The media coverage was very good, and the orchestra was well organized -- many committees. A settlement was finally reached and the details of the three-year contract were published in the August Senza Sordino. A good split-orchestra clause was obtained as well as an audition committee clause. Sipser and Liebowitz were engaged as legal counsel and were of immense help. The new decision of the NLRB to assert jurisdiction over symphony orchestras made it possible for the orchestra to file unfair labor charges against the symphony president and the personnel manager.

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Morning Session -- 9:30 A.M., September 7, 1973

The New Jersey delegate gave his report: the new musical director, Henry Lewis, was determined to make the New Jersey Symphony Orchestra into a major orchestra very quickly; as example of what he accomplished, the weeks and salary went from 26 weeks at $161 minimum with night rehearsals in 1971-72 to 32 weeks with 2 weeks paid vacation at $200 minimum the following season. The coming season will be 34 weeks at $210, and the final year of the contract will be 36 weeks at $230. Other benefits were achieved, but the big problem now is enforcing the contract, chiefly in matters of schedule changes. On the positive side, New Jersey's change in status from a community to a major orchestra has resulted in much greater attendance at concerts and more grants. The orchestra joined ICSOM because it wants to keep on growing.

The New Orleans delegate gave his report: Negotiations have been concluded and a ratification vote will be taken in a few days on a one-year contract. The negotiations were difficult because management did not want to meet; i.e., a meeting was held last November and the next one was not until April. Another problem is the New Orleans Opera, which is under separate contract and worked by symphony and local players. The orchestra and management would like this job to be added to the regular season, but there is the problem of the local players and the terms of the agreement; a great deal of time was devoted to this matter, and the idea was finally dropped for this year; hence the one-year interim contract, with hopes of successfully negotiating the opera issue next year. This contract provides for a 10% across-the-board raise and 38 weeks, including 3 weeks paid vacation, with a new seating clause, some good new audition procedures and other benefits. Dave Winstein, Local President, was very helpful.

The Chairman suggested that those delegates having experience in adding an opera season meet informally and perhaps prepare a paper on the subject to be published in Senza Sordino.

The St. Louis delegate gave his report: The orchestra is now in negotiations and is seeking two main items: a salary increase and elimination of the no-strike clause and the arbitration clause. The old contract ends this coming Sunday; negotiations are at a standstill, and the orchestra is quite unified and prepared for a protracted labor dispute if necessary. The reason the orchestra wants elimination of both the no-strike and the arbitration clause is that if the no-strike clause is eliminated but not the arbitration clause, the orchestra still could not call a strike, according to a Supreme Court ruling.

The ICSOM Secretary gave a detailed account of a labor dispute in St. Louis last season involving the attempted non-renewal of contract for three orchestra members. The account was given because it demonstrated the unity of the orchestra. (Details were published later in Senza Sordino, February 1974.) The orchestra unanimously voted not to resume the rehearsal until the arbitrary and unfair actions of management were rescinded. Later that day, management rescinded its actions and the orchestra resumed rehearsal after the Executive Director apologized to the full orchestra for his handling of the situation. The same unity prevails in the present negotiations.

Sipser and Liebowitz are representing the Local and the orchestra with the Local paying full fee and expenses.

There was an extensive discussion on using the contract machinery in a labor dispute vs. taking the immediate dramatic action as did St. Louis, and there was general agreement that, in most cases, the machinery would be utilized, but in the event of a blatant, outrageous action by management, an orchestra might very well decide as St. Louis did.

An extensive discussion was held on non-renewal and dismissal clauses, arbitrations, etc., and it was felt that an arbitrator would not be competent to judge a case involving musical competence. Also, the Detroit delegate said that his contract stipulates that no player within five years of retirement would have to play an audition.

Sipser discussed problems concerning grievance, arbitration, and no-strike provisions in contracts, saying that while, historically, the Executive Board of the Union has usually been the final arbiter in a dispute with management, it may be that, since the NLRB has decided to assert jurisdiction, such an action by a union may now be declared an unfair labor practice. Sipser thought that AFM General Counsel Henry Kaiser should examine this matter. Concerning arbitration on musical matters, Sipser said that, while this is certainly preferable to a unilateral decision of the conductor and/or management, a better method would be to have a decision made by an orchestra committee; this would be, of course, a collective bargaining issue.

