

## 2004 ICSOM Conference

*Dedicated to the memory of Lew Waldeck*

**August 18-21, 2004**

**Salt Lake City, UT**

***“We have seen the future and it could be us”***

### **Wednesday – August 18, 2004**

Jan Gippo, ICSOM chairman (St. Louis Symphony) called the conference to order and introduced the rest of the ICSOM Governing Board, legal counsel and conference coordinators:

Brian Rood, ICSOM president (Kansas City Symphony)

Michael Moore, ICSOM treasurer (Atlanta Symphony Orchestra)

Laura Ross, ICSOM secretary (Nashville Symphony Orchestra)

*Sam Bergman, editor of Senza Sordino (Minnesota Orchestra) – not attending*

Paul Ganson, ICSOM governing board member-at-large (Detroit Symphony Orchestra)

Richard Levine, ICSOM governing board member-at-large (San Diego Symphony Orchestra)

*Henry Peyrebrune, ICSOM governing board member-at-large (Cleveland Orchestra) - on tour*

Bruce Ridge, ICSOM governing board member-at-large (North Carolina Symphony Orchestra)

Leonard Leibowitz, ICSOM legal counsel

Lynn Rosen, 2004 ICSOM conference coordinator (Utah Symphony Orchestra)

Robert Levine, assistant conference coordinator (Milwaukee Symphony Orchestra)

Laura Ross, ICSOM Secretary, read the roll call of member orchestras:

Alabama Symphony Orchestra	Jeff Solomon
Atlanta Symphony Orchestra	Michael Moore
Baltimore Symphony Orchestra	Mary Plaine
Boston Symphony Orchestra	Lawrence Wolfe
Buffalo Philharmonic Orchestra	Robert Prokes
Charlotte Symphony Orchestra	Bob Rydel
Chicago Lyric Opera Orchestra	Matthew Comerford
Chicago Symphony Orchestra	Rachel Goldstein & Steve Lester (Alternate)
Cincinnati Symphony Orchestra	Paul Frankenfeld [for Martin James]
<i>The Cleveland Orchestra</i>	<i>Henry Peyrebrune – on tour</i>
Colorado Symphony Orchestra	Kenneth Harper
Columbus Symphony Orchestra	Andy Millat
Dallas Symphony Orchestra	Matthew Good [for James Nickel]
Detroit Symphony Orchestra	Brian Ventura
Florida Orchestra	Warren Powell
<i>Florida Philharmonic Orchestra</i>	<i>Jay Bertolet – not attending</i>
Fort Worth Symphony Orchestra	Lesley Cleary
Grant Park Symphony Orchestra	Eva Carol Beck [for Michael Shelton]
Honolulu Symphony Orchestra	Steve Flanter
Houston Symphony Orchestra	John Thorne
Indianapolis Symphony Orchestra	Nancy Agres
Jacksonville Symphony Orchestra	John Wieland
Kansas City Symphony	Jessica Wakefield
Kennedy Center Orchestra	Nancy Stutsman
Los Angeles Philharmonic	Meredith Snow
Louisville Orchestra	Karen Lord-Powell [for Daryl Johnson]
<i>Metropolitan Opera Orchestra</i>	<i>Marvin Topolsky – not in attendance</i>
Milwaukee Symphony Orchestra	Helen Reich & Robert Levine (Alternate)
Minnesota Orchestra	Paul Gunther
Nashville Symphony Orchestra	Bruce Christensen
National Symphony Orchestra	Jennifer Cline

New Jersey Symphony Orchestra  
New York City Ballet Orchestra  
New York City Opera Orchestra  
New York Philharmonic  
North Carolina Symphony  
Oregon Symphony Orchestra  
Philadelphia Orchestra  
*Phoenix Symphony Orchestra*  
Pittsburgh Symphony Orchestra  
Puerto Rico Symphony Orchestra

Rochester Philharmonic Orchestra  
Saint Louis Symphony Orchestra  
Saint Paul Chamber Orchestra  
San Antonio Symphony  
San Diego Symphony Orchestra  
San Francisco Ballet Orchestra  
San Francisco Opera Orchestra  
San Francisco Symphony Orchestra  
*Syracuse Symphony Orchestra*  
Utah Symphony Orchestra  
Virginia Symphony

Bob Wagner  
Ethan Silverman  
Nancy McAlhany  
Kenneth Mirkin  
Bruce Ridge  
Dolores D'Aigle  
Zachary DePue  
*John Lofton – not attending*  
Zach Smith  
Emma Matos Rodriguez [for Alexis Sanchez-Ortiz]  
David Angus  
Christian Woehr  
Carole Mason Smith [for Leslie Shank]  
Dan Zollars  
Thomas Morgan  
Brian Lee  
Leslie Ludena  
Linda Lukas  
*Angel Sicam – not attending*  
Lynn Maxine Rosen  
Christine Allison & John Lindberg (Alternate)

Chairman Gippo introduced ICSOM committee chairs, AFM conference representatives, AFM executive officers and staff, local officers and guest:

Bill Foster, ICSOM Electronic Media Committee chairman & AFM-EPF Trustee (National Symphony Orchestra)  
Leslie Shank, ICSOM Legislative Committee chair (St. Paul Chamber Orchestra)

#### **OTHER AFM PLAYER CONFERENCES:**

Larry Gardner, Member-at-large, Regional Orchestra Players Association (ROPA)  
Francine Schutzman, president, Organization of Canadian Symphony Musicians (OCSM)  
Phil Ayling, president, Recording Musicians of America (RMA)  
Phil Yao, Recording Musicians of America-Los Angeles (RMA-LA) & AFM-EPF Trustee  
Vicki Smolik, president, Theater Musicians Association (TMA)

#### **AMERICAN FEDERATION of MUSICIANS:**

Tom Lee, AFM president  
Bobby Herriot, AFM vice-president CANADA  
Florence Nelson, AFM secretary-treasurer  
Hal Espinosa, AFM IEB, president, Local 47, Los Angeles CA  
Ray Hair, AFM IEB, president, Local 72-147, Dallas-Fort Worth TX  
Mark Jones, AFM IEB, president, Local 92, Buffalo NY  
Ed Ward, AFM IEB; president, Local 10-208, Chicago IL  
Laura Brownell, director, Symphonic Services Division (SSD)  
Eric Beers, AFM SSD, contract administrator  
Chris Durham, AFM SSD, negotiator  
Nathan Kahn, AFM SSD, negotiator  
Deborah Newmark, AFM SSD, director, Symphonic Electronic Media  
Janice Galassi, director, AFM, director, Organizing and Education  
Michael Manley, AFM Travel/Touring/Booking Division

#### **OFFICERS OF AFM LOCALS:**

Douglas Fisher, president, Local 103, Columbus, Ohio  
David Schubach, vice-president, Local 47, Los Angeles CA  
Lovie Smith-Shenk, president, Local 65-699, Houston TX  
David Lennon, president, Local 802, New York City NY  
Jay Blumenthal, vice-president, Local 802, New York City NY  
Teresa Gafford, secretary-treasurer, Local 161-710, Washington DC  
Erich Graf, president, Local 104, Salt Lake City UT

John Grimes, vice-president, Local 9-535, Boston MA  
José Martin, president, Local 555, San Juan PR

**SPEAKERS and PANELISTS:**

Henry Fogel, president, American Symphony Orchestra League  
Paul McCarthy, Collective Bargaining Associates  
Patricia Polach, AFM Counsel  
Lowell Noteboom, board president, St. Paul Chamber Orchestra  
Bruce Coppock, president, St. Paul Chamber Orchestra,  
Tina Ward, musician, St. Louis Symphony  
Gary Bordner, musician, St. Paul Chamber Orchestra

**OBSERVERS and OTHER GUESTS:**

David Gruender, observer, Indianapolis Symphony Orchestra  
Winston Webber, observer, National Arts Centre Orchestra  
Sam Denov, Chicago Symphony Emeritus, former ICSOM Chair, Vice-Chair and Editor *Senza Sordino*  
Michelle Walker Fine, observer, Memphis Symphony

Conference coordinator and host Lynn Rosen introduced Utah Symphony CEO Anne Ewers, who welcomed the delegates and guests to Salt Lake City.

The first order of business was to forgive San Antonio Symphony ICSOM dues for the previous season (so the delegate could be seated) and to determine the Florida Philharmonic's membership status for the coming year and to forgive the Florida Philharmonic's dues for the previous season. Both dues waivers were approved; the Florida Philharmonic will remain a member of ICSOM with suspended status for the next year.

The 2003 ICSOM Conference Minutes were approved.

Conference Dedication

Honolulu Symphony ICSOM delegate Steve Flanter distributed copies of Local 677's special tribute issue in memory of Lew Waldeck. Marsha Schweitzer, Editor of *Keola O Na Mele*, was thanked for her excellent work.

ICSOM counsel Len Leibowitz read his tribute to Lew Waldeck entitled "And the Winner Is".

New York City Opera ICSOM delegate Nancy McAlhany read a short note from former ICSOM delegate Bruce Revesz remembering Lew Waldeck.

The following resolution (#1) dedicating the 2004 ICSOM Conference to the memory of Lew Waldeck was adopted by acclamation. [*Motion #1 – Governing Board*]

Whereas, Lew Waldeck was a pioneer in the orchestral field, as well as a mentor, negotiator, teacher, guru, and the first head of what is now the Symphonic Services Division of the American Federation of Musicians; and

Whereas, He touched the lives of thousands of symphony, opera and ballet musicians profoundly in so many ways; and

Whereas, Those who were privileged to know him and to work with him will never forget his wisdom, his fighting spirit, and his dedication to the cause of improving the working lives of classical musicians in the U.S. and Canada; and

Whereas, His passing has left a void in the hearts of so many who benefited from his teachings, his leadership, and most of all, his love, therefore, be it

**Resolved,** That the 2004 ICSOM Conference in Salt Lake City be, and the same hereby is, dedicated to the memory of Lew Waldeck as just a small token of the admiration, respect and affection in which Lew is held by the delegates to the Conference, as well as the thousands of musicians those delegates represent.

Conference coordinator and host Lynn Rosen welcomed delegates, officers and guests to Salt Lake City and made a few remarks about upcoming events.

Assistant conference coordinator and ICSOM chairman emeritus Robert Levine made a few opening remarks about procedures.

## Officer and Committee Reports

### **President – Brian Rood**

Brian Rood introduced his wife, Jessica Nance, and their 5-month old daughter, Grace. He spoke about his attendance at the OCSM conference, a recommendation by the Governing Board to approve an additional 3-year agreement with the Sphinx program, and a Carnegie Hall performance sponsored by Sphinx in the fall. He talked about his work with Michael Moore and Tom Morgan on the conductor evaluation program and the need for all orchestras to participate in the program. He also spoke about the *ICSOM Directory* and the plans to move up production and distribution dates and the plan to continue mailing them to individual musicians. He spoke about the negotiation climate and pointed out how important unity is to collective success. Brian mentioned his and Henry Peyrebrune's participation in the Mellon process, known as the "Elephant Task Force" and the abuses in the press that were immediately dealt with. A memo from Mellon about what the Elephant Task Force's responsibilities were in developing an internal financial evaluation has been distributed to all the mailboxes. He spoke about the role of an ICSOM delegate, referring in part to portions of the *Delegate Manual*.

Jan Gippo thanked Brian Rood for his leadership as president.

### **Secretary – Laura Ross**

Laura Ross thanked the Governing Board, including those outgoing members, and mentioned a need to receive information from delegates concerning registration sheets, settlement bulletins and new delegate information in a timely manner.

