

Senza Sordino

Official Publication of the International Conference of Symphony & Opera Musicians

VOLUME XVII

74

FEBRUARY, 1979 — NO. 3

A.D.E.A. AMENDMENTS NOW OPERABLE

As of January, 1, 1979 the recently passed amendments to the Age Discrimination in Employment Act became operable. The key change as it affects the musician was a raise of the age before which retirement of an employee in the non-public sector may *not* be mandatory. That age is now 70 instead of 65. The extent of the applicability of this change to the symphonic musician was a topic of discussion at the recent ICSOM Conference and a subject of an address by Phil Sipser. We feel that many of our members would like to share the information presented so we offer this synopsis of Phil's address.

The Act (ADEA) has been in effect since 1967. It was the first attempt in U.S. legislative history to place a control on forced retirement in respect to age — the outer limit was set at 65 for non-public sector employees and 70 for Government employees. On April 6, 1978, the Act was amended to make 70 the outer limit age of forceable retirement for non-public sector employees. Bear in mind that the change affects only trade agreements where it is specific that a musician *must* retire at a specific age. The law applies as follows: If mandatory retirement is now permitted under an orchestra's contract or pension plan, then the prohibition takes effect when the contract expires, or 1980, whichever is earlier.

The law applies where there are 20 employees engaged for at least 20 weeks. (This would make the Act not applicable for the Chicago Lyric Opera, for instance). This does not preclude that satisfaction may not be obtained from a State's Discrimination Act where one exists. (A list of such states may be obtained from Sipser's office). The following statute in the ADEA defines the prohibitive aspects of hiring or firing for reasons of age. It shall be unlawful —

• *For an employer to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's age.* (Section 4)

• *To limit, segregate, or classify his employees in any way which would deprive any individuals of employment opportunities or otherwise adversely affect his status as an employee because of such individual's age.*

• *To reduce the wage rate in order to comply with this Act.* (An offer to retain you if you agree to accept less pay would, of course, be violative.)

This statute may suggest various unfair practices. The question is, what does the individual do if he feels discriminated against because of age. It is not necessary to retain legal counsel.

In the event you have no state agency, go to the regional office of the Secretary of Labor and file a charge. Enter the facts on a prepared form.

Don't do it *orally*. Fill out and sign the necessary form and get a copy of it. Although one has 180 days to file the charge, do it as quickly as possible. The Secretary of Labor will investigate the charge. When an individual files a charge with the state agency, he still must file with the federal government within 300 days (except that some States automatically transfer com-

plaints to the federal agency after a given period of time.) Once you file with the State agency, you must wait 60 days before bringing a lawsuit.

You must call or otherwise keep on top of the investigation on your own behalf. Inquire at regular intervals as to progress on your case.

If the case is found in your favor, the Secretary of Labor may attempt to get the employer to rectify the situation or may bring a law suit against the employer. If the Secretary of Labor dismisses the charges, you may go to your legal counsel and file suit against the employer if you wish.

On the other hand you may decide not to wait for a decision from the Secretary of Labor's office and file suit in your own behalf. In the event that this is done and, subsequently, the Secretary of Labor finds in your favor, your suit will be set aside and the court will recognize the Federal suit as superceding yours on the theory that they are remedying a public wrong.

Because of the subjective nature of the term *discrimination* in relation to age, the validity of your charge should be carefully considered by you. Be advised to contact the office of your ICSOM counsel or your personal counsel before acting on the matter.

THE EFFECT OF THE ACT ON PENSIONS AND H. AND W. PLANS

In regard to your prospect that your pension benefits would increase if you postponed retirement, Phil Sipser had the following to say. The Labor Department has issued proposed regulations which would permit pension plans to provide that no pension credits are earned by continued employment beyond the plan's normal retirement age. Similarly, the regulations would permit pension plans to provide that contributions may cease on behalf of employees who are beyond normal retirement age as defined in the pension plan. In addition, the proposed regulations provide that the "actuarial equivalent" of pension benefits need not be paid to employees working beyond the plan's normal retirement age.