On the no-strike matter, Sipser said it was a highly legalistic issue, and orchestras contemplating an action should either first consult Local counsel or call his office; the courts have held that workers having a no-strike provision can still refuse to work if the situation becomes dangerous. He cited the Dallas incident, i.e., the players' refusal to play because it was too cold, as possibly falling into this category. However, he cautioned orchestras against making decisions without consulting Counsel, citing court rulings in which fines were levied against locals of treasuries and even firings resulted. In emphasizing the importance of legal counsel, he said, however, that even lawyers are not clear about this matter; this illustrates its complexities. Sipser said that under ICSOM's legal retainer agreement, any ICSOM orchestra may, without charge receive legal counsel from his office and, when in New York, can, if they wish, arrange for a consultation.

There was considerable discussion about decision-making by shop stewards and orchestra committees and the orchestras were cautioned against making unilateral decisions and were also given advice on protection against management reprisal, i.e., making sure that a decision is made by the whole committee, the union is consulted, etc. For example, when the New York Philharmonic is on tour, the orchestra committee is the official representative of the Local. Also, if it is known in advance that a problem is going to occur, a call to the Local President followed by a call to management notifying them of the problem and of the fact that a union official is going to be present, invariably takes care of the matter.

Orchestra reports were resumed with a report from the Denver delegate: Contrary to almost all other orchestras, Denver has been working under one-year contracts, feeling that more progress can be made on a year-to-year basis. The only agreement reached so far in negotiations is that this coming contract will also be for one year. The relationwhip with the Local is excellent. The present minimum is $215 and 40 weeks, including one week paid vacation, with a contributory pension plan and half-paid medical. Management's offer is one more paid vacation week with no increase in salary; they want more splits and more transfers of service. The orchestra wants more money and weeks, full medical, and a non-contributory pension plan. The orchestra is much more willing than in the past to support musicians dismissed without justification; for example, in one arbitration case, fully half the orchestra testified on behalf of the player in question. The player pays half the cost of arbitration. (This information produced an indignant reaction from the delegates, and the Chairman said that, in most orchestras, arbitration costs are shared equally by the Union and management and Denver should be so informed). The delegate gave a detailed account of a peculiar instrument coverage policy in her orchestra and was asked by the Chairman to give this information to the Editor of Senza Sordino. The orchestra also has never seen its life insurance coverage, and Liebowitz pointed out that under the NLRB, management is required, upon demand, to furnish any documents requested at any time; he also said that it should be the responsibility of every orchestra committee to examine every policy covering the orchestra.

Crawford Best gave more details on the Denver arbitration to illustrate the absurdity of having a person outside the profession rule on a musical matter. Liebowitz agreed and said that some success has been achieved in having the third party be a person of some musical prominence in the community agreed on by both sides, or a panel, say, of music instructors from a conservatory; in any event, the third party must possess some musical expertise.

Dave Winstein pointed out that every player in an orchestra should realize that, at some point, he or she is going to face the possibility of having to be subjected to a similar ordeal, i.e., the question of musical competence; if nothing else, the fate of the player should be settled by the members of the orchestra and no one else. He cited the long-standing New Orleans clause which stipulates that a players committee determines a player's fate, and this decision is final. Dave could not understand how any orchestra would put up with allowing an outside arbitrator to determine a player's fate and said that orchestras should rid themselves of any such clause.

A poll was taken on those orchestras having clauses similar to New Orleans: Los Angeles, National, Rochester, Houston, and Buffalo.

Orchestra reports continued with the New York City Ballet Orchestra: The orchestra is part of the City Center of Music and Drama, which is also the parent organization of the New York City Opera Orchestra, which is now on strike. The two orchestras share the same space, hence making it difficult for either to expand its season. Each orchestra has its own management, and, again, each management is having difficulty expanding its operation because of having to share the same house; these facts put the orchestras in an inadvertent competitive situation. Another complication is that Local 802 gets pressure from the free-lance players, who construe any expansion of the season of either orchestra as being work taken away from them. The old house on 55th Street is still used by City Center as a booking house for a visiting ballet or modern dance company, and if they use one of their orchestras, the free-lancers are obviously up in arms. This operation finally had to be abandoned, so the two managements have extended their operations by putting on productions with groups other than their own companies, i.e., the Joeffry Ballet, which later became part of the New York City Ballet contract, adding twelve weeks. The Opera orchestra had a similar extension of weeks and is now on strike primarily because these weeks are being threatened. The Ballet orchestra is facing the same threat because theJoeffry Ballet is claiming now to not be any longer a part of the City Center, and City Center says it is no longer willing to underwrite the orchestral costs of Joeffry Ballet; so, the City Center management is putting pressure on both orchestra managements to get out from under this kind of operation. In June, the parent organization called a meeting of all its orchestras, singers, dancers, stagehands, etc., and wanted to declare a moratorium for one year, i.e., freeze all wages; this propostion hinged upon acceptance by all the unions involved, with the exception of the Ballet Orchestra, which was asked to accept a one-third cut of its season. On advice of Counsels Sipser and Liebowitz, the orchestra decided not to respond one way or the other to this proposition but rather to wait and see what the response of the other groups would be. It was a short wait: The Opera Orchestra said "No." The Ballet Orchestra had not had serious negotiations with its management but is working now to save the Joeffry Ballet situation.