### **Treasurer – Michael Moore**

Michael Moore thanked the delegates and orchestras for agreeing to a dues increase last season. He spoke about ICSOM's fixed expenses, how accounts are set up, and requested that dues be paid sooner rather than later. He also spoke about the Emergency Relief Fund, referring delegates to their Handbook.

***Senza Sordino – Sam Bergman*** (*Sam did not attend the conference. His written report is in the Delegate Manual.*)

### **Chairman – Jan Gippo**

Jan Gippo detailed his many meetings over the past season that included meetings with Henry Fogel (American Symphony Orchestra League - THE LEAGUE), and Fred Zenone and Paul Boulian (Symphony Orchestra Institute - SOI). There were numerous Player Conference Council (PCC) meetings along with joint meetings with the AFM International Executive Board (IEB). Len and Brian attended some of those meetings. Chairman Gippo and the Symphonic PCC members assisted in the choice of our newest SSD Director, Laura Brownell. He thanked Tom Lee for his support in this process.

Chairman Gippo assisted in negotiating the AFM fence agreement with the New World Symphony and expressed his hope that the AFM and ICSOM will have a continued presence in Florida. He presented a paper to many of the major managers in October 2003 in which he encouraged an open relationship between musicians and management that must be reciprocal. He met with the Detroit Symphony, Minnesota Orchestra and St. Paul Chamber Orchestra this past year. He was a member of the AFM Futures Committee, attended the Digital Download negotiations along with Media Committee chair Bill Foster, and participated in negotiating the new AFM Symphony, Opera, Ballet Audio-Visual Agreement. In the past two months he has attended conferences for the American Symphony Orchestra League (THE LEAGUE), the Major Orchestra Librarians Association (MOLA), and the Regional Orchestra Players Association (ROPA).

Chairman Gippo thanked Janice Galassi for her hard work as director of SSD in the past few years and urged delegates to contact her in her new capacity as director of Organizing and Education.

He spoke about why his belief that hearing all points of view, including management's, was very important. This is the reason certain presenters are included in this year's conference. He has provided an ICSOM presence within our constituent groups, and worked with those orchestras who have felt isolated. He thanked the delegates for their support and closed with the remark that symphonic musicians do have cultural relevance and must also be warriors on occasion.

Lynn Rosen introduced Steve Proser, union steward for the Utah Symphony.

## **Membership Committee Report – Laura Ross, Chair**

There were no applications for membership this year.

## **Nominating Committee Report – Mary Plaine, Chair**

Names placed into nomination by the Nominating Committee, which also included Tom Hall (Chicago Symphony), and Leslie Shank (St. Paul):

Chairman – Jan Gippo [2-year term]

President – Brian Rood [1-year term]

Secretary – Laura Ross [1-year term]

Treasurer – Michael Moore [2-year term]

Editor of *Senza Sordino* – Richard Levine [2-year term]

Member-at-large [1-year terms] – Steve Lester, Bruce Ridge

Member-at-large Paul Ganson asked for further nominations. There were none. Nominations remain open.

The ICSOM publication compiled by Tom Hall, *ICSOM: Forty Years of the International Conference of Symphony and Opera Musicians*, will be distributed to all attendees. Thanks were extended to Lucinda-Lewis, former ICSOM Secretary, who assisted in publication of the book.

A get-well card for Richard Totusek was circulated.

Jan Gippo introduced American Symphony Orchestra League President and CEO Henry Fogel and presented him with a copy of Tom Hall's book.

## **Keynote Address - Henry Fogel**

Henry Fogel spoke about the invitation to leaders of ICSOM, ROPA and the AFM to serve as *ex officio* board members of the American Symphony Orchestra League. He spoke about his history as a radio producer, as a board member of the Syracuse Symphony, and as CEO of both the National Symphony and Chicago Symphony before becoming CEO of the League. He spoke about the structure and history of the League and how musician participation on the League board has changed the tone and direction of management thinking toward musicians. He said that since the League is not an employer, it is a good place for all constituencies of the League to meet and discuss issues. He encouraged musician participation.

## **Question and Answer**

Following Mr. Fogel's remarks, numerous delegates expressed their desire to elevate discussion and be open-minded but also spoke about previous abuses their orchestras had faced due to actions by managers and/or the League. Mr. Fogel answered questions on a variety of topics.

Attacks on musicians have included information from the League and Mellon Task Force; what is Mr. Fogel's attitude about misuse of information? Mr. Fogel responded that the League does not control the managers. He does not condone that kind of behavior, especially because it does not elevate the tone of discussion as he would wish. Much League information is at least a year old because they use audited financials, but Fogel believes there is no statistical information that supports the conclusion that there are major structural deficits across the country. He doesn't believe the League figures prove that, but it does show there are more deficits. Twenty years ago it was about "downsizing" and now it's about structural deficits – what does it mean? If it's not due to one project gone bad but an ongoing loss of income, year after year, then it might be a structural deficit. It could be a revenue problem, not an expense problem. The 1990's were an unbelievable time. The economy began to go down and hit bottom in 2001. This huge rise and drop had to have an impact but the economy will recover. Orchestras let their expenses ramp up because their income didn't equal expenses, but the answer now is that it is not always necessary to cut expenses. He likened the use of statistics to a quote by H. L. Mencken, who said, "many people use statistics the way a drunk uses a lamp post, for support instead of illumination." Musicians need to help the League find constructive ways to use and collect financial statistics. There has been no long-term exploration of how those

figures track over time – 30-40 years back. He believes that our continued conversations (and board membership) would change attitudes and that we could identify ways to use information in a positive way.

Concern was expressed about the long-range plan the League is working on. One orchestra was harmed by its own long-range planning when, having already made a number of concessions, the musicians were once again beaten down by what seemed to be a very organized effort to return to conditions of the 1960's. Mr. Fogel responded that the League is not about employing musicians or bargaining agreements with musicians, it is a service organization.

Since the League has made the offer, how would ICSOM's participation on the board address the problems that are occurring when League information is being abused? Mr. Fogel said the memberships would be publicized to give credibility. On the issue of being co-opted, he suggested that ICSOM would have to decide if it was a major or minor issue. If it was fundamental, resign. He also said that if he agreed it was wrong, he might resign as well. There are 40 League board members, two of whom are musician representatives. One officer is a musician: vice-chair Robert Wagner is from the New Jersey Symphony.

When asked if ICSOM's participation on the board would help us deal with managers and boards, Mr. Fogel responded that the League's role is not to control managers and boards. It is their role to figure out how to change behavior through teaching and educating new leaders.

There was a question about identifying new board members. Mr. Fogel said board training is important and a focus of the League now. Managers are expected to travel and learn, but board members do not have the same requirements. Mr. Fogel will be spending 50% of his time traveling to visit orchestras. Each visit will be 1-2 days, with 1 full hour with board, 1-2 hours with the executive board, as well as meeting with managers, possibly orchestra committees, volunteers, and listening to concerts. The League is an orchestra resource and more must be done.

Another topic of interest to the delegates was the availability of the League's financial information. Mr. Fogel said managers have received recommendations to share financial information with their orchestras, but most figures are submitted with confidentiality requirements that don't allow sharing. He agrees that we need to address this issue and, while he has been pushing this idea for year, the climate may have changed enough to let us address this topic. Finding an applicable system is also a priority; accounting right now is all over the map.

Mr. Fogel's speech included references to workshops on getting the better of the musicians, while another workshop addressed ways to out-negotiate Lew Waldeck, the man our conference was dedicated to. Mr. Fogel said those were previous times when the League was perceived as a management organization. The League represents everyone, and he believes it is best set up to address change and discussion among all different constituencies. Managers have their own groups now. The League represent everyone, not just managers.

### **Chairman – Jan Gippo**

Chairman Gippo continued his report by speaking about the changes that have occurred during the past two years in ICSOM and the climate of negotiations, which is currently very acrimonious. He believes that we should be discussing ICSOM's joining the League board. Having said this, he went on to say he doesn't believe the time is right now. He spoke about the change in direction that the League is undergoing with Henry Fogel. He believes the League is looking in the right direction, and agreed that the League is no longer the major managers' organization. He said we must see some bold leadership from the League in regard to the behavior of some of our current orchestra managers, and that bold leadership can be accomplished through back-channel communication. Whatever the League does must stop the vituperative attitudes we face today. ICSOM hopes to identify ways to work with the League on a number of projects in the future.

### **AFM President - Tom Lee**

President Lee noted that this was his thirteenth conference and expressed his pleasure that Paul McCarthy was a presenter at ICSOM this summer. He spoke about the selection of Laura Brownell as the new director of SSD and acknowledged Janice Galassi's contributions the past few years in that position. He spoke about the success the AFM recently experienced in regard to royalty payments for digital broadcasts due under the Copyright Arbitration Royalty Panel (CARP) decision as paid to SoundExchange on behalf of featured artists. He thanked Trish Polach for her work that led to a recent decision by the SoundExchange board (of which Tom Lee holds a seat), which

unanimously determined that the musicians of the orchestra are featured artists, not our orchestral institutions. *[President Lee asked to be excused and completed his speech at a later time.]*

Lynn Rosen acknowledged her conference assistants – Laura Ross, Michael Moore and Robert Levine.

### **SSD Director - Laura Brownell**

Laura Brownell spoke about her 18<sup>th</sup> day as director of SSD, commended each of the conferences for their presentations, and gave a little history about her training as a musician and as the Canadian SSD contract administrator/negotiator/jack-of-all-trades. She spoke about some of her dealings with Canadian managers and their attitudes and trends in financial analysis that show how orchestra salaries have stagnated or increases remained low while expenses have risen incredibly. She spoke about her plans for SSD, ideas about how to better serve ICSOM, and thanked AFM Canadian vice-president Bobby Herriot, OCSM president Francine Schutzman and OCSM, and the staff of SSD for their support.

There were questions about her intention to deal with overtaxed negotiators and how their concerns and those of orchestras who need their services would be dealt with, and where her offices would be located. Ms. Brownell responded that Tom Lee has given her assurances these concerns that, after evaluation of the department, if needs existed, they would be dealt with. Her plan is to work three weeks in the Canadian office and one week each month in New York.

### **AFM Travel/Touring/Booking Director - Michael Manley**

Michael Manley spoke about what he considers to be a “cross over” issue as third party companies begin hiring CBA orchestras to back up major artists like Barbra Streisand, Andrea Bocelli, and others. He spoke about the intent of AFM Bylaw Article 14, Section 3, that addresses orchestras on tour outside their local jurisdiction. Orchestras have begun to broaden the intent and are trying to apply it for concerts that are no longer, in his view, of a “symphonic nature.” It’s a matter of orchestra wage scales versus local minimums as well as a work dues issue. It’s also about undercutting freelance musicians and the shift in liability from third parties to the orchestras (cancellation, media abuses – the AFM would have to go after the orchestra, not the producers of the event.) He posed some questions that helped him define whether a tour was of a symphonic nature: 1. Who is the producer? 2. Who is the featured act? 3. Is the orchestra being double booked? 4. Is the orchestra the exclusive touring ensemble? Mr. Manley spoke of a resolution he had drafted (previously adopted by ROPA) that would be presented later in the week for consideration.

There were questions and clarifications from the delegates, some concerning the Baltimore Symphony’s tour with Linda Ronstadt. Concerns were raised about some of the questions Michael Manley listed to define whether a concert was symphonic in nature, particularly the question about tours handled by third parties. Work dues are an issue as well as the concern that orchestras trying to find additional revenue may step on the toes of freelance musicians who depend solely on this type of work, especially if the orchestra helps subsidize the cost of the tour, thus undercutting outside contractors. Mr. Manley said the AFM is not trying to assign blame but to open a dialogue. There were also questions about required minimums and applicable scales. Another concern was that traveling orchestras might undercut local scales if CBA wages were less than some local rates. Jan Gippo assured the delegates that there would be further discussion of this subject during the rest of the conference.