In regard to Health and Welfare plans, the proposed regulations would permit health and welfare benefits of older workers to be less than that provided for younger workers so long as the actual cost incurred on behalf of the older worker is equal to the actual cost expended on behalf of the younger workers. (Thus for example, the life insurance benefits of older employees need not be the same as for younger employees). In addition while an employer may take advantage of benefits offered by Medicare, (i.e., it need not duplicate them), it may not reduce the total benefit package of older workers. In other words, the Medicare plus private benefits has to be as good as the benefits package without Medicare.

THE NEW JERSEY SYMPHONY STRIKE — THE SEARCH FOR JOB SECURITY

by Tony Cecere, New Jersey Symphony

I The Background

Last April the members of our orchestra published an article in *Senza Sordino*, Vol. XVI, No. 4, describing the *slaughter* undertaken by Thomas Michalak, our new Music Director. At that time three tenured players were demoted, two tenured players were dismissed and six non-tenured players were dismissed. It was against this backdrop that negotiations for a new Master Agreement were started during the last week in April.

A "do nothing" attitude characterized the negotiation meetings held up to the time that our contract expired on September 15th, 1978, before the commencement of our winter season in October. On October 10th, the musicians offered to "play and talk." The offer was accepted and for seven weeks we performed under the terms of the old master agreement. During this time only two meetings were held. The issues of money and job security were not discussed. This was an obvious stall on the part of the orchestra management.

At this point it is necessary to understand that we had 11 vacancies in our orchestra. The self-governing musician's rules currently allow new players to vote on contract ratification after an eight week probationary period has elapsed. This meant that by December 20th, 1978, we would have 10 new votes cast on the outcome of our contract, a block large enough to change the outcome of the voting in a decisive manner. We understood then, in the beginning of December, why management had procrastinated. At a meeting during the seventh week of "play and talk" the orchestra voted to set a strike deadline of midnight, December 5th.

At 7:45 pm on December 5th, the management finally offered a package — their first and "final" offer, accompanied by a doomsday speech from our Board President, Lowell Broomall, insinuating that an "interruption" of the season would surely result in the demise of the New Jersey Symphony Orchestra (a threat that we have heard uttered at every previous negotiation for a new contract).

What exactly was our management offering? Simply this: A committee to review firings made up of four principal players, three section players and the musical director casting three votes to yield a total of 10 votes. In the event of a tie, the committee would vote again, only this time the Music Director would cast four votes. No increase in wages was offered.

At this same meeting on December 5th our committee responded to management's offer by repeating our original proposal for a National Symphony type of Player's Review Committee, without the Music Director, elected by the musicians.

II. The Strike and subsequent Settlement.

Later that same evening, the musicians rejected management's offer by a vote of 50 to 9. The strike issue was clearly job security rather than money. Management responded by requesting that State and Federal mediators be present at future negotiating sessions. Press accounts that appeared during the eight day strike were fraught with inaccuracies. On December 11th the Secretary of State of the State of New Jersey entered the negotiations, requesting a meeting with both sides that included only one representative of our committee. The next day both sides met again, and management proposed the following:

1— *A modified National Symphony type of Player's Review Committee, without the Music Director, consisting of 6 tenured principals, 5 tenured section players, to be elected*

by the orchestra members.

- 2— *A minimal \$15 per week across-the-board raise (from \$285 to \$300).*
- 3— *Some improvement in the rights of demoted players, i.e., principals or assistant principals with 5 or more years of service shall retain their original salary for 2 seasons following their demotion; principals or asst. principals with less than 5 years service will retain their original salary for a period of 1 year. All other tutti players shall retain their original salary for the balance of the year that they are resealed, and for two following seasons.*
- 4— *Substantially improved rehearsal scheduling with "back to back" services, morning and afternoon, on Wednesday and Thursday.*
- 5— *Auditions will be arranged by the management in accordance with the musician's proposal to withdraw entirely from the audition procedure. On December 13th, the musicians ratified these proposals for a 2 year agreement by a vote of 39 to 19, with reopeners on the issues of job security and economics after the first year.*

III. Conclusions

Our decision to withdraw from the auditions requires some explanation. Under the previous contract, an audition committee heard preliminary auditions behind a screen and recommended candidates for the finals. However, the committee served in an advisory capacity only during finals, and the Music Director made the final decision.