The Dallas report was given: Management offered $240, 4 weeks paid vacation, and 47 weeks; last year the orchestra had $225 and 45 weeks. Management has also increased the size of the orchestra to 90 musicians. This offer may or may not be accepted. A problem with ratification of the Opera contract was solved by consultation with the ICSOM Chairman and legal counsel and with various experienced Local officers throughout the country as well as Ted

Dreher, who consulted with the Dallas Local.

The Chairman pointed out that this kind of help can be given only if such a problem is brought to ICSOM's attention, and Betty Patterson, the Dallas delegate, made the point that her Local was very conscious of the fact that many people throughout the country were watching and were interested in the outcome of this situation; this knowledge had some influence on their deliberations.

The Seattle delegate gave his report: The orchestra has an opera season plus two Joeffry Ballet weeks which run concurrently with the symphony season, thus making for a very heavy work load in some weeks. The orchestra wants to spread this activity over forty weeks and is seeking a two-year contract. There are twenty-two or so players who do not play the opera, and the orchestra wants them to be included. A few weeks ago, management proposed to send a confidential salary analysis report to each player, showing what reimbursement this player received last year and what he or she would enjoy under its new proposal; this was considred by the Orchestra to be in violation of the NLRA, because all negotiations must be done through the bargaining agent; management disagreed, but the letters have not been sent. The Orchestra wants 40 weeks at $240, $255 the second year; agreement has been reached on some fringe benefits. The relationship with the Local is excellent and the Orchestra had good Local legal counsel. It has also consulted with ICSOM counsel.

Dave Smiley mentioned that San Francisco managed to get a tour clause stipulating one day off after every four work days.

The Chairman thanked Gene Frey, President, Local 1, AFM, for the dinner given for the Conference last evening.

Negotiation reports continued with Chicago: The Orchestra wants a one-year contract because of Price Board conditions; it also wants its pension plan to be jointly administered plus increased benefits. A five-day week is another goal. The Orchestra strings are overwhelmingly in favor of continuing the revolving system; no objection from management is foreseen. Another item is strengthening liaison between management and tour committee.

The New York Philharmonic report was given: Management says it has no money to offer the first year but perhaps can offer some the second and third year; they want more productivity, i.e., more services, in order to be able to justify any wage increase; they want to pay subs union scale rather than orchestra scale, cut out chair prices in the string sections, etc. Management's position seems to have become more rigid than it has been in many, many years, and the orchestra is making plans in the event of a strike. The orchestra is now on tour, and negotiations will not take place until it returns home. The revolving string idea is being extensively discussed.

The Boston delegate, Burt Fine, gave a detailed explanation of Boston's rotation plan involving outside work. The orchestra does not have a revolving string plan as does Chicago. A string player joining Boston automatically sits on the last chair in that section and moves up only through auditioning or seniority. Some sort of revolving plan might be desirable because some players become discouraged over the prospect of spending their careers in the back of the second string section and leave the orchestra. Burt had some ideas but had not presented them to his orchestra because the time was not yet right.

There was an extensive discussion on this matter: Pittsburgh reported that all run-out concerts, except for the prestigious ones, have player rotation in the strings. Also, the rotation committee published a list of the sections and the number of services off of the players, and the personnel manager wants an equitable distribution of these off-services, especially since the list disclosed that some violins were off 27 services more than other members of their section, with up to 63 more off-services for some members of the basses and celli. St. Louis reported that, in its bass section, players in the rear will ask to play a work calling for a reduced section simply because they would like to do it for the musical experience. National reported the same attitude in the bass section.