### **ROPA - Larry Gardner, Member-at-large**

Larry Gardner delivered the greetings of the 68 member orchestras of ROPA and of president Barbara Zmich. He acknowledged the good relationship between ROPA and ICSOM and spoke about the invitation extended to the AFM, ROPA and ICSOM to serve of the League board. He reported that the ROPA Executive Board would discuss this further, but would be interested in identifying ways to work with THE LEAGUE, especially on education projects. Their board wants substantive reasons to join, so for now they are saying no. He urged the delegates to actively encourage voter registration and the need for change.

### **AFM President - Tom Lee *(continued)***

President Lee returned and spoke about Bill Foster’s appointment as a rank-and-file trustee to the AFM Pension Fund. He mentioned the AFM IEB’s endorsement of John Kerry in June, which was due in part to the imposed limitations and requirements that have been placed on our locals and unions in general by the current administration. President Lee spoke about failed legislation that would have expanded the amortization of multi-

employer pension funds because these funds are considered union friendly and Bush's administration doesn't want to help any unions (the same legislation did allow the expansion for single-employer pension funds). He also mentioned problems with Medicare, access to inexpensive drugs, and job losses as reasons for the endorsement. President Lee reported that it has only been a recent development that Republicans have agreed to take on limiting the power of the FCC in regard to expansion of media ownership, and he spoke about various legislative activities the AFM, Hal Ponder and Trish Polach have been involved in. We continue to deal with CARP issues, piracy, airline instrument carry-on policies, and the FCC. He urged all members to be registered on the AFM website and the online legislative notices.

Finally, President Lee spoke about the "re-tooling" of the AFM by putting more people in the field. He spoke of the need for more people like Chris Durham and Nathan Kahn, and he recognized the staff of SSD and their contribution to the AFM and our membership.

#### **OCSM - Francine Schutzman, President**

Francine Schutzman thanked Brian Rood for attending the OCSM conference and went on to discuss the many meetings with her PCC colleagues on the Futures Committee. She spoke about the conditions in Canadian orchestras today, the loss of funding agencies for their orchestras, the tax status of orchestras as employees, and her views about ROPA and ICSOM joining the League board. She thanked Laura Brownell and Janice Galassi for their service.

#### **AFM Diversity Committee - Lovie Smith-Schenk, President, Local 65-699 - Houston TX**

Lovie Smith-Schenk explained the goals of the AFM Diversity Committee, a standing committee of 13 members. They are working to better represent all members of the AFM inclusively. The committee is active by giving awards that recognize the contributions of locals and individual members by creating awareness and achievements, reaching out to youth and younger members, conducting surveys, setting up subcommittees and a diversity website, and establishing a higher profile in the *International Musician*. She mentioned that orchestras are the most diverse body the AFM has who play all different types of music, and that when orchestra members go out in the community they can help spread the word. She also recommended that ICSOM establish a Diversity Committee.

#### **Legislative Committee - Leslie Shank, Chair**

Leslie Shank expressed her excitement serving on the committee and announced that Nancy Stutsman had agreed to serve as co-chair. She spoke about the goals of the committee: to identify convention representatives and local officers who attend the AFM convention and to identify possible changes to AFM legislation. The committee also works with AFM legislative director Hal Ponder on governmental issues and legislation. She spoke of the need for more participation by delegates and orchestra members. She has put together a survey about local AFM representation in ICSOM orchestras and the possibility of organizing the committee into regional responsibilities. The committee is asking for more volunteers.

Jan Gippo expressed his belief that was a vital committee for ICSOM.

#### **Electronic Media Committee - Bill Foster, Chair (see written report)**

Bill Foster thanked the AFM for supporting the Media Committee. He discussed the issues surrounding local control, which are addressed in both the AV and Internet Agreements through local oversight committees. He explained the experimental nature that led to the inclusion of these oversight committees and mentioned the frustration with the process from some managers and some musicians. He spoke about the number and types of meetings and negotiations he and the committee were involved in the past year and said he tries to keep good contract with the ROPA media committee through its chair, Jennifer Munday. He spoke briefly about the AV negotiations, digital download negotiations, dealing with SoundExchange, nationally syndicated radio broadcasts and discussions about self-produced recordings. There have been the beginnings of a discussion with managers about self-produced recordings that would lower up-front rates in exchange for revenue sharing on sales of a product that would remain the property of the institution rather than a third party. The Committee has been exploring the concept of a low budget agreement that currently exists under the SRLA for the non-symphonic world but excludes symphony orchestras.

The new AV agreement includes a freeze in year one (retroactive to August 1, 2003) and a 2% increase in the second year.

Mr. Foster explained that the committee has recently begun discussing syndicated radio agreements. The current IEB guideline for radio is 5% of weekly scale per broadcast. The Committee considered whether (1) the national guideline should be eliminated, leaving radio rates up to local negotiation, (2) a different kind of guideline would be more acceptable/enforceable, or (3) it is possible and preferable to negotiate a national radio agreement with the managers. He asked that committee chairs or media contacts call him either to ask questions or just advise him and the Committee when media projects are being discussed locally. Orchestras should not take the word of their managers that what they are doing is ok. Call Bill Foster or Debbie Newmark (or both) – sooner rather than later. Once an agreement has been made locally, it is too late to provide helpful input.

Jan Gippo observed that Bill Foster’s attitude is “what can we do to help orchestras to deal with these issues?” He urged all orchestras to call Bill and Debbie.

#### **Abe Torchinsky ICSOM Emeritus Program - Mary Plaine**

Mary Plaine explained the history of the program, the requirements, and what members receive as benefits. Many emeriti continue to be active in the national community of orchestras. She asked that delegates periodically review the list in the back of the *ICSOM Directory*. Jan mentioned the possibility of including a link on the ICSOM website for the form.

#### **Directory/Archive/Orchestra-L/CD-ROM and *Senza Sordino* - Robert Levine**

Robert Levine reported that the new *ICSOM Directory* is published. ICSOM saved a lot of money sending the directories out bulk mail. The future process for editing the information will be an online database with password security to make changes and print proof sheets. The Governing Board will set the deadlines and should be in members’ hands eight weeks later. He expressed his pleasure that Richard Levine would be overseeing the directory production.

Robert Levine fielded a number of questions about distribution, extra copies, keeping the information current in the database, and that one orchestra had not received directories. He cautioned that making distribution changes more difficult could lead to problems, and he spoke on behalf of sending *Senza Sordino* to each individual’s home instead of delegate boxes. He also reported on the change in providers for Orchestra-L and expressed that the Governing Board guidelines were helpful. Mr. Levine is also currently working on the archives and is working on consolidating all the ICSOM resolutions, minutes and *Senza Sordinos*, which he hopes to have in some scannable form in the future. He hopes to include much of this on a CD-ROM and/or on the website.

#### **Strike Fund Trustees - David Angus**

David Angus reported that the AFM Strike Fund has over \$2.65 million, with \$300,000 paid out to Charlotte and San Antonio this past season. He reminded the delegates that access to the fund requirements have been liberalized. AFM bylaws have been totally reorganized but can be found in the delegate manual. The trustees have to take each case on its merit and sometimes face choices that are questioned later.

Jan Gippo asked what happens to an orchestra in troubled negotiations and then management cancels the season; do the musicians get the strike fund payments or collect unemployment? David Angus said there’s no clear answer; it depends upon each individual situation.

Bob Rydel alluded to a situation that, due to a miscommunication with SSD, put the orchestra’s negotiating power in jeopardy. While David Angus did not remember the incident, Brian Rood reminded the delegates that he and David are both trustees and can be contacted at any time.

#### **Evening Session: The Orchestra Committee, Duty of Fair Representation and Beyond: Leonard Leibowitz, Distinguished ICSOM Legal Counsel**

Len Leibowitz explained that the duty of fair representation (DFR) arises from the union’s status as “sole and exclusive” bargaining representative of the bargaining unit. Fair representation means that the union, or anyone acting on behalf of the union, must treat everyone in the unit fairly, whether he or she joins the union or not, and may not make decisions which are arbitrary, capricious, discriminatory or in bad faith. In right-to-work states unions must still represent non-members because of this exclusive right. Duty of fair representation is about how a person is represented. Counsel addressed missing time limits (and encouraged attention to time limits) and suggested it

might be prudent to file the grievance if you're getting close to the time limits, even if you don't know all the facts yet, because the grievance can always be withdrawn.

He pointed out that DFR is not just a union issue as orchestra committees are agents of, and act on behalf of, the union as well. The union or committee has an obligation to investigate the grievance (thorough and complete), and a decision has to be made whether to follow through on the grievance. Waivers on time limits by management should be in writing, and when the time starts to run depends upon when the occurrence happened, or when the union learned of it, or should have learned of it. Sometimes filing a grievance assists in investigation and discovery. He also counseled that committees and unions should not be afraid of having a settlement discussion because they are not admissible in arbitration. The union does not, in most cases, have an obligation to follow through on a grievance that has insufficient or no merit. In the case of sexual harassment by one member on another, the grievant has the right to complain to management, who is responsible for dealing with this issue. Some unions have come to the conclusion that it is easier to take every case than to deal with fair rep charges brought before the NLRB. This is causing many arbitrators to become skeptical of union grievances and leads them to make some poor decisions.

Counsel also pointed out that taking a grievance to arbitration has cost as well, and a union could end up defending itself against a DFR, which is more expensive and could end up in federal court. Following through and good investigation are the best protections against these charges. Also, the employer has an obligation through the grievance procedure to engage in the process by participating in the investigation, etc.

Mr. Leibowitz presented six case studies and asked the delegates to decide whether the examples constituted a breach of DFR or not. The delegates broke into smaller groups and later reported their findings to the entire group.

#### **Countering the “Structural Deficit” Argument: Richard Levine, Leonard Leibowitz**

Len Leibowitz acknowledged that there is such a thing as a structural deficit but that what boards are calling a structural deficit is actually an excuse by boards for their failure to raise more money in their communities, claiming that it's not their fault. It's because they have reached the limit the community will give. In one orchestra the board wants to not only cut the budget but shorten the contract as well. When some boards are offered large sums of money they refuse it because they see it as a short-term fix and they only want long-term solutions. In some contracts he has negotiated recently, the musicians agreed to make some concessions to deal with the immediate problems (find out the board's plan is to fix the problem) and then build in an extra year of “rehabilitation” on the end of the original contract. Managers are unwilling to negotiate and throw up their hands and say, “that's it.” Where is the end of the road? He believes managers and boards have abdicated their responsibility by saying the structural deficit is built in, it can't be fixed. Managers are saying there is no more money. It's absolutely untrue. Counsel also pointed out how coincidental it is that this problem appeared everywhere at the same time.

Richard Levine gave some examples of real structural deficits. He explained the difference between cyclical deficits and structural deficits. Economies cycle between boom and bust. If a government budgets more expense than income at the top of such a cycle, it creates a structural deficit. A second type of structural deficit can be caused by the use of one-time sources of income to fund ongoing projects. Gifts for capital projects without additional operations funding are known to be problematic for non-profit organizations because they can create such structural deficits. Another example would be an orchestra that launches a recording project with a directed gift and then continues to record after spending the directed gift. How to handle such structural deficits is an open question, with answers ranging from identifying new sources of income to reallocating resources or cutting programs.

Nathan Kahn pointed out that an accumulated deficit is not the amount an orchestra owes, it's only a tally of the annual deficits the orchestra has posted in the past. David Angus said that there are new accounting rules relating to posting debt from endowments.