Our negotiating committee proposed a "veto power", i.e., if a committee unanimously opposed the Music Director's choice, his selection would be voided. Our General Manager, Kenneth R. Meine, responded to this proposal in July with a statement that said that as long as he remained as manager the musicians would have no say in who was hired for the orchestra. During the course of several auditions our Music Director had selected no one, subsequently hiring substitutes on a yearly basis. Our participation in the auditions became a travesty. Our committee would save the management and the Music Director hours of work, would not be paid for listening to auditions and would not have a voice in the ultimate selection of a candidate. We therefore withdrew from the auditions.

The Player's Review Committee represents a significant gain. It was recently reduced in size from 11 to 9 (5 principals, 4 tutti players) as there were *not enough tenured principals* to form the committee after two principal players declined to serve.

The committee works like this: a vote of two-thirds to retain or dismiss is final and binding on all the parties. If the vote is less than two-thirds the musician proceeds to arbitration, and the arbitrator must be a musician, selected through mutual agreement of the player and the management. The costs of arbitration are borne by the management. (Not including legal fees).

The increase in salary is disappointing, but money was not the prime issue this season. The schedule improvements are a big step forward, especially for an orchestra that travels continuously. Also, the strengthening of a demoted player's rights is a salient point. Under the old agreement all demotions were handled in legal arbitration.

I cannot overemphasize the importance of the ICSOM Mailgram Campaign. This marvelous show of support from other

orchestras provided a much needed boost to our morale, and certainly prodded our management into a quick settlement (8 days) of our dispute. I feel that the sense of unity generated within our orchestra by the Mailgrams will blossom into a greater feeling of unity between the NJSO and other ICSOM orchestras.

IV — The Present and the Future

A few days after we returned to work the orchestra voted to join the AFM Strike Fund by a vote of 60 to 6 with 9 abstentions. This good news was quickly dampened, for on January 10th our management issued warning letters for six dismissals and one demotion, involving four tenured and three non-tenured players. Our new Player's Review Committee will soon be put to the test — these warnings become official notices on February 1st.

Our Orchestra Committee and our legal counsel, Leonard Leibowitz, deserve our thanks for their perseverance and success, particularly in acquiring Job Security for our orchestra.

ICSOM RESEARCH ASSISTANT TO BE HIRED

The ICSOM Executive Board held its annual "mid-year" meeting on February 4th. Agenda items for the summer ICSOM Conference were discussed as well as such current business as the National Public Television negotiations to be held on February 20th and 21st in New York. ICSOM representatives have been invited to those meetings.

Last summer the subject of a part time employee for ICSOM was discussed. The matter was not pursued until a determination could be made as to what duties such a person might shoulder. The need for contract research probably holds the highest priority. It would be very convenient if our contracts could be broken down into particular areas so that ICSOM orchestra committee members could call or write and get quick answers to as what various orchestra contracts provide in specific classifications.

It is envisioned that after the proposed research is under way, an orchestra representative could simply contact the office of our legal counsel, where office space is to be provided, ask for the Research Assistant, and get a series of clauses on Run-Outs, for example, without the time consuming effort of writing to specific orchestras, waiting for answers or culling the contracts for the specific information. At present, it is probably as close to "computerizing" our contracts as we can get.

Our now defunct Rapid Communication system broke down because the job became too overwhelming for musicians "burdened" with earning a living. It is also too costly for professional legal counsel because of the time element involved in research.

A law student will be hired on a part time basis from now until the 1979 Conference so that we may test the effectiveness of the services of an assistant to our orchestra. Other projects will be planned for the Research Assistant as well. We exist in order to provide services to ourselves on an organizational plane that might be impractical on an individual orchestra basis. The ICSOM Executive Board hopes that you share our enthusiasm for this new development. Bulletins will follow.

HERE'S A "HOT" ITEM

The *Indianapolis Star* reported on Sunday, October 15th that the Indianapolis Symphony Orchestra "will come back strong to present Haydn's *The Cremation*, with the Indianapolis Symphonic Choir, Friday and Saturday nites of the week after next."