<u>Afternoon Session</u> -- <u>2:30 P.M., September 7, 1973</u>

Negotiation reports were continued with <u>Syracuse</u>: The orchestra is twelve years old and since its inception has been promised that it will grow to become a full-time orchestra. The city is not big enough to support a full-time orchestra, so it works on a regional basis. The orchestra is a symphonetta with 43 players at $120 weekly for 33 weeks -- $3960 annual. There are numerous ensembles with extra pay, and the average orchestra player who also is in one of these ensembles makes $5500 annually. One illustration of managemen's attitude is that it opposed unemployment benefits; the orchestra, however, won this contest. Negotiations have been going on for about a year, with management offering a 5% pay increase, with fifty cents per diem increase; the orchestra proposed $200 at 40 weeks, 3 weeks paid vacation, 56 players, a health and pension plan -- so nothing happened for months. In June, the orchestra retained Sipser and Liebowitz, so management proposed a three-year contract with 5%, 7%, and 8% increases plus a medical plan, but no pension. This was unacceptable, but management has an important (to them) concert scheduled, so the orchestra agreed to play and talk, giving a two-week strike notice. Some positive aspects are that a symphony member was gotten on the Symphony Board last June; the Board has almost succeeded in matching a sizable Ford grant; the relationship with the Local is much improved -- for example, it paid the delegate's expenses to this Conference and is paying some of the legal fees incurred in the unemployment fight. Also, the orchestra will have a new hall in a few years.

The Minnesota delegate gave his report: Negotiations are not going too well, and the orchestra is disturbed because the scale is not keeping up with other orchestras and now ranks thirteenth on the chart. At the end of the current contract, scale was $254 with 3 weeks paid vacation and 46 weeks. The orchestra made proposals -- Sipser and Liebowitz are its counsels -- and management countered with a completely unacceptable proposal. Moreover, they rejected a vastly superior pension plan proposed by Counsel which would have cost them only $120 more annually; they were, however, willing to pay $300 to bring in a truck-load of dirt to publicize on TV their building of a new hall: The conductor directed while a trustee shovelled the dirt; afterward, the dirt was picked up and taken away. So, negotiations are at a standstill, but Counsel is coming to Minneapolis in a few days for more talks, and the orchestra is making strike preparations.

The Minnesota delegate gave a detailed report on an arbitration case involving a non-renewal notice of a member of the orchestra. This notice, given in January 1971, involved musical incompetence; a committee was formed to assist in his defense, and the player in question agreed to a program of private study, chamber ensemble playing, etc., and, after five months, this committee was so impressed with his improvement that it recommended to management withdrawal of the notice and were supported by a petition signed by virtually every member of the orchestra. Management, however, rejected the recommendation and insisted on a private audition for the conductor in spite of the fact that during the last five months, the Musical Director had had ample opportunity to judge this player in ensemble and solo performance. On the advice of his colleagues and the Local, the player refused to play the audition, and the matter was submitted to arbitration. Because of the delay caused by the improvement program and the choosing of an impartial arbitrator, the hearing was not held until October 1972. Even though under the contract, the arbitrator makes the final judgment, management terminated this player's contract in August '72 and referred to him as a former member of the orchestra. In addition to all these injustices, the arbitrator died before making a decision, so it was May '73 before a new hearing was held and the arbitrator ruled that the player must be reinstated with full back pay. The orchestra committee expressed its appreciation to the Board and officers of Local 73, AFM: the Local contributed generously to the legal defense; also, the orchestra made a tremendous contribution in terms of support, implementing a musical improvement program, preparing a legal defense, contributing voluntarily to the legal defense fund, and speaking out on this player's behalf.

The Minnesota delegate stressed the importance of refusal to play a private audition, and the Chairman further elaborated on this, pointing out that an audition does not reflect the actual job situation. In this case, the first arbitrator agreed, suggesting instead that various people in the orchestra listen to this player's orchestra performance and also listen through previous recordings to his earlier performances to determine whether, in fact, his playing had deteriorated; another idea was to go to people who were familiar with his earlier playing; Dorati, for example, was contacted and agreed to testify on this player's behalf.

There was extensive discussion on how the final arbitrator reached a decision, i.e., whether the testimony for and against was partisan or objective, who was chosen to testify, etc., and Sipser wanted a copy of the award plus the written transcript so that his office could prepare a summary in order to help other orchestras. Also, Sipser said that while he was happy with the decision, he disagreed with the rationale, for example, the statement that, as a rule, the conductor should make the musical determination and how could he, the arbitrator, attack the conductor's musical opinion.

It was noted that the player in question had been subjected to pressure from the conductor for ten or twelve years and, rather than go to the orchestra, he tried to work this problem out on his own; it was emphasized that this procedure is unwise for any player in a comparable situation. These problems should not be kept secret, and no private agreements should be made.

After long discussion about auditions, it was resolved that the chair appoint a sub-committee to study and report back to the body on the subject of auditions of orchestra members. The Chairman appointed Ms. Elizabeth Patterson, Dallas; Stephen Edwards, Detroit; and Warren Claunch, St. Louis.