**The Negotiating Orchestra meeting was rescheduled for later during the conference.**

**Thursday – August 19, 2004**

Roll Call of Orchestras

Nominations. There were no additional nominations. Nominations remained open.

There was a moment of silence to honor former ICSOM Chairman Emeritus Irving Segall, who died this past season.

**Panel Discussion: Musicians & Governance -**

**Jan Gippo, Moderator**

**Tina Ward (St. Louis); Bob Wagner (New Jersey); Paul Ganson (Detroit); Bruce Ridge (North Carolina),  
Ken Harper (Colorado); Gary Bordner, Leslie Shank & Carole Mason Smith (St. Paul)**

Tina Ward and Bob Wagner gave a presentation to ICSOM on their project on Artistic Leadership. The funding for this project came from the Mellon Foundation. Bob and Tina had separate projects, but they found that portions of their projects were similar, so they joined up to look at three European orchestras. *[Outline distributed to delegates]*

Some of the successful results they found were:

1. Music first + identity + vision = Magic
2. Great teamwork = better performance
3. The importance of a dynamic board

Ms. Ward and Mr. Wagner spoke about their observations and experiences when discussing the Lahti Symphony and Berlin Philharmonic, and they spoke about the roles of musicians in these orchestras with a view toward artistic leadership and input.

Paul Ganson spoke about how the Detroit Symphony was able to improve its musician termination process at a time the musicians were locked out for nine weeks. He also told how the musicians took charge of the music director search process, by prohibiting the hiring of a music director who is not on a list approved by the musicians (which has at times prohibited the board from hiring the music director they desired), during a time the orchestra was forced to make concessions. Following changes to the non-renewal process came major changes to the audition procedures, which now allow committees to hire section musicians who were not the choice of the principal or music director.

Bruce Ridge spoke about his experience as chair of the North Carolina Symphony's recent music director search committee. The committee that included four musicians and four management/board representatives was specified in the CBA, but choosing a musician to chair the committee was not. He spoke about the committee process, which included recruitment as a major component of the search process and not just inviting candidates that showed a great deal of interest in the job. He also spoke about the lack of job longevity of executive directors and other staff members as compared to musicians and board members. He was able to cultivate good relationships with the orchestra staff and board and with the media during this process.

Ken Harper spoke about the Colorado Symphony's artistic committee, 1/3 of which are musicians. The artistic committee oversees programming and the terms and conditions for hiring the music director (there is a great deal of orchestra input), it grants tenure to new musicians (only musicians on the artistic committee vote, and the music director has two votes), and it decides upon probation and termination of musicians (musicians can initiate terminations). Additionally, there is a peer review committee whose determination to keep a musician is binding. If the vote is upheld to terminate the musician, the musician may go through grievance and arbitration; however, if the vote is 2/3 in favor of termination, the musician has no recourse. The orchestra committee is in place to keep an eye on the artistic committee, and three musicians serve on the finance committee. The members of these committees take their responsibilities very seriously, but there have been times when musicians have been co-opted. Communication is vital. Musicians are not trained to be managers, and they should know what they are doing. Musicians' serving as management has its problems, and they can't make decisions in a vacuum. They must remember that musicians are also their colleagues; to forget is not good management. The problem now is there are too many positions and too few people agreeing to serve, which means some people become members by default. Musicians need to be represented. There was also a brief description of a recent controversial tenure arbitration.

Carole Mason Smith mentioned five letters submitted by various St. Paul Chamber Orchestra and staff members for presentation at this ICSOM conference, and she briefly mentioned the “collaborative” but contentious negotiations and the 51-49% ratification that continues to cause contentiousness within the orchestra. Because of this, the overwhelming concern in the orchestra now is to ensure that every committee is truly representative of the orchestra viewpoints. The two major committees are those that deal with artistic vision and personnel issues. The executive director and general manager serve on both committees while the musicians do not. Ms. Smith spoke about the need to have open communication with her colleagues so they know what is going on at all times. She said it is a constant struggle and balancing act, but also a fabulous opportunity to learn what is going on and to try to make changes.

Leslie Shank spoke about a voluntary education task force. There was a misunderstanding about the duties the musicians thought they would perform as members of this task force: they thought they were going to look into existing education programs and make suggestions. Instead management provided a mission statement that had been devised by a small group of people, not the task force. When the musician representatives attempted to survey their colleagues, the mission statement caused concern from many orchestra members. Management was unhappy about the survey and said the committee should work without outside influence.

All three St. Paul musicians spoke about the problems they face as representatives on committees. They are elected by their colleagues to represent their viewpoints but have been told by management and staff that their positions on these committees are as individuals serving the institution, not as musician representatives. This caused a great deal of concern by the delegates who believe musicians are there to serve as the voice of their orchestras, not as individuals. Ken Harper echoed the same concerns about his orchestra.

There were questions about Tina Ward’s and Bob Wagner’s presentation regarding musician tenure, which is granted by the entire section. If there were a split decision, which occurs rarely, the executive committee would make the decision. In Berlin it takes many years of intense scrutiny to receive tenure (nearly 1/3 never receive tenure), and once received is not lost. There was also a question about the structure of Berlin since trade unions negotiate all national agreements, but Berlin is a city-state and different from all other orchestras in Germany. European orchestras don’t have boards; the orchestras are funded by the state. In Lahti the city hires the music directors and managers.

There were questions about the role of the St. Paul orchestra committee, which represents all musicians but which has been left out on some issues addressed by the new artistic vision committee. There was a brief discussion about how artistic personnel feedback will work and what will trigger intervention. The entire feedback and intervention process has not been thoroughly examined by the committee of three musicians and two management representatives, which may be the reason a moratorium on dismissals and interventions has been put in place and may not commence until the first year of the next agreement. Ken Harper expressed the difficulty Colorado musicians have faced; they have been doing this for a number of years and realize that musicians under the gun from the conductor and musicians can offer conflicting advice. It takes a responsible group of musicians to ensure that fulfillment of managerial duties does not appear to be harassment of a musician.

There were questions about audience cultivation. Bruce Ridge responded with ideas to set up direct access with e-mails and for musicians to make themselves accessible to audience members. He talks to audience members, ushers, and others before each concert, and stressed that following up when important people come to concerts has allowed North Carolina to feel real ownership of the orchestra. Tina Ward reported that Lahti and Berlin have active audience communication already set up. Education is a large part of their focus.

In response to a question about getting to know board members, Bruce Ridge said that doing research doesn’t hurt, perhaps by looking into donors’ histories and identify issues they care about.

Gary Bordner reported that the St. Paul musicians are trying their best to unify the orchestra and to be sensitive and listen to all sides.

### **The SPCO - Perspectives on a Work in Progress: Presentation & Discussion - Bruce Coppock, SPCO President**

Bruce Coppock spoke about the St. Paul contract renewal talks and their desire to question everything and look for new directions. He spoke about their core values of excellence (which he clarified were peak performances everywhere, not just on stage), intimacy, innovation and continuity. Their goal was to be “America’s chamber

orchestra” with an international profile, and their purpose was innovative labor relations. They also wanted to be a symbol of success for the Twin Cities. The orchestra had to be better, more competitive, have better programs and better circumstances. Was the workplace creative? No, but if they changed it to a team aspect they could move from passive to active participation. Music directors are un-collaborative, somewhat part-time, and really best in one type of repertoire, so musicians and management will set artistic direction and policies. He said about \$400,000 of the \$500,000 surplus would be going to the orchestra members.

### **Questions to Mr. Coppock**

Does the orchestra’s vision include world-class salaries? Mr. Coppock replied that they want to pay high wages, and it is of concern, but that everyone took a pay cut to keep the orchestra alive. He said that the quality and nature of the job is also vital to the success of the orchestra.

If audiences are unknowledgeable, and if the goals are too outwardly focused, is the orchestra taking into account the respect the musicians need for their job satisfaction? Mr. Coppock said he believes audiences are unsophisticated about what they hear, but they know the difference between a good and a great concert. The second issue is complicated, and the motivation for change is to try to create job satisfaction.

Are there responsibilities not shared by the musicians? Mr. Coppock responded that 95% of the responsibilities are about fundraising, all marketing, accounting, and board development. The committees deal with programming, repertoire, establishing policies, and they guide but do not approve who is hired because the committee can give management more or less latitude, so it’s not all black and white. The committee musicians are very involved in policy and personnel as well as performing concerts.

There were questions about the lack of legal representation during the previous negotiations and the role of the union. Would they be negotiating with themselves? Mr. Coppock responded that the musicians always had the choice to retain counsel and that management urged them not to because he believes in collaboration, that legal representation would have changed the nature of their talks. He also said contract renewal talks would always be between musicians, and he cited Len Leibowitz’s CBA language to ensure this would occur.

There was discussion about the make-up of some of the committees: the strategic planning steering committee consists of six elected musicians, five management representatives and four trustees. This committee came up with the strategic plan, which will be reviewed annually. Musicians chosen for the artistic vision and personnel committees each include one elected, one chosen from a lottery, and one chosen by the committee. Management representatives are chosen by their position. The question about how the personnel committee would deal with hiring and firing; musicians are on stage most of the time but managers are not. Mr. Coppock responded that the committee makes recommendations to management to initiate termination, and that he and the other management representative attend enough concerts to participate meaningfully in the discussion.

It was explained that a committee vote requires a majority of four to one. Mr. Coppock expressed his belief that it was not likely the other management representative would feel compelled to vote with him because the two of them disagree all the time.

A comment from the floor was that St. Paul was already considered by most to be at the top, so why in 1999 did the structural committee feel the orchestra was only good? Mr. Coppock said the orchestra’s need to strive to be better came from the orchestra through musician retreats, requests by the musicians for sectionals, and the addition of many new chamber orchestras.

There was a question about the concessionary nature of their contract. Mr. Coppock said that they are finding money to build a new hall. Is there also a plan to increase salaries and benefits? This led to a discussion about one-time expenses versus annual expenses and about the artistic strength necessary to raise more money. A question of sharing of surpluses is spelled out in the CBA, with a payment based upon the percentage of the cut last season.

What happens if the musicians become uncomfortable with these new duties? Mr. Coppock responded that if that happened the system would have failed, and so far musicians want to participate. Will these duties be a consideration when new musicians are to be hired? He said the audition process has changed, artistic standards have been raised, and that management is not likely to disregard the recommendation of the personnel committee for termination of a musician. He said it would be foolish to not be guided by the committee’s recommendations.

To a question about dispute resolution against management and the line between union and management, Mr. Coppock responded that musicians have as much protection now as they had in the past. If a dismissal goes to the orchestra committee and the firing is deemed capricious or wrong, the player can file a grievance.

There was a question about maintaining the necessary balance between playing and other duties. Committee members receive eight services for their non-playing duties on the artistic vision and personnel committees. Are they being asked to put all the eggs in one basket with the fear of failure? Mr. Coppock responded that they want broader engagement by the musicians. Would the unintended result be that it could go in the opposite direction? He responded that it's too soon to tell.

An observation was made that some orchestra members felt unhappy that the presentation at the League's annual convention gave an impression that the orchestra was "good but not great." Mr. Coppock responded that the industry's impression is of an excellent ensemble with awareness about its financial concerns and that the League was responsive to how open it was.

Mr. Coppock was asked to define his projection of an orchestra generational shift by 2009, pointing out that the orchestra has already recently hired four new players under age 30. He responded that the average age of the orchestra is 54 years, and it is a fact that over the next 10-15 years there will be a transition of new players into the orchestra and he must take them into consideration. A delegate pointed out that current members would only be able to leave when retirement is affordable to them.