1978-79 SYMPHONY WAGE CHART

Most orchestras that guarantee income for recordings or other electronic media services, pay such income in weekly increments. To facilitate comparison, the weekly salary in such orchestras are broken down into two figures.

Orchestra	Weeks	Weekly Salary Plus E.M.G.	Annual Guaranteed Salary
Atlanta	48	\$300. + 10.	16,320.**
Baltimore	45	320.	14,400.
Birmingham	30	186.40	5,592.
Boston	52	480. + 20.	25,960.**
Buffalo	47	320.	15,040.
Chicago	52	500.	26,000.
Cincinnati	52	365. + 20.	20,020.**
Cleveland	52	410.	21,320.
Dallas	52	346. + 15.	18,772.**
Denver*	52*	304.*	15,808.
Detroit	52	440.	22,880.
Florida	30	235.	7,050.
Grant Park*	9½	378.	3,967.
Hartford	34	132.09	4,359.
Honolulu	36	300.	10,800.
Houston	52	{ 340. + 15. 365. + 15.	18,305.**
Indianapolis	43	350.	15,080.
Kansas City	36	282.	10,152.
Los Angeles	52	440. + 48.	25,390.**
Milwaukee	49	350.	17,150.
Minnesota	52	{ 375. + 25. 395. + 25.	21,190.**
National	52	440.	22,880.
New Jersey	28	300.	8,400.
New Orleans	39	363.	14,157.
New York	52	480.* + 20.	25,960.**
North Carolina	40	315.	12,600.
Oakland	86 serv.	39.50 per service	3,397.
Oklahoma	31	225.	6,975.
Oregon	36	145.28	5,230.08
Philadelphia	52	480. + 30.	26,520.**
Phoenix	34	175.	5,950.
Pittsburgh	52	430. + 20.	23,400.**
Rochester	45	340. + 10.	15,750.**
St. Louis	52	{ 345. + 30. 390. + 30.	20,670.**
San Antonio	35	265.	9,275.
San Diego	200 serv.	40. per service	8,000.
San Francisco		Presently negotiating	
Seattle		On Strike	
Syracuse	39	252.	9,828.
Toledo	60 to 180.	\$23. per service	
Utah	46	330. ("A" cont.)	15,180.
Chicago Lyric*	16	460.	8,022.40*
Kennedy Center Opera		500.	no. guarantee
Met. Opera*	44 ¹	490.46 ²	21,580. ³
N.Y.C. Opera*	28 ¹	415. ²	11,620. ³
N.Y.C. Ballet*	25 ¹	415. ²	9,545. ³
S. F. Opera	13	467.18	7,268.
S. F. Ballet*	{ 70 perf. 75 hrs.	60. perf. 12.	5460. ¹

** Annual Guaranteed Salary includes Electronic Media Guarantee or Recording Guarantee.

Grant Park* — Figures are for 1977-78 season. 1978-79 contract yet to be negotiated.

Denver* — \$304. paid for 52 weeks. Working season 32 weeks in length. \$13,416 annual salary plus \$2392. Survival Fund Pay.

New York* — Plus \$20 (minimum) per week for each string player. (rotation pay).

Chicago Lyric Opera* — annual wage does not include \$602. taping fee.

Kennedy Center Opera — \$420. per wk. for musical shows.

Metropolitan Opera* — 1) plus 7 weeks Supplemental Unemployment Benefits. 2)___3)___not including rehearsal pay.

N.Y.C. Opera* — 1) Plus 6 week tour. 2)___3)___Does not include rehearsal pay.

N.Y.C. Ballet* — 1) Includes 4 weeks Supplemental Unemployment Benefits. 2)___3)___not including rehearsal pay; 75 hrs. @ \$12.50

San Francisco Ballet* 1) Includes week tour.

JOB HUNTING ABROAD?

There Could be Problems.