The next item on the agenda was NLRB jurisdiction. Len Liebowitz recounted the March decision of the NLRB to assert jurisdiction over symphony orchestras having a gross annual revenue of not less than $1,000,000, excluding contributions which are not available for operating expenses; the income, however, from this type of contribution can be counted.

There are four major areas to be considered: (1) the union shop versus the closed shop, (2) strikes and lockouts, (3) right to picket, and (4) unfair labor practices.

(1) A closed shop means that all employees must be members of a union before being hired. Under the NLRA, this provision is unlawful. A union-shop clause is one which specifies that, while a non-union employee can be hired, he must join the union within 30 days. A state, however, can pass legislation outlawing union shops, and this prohibition will be recognized by the NLRB -- Section 14B (right-to-work provision). Liebowitz suggested that if management demands that the closed-shop clause be stricken, try to have it modified into a union-shop clause with the reservation that, if the NLRB later changes its mind on asserting jurisdiction, the orchestra will have the right to reinsert the clause or renegotiate it.

(2) Strikes and lockouts: The NLRA gives the employee pro-

tection of the right to strike or engage in other concerted activities for the purposes of collective bargaining, etc., with certain restraints and restrictions. Most orchestras engage in economic strikes, but the unfair labor practive strike is very important because it can be used as a major weapon in collective bargaining, for example, striking because the employer is refusing to bargain in good faith; the orchestra can then later decide to go back to work and even if management denies their application to return on the grounds that various soloists have been cancelled because of the strike, the orchestra is entitled to a day's pay for every day out on strike, if the NLRB determines that the orchestra applied to return to work and if it is determined that it was indeed an unfair labor practice strike. This back pay would never be applicable in an economic strike.

Also, if an orchestra asks to play and talk and is refused by management and thereby locked out, it is entitled to back pay if it is determined that the lockout was illegal based on management's failure to bargain in good faith.

Orchestras and locals must be careful not to engage in secondary activity, i.e., strikes or picketing to pressure or force an employer not to do business with another employer, because it is illegal under the NLRA; the question of primary and secondary boycotts is very complicated and extreme caution must be exercised.

Another matter of importance concerning the NLRB is that orchestras now will be required to serve a 60-30 day notice (Section 8D), which stipulates that when a party to a contract wishes to terminate or modify the contract, he must notify the other party in writing 60 days before the scheduled expirational date, or, if there is no scheduled expiration date, 60 days before the time proposed that the termination or modification take effect. (A form notice was prepared by Counsel and distributed.) This notice should be sent to management 90 days prior to the termination date and a similar notice sent to the Federal Mediation Board. These notices should be sent by certified or registered mail, keeping a copy of the evidence of such mailing.

Also, each party to the contract must coninue in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract until 60 days after the notice to the other party was given or until the date the contract is scheduled to expire, whichever is later. (A booklet entitled <u>A Layman's Guide to Basic Law under the National Labor Relations Act</u> was distributed to the delegates.)

Failure to comply with Section 8D may result in an injunction, so this matter must be taken care of. Also, any employee who engages in a strike within the 60-day period loses his status as an employee of the struck employer and is no longer protected by the Act. This loss of status ends, however, if and when he is reemployed by the same employer.

Orchestras now in negotiation who have not complied with this section should consult Local Counsel or call Sipser's office.

Counsel gave a detailed explanation of unfair labor practices of unions and employers. In this connection, Sipser was firmly convinced that if the NLRB had asserted jurisdiction in the San Antonio dispute, the San Antonio Symphony management would have been found guilty of interference with the adminstration of the labor problems and the trade unions in that situation under Section 8 (A) (2). Also, Section 8 (A) (3), which provides that no employee can be fired for union activities would have been applicable in the Rochester firing of five players, remembering, however, that labor activities was not the stated reason, and that the Labor Board requires a great deal of proof before it will even hold a hearing.

Section 8 (A) (5), refusal to bargain in good faith, is of great importance to orchestras. Management's saying "no" to every proposal, however modest, is still not bad faith bargaining under the Act, nor so considered by the NLRB. This fact, however, should not deter an orchestra from filing an unfair labor charge -- refusal to bargain in good faith -- if management says it would like to give a pay increase but has no money and then refuses to give financial information; this would constitute refusal to bargain in good faith. Before asking for such information, a negotiation team should prepare a list of every possible item, i.e., all expenditures and income. It cannot, however, ask for this information unless management pleads poverty.

Also, under this Act, another kind of information can be asked for -- payroll amounts. In order, however, to avoid disunity in the orchestra, the negotiators do not ask who makes what but simply how many make scale, how many make certain amounts over scale -- failure to give this information is an unfair labor practice.