There was a general impression that many members didn't want this contract, to which Mr. Coppock observed that he didn't know if the salary cuts were the reason or if there were other reasons, to which the delegate responded it was probably some of each.

The final question was how the committee members dealt with the various personalities on these committees, especially in light of the fact that Mr. Coppock is the boss. Could the musicians tell him to back off? Mr. Coppock responded that he knows he has a strong personality and that he worries about this himself. He would like to think that, since Mr. Coppock doesn't have the power to fire, no one would fear for his or her job.

### **Health Insurance Task Force Report – Brian Rood**

Brian Rood reported that health care costs are becoming major budget items in symphony contracts and informed the delegates that the Governing Board put together a task force last summer to investigate the possibility of an AFM plan. Speaking with Mercer Insurance and attorney Susan Martin, the committee has begun looking into this. The August *International Musician* reported about the meeting in May with AFM, management, and ROPA representatives. The goal is to find affordable coverage at similar levels now covered for staff and musicians, and it is believed that a union-only plan would raise costs for staff members. Because of this, the committee is investigating the idea of a multi-employer (ERISA) group that requires a 75% union/25% non-union split. Surveys from both ICSOM and AFM have been distributed to all ICSOM orchestras and those ROPA orchestras with current coverage. At this time the percentages do not look to be meeting those requirements, but different people in Washington could change that.

Michael Moore briefly explained Atlanta's plan, which is a Medical Expense Reimbursement Plan (MERP).

### **RMA President - Phil Ayling**

Phil Ayling spoke about concerns of the freelance recording musicians and the musical and business "experts" all musicians have to deal with. He pointed out that we all do a great deal of business we're not trained for.

### **AFM Secretary-Treasurer - Florence Nelson**

Secretary-Treasurer Nelson paid tribute to Lew Waldeck by saying how much our lives were influenced by what he did for all of us. She gave her sage advice for negotiation preparation: orchestras should know where they came from through a written or oral history of the orchestra; the over 40 orchestras negotiating this year should know their goals; and committees should work on options and not get stuck in a corner. She encouraged reaching out to other unions for support and reminded the delegates of the importance of Election Day because the election is about jobs, intellectual property rights and unions. She encouraged orchestras to be more proactive about voter registration.

## Electronic Media Negotiation Report – Debbie Newmark

Debbie reported on the status of the National Public Radio (NPR) and Symphony-Opera-Ballet Audio-Visual (AV) agreements.

**Digital Download and CARS: Patricia Polach - Bredhoff & Kaiser** (*A handout entitled Exploitation = To Generate Revenue was distributed.*)

Trish Polach began with a brief history of recording, including AFM president James Petrillo's fear that recorded music would replace live music performance and his refusal to allow recording, calling strikes in 1942 and 1948. He forced the record companies to pay wages and health and welfare. He also negotiated for industry payments (first to the union, then to the Music Performance Trust Fund) for the purpose of funding live performances, and, later, for payments to musicians through the Special Payments Fund. The latter fund provides deferred compensation for sessions played; these payments are not considered royalties but the sharing of some revenue through what is now known as the Sound Recording Labor Agreement (SRLA).

Unfortunately, there was one important glitch: audiences not only listened to music by purchasing recordings, they also listened to the radio. The radio industry exploited our product by selling advertising and playing recorded music. The broadcast industry was able to do this without paying any money to the record industry and musicians because sound recording was not protected by the copyright act.

In 1972, Congress included sound recordings in the copyright act, but only in a limited way. Congress did not include a performance right in the copyright protections granted to sound recordings, so broadcasters were still allowed to use sound recordings without paying the owner of the copyright in the sound recording (usually the record label) or the performers. In Europe, "neighboring rights laws" require broadcasters to pay performers and recording companies for the broadcast of sound recordings but without similar rights in the US, the Europeans collect the money for the US recordings but don't pay it to the US artists.

The AFM has tried to change the copyright act to include a performance right in sound recordings but has been unable to do it because broadcasters are very powerful. However, the recent development of digital changes presented a new avenue to try to accomplish change. The AFM, AFTRA, RIAA, and six major labels looked to gain performance rights in future technologies, and this was achieved in 1995 with the Digital Performance Rights Act (Internet, cable music services, satellite radio, etc.). This act ensured that some payment would be made. Ms. Polach explained compulsory licenses, which are granted to non-interactive broadcasts (not on-demand) like various music services, webcasters, and XM and Sirius satellite radio. These services have to pay to use the music. Of that payment 50% goes to the copyright holder, 45% goes to the "featured artist," and the other 5% is split between AFM and AFTRA to distribute to session musicians and vocalists. These music services make payments to an entity called SoundExchange, which has both label and artist representatives as board members. They then distribute the monies to each group – copyright holder, featured artists, AFM, and AFTRA.

Ms. Polach went on to explain that interactive services are only allowed to play music if they have license agreements. The copyright holder makes these decisions and monies are shared according to their royalty agreements. AFM and AFTRA have an agreement that record labels have to pay 1% to them for distribution to session musicians and vocalists.

In April 2003, Apple released i-tunes and the record labels could delay no longer. The SRLA says when something is sold, record labels have to contribute, so the AFM called for a joint industry cooperative discussion concerning digital downloads. That settlement states that a portion of the revenue from each download will be paid into the special payments fund with a different formula than that of the SRLA. Payment per download after 10,000 units will be .33% of wholesale, and increases to .5% next year. New technology will not keep the radio broadcasters from using satellites, and they will still not have to pay anything. Perhaps it's time for a new campaign in Congress to get a full performance right, not just a digital performance right.

Ms. Polach pointed out that symphonic recordings made under other agreements are not addressed in this agreement. She also touched on the recent SoundExchange determination that stated absolutely that the orchestra (along with conductors, artists, and others), is the "featured artist" on symphonic recordings, not the institution as argued by management. Ms. Polach explained that payment of SoundExchange monies had yet to be determined.

**7:00PM - MIXER at Abravanel Hall -- courtesy of Local 104 and the Utah Symphony Musicians**

## Friday – August 20, 2004

Nancy Stutsman announced the continued collection of TEMPO contributions.

Roll Call of Orchestras

Paul Ganson announced the nominations to date for chairman, president, secretary, treasurer, and editor. Nominations for these positions were closed. Mr. Ganson accepted a motion to declare Jan Gippo, Brian Rood, Laura Ross, Michael Moore, and Richard Levine to be elected by acclamation. The motion carried without objection.

Following the election of Richard Levine, a third member-at-large position became vacant. In addition to Steve Lester and Bruce Ridge, Warren Powell and Bob Rydell were both nominated. Nominations were closed.

**Paul McCarthy, Collective Bargaining Associates – Workshop** (*Handouts were distributed; there are no notes in the minutes.*)

MSC to reopen nominations for member-at-large. There were no further nominations, but nominations remained open.

### **Negotiating Orchestras Discussion**

### **Legal Aspects of the St. Paul Chamber Orchestra: St. Paul board chairman Lowell Noteboom and Leonard Leibowitz**

Mr. Noteboom began by stating he is not a labor lawyer. He began his presentation by stating that he is expecting their “bold experiment” to change the orchestra industry. He spoke about articles that influenced his thinking about musician job satisfaction and the constant striving for perfection; the roles of the music director, musicians, and others; and a report about job satisfaction that compared European orchestras, string quartets and orchestras. The results of these articles, some of which seemed to call for a new model, were central to what occurred in St. Paul. He spoke about the desire to form a more collaborative model in which the entire organization would work. He spoke of the contract review discussions--he would not call it negotiations. *NLRB-vs.-Yeshiva* addressed whether faculty members had taken on roles that were considered too supervisory, and he believed there were a number of factors in the Yeshiva decision that had to be taken into account. During the St. Paul process, all parties agreed they had no intention to permit the Yeshiva decision to affect their CBA status, or the employees’ status. He is optimistic about what can be done in the future.

### **Questions to Mr. Noteboom**

Had the process been affected by the financial crisis that led to musician cuts of nearly \$2M? Mr. Noteboom said they would have continued in the direction they were going regardless of the financial crisis. He does not believe their planning was detracting from their core mission.

There was a question about the artistic personnel committee’s imposed limitations, to which Carole Smith explained that certain systems are not fully developed. Mr. Noteboom said he feels this process will be positive, especially in a chamber group, and while it could be stressful, they will have ownership of quality.

There was a question about the impact performance-wise on the board after this change and Mr. Noteboom said board members probably started with a better connection to the musicians but felt working with musicians reinforced their reasons for wanting to be involved in the first place. Musicians are reaching out to board members and are even participating in fundraising. The board is really engaged. Carole Smith agreed the board is more engaged, and she appreciates being on the executive board.

Mr. Noteboom responded to a question about the board’s view of the close ratification vote. He believes money may have colored the vote considerably, but the board has a responsibility to communicate with the musicians who voted against the agreement.

Would the Yeshiva clause protect the bargaining process, and should musicians have to put their jobs in jeopardy to be heard? Mr. Noteboom said they tried to avoid putting the musicians in jeopardy and that the waiver is enforceable. He said in a discussion Len Leibowitz raised the issue that someone in the future might try to take on

this waiver. The SPCO will not allow this to happen. As they work through it, they will fine tune it rather than scrap it, so they still have the collaboration.

Len Leibowitz commented on a few points of Mr. Noteboom's presentation and addressed the concern about putting musicians in jeopardy. The musicians are not in jeopardy but the union is. Status quo or the SPCO way are not the only choices. Counsel reported that the language he provided would not necessarily protect the musicians, and that he told that to the Committee when they asked him to write it. He spoke about some of the legal problems he saw (see the provided handout): there is no managerial exclusion in the National Labor Relations Act (NLRA); it's in the Yeshiva case, which was decided in 1980. There have been questions raised in the past about whether peer review alone would be considered a managerial function sufficient to satisfy Yeshiva. In the new SPCO contract there are many more functions that could be considered managerial.

Intent has no "legal legs"; it was not the intent of Yeshiva University to nullify the union eligibility status of those teachers when they assigned them all of that authority. Counsel has concerns that, even if Mr. Coppock or the St. Paul board would not challenge the status of the musicians, some other executive director or board could conclude that the union was standing in the way of things and refuse to recognize or bargain with the union. Thus, the board could simply refuse to bargain, the union could file an unfair labor practice charge, and the board could respond by demonstrating that the musicians are not "employees" within the meaning of the Act and are instead "managers" who are not covered by the NLRA. Yeshiva arose from a petition for certification, and that was how it came before the Labor Board. The teachers were originally deemed to be non-supervisory by the local regional office of the NLRB, and they held an election to unionize. When the University refused to bargain with the union, the Second Circuit Court of Appeals and then the U.S. Supreme Court ruled that teachers were "managerial employees".

Robert Levine argued that he believed Yeshiva does not necessarily apply because we are supervised, and the teachers were not. He believes Yeshiva was about certification and that it has not been used to decertify a bargaining agreement. Counsel said that that was not true and that many faculties lost bargaining rights in the aftermath of Yeshiva.

Another question was asked about how the local deals with its responsibility to represent a musician who has been fired by a musician committee and, at the same time, support the clause it has negotiated that allows this. Counsel said that it would not necessarily be a problem because the union has the right to determine if a grievance is valid, and if done properly there should be no problem with duty of fair representation. Tenure review committees have that power if the bargaining unit has agreed to it. However, in the SPCO contract there is a panoply of managerial functions, which go well beyond tenure review. Indeed, Leibowitz believes they go beyond that which the faculty had in Yeshiva. It was pointed out that many of these roles are due to the lack of a music director. Counsel replied that there is no music director because that was part of the deal. It was also noted that there is always an aspect of the work of professionals that appears to be "supervisory" or "managerial" (e.g., doctors, supervising nurses). Those are exercises of professional responsibilities, and the Yeshiva decision did not argue that teachers were not professionals.