One need not look further than the lists of applicants for job opportunities in the major orchestras of this country to conclude that there are many more qualified musicians than positions to accommodate them. The situation invites many to seek employment outside the U.S. and Canada. Concomitant with that decision may come a variety of problems. Some have been brought to our attention by Ted Dreher, A. F. of M. Symphony Department. The advice given could be of particular value to students of our orchestra members who may be seeking opportunities to begin a career as an orchestra musician.

Mr. Dreher writes that while Federation By-Laws (Article 26) mandates that any A. F. of M. member accepting any foreign engagement submit his contract to the Foreign Service Department of the President's Office (that's Ted Dreher), many musicians, particularly the young graduates, contend for jobs in these orchestras with never a contact with that office, where they may get good advice. Many of the contracts are in a foreign language, a handicap to a majority of applying members. Translation of the contract is available at the Foreign Service Office by visit. Exchange in terms of \$U.S. is worked out and the hazards of going to work in a government controlled orchestra are pointed out. The musician is reminded that the A. F. of M. has no jurisdiction outside the U.S. and Canada and that abuses encountered elsewhere may be minimized if the musician would take advantage of information available before making a commitment to a foreign contract.

Some of the advantages of working abroad may be — residence in a foreign country; a chance to learn a second language; diversity of musical experience; the favorable climate of the countries in Central, South America and the Caribbean, as well as warm weather countries such as Israel and Hong Kong.

Some of the disadvantages are: The high cost of getting to the job (most orchestras will not pay transportation from the U.S. to the job unless wheedled); the high cost of moving personal effects and instrument (s) to the job; haphazard operation of the orchestra as regards scheduling, over-time rehearsals, sudden run-outs, slow pay, quixotic conductors, mandatory adjudication of claims and disputes by the government tribunals in the country. The A. F. of M. is very limited in pursuing a claim of a musician. Other problems may be poor managers or a succession of inept managers; and re-assignment of chairs at

the whim of the conductor.

Fringe benefits in foreign orchestras vary. Many orchestras have some kind of pension; varying degrees of medical coverage; some require membership in the Musicians' Union of the country. Many have paid vacations.

Presently there are contracts of ten Mexican, Central American, South American orchestras and five Israeli orchestras in the A. F. of M. files, as well as a smattering of others from various other foreign orchestras. Conditions vary to the degree that the Office follows a variety of approaches in dealing with these organizations.

"In general, the ads appearing in the *International Musician* for openings in foreign orchestras, are there because there has been no adverse reports of their operation," Mr. Dreher asserts. "When there are unresolved (unpaid) claims or where we have received multiple complaints in writing from musicians working in a particular orchestra, we will (1) refuse ads until the problems are resolved or the claims are paid, (2) decline to approve contracts, pending settlement.

I have told several musicians that if they take a job in a foreign orchestra without an approved contract, they are entirely on their own if it comes to a dispute, a non-pay or a grievance. In the usual course, I will not approve a foreign orchestra contract for a non-A. F. of M. musician."

If there are any questions raised by the information furnished above, one may contact: Ted Dreher, A.F. of M. Symphony Dept., 1500 Broadway, New York, N.Y. 10036.

SYRACUSE MUSICIAN ELECTED HEAD OF LOCAL 78

Philip R. MacArthur, Principal Oboe of the Syracuse Symphony Orchestra, has been elected President of Local 78, A.F.M., replacing retiring President Louis DeSantis. Mr. MacArthur has served as a member of the SSO Orchestra Committee from 1964-70, as Personnel/Operations Manager of the Orchestra from 1970-77, and again as Chairman of the Orchestra Committee during 1978. William Harris, SSO Principal Trombone, was elected to a seat on the Local Executive Board last season. These recent developments underline a long history of cooperation and solidarity between the Local and Symphony musicians in Syracuse, and are expected to further strengthen this relationship and collective effort in the season ahead.

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SENZA SORDINO is the official publication of the International Conference of Symphony and Opera Musicians and is published six times a year on a bi-monthly basis. ICSOM is affiliated as a conference of the American Federation of Musicians of the United States and Canada, AFL-CIO.

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Subscriptions: A.F.M. Members \$4.00 per year
Non-Members A.F.M. \$7.00 per year