Other items management is required to divulge include length of service of players, exact costs of fringe benefits, name of agency or carrier, party getting the dividends and commissions and amounts -- in short, all information required to help in collective bargaining.

Some items requested are not financial, for example, length of service of players. This information is needed if a seniority pay proposal is being negotiated.

Counsel explained why it was necessary to ask for all information and how an unfair labor charge could be used as a valuable tactic in collective bargaining.

On the matter of various contract clauses, Counsel said that any clause stating that the employer agrees to employ not less than 85 members of the AFM is now illegal. The clause must simply state that the employer agrees to hire not less than 85 musicians. Following that clause, there must then be one stating that all musicians who are hired must become members of the union not later than 30 days after having been hired. This is known as the Union Security Provision.

Counsel emphasized that any benefit in a contract -- auditioning, hiring, seniority, fringe benefits, etc. --which has as a condition membership in the AFM is now illegal and should be modified now. A general exculpatory clause is not sufficient.

Counsel detailed the unfortunate decision handed down in Rochester involving Sam Jones, the conductor; the Local penalized Mr. Jones for his activities in connection with the attempted firing of five orchestra members. Before the union trial Mr. Jones' lawyer filed a charge with the NLRB against the union. The charge was thrown out because it was not asserting jurisdiction at that time. So Mr. Jones was penalized but refiled the charge after the NLRB asserted jurisdiction ; the trial examiner handed down a decision which held that the Local had violated Section 8 (B) (1), directed that the fine be remitted, the union trial be expunged from the record, and directed the Local to not take any action against Mr. Jones as a result of his action against five AFM members. That case is now going to be appealed to the NLRB in Washington, D.C. This decision, if allowed to stand, will seriously affect the internal disciplining of the AFM. This is just one example of the kind of thing which must now be expected.

In response to a question whether an orchestra's refusal to play a concert in a town in which another orchestra was having a labor dispute constituted a secondary boycott, Counsel said that legal advice had to be sought to ascertain all the facts: for example, who held the title to the hall in which the concert was scheduled. A more sophisticated and effective approach would be for an orchestra to tell its management that it would play the concert if management insists, but urge it to cooperate with the orchestra and not go on with this concert. Usually management will cancel the concert. If, however, the urging is accompanied by a threat, this would constitute an unfair labor practice and should be avoided.

Another matter affected by the NLRB decision is the transfer laws pertaining to symphony musicians in many locals. Counsel said that AFM Counsel should take a good look at these laws because some problems may come up with these laws and they may very well be challenged under the Act.

Counsel also pointed out that a non-union musician can be hired in an orchestra, can apply for membership after 30 days and be turned down, for legitimate reasons, by the union. He still retains his job and cannot be discriminated against; he still is a member of the bargaining unit and entitled to all benefits.

Counsel emphasized that an unfair labor strike, as a practical matter, has more value vis a vis publicity than it has as far as the ultimate decision by the Board is concerned.

In this connection, Counsel said that if the contract stipulates a certain date upon which negotiations shall commence on the next contract and if the orchestra then submits its proposals but does not receive any counter-proposals from management for months, then an unfair labor charge should be filed, chiefly for its publicity value.

Counsel was of the opinion that, even though the IRS makes certain portions of management's return confidential information because of its non-profit status, this information, under the Act, has to be divulged in collective bargaining, especially if management pleads poverty; even if this plea is not made, however, it will probably be determined over the course of the next several years that this information will have to be divulged if it aids in collective bargaining.

In answer to a question, Counsel thought that individual contract negotiations after the signing of the master agreement were also covered by the Act, being an extension of the collective bargaining process. During the collective bargaining process, however, it would be an unfair labor practice for management to try to negotiate deals with individual players; only when an impasse is reached can management act unilaterally, i.e., send out letters to the orchestra members asking them to come back to work; trying to make deals with individual players is, however, an unfair labor practice.

On the matter of requesting detailed information about Ford grants, Counsel thought that information had to be given, ever though the Ford Foundation has said that some of its information is confidential.

On refusal to cross a picket line, Counsel said that unless this right is in the contract, an orchestra can be subjected to discipline or discharge. Every contract should have a clause which states that no discipline, no discharge, no punishment will be issued for refusal to cross a picket line. Insertion of this clause would have to wait until the next contract; in the meantime, an orchestra could still engage in such collective activities, despite not having such a clause; it would, however, be unwise for an individual member to refuse to cross a picket line.