When asked why the waiver didn't protect the musicians, Counsel responded that the NLRB is not bound by any self-serving statement of the parties but by the facts. The SPCO can't waive the laws of the US, and he believes the CBA waiver is not enforceable.

When questioned if those committee positions could be excluded temporarily during collective bargaining, Counsel responded that it was an interesting concept but he believes that would be unavailing because they either have this authority or not, and if they had it prior to and after bargaining, then they had it, and they couldn't pretend that they didn't.

### **3:45-6:00PM - TOWN MEETING**

This closed meeting was for primary delegates, alternate delegates, and Governing Board members only.

At this meeting Lynn Rosen was nominated for member-at-large, Warren Powell withdrew his name from nomination, and nominations for member-at-large were closed.

**Saturday – August 21, 2004**

An announcement was made about the vandalism of an orchestra's name card. Concern was expressed about proper conduct during the conference.

Roll Call of Orchestras

The four candidates for member-at-large—Bob Rydel, Lynn Rosen, Bruce Ridge, and Steve Lester—each spoke. Elections were held.

\* \* \* \* \*

The following resolution (#2), that defines Alternate Delegate(s) was adopted. [*Motion #2 - Governing Board*]

Whereas, Article VI, Section 2(a), of the ICSOM bylaws mandate a specific procedure which may not be the procedure by which member orchestras elect their delegates; and

Whereas, ICSOM bylaws make no reference to “alternate delegates,” a term used with frequency and ambiguity; therefore, be it

**Resolved**, That Article VI, Section 2(a), of the ICSOM Bylaws be amended as follows:

~~Section 2.(a) ICSOM delegates shall be selected by secret ballot by AFM members in each member orchestra. A member orchestra may send more than one delegate to meetings of ICSOM, but only one delegate shall be the voting delegate. The voting delegate shall be a member of AFM. Each member orchestra will determine for itself the authority its voting delegate may assume.~~

ICSOM Delegates shall be elected by AFM members in each Member Orchestra in accordance with each orchestra's established procedure. Delegates must be members of the AFM. Each Member Orchestra shall elect one primary ICSOM Delegate. A Member Orchestra may elect additional delegates (“alternate delegates”) to send to annual conferences in addition to, or in lieu of, the primary ICSOM Delegate. Regardless of the number of delegates from a Member Orchestra who attend an annual conference, each Member Orchestra shall have only one vote. Each member orchestra shall notify the ICSOM Secretary in writing of the identity of the Delegate and, if there is an Alternate Delegate(s), the identity and voting rights of each. Said notification shall be made as soon as feasible after the election.

\* \* \* \* \*

The following resolution (#4) that expanded proxy votes to include “domestic tours” was adopted as amended. [*Motion #3 - Governing Board*]

Whereas, The ICSOM Bylaws provide that the only circumstance which allows an orchestra to designate another orchestra's delegate to cast a proxy vote at the annual Conference in their absence is if that orchestra will be on a foreign tour during the period of the Conference; and

Whereas, The reasons for such allowance apply in many respects to domestic tours as well; therefore, be it

**Resolved**, That Section 2(b) of Article VI, “Meetings” of the ICSOM Bylaws be amended by adding the words “ or domestic” between the words “foreign” and “tour” in the first sentence.

Section 2.(b) In the event a member orchestra is unable to send one of its own members as a delegate to a regular or special meeting of ICSOM because it will be engaged in a foreign or domestic tour at the time of such meeting, it may, by secret ballot, designate a member of another member orchestra to act as its proxy delegate, with all rights and privileges. The chairperson of such member orchestra shall notify its proxy delegate and the Secretary of ICSOM of such designation in writing.

[*Motion #4 - Richard Levine (MAL)/Mary Plaine (Baltimore)*] – amend to strike “by secret ballot” was approved.

Section 2.(b) In the event a member orchestra is unable to send one of its own members as a delegate to a regular or special meeting of ICSOM because it will be engaged in a foreign or domestic tour at the time of such meeting, it may, ~~by secret ballot~~, designate a member of another member orchestra to act as its proxy delegate, with all rights and privileges. The chairperson of such member orchestra shall notify its proxy delegate and the Secretary of ICSOM of such designation in writing.

\* \* \* \* \*

The following resolution (#5) that establishes a Lew Waldeck Memorial Fund was adopted unanimously. [*Motion #5 - Governing Board*]

Whereas, The recent passing of Lew Waldeck has occasioned an outpouring of love and affection for him, as well as long overdue recognition of his contributions to the quality of life of symphony, opera and ballet musicians throughout the United States and Canada; and

Whereas, The members of the symphonic player conferences, ICSOM, ROPA and OCSM, are forever affected by his loss, and wish to establish a permanent memorial in his name; and

Whereas, It is their collective belief that Lew would have appreciated a memorial which continued in some small, but important ways, his lifelong work of helping orchestral musicians; therefore, be it

**Resolved**, That the Governing Board and Delegates to the 2004 Conference of ICSOM hereby agree to establish, in conjunction with ROPA and OCSM, the Lew Waldeck Memorial Fund, the purpose of which will be to receive contributions from many sources, to invest said monies prudently, and to make grants to orchestras, orchestra members, AFM local unions, music schools, etc. for the purpose of facilitating projects which are deemed to be in keeping with Lew's philosophy of trade unionism and/or with his general philosophy of life. Be it further

**Resolved**, That the details of the administration and governance of the Fund, the application process, and the amounts and recipients of the grants, will be worked out by a committee appointed by the Governing Boards of the three Symphonic Player Conferences as soon as practicable, with a report on their progress to be made no later than the 2005 Conferences.

Discussion included questions about receiving contributions from other sources than the player conferences and the establishment of a 501(c)3. Francine Schutzman announced that the OCSM conference had authorized \$500 per year for 4 years.

\* \* \* \* \*

The following resolution (#6) to suggest CBA language that encourages conference and AFM convention attendance with no loss of compensation was adopted as amended. [*Motion #6 - Governing Board*]

Whereas, Some years ago an agreement was reached by and between ICSOM and a group of orchestra executives known as the "Major Managers" that the elected ICSOM Conference delegate in each orchestra should be granted time off without loss of compensation to attend the annual Conference; and

Whereas, Most constituent ICSOM orchestra managements have adhered to that policy, whether or not it was expressed in the collective bargaining agreement; and

Whereas, In recent times there have been some problems in some orchestras whose managements have failed or refused to adhere to that policy; and

Whereas, The importance of full compliance of all ICSOM orchestras to abide by this policy cannot be overstated; and

Whereas, Time off without loss of compensation should also be granted to Governing Board members, and delegates to the AFM Convention; Therefore, be it

**Resolved**, That the delegates of each ICSOM orchestra are urged to relate to their negotiators the need to include the following language, or language to the following effect, in the collective bargaining agreement:

The [Employer] agrees that the duly elected delegate to the annual ICSOM Conference, any member of the Governing Board of ICSOM, and any delegate to the AFM Convention shall be granted the time off necessary to attend the Conference and/or AFM Convention, and shall suffer no loss of income for said period.

Jan Gippo explained about the history of the agreement with the major managers and will follow up with Brent Assink to continue this situation. He asked for an amendment concerning ballet orchestras.

[*Motion #7 - Ethan Silverman (NYC Ballet)/Mary Plaine (Baltimore)*] – amend to add “or attendance credit, where applicable,” was defeated.

The [Employer] agrees that the duly elected delegate to the annual ICSOM Conference, any member of the Governing Board of ICSOM, and any delegate to the AFM Convention shall be granted the time off necessary to attend the Conference and/or AFM Convention, and shall suffer no loss of income or attendance credit, where applicable, for said period.

[*Motion #8 - Michael Moore (Atlanta)/ Paul Frankenfild (Cincinnati)*] – add “or attendance credit, or reduction of paid time off,” was approved.

The [Employer] agrees that the duly elected delegate to the annual ICSOM Conference, any member of the Governing Board of ICSOM, and any delegate to the AFM Convention shall be granted the time off necessary to attend the Conference and/or AFM Convention, and shall suffer no loss of income or attendance credit, or reduction of paid time off, for said period.

\* \* \* \* \*

Member-at-large election results were announced: Steve Lester, Bruce Ridge, and Lynn Rosen were elected

\* \* \* \* \*

The following resolution (#7) to thank Janice Galassi for her service as SSD Director was adopted by acclamation..  
[*Motion #9 – Governing Board*]

Whereas, Janice Galassi has served as the Executive Director of Symphonic Services Division of the AFM from 2001 through July of 2004; and

Whereas, She has now become the Director of Organizing and Education for the AFM and will no longer be directly affiliated with the SSD; and

Whereas, Janice has been a true and devoted friend of ICSOM, its Governing Board, and the members of the constituent orchestras, in maintaining a close working relationship therewith; and

Whereas, The delegates to the 2004 ICSOM Conference appreciate her efforts on their behalf during her stewardship of SSD; therefore, be it

**Resolved**, That the Governing Board and the Delegates to the 2004 ICSOM Conference express their gratitude and good wishes to Janice Galassi for her outstanding leadership of SSD, and for her future endeavors as Director of Organizing at the AFM.

\* \* \* \* \*

The following resolution (#8) to thank Tom Hall for his years of service to ICSOM was adopted by acclamation.  
[*Motion #10 – Governing Board*]

Whereas, Tom Hall has served ICSOM in numerous capacities; and

Whereas, Those capacities include, without limitation, delegate from the Chicago Symphony, Editor of *Senza Sordino*, member of the Governing Board, Conference Coordinator, Historian, and author of the “History of ICSOM”, etcetera, etcetera, etcetera; and

Whereas, His contributions to ICSOM and the field cannot be truly measured by merely listing the positions held; and

Whereas, It is difficult to conceive of an ICSOM Conference without him; and

Whereas, No Resolution or other material thing can fully convey the debt of gratitude owed to him; nevertheless, be it

**Resolved**, That the current Governing Board, and those that have preceded it over the years, as well as the delegates to the 2004 ICSOM Conference, and the delegates to the many prior conferences to which Tom Hall gave so much of his time and himself, wish to express their gratitude and awe of the enormous gifts to them, of the time, talent, intelligence and love from Tom Hall over these many years; and, be it further

**Resolved**, That Tom Hall be given the honorary title of ICSOM Governing Board Member Emeritus.

Robert Levine mentioned an e-mail of best wishes sent from Tom Hall.

\* \* \* \* \*

The following resolution (#3) recommending CBA language concerning EMG use for non-symphonic work was adopted as amended. [*Motion #11 – Electronic Media Committee*]

Whereas, The Recording Musicians Association is a Player Conference representing colleagues in the commercial recording area who make their living working under AFM national agreements including those for motion pictures; and

Whereas, There is growing concern that symphony orchestras with Electronic Media Guarantees in their collective bargaining agreements could be asked to do electronic media work traditionally done by RMA musicians and that work would be subsidized by the Orchestral Association using EMG resources; and

Whereas, Such work may be in non-standard symphonic areas outside those delineated and defined in the Sound Recording Labor Agreement and the Symphony/Opera/Ballet Audio-Visual Agreement, and would, therefore, undercut our colleagues who make their income solely from this type of work; therefore, be it

**Resolved**, That all ICSOM orchestras with Electronic Media Guarantees in their collective bargaining agreements be urged to negotiate the following language (or language to the following effect) which will prohibit their managements from selling their services for non-standard symphonic work, e.g. motion picture soundtracks, using EMG resources to subsidize it:

“The Association agrees that EMGs may not be used to contract out, or otherwise sell the services of the musicians to an outside entity for the purpose of performing any non-standard media work, including, without limitation, motion picture or television sound tracks, or other similar musical genre, the performance and/or recording of which would tend to deprive other non-symphonic musicians of employment.”

