

Senza Sordino

Official Publication of the International Conference of Symphony and Opera Musicians

VOLUME 32, NO. 3

February 1994

The Legal Underpinnings of the Negotiating Process by Leonard Leibowitz, ICSOM Counsel

While it is true that many musicians in ICSOM orchestras have earned graduate degrees from the school of hard labor bargaining, it is equally true that there is not much knowledge, even within negotiating committees, of the law underlying the collective bargaining process. If you have ever wondered why people on negotiating committees aren't fired for being in the other side's face, or why you can't tell the other side not to bring to the table the **one** management person who has lied to you repeatedly, or why they give you the information you ask for, when it shows them to be less competent than even you suspected, or why your lawyer gets red in the face whenever you utter the words "impassé" or "implement," read on.

The fundamental statute underlying the collective bargaining process in the United States is the National Labor Relations Act (NLRA). This act was passed by Congress and signed by President Franklin Delano Roosevelt in 1935, during the depths of the Depression, when labor disputes were widespread and often ended in violence. The Act recognized the right to form and join unions, to bargain collectively with employers, and to engage in other collective action for employees' mutual benefit and protection. The Act also prohibited employers from interfering with the formation or internal affairs of unions, while also placing some restrictions on the kinds of collective actions in which unions could engage. The Act also created the National Labor Relations Board (NLRB), which monitors representation elections and investigates charges of unfair labor practices.

Statutory Notice Requirements

Section 8(d) of the NLRA establishes certain statutory notice requirements before a contract can be terminated or modified. If there is a collective bargaining agreement in effect, a party seeking to terminate or modify the agreement must serve a written notice by certified mail, of the proposed termination or modification on the other party at least sixty days before the expiration or modification. The party serving the written notice must offer to meet and confer with the other party to negotiate for a new contract or modify the existing agreement. The notice letter can be given by either the union or the employer. Within thirty days after notice to the other side, the party must also provide notice of the dispute to the Federal Mediation and Conciliation Service (FMCS) and to any state

agency established to mediate and conciliate labor disputes.

Section 8(d) establishes the minimum notice periods. If either party wishes, the notices can be sent out sooner than required, such as 90 days before the modification or termination date. Although the law refers to notifying the other party first, and then the FMCS, it is permissible and common to send out all required notices at the same time. The FMCS has a standard multicopy form that can be used to notify both the employer, the FMCS, and the state mediation agency, if any.

Strike/Lockout Ban During Notice Period

Section 8(d) prohibits either party from engaging in a strike or lockout until the expiration of the notice periods or the expiration of the contract, whichever comes later. If either party gives the proper notices, both parties are free to engage in a strike or lockout at the termination of the notice period. Thus, if a union gives a sixty and thirty days notice, the employer can engage in a lockout. If the employer gives proper notices, the union can strike at the end of the notice period even though it has not given notice.

The notice requirements apply to midterm modification of a contract, such as a wage reopener, as well as to the contract's expiration.

Consequences of Late Notice

A union does not forfeit forever the right to strike by failing to meet the notice requirements. It can give the notice late and strike after waiting the appropriate period. For instance, suppose a union gives proper notice to the employer by the sixtieth day, but forgets to give

continued on page 5

In This Issue

It's the Law	1
Repelling Boarders	2
SenzaNet	3
The Old Pro's Nest	4
Product Watch	8
Letters	9
News that Fits	10

Prepare to Board: Researching Your Employers by Chris Perry

A few years ago, I started collecting news articles and biographical information on the members of my orchestra's board of directors. This article will explain why it's useful to have this information, and how to begin your own board research project.

Why Ask Who's Who?

- You will find out about the public and corporate personae of your board members.
- If you find a profile story, you may gain some idea of how members see themselves and how their peers see them.
- You may find out how they treat employees in a labor dispute.
- You will begin to recognize power bases within the board. You'll know who works for whom. You may find out who is related by marriage. You'll find out which members serve on other boards together.
- You may see how their businesses work with the Symphony. You will probably have bankers on the board, with whose banks the Symphony has a line of credit. The attorneys may represent the management in negotiations, real estate, and intellectual property matters, the accountants may be on the Finance Committee, and insurance company executives may be providing health as well as other insurance policies. The bankers, attorneys, and accountants, at the very least, give advice and make policy in these and other areas, and are probably your most conservative, and most powerful, board members.