The Chairman asked Counsel to draw up a list of changes needed in contracts and sample clauses as a result of the NLRB decision. Dave Smiley cited such a clause in the San Francisco contract: "There shall be no lockout by the Association and neither the Union nor the orchestra members will cause or engage in ny strike or concerted stoppage of work during the term of this agreement, provided, however, that members shall not be required to cross any picket lines established by an labor organization lawfully representing the employees employed at the premises where the service is to be performed."

Morning Session -- 8:30 A.M., September 8, 1973

The next item on the agenda was IV C -- relationship with the AFM. Local relationships were discussed and poll was taken on percentages of orchestra work dues: of those orchestras represented, three paid 1%; four paid 1½%; four paid 2%; one paid 2¼%; seven paid 3%; one paid 4%; one is 3% with a maximum of $120; four have no work dues. Dave Winstein said that Local work dues are governed by Local autonomy up to 4%, and any orchestra which feels that its work dues are too high should discuss the matter with the Local officers, examine the reasons for such a percentage and, if the figure still seems too high, introduce a resolution at a meeting to have it lowered. The amount of service rendered by a Local, i.e., payment of ICSOM delegate expenses, legal fees, printing costs, etc., should be the prime consideration.

Bob Jones, the Oregon delegate, pointed out that a work-dues resolution would have a better chance of passage if it confined itself to only one area, i.e., the orchestra.

Winstein urged caution on this matter, saying that the courts might hold that work dues have to be uniform in a Local. Sipser was of the opinion that it would be proper to introduce a resolution stipulating that the annual work dues payment would not go above a certain dollar amount; this would be the best way, politically and legally, to solve the problem.

Wage stabilization was the next item, and Liebowitz reported that since Phase 3 went into effect on January 11, orchestras were no longer required to pre-notify the Pay Board of contracts, increases, etc. Since that time, very little has happened with orchestras and the Board: Philadelphia got its entire increase after January 11, except for the period from September to January; management paid this retroactive amount in May, after the Pay Board made a policy change. In Houston, a week or so after the contract was signed, Liebowitz got a call from an executive on the Cost of Living Council, Pay Board Division, who said that he had learned that the agreed increase in Houston was above the guidelines; he was not allowed to disclose his sources, but in fact did find out about it and asked that a reporting form be filed. This was a legitimate request, no matter how the information was obtained. Liebowitz was not sure what the results will be.

Sipser stressed not being inhibited by the Cost of Living Council and urged orchestras to get as much as possible the first year of the contract, rather than deferring the bulk of the wage increase to the second or thir year, because, obviously, a lot of money is involved.

On the Orchestra Chart, Ted Dreher said he, Dave Smiley, and Bob Maisel had eliminated a number of non-pertinent and repetitive items and had added some new ones; he was soon going to send out a work sheet form to the orchestras to be filled out and sent back to him. He would like all the chart information to get to him by Thanksgiving.

The Chairman urged the orchestras to be more prompt and cooperative in filling out chart information.

Liebowitz was reminded of a fact concerning the Pay Board and the NLRB: there have been cases in which it has been held that management's refusal to negotiate or discuss increases above 5.5% because of the Pay Board's ceiling has constituted an unfair labor practice.

The next item was the Contract and Rapid Communications Center: it has become largely inactive because orchestras have not been sending in their completed contracts; hence, the Center cannot comply with requests for contracts. The delegates favored simply contacting those orchestras whose contracts they needed. The Center will continue, however, to be used to disseminate information -- notices, bulletins, questionnaires, etc. -- to orchestras. If an orchestra has difficulty in getting contract information, it can call Mendelson or Dreher.

Dreher added that he would be willing to extract clauses from contracts for orchestras needing such information.

The Chairman suggested that the CRCC handle the ICSOM Directory and the proposal was adopted. Nick Marlowe, National Symphony, agreed to take the CRCC job.

There was discussion on the ICSOM Directory, and it was generally agreed that the Directory was valuable and should be continued.

The next item on the agenda was recording, radio, TV, video cassettes, and the Music Performance Trust Fund. On recording, the New Jersey delegate said that, while his orchestra wanted to record even at reduced rates, the orchestra unanimously decided that if no guarantees could be obtained from the recording industry, a reduced scale was not worth it. Other delegates echoed this sentiment.

Considerable discussion was devoted to the new recording agreement and the intricacies of chamber and small ensemble recording rates and the possibilities of increased employment. Another area involves making initial recordings of music by American composers at symphonic rates with fewer restrictions, i.e., having to pay the entire orchestra, and discussion will be held with the Federation on this matter.