*[Motion #12 – Carole Smith (St. Paul)/Mary Plaine (Baltimore)]* – amend to include language reflecting EMG equivalents in the St. Paul CBA was approved.

**Resolved**, That all ICSOM orchestras with Electronic Media Guarantees or Electronic Media Guarantee equivalents in their collective bargaining agreements be urged to negotiate the following language (or language to the following effect) which will prohibit their managements from selling their services for non-standard symphonic work, e.g. motion picture soundtracks, using EMG resources, or EMG equivalent resources, to subsidize it:

Discussion included questions about what recourse the orchestra musicians have if they cannot get this language in their agreement. Jan Gippo responded the orchestra members should encourage management not to do it. Len Leibowitz said it could lead to a discussion at the bargaining table. Another question was asked if this could be a condition that SSD imposes when they approve media language. Counsel believed SSD might not be able to enforce this unless it was already agreed to. Another delegate asked if the resolution could go further and prohibit any subsidization. Counsel explained that the main subsidy is the EMG.

\* \* \* \* \*

ICSOM raised \$2,100 for TEMPO in cash and checks at this conference.

\* \* \* \* \*

The following resolution (#9) thanking Jay Blumenthal for his service to ICSOM was adopted by acclamation.  
*[Motion #13 – Governing Board]*

Whereas, Jay Blumenthal has served ICSOM as the delegate from the New York City Ballet Orchestra, and as a Member-at-large of the Governing Board; and

Whereas, He has now been elected to the position of Vice President of Local 802, AFM in New York; and

Whereas, The Vice Presidency is a full time position and required that he give up his tenure at the New York City Ballet Orchestra, and thus his eligibility for membership on the ICSOM Governing Board; and

Whereas, The Governing Board and the Delegates to the 2004 ICSOM Conference wish to recognize his very valuable service over the years; Therefore, be it

**Resolved**, That the Governing Board and the Delegates to the 2004 ICSOM Conference congratulate Jay Blumenthal on his election as Vice-President of Local 802, and expresses their gratitude for his contributions to ICSOM and to the field in general. Be it further

**Resolved**, That the Governing Board and Delegates congratulate Local 802 and its members for their good sense and good fortune in electing Jay, who will surely carry on, and even improve, the great work of Local 802.

\* \* \* \* \*

The following resolution (#10) thanking Paul Ganson for his service to ICSOM was adopted by acclamation.  
*[Motion #14 – Governing Board]*

Whereas, Paul Ganson has been a revered leader in his own orchestra, the Detroit Symphony, for his musical, administrative and trade union contributions; and

Whereas, Paul has been likewise admired by the members of other ICSOM orchestras for his work in Detroit, as well as his contributions to the field as a Member-at-large of the ICSOM Governing board; and

Whereas, Paul has announced his retirement from the DSO, and his position on the ICSOM Governing Board; and

Whereas, The Governing Board and the delegates to the 2004 ICSOM Conference wish to join with his colleagues in Detroit in expressing their gratitude to him; therefore, be it

**Resolved**, That the 2004 ICSOM Conference hereby extends to Paul Ganson, their admiration and affection, in recognition of his incredible contributions to the entire field of symphonic music in the US, and especially to the Detroit Symphony Orchestra, and to the members of the constituent orchestras of the International Conference of Symphony and Opera Musicians; and, be it further

**Resolved**, That the entire Governing Board and delegates assembled at the 2004 ICSOM Conference wish for him and his family a healthy, productive and fulfilling retirement.

Paul Ganson thanked the delegates to the conference.

\* \* \* \* \*

The following resolution (#11) requiring ICSOM delegates provide e-mail addresses and subscribe to Delegate-L was adopted. [*Motion #15 – Governing Board*]

Whereas, In this century all electronic transmission has become a primary source of communication for business and social intercourse; and

Whereas, ICSOM business is conducted from cities through the nation; and

Whereas, It is essential that ICSOM delegates have access to, and be accessible by electronic mail in order to function properly; therefore, be it

**Resolved**, That a prerequisite to becoming and remaining an ICSOM delegate is having the ability to send and receive e-mail; and, be it further

**Resolved**, That each such delegate must subscribe to the list known as “Delegate-L” and when appropriate shall respond to requests, questions, etc., on said list in a timely fashion.

\* \* \* \* \*

The following resolution (#12) encouraging the cooperation and resource sharing between ICSOM, the Sphinx Organization and The AFM Diversity Committee was adopted. [*Motion #16 – Governing Board*]

Whereas, The achievement of ethnic and racial diversity in the symphonic workplace is of the utmost importance, as it is in every musical field; and

Whereas, To that end, ICSOM has participated in numerous projects, committees and programs over the years such as the Music Assistance Fund of the New York Philharmonic, the Mendelson Fund, and currently the Sphinx Competition; and

Whereas, The AFM Diversity Committee is aggressively pursuing the same goals in other areas of musical employment; and

Whereas, ICSOM believes that the achievement of the goals of said AFM committee and ICSOM would be hastened by cooperation and liaison between the AFM Committee and the Sphinx Organization; therefore, be it

Resolved, That the delegates to the 2004 ICSOM Conference endorse the cooperation and sharing of resources by and between ICSOM, the AFM Diversity Committee and the Sphinx Organization as a way of hastening the achievement of ethnic and racial diversity throughout the music industry; and, be it further

Resolved, That the Governing Board take all appropriate steps to bring the three organizations, and any other like-minded entities, together for the stated purposes.

\* \* \* \* \*

The following resolution (#13) supporting David Lennon and Local 802 in their efforts to ban the virtual orchestra machine was adopted by acclamation. [*Motion #17 – Governing Board*]

Whereas, The use of the virtual orchestra machine to replace live musicians is an abomination to the art form and a threat to the livelihood of working musicians; and

Whereas, All musicians and music lovers should deplore the machine’s use in all venues for any purpose; and

Whereas, There are those whose love of money and fear of unions lead them to welcome this machine and seek to promote the widespread use thereof; and

Whereas, In recent months David Lennon as President of AFM Local 802 of New York City has waged an enormously successful campaign in the New York City area in achieving contracts with music presenters and music venues which contain specific prohibitions against the use of virtual orchestra machines; and

Whereas, Legal attacks on the validity of such contracts have been repelled, and those prohibitions have been found to be valid and enforceable by the National Labor Relations Board; therefore, be it

Resolved, That the delegates to the 2004 ICSOM Conference applaud and congratulate David Lennon, his staff and fellow officers on their valiant efforts; and, be it further

Resolved, That the AFM, its locals, and all musicians deplore the use of the machine and take whatever steps available to them to impede the spread of this threat to music and musicians.

*[Motion #18 - Ethan Silverman (NYC Ballet)/Lynn Rosen (Utah)]* – amend to put quotes around the words “virtual orchestra” machine was defeated.

Lynn Rosen urged the distribution of this resolution.

David Lennon thanked the delegates for recognizing that this is still a problem.

\* \* \* \* \*

The following resolution (#14) to encourage every orchestra to participate in the ICSOM Conductor Evaluation Program was adopted. *[Motion #19 – Governing Board]*

Whereas, The ICSOM Conductor Evaluation Program was founded in the 1980s to help give orchestras a voice in the engaging and non-engaging of conductors; and

Whereas, The success of the ICEP has spawned numerous internal single-orchestra conductor evaluations; and

Whereas, Other orchestras do not have access obtained in this manner; and

Whereas, Usage of the ICEP has waned in recent years; and

Whereas, This valuable program deserves the attention and support of all ICSOM members; therefore, be it

Resolved, That all ICSOM delegates commit to evaluating at least one conductor in year 2004-05 through the ICEP and encourage 100% participation by all members of their orchestras.

Leslie Ludena spoke about the success of their orchestra’s internal form.

\* \* \* \* \*

The following resolution (#15) regarding Member-at-large and Delegate communication was adopted. *[Motion #20 – Governing Board]*

Whereas, Communication is the core value of ICSOM; and

Whereas, Communication between the Members at Large of the Governing Board and each of their assigned delegates is one of the most important means of interaction between the Board and the constituent orchestras; and

Whereas, It is a primary obligation of each Member-at-large to initiate the contact with the delegates from his/her assigned orchestras; therefore, be it

Resolved, That the delegates to the 2004 ICSOM Conference urge the Members at Large to communicate by phone or e-mail on a regular basis throughout the year, with a goal of at least one contact per month; and, be it further

Resolved, That the delegates are urged to initiate contact with their respective Member-at-large as well.

\* \* \* \* \*

The following resolution (#16) calling for nationwide support of Chicago, New York, Cleveland and Philadelphia in their negotiations was adopted by acclamation. *[Motion #21 – Governing Board]*

Whereas, The members of the orchestras of Chicago, New York, Cleveland and Philadelphia are engaged in highly contentious collective bargaining negotiations; and

Whereas, It is apparent that the managements of each of those orchestras are acting in concert in an attempt to roll back and even wipeout hard fought gains in areas of compensation, benefits and working conditions; and

Whereas, The outcome of these struggles will have profound and widespread significance not only to the members of each of the above great orchestras, but to the members of virtually every professional orchestra in this country; therefore, be it

Resolved, that the delegates to the 2004 ICSOM Conference deplore the attack by those managements, wish our colleagues in these cities well, and urge the AFM, its Local Unions and the members of all professional orchestras in the nation to write letters, send e-mails and engage in any other form of protest in an effort to protect and preserve the quality of life of all symphonic musicians in the United States.

\* \* \* \* \*

The following resolution (#17) recommending language be added to CBAs regarding musicians serving in managerial roles was adopted as amended. [*Motion #22 – Ken Harper (Colorado Symphony)/Carole Smith (St. Paul)*]

Whereas, Cooperative models and elements of participatory governance are increasingly being adopted by ICSOM orchestras; and

Whereas, Those orchestras are asking their musicians to take on managerial roles and one of the legal underpinnings of the Yeshiva University case is that employers have a right to the unswerving loyalty of the management; and

Whereas, The goal of cooperative models is to make decisions with musician participation and by consensus; and

Whereas, Musician participation in governance must be representative of the musicians as a whole in order to attain a true consensus and to avoid discord when decisions are implemented; therefore, be it

Resolved, That the delegates to the 2004 ICSOM Conference urge the member orchestras to adopt language in their collective bargaining agreements that clearly define the roles of musicians who serve on management committees and Boards. Said role shall make clear that they serve as representatives of their colleagues and that the musicians who serve shall continuously communicate with their fellow musicians to represent their views responsibly and vigorously.

[*Motion #23 - David Angus (Rochester)/Ken Harper (Colorado)*] – amend to add “and/or player association bylaws” was defeated.

Resolved, That the delegates to the 2004 ICSOM Conference urge the member orchestras to adopt language in their collective bargaining agreements and/or player association bylaws that clearly define the roles of musicians who serve on management committees and Boards. Said role shall make clear that they serve as representatives of their colleagues and that the musicians who serve shall continuously communicate with their fellow musicians to represent their views responsibly and vigorously.

[*Motion #24 - Bob Wagner (New Jersey)/David Angus (Rochester)*] – amend to strike “adopt” and insert “attempt to negotiate”, “into” and “and/or adopt such language into their player association bylaws” was approved.