How To Begin

Here's what I did: at the public library, I started with *Who's Who*. If my board member was listed in *Who's Who in America*, that little paragraph told me which corporation he was the head of, his

Chris Perry is a percussionist with the Oregon Symphony. She has served on the orchestra committee, as chair of the negotiating committee, as ICSOM representative, and as a member of the finance committee of the Oregon Symphony.

history in business, his education and family, and even some of his volunteer board affiliations. In my case, only one of all the board members was in this book, but he was very high up in a large corporation that has several subsidiaries. I then looked up the corporation in Standard and Poor's *Register of Corporations, Directors, and Executives*. I compared the list of officers and boards of directors of all of the subsidiaries, and found four or five of the symphony's board members listed as subsidiary executives and board members. Then I looked up other major corporations in my city and compared the list of symphony board members to the boards and officers of those companies.

I had found quite a few of the members of the symphony's Executive Committee by this time. I knew where they worked and their titles, and could deduce members that obviously worked together. I took this group and looked them up in the computerized newspaper and periodical indices.

Through the indices I found a few profile articles in my local Business Journal. I also found stories in other newspapers about wealthy arts patrons in town – these stories were good background for understanding family wealth and philanthropy connections in the city.

What Good Is This Information?

From your research, you can compile a list of current board members with a short paragraph about each person, and copies of relevant news clippings. Beyond its use for analysis of powerful people on the board, which is the purpose for which your negotiator may request it, the orchestra committee can provide this information to musicians serving on committees with board members in order to familiarize themselves with the board members before important meetings. The orchestra committee can also offer the information to other unions who need background on their company CEO and board members.

Some sources for this information are:

- *Who's Who in America; Who's Who in the West; Who's Who in the East; Who's Who in the South; Who's Who in the Southwest*, etc. There are also *Who's Who* volumes relevant to certain industries. These will give you information on education, corporate history, any awards bestowed, and a list of corporate and volunteer boards on which the person has served.

continued on page 3

Prepare to Board

continued from page 2

- Standard and Poor's *Register of Corporations, Directors, and Executives*. Lists of corporate officers and board members.
- Dun and Bradstreet *Million Dollar Directory*. America's leading public and private companies, officers and board members.
- *Biography and Genealogy Master Index*. A consolidated index in several volumes of 3.2 million biographical sketches in 350 biographical dictionaries.
- *Biography Index*. A cumulative index to biographical material in books and magazines.
- Newspaper Index. Several libraries now have this computerized for their local daily newspaper. Just type in the name of your board member, or the company the person works for, and any identifying names associated with him or her (you can do the same for the name of your orchestra, music director, and board president in order to find interesting links and bases for further information searches).
- Periodical Index. Libraries often have this computerized as well. My library has about 1,500 magazines and trade journals indexed on-line. It has our local version of the *Business Journal*, and keeps the last two months of the *Wall Street Journal* and *New York Times* indexed.

There are other reference sources that may be locally available, including databases. Ask your librarian for assistance; the librarian can be exceedingly helpful and knowledgeable, and often has an affinity with workers of other underpaid professions. You, your union or central labor council also can subscribe to computer networks and clipping services.

From all your research, you'll begin to recognize who has the real power on the board and who doesn't. You may be able to ascertain which board members are sympathetic to the musicians, or have the potential to be. Hopefully, the sympathetic ones will have some power on the board (not all of them do). If not, you can help them develop some. Of fifty to sixty board members, only a few are involved in running your orchestra. All try to attend a few one-hour meetings each year and help raise money for the annual fund, but not all have the power to make decisions.

Most of your research should center on the members of the symphony's Executive Committee — the people who make most important decisions affecting your work life.

The American Symphony Orchestra League uses the three-legged stool (*Those that live in glass acronyms shouldn't throw double-edged metaphors — Ed.*) as a description of power sharing in an American

symphony orchestra. The three legs are the Music Director, the Executive Director, and the Board. Through your research, you will get to know the board members well enough to make judgments about how the three legs of the stool work together, and which power sources are fueling your orchestra at the moment.