The Chairman gave details of a discussion in late July he and John Palanchian had had with President Davis, Bob Crothers, and Ted Dreher on the matter of trade-off of services. It was pointed out that, as the result of a poll of the orchestras, the Federation was now prohibiting this practice because orchestras clearly needed protection by the Federation; the orchestras also need this kind of protection on pension-taping, because individually they are helpless in bargaining situations, i.e., the package is acceptable except for this one item, but they can hardly go out on strike over this one issue, so it stays in the contract. The Chairman said that he and Palanchian had difficulty in persuading the Federation that orchestras want a prohibition of pension-taping; therefore, as with trade-offs, the Federation has to have all orchestras indicate that they do not want pension-taping and do need protection by the Federation.

After extensive discussion on pension-taping, during which the practice was decried, principally because of its exploitative nature, it was resolved unanimously that each orchestra vote by secret ballot to ask the AFM to (1) prohibit pension-taping and (2) set a reasonable rate for radio transcription taping.

An announcement was made by the Cleveland delegate that since the time of ICSOM's support of that orchestra (a period of twenty-four hours) pledges of $25.00 weekly have been gotten from 35 to 40 members of that orchestra. Again appreciation was expressed to ICSOM.

Artistic advisory committees were discussed, and it was suggested that orchestras are now moving more into the area of the policy-making domain, as is occurring in other industries and this new area needs careful consideration, especially since a certain amount of secrecy may be involved and guidelines need to be established, i.e., monthly reports to the orchestra.

Henry Shaw quoted passages from <u>Orpheus in the New World</u> which mention Seattle's operations and development committee; the author says that, while conservative managements view Seattle's committee with some alarm, the Seattle management is very proud of this idea, not so much because tensions would be relieved but because new ways of developing new services of an orchestra which has yet to approach a year-round season could be found by this joint effort. The author goes on to point out that the musicians can provide a major resource of artistic expertise that is now largely neglected, i.e., advising the laymen on symphony boards about the musical repertorie and the competence of soloists and resident and guest conductors otherwise unknown to management, thus making a very real contribution to artistic quality and also providing input on the feelings of the artistic community, etc., all of which influences policy-making.

Numerous delegates recounted abuses of artistic committees by management, i.e., trying to subvert contract provisions; the Chairman, therefore, urged that certain safeguards be taken: orchestra choice of artistic advisory committee members; examination by this committee of its rights and responsibilities; not only having the committee meet with the Symphony Board but perhaps having some members become part of the Board.

Sipser said that this was very important: If management simply considers an artistic advisory committee as a gimmick -- a front for management -- forget it; it's worse than nothing. If management invites two members to be non-voting members of the Board, it's a compromise and better than nothing; perhaps later these people will be voting members. Sipser was generally suspicious of management's motives, however, especially when it insists on secrecy; if this should be a condition, avoid it. The most important thing is to get on the Symphony Board and have voting rights, because that is where the power lies and that is what policy-making means.

The Boston delegate said that his committee is a responsible, free-talking committee which presents the views of the orchestra on artistic matters to management. Another feature in Boston is an overseers' committee, which concerns itself primarily with fund-raising; this committee is made up of Board members, trustees, management, and orchestra members. This committee is only one year old but seems to be working well.

The Chairman asked the Boston delegate to prepare a short report on this committee for dissemination to the orchestras.

The Los Angeles delegate gave a favorable report on his orchestra's advisory committee: The conductor evaluations are carefully filed; the manager sees and considers these results very carefully; the committee gives advice and opinion on repertoire but does not discuss contract changes or amendments and does not discuss personnel. Moreover, this committee does not feel that it has ever been used by management.

It was resolved that orchestras be urged to upgrade the benefits of pensioners.

The matter of immigrant musicians, particularly Russians, was discussed, and Ted Dreher outlined the situation, saying that, in most cases, the AFM has been accomodating.

The Pittsburgh delegate read a letter from the committee chairman to the Union president concerning the problem of alcoholism of an orchestra member. The position was that alcoholism is an illness for which this member was being treated, and management is incorrect in defining alcoholism as misconduct and thereby seeking to discharge this member. The committee and the orchestra vigorously stated their determination to fight for this member's job.

It was resolved unanimously that ICSOM endorse the position on alcoholism as set forth in a letter from the Pittsburgh Symphony Orchestra Committee to the Local president.

The matter of orchestra librarians, i.e., not necessarily covered in a contract, came up, and the Chairman suggested that they communicate and prepare a report for examination by ICSOM.

The Chairman thanked the ICSOM Executive Committee, the hosts, delegates, and guests for their help in making this a successful Conference.

The Conference was adjourned.

Respectfully submitted,

R. Robert Maisel

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Secretary