Resolved, That the delegates to the 2004 ICSOM Conference urge the member orchestras to ~~adopt~~ attempt to negotiate language into their collective bargaining agreements and/or adopt such language into their player association bylaws that clearly define the roles of musicians who serve on management committees and Boards. Said role shall make clear that they serve as representatives of their colleagues and that the musicians who serve shall continuously communicate with their fellow musicians to represent their views responsibly and vigorously.

[*Motion #25 - Bob Wagner (New Jersey)/Nancy Stutsman (Kennedy Center)/Richard Levine (MAL)*] - amend further to strike “role” and replace with “language”, strike “they” and replace with “musicians” was approved.

Resolved, That the delegates to the 2004 ICSOM Conference urge the member orchestras to attempt to negotiate language into their collective bargaining agreements and/or adopt such language into their player association bylaws that clearly define the roles of musicians who serve on management committees and Boards. Said ~~role~~ language shall make clear that ~~they~~ musicians serve as representatives of their colleagues and that the musicians who serve shall continuously communicate with their fellow musicians to represent their views responsibly and vigorously.

\* \* \* \* \*

The following resolution (#18) concerning symphony orchestras traveling outside their local jurisdiction was referred back to the Governing Board. [*Motion #26 – Governing Board; Motion #27 – Dolores D-Aigle (Oregon)/ Ken Harper (Colorado)*]

Whereas, The normal rule governing traveling musicians when they perform engagements in the jurisdiction of a Local Union other than their home Local is that they must pay work dues to that other Local rather than their home Local, and may have other conditions of employment imposed, such as a higher minimum scale, by said Local; and

Whereas, Article 14 Section 3 of the Bylaws of the American Federation of Musicians creates an exception to that normal rule when symphonic orchestras give concerts of a symphonic type outside the jurisdiction of the home Local; and

Whereas, The intention of that exception is to permit symphony, opera and ballet companies to engage in domestic tours for the purpose of cultural exchange in accordance with the terms and conditions of the collective bargaining agreement negotiated by the home Local, and to permit the home Local to collect the work dues flowing from such a tour; and

Whereas, In recent years there has been an increase in situations where third party producers have been purchasing services from symphonic orchestras; therefore, be it

Resolved, That the delegates to the 2004 Conference urge that Local Union officers and/or Orchestra Committee members who become aware that their orchestra may be planning to perform concerts that are not of a symphonic type outside their home Locals notify the Symphonic Services Division of the AFM as soon as they learn of it so that the AFM may take appropriate action; and, be it further

Resolved, That ICSOM urge all AFM orchestras to negotiate the following language into their CBA (or language to the following effect) which will allow the AFM to determine the appropriate minimum scales for concerts outside their home Local:

“The Employer agrees that it will consult with the Symphonic Services Division (SSD) of the AFM prior to providing musicians’ services to a third party for the purpose of performing a concert or concerts outside the Local boundaries. For concerts of a non-symphonic nature as determined by the SSD, the Employer agrees that it shall pay the applicable wage scale of the Local in which the services are rendered, or the minimum wage scales contained in the CBA, whichever is greater.”

Concerns voiced by delegates related to the definition of third party, whether this was meant to cover runouts as well. Richard Levine reported that SSD would only get involved if CBA scales in question. Tom Lee stated that the AFM Bylaw presumes the orchestra tours are not subsidized and the orchestra is not serving as a “back-up band”. He said the IEB would make their determination based upon AFM Bylaws and said the purpose of the tour would be included in their determination. Delegates expressed doubt that this resolution accomplished all that was intended.

\* \* \* \* \*

The following resolution (#19) concerning ratification of mid-term CBA reopeners and easements was referred back to the Governing Board to work with the other Player Conferences. [*Motion #28 – Governing Board; Motion #29 – Jan Gippo (Chair)/Ken Harper (Colorado)*]

Whereas, Recent re-openings of collective agreements have resulted in mid-term changes or easements to those agreements; and

Whereas, Ratification of mid-term changes or easements to collective agreements are not addressed in the AFM Bylaws; therefore, be it

Resolved, That ICSOM submit to the 2005 AFM Convention the following proposed AFM Bylaw change:

That Article 5, Section 31 of the AFM Bylaws be amended as follows:

“Locals shall submit any CBA, [or any and all renegotiated changes or easements during the term of an existing CBA negotiated by a local.] to the AFM members who...(no change).

Tom Lee said he believed AFM Bylaw 5.32A may cover this issue.

\* \* \* \* \*

The following resolution (#20) regarding AFM new use work dues on existing electronic media product was referred to the ICSOM Electronic Media Committee. [*Motion #30 – Robert Levine (Milwaukee – alt.)/David Angus (Rochester); Motion #31 - Steve Lester (Chicago – alt.)/Paul Frankenfeld (Cincinnati)*]

Whereas, Work dues on payments for new use of previously recorded electronic media product are several times higher than work dues charged for any other work by the AFM or its local unions; and

Whereas, Such high level of work dues is predicated on, and justified by, high costs for the AFM to administer and collect such new use payments; and

Whereas, Payments for product made under the Radio-to-Noncommercial promulgated agreement are neither difficult nor expensive for the AFM to collect and otherwise administer; therefore, be it

Resolved, That the ICSOM delegates to the 2004 Conference urge the Governing Board to consider submitting to the 2005 AFM Convention an AFM bylaw amendment that would lower such work dues on payments for new use of previously recorded electronic media product to a level commensurate with the real costs to the AFM to collect and otherwise administer such payments.

\* \* \* \* \*

The following resolution (#21) regarding contractors on Local union boards was adopted. [*Motion #32 – Robert Levine (Milwaukee – alt.)/Helen Reich (Milwaukee)*]

Whereas, It is a long-standing ICSOM policy that the AFM bylaws should prohibit union officers from serving as contractors or in any other supervisory capacity over other AFM members; and

Whereas, ICSOM submitted a resolution on the subject to the AFM 2003 Convention (designated as Resolution #40) which received grossly inadequate consideration by the Law Committee, leading to its late presentation to the delegates and its withdrawal by its proponents; therefore, be it

Resolved, That the ICSOM Governing Board be directed to re-submit Resolution #40 to the 2005 AFM Convention; and, be it further

Resolved, That the ICSOM Governing Board actively seek the support of the other Player Conferences for such legislation.

Resolution No. 40

Whereas, There are many Locals in which the Officers also work as Contractors, Personnel Managers, or Booking Agents, creating a clear, inherent conflict of interest that has a chilling effect on a member's ability to receive fair and impartial representation; therefore, be it

Resolved, That Article 5, Section 7(d) of the Bylaws be amended, as follows:

No Local Officer shall (1) serve in the position of a Personnel Manager or a Contractor for an employer of musicians in the Local's jurisdiction [~~Beginning with a Local's next election on or after August 1, 2001, no Local Officer, except in Canada, shall serve in the position of a contractor of musicians in the musical theater field.~~]; (2) work in any position where s/he receives any remuneration from contracting or booking musical units (other than a regularly organized one of which s/he is a leader or member) in the Local's jurisdiction, except in his/her capacity as a Local officer administering an employment referral or booking program on behalf of the Local.

\* \* \* \* \*

The following resolution (#22) endorsing John Kerry and John Edwards was adopted. [*Motion #33 – Nancy Agres (Indianapolis)/Nancy Stutsman (Kennedy Center)*]

Whereas, The AFM-IEB has endorsed John Kerry for President; and

Whereas, An overwhelming majority of the delegates to the 2004 ICSOM Conference are in accord with said endorsement; therefore, be it

Resolved, That the delegates to the 2004 ICSOM Conference join with the AFM-IEB in endorsing the Kerry/Edwards ticket in the upcoming Presidential election.

\* \* \* \* \*

The following resolution (#23) recommending securing conference sites on a multi-year basis was adopted. [*Motion #34 – Lynn Rosen (Utah)/Mary Plaine (Baltimore)*]

Whereas, The annual ICSOM Conference requires an enormous amount of planning; and

Whereas, The selection of a site on only an annual basis does not allow enough time for proper presentation; therefore, be it

Resolved, That the delegates to the 2004 ICSOM conference urge the Governing Board to attempt to secure sites for the annual conference on a multi-year basis to provide sufficient time for proper preparation.

[*Motion #35 – Lynn Rosen (Utah)/Mary Plaine (Baltimore)*] – made a housekeeping recommendation to amend ICSOM Bylaws VI.7.9. Agenda to change "Next Meeting" to "Future Meetings" was adopted.

\* \* \* \* \*

The following resolution (#24) encouraging voter registration was adopted. [*Motion #36 – Bob Wagner (New Jersey)/Nancy Stutsman (Kennedy Center)*]

Whereas, The 2004 ICSOM conference and the American Federation of Musicians International Executive Board have endorsed the Kerry/Edwards ticket in the upcoming presidential election; and

Whereas, There are undoubtedly musicians in our member orchestras who are not yet registered to vote; therefore, be it

Resolved, That the delegates to the 2004 ICSOM conference encourage all ICSOM delegates to make available to all their constituent members appropriate voter registration forms, encourage completion of same, and remind them to vote in the November 2<sup>nd</sup> Presidential election.

\* \* \* \* \*

### **Good & Welfare –**

Jan Gippo extended his thanks and indebtedness to Sam Denov and the founding members of ICSOM. Sam Denov replied that it had been a long time since had attended an ICSOM conference. He said it was comforting to know ICSOM is alive and well and has reached a relationship with the AFM that seemed impossible years ago. He said good things do happen.

### **New Business –**

AFM Convention Delegate – The delegates approved Lynn Rosen as third delegate to the AFM Convention and Bruce Ridge as alternate delegate.

Site selection – Laura Ross announced that no orchestra had offered a location for the 2005 conference. Bids are due to the ICSOM Secretary by Sept. 30. Tom Morgan offered San Diego for 2005 but still had to work out the details. Lynn Rosen has been asked that she be available as consultant to work with the next conference coordinator. August 17-20, 2005, are the tentative dates for next year's conference.

Jan Gippo asked delegates to consider adding an additional half-day on Tuesday afternoon and to include comments on the conference evaluation sheet.

Bill Foster invited any delegates or musicians who participate in the AFM Pension Fund to feel free to contact him or any trustee with concerns. Orchestras now contribute 35% of the AFM-EPF. There are currently no orchestra management trustees.

Bob Wagner recommended plaques be sent to Jay Blumenthal, Janice Galassi, Paul Ganson and Tom Hall.

Tom Morgan encouraged delegates to sign up for committees.

John Thorne asked ICSOM to address long-term issues, such as defining themselves, not just governance. He said we need to deal with our cultural relevance and brainstorming ideas to prove our relevance.

Jan Gippo informed the delegates that the Governing Board would be talking to members of the League strategic planning committee on Sunday.

### **Good & Welfare –**

Jan Gippo displayed the plaque honoring ICSOM's first president, George Zazofsky, that will be placed in Boston's Symphony Hall this fall.

Brian Rood, Laura Ross, Michael Moore, Richard Levine, and Bruce Ridge thanked the delegates for their support and for electing them to their offices.

Janice Galassi expressed her thanks for her resolution. She also spoke about those who are struggling in their workplaces and asking for support of a collective bargaining act.

Jan Gippo announced that ICSOM shirts, pins, and books may be ordered. They should contact him.

Nancy Stutsman thanked the delegates for their contributions to TEMPO and thanked Lynn Rosen for all her hard work.

Bobby Herriot thanked the Governing Board for inviting him the delegates for making him feel welcome.

Brian Rood recognized Robert Levine's contributions as assistant conference coordinator.

Jan Gippo adjourned the conference with thanks to the delegates and participants and said he had been energized by the past week. He announced that the negotiating orchestras meeting would follow the conference.