SenzaNet: Take a Byte

Senza Sordino is now available online. Thanks to the cooperation of Wayne King, Supervisor of Computer Services for the AFM Symphonic Services Division, electronic versions of *Senza Sordino* will be posted on the SSD computer bulletin board, and can be downloaded by any AFM member with a computer and a modem.

Issues will be available in three formats:

- a "digital paper" version, which can be read and printed by Macintosh computers and PC's running Windows 3.1. This produces an exact replica of *Senza* as it appears on your music stand, minus photographs.
- a "setext" version, which is a hypertext format currently readable only on Macintosh computers.
- a text version, readable on any computer.

To read and print the "digital paper" version, Windows users need to download an .EXE file named "CGMINIVW.EXE" (the "digital paper" file is actually a Macintosh application with a built-in Mac miniviewer). To read the "setext" version, Mac users need to download the "Easy View" application. Both are posted on the BBS. Files are compressed in Stuffit (.sit) format for Macintosh files and ZIP (.zip) format for MS-DOS/Windows files. Utilities to decompress these formats are also posted on the BBS.

Currently, the only issues posted are Volume 32, #1 – 3 (1993-94) and Volume 31, #4 (June 1993). Past issues will be posted when the editor of *Senza* has some free time, which, if his employers decide to reach an agreement with his orchestra, may be before the onset of the next Ice Age.

To become a Senzanaut, call the AFM BBS at (800) 223-6623. The new user will need to set their telecommunications program to 8 data bits, 1 stop bit, and no parity. After logon, they will be guided through a short registration procedure.

The Old Pro's Book of Handy Hints

by Tom Heimberg

Somehow, over the past thirty-two years of professional music making, I have metamorphosed from an awestruck newcomer into a Respected Old Pro. It happens — sometimes later, sometimes sooner. (you don't have to be old to be an Old Pro!) In the course of this surprising and awesome transformation (yes, I still get awestruck, but for different reasons now) I have developed — as we all do — a collection of tricks and techniques that ease the work of playing classical music.

Here are a few of these devices for your use and enjoyment:

Rubber bands make great windclips! Two (or more) good quality bands with a relaxed diameter of 3" to 3½" can be stretched around the stand and the music on both sides of the part. Their grip is tighter at the top than at the bottom (where the lip of the stand takes up extra room), so care is necessary. But once you get the knack of carefully freeing the upper right hand corner when you turn pages, the advantages of this device will be clear: the person turning pages has greater control without needing to use both hands.

If the wind is really strong, conventional clips might still be needed, but even then rubber bands help keep the folder in order.

Of course they can also keep a folder in order even if there is no wind. When there are many short pieces of music in a book — a selection of opera excerpts, or an assortment for a Pops concert — the bands can be stretched around the music and folder without involving the stand. Pit musicians with a large book that doesn't want to stay open will also find them useful.

Carry several on the job. String players can wrap them around a packet of emergency strings (another Handy Hint that is often honored in the breach).

Old Pros not only have beer bellies but cork guts. The playing life of all-gut strings can be greatly extended by lightly applying cork-grease to most of their length — the fingering area, not the bowing area — and then wiping it off. Just that additional bit of extra lubrication from time to time reduces wear and gives extra flexibility to the string.

Gut strings without a winding had almost disappeared from orchestra use when I joined the profession more than thirty years ago. But not completely; I used a gut A-string on my viola for seven years, until playing a chamber work of Milhaud requiring lots of A-string

harmonics forced me to use steel. The recent rise in Baroque music specialization should give this device a new field of use.

I learned about cork grease and gut strings from one of my beloved stand partners in the San Francisco Symphony, the late Hubert Sorenson. Hubie was a highly respected professional quadrupler (violin, viola, clarinet, saxophone) who could — and did — mix his symphonic and operatic playing with shows and dance jobs, on all four instruments. (He told me once that he had studied flute, too, but had so much work on the other four instruments that there was no time to to keep it up.) As a wind player he used cork grease on a daily basis, and he used a gut A-string on his viola. This special convergence of knowledge is passed on in his memory.

Wound strings can benefit from special treatment, too. When you clean your fingerboard and strings, try using a solution which blends alcohol with some kind of gentle lubricant (myristate of myristyl, for example — whatever that is!). The cleaning is just as effective as alcohol alone, and the residue leaves the strings and board smooth and comfortably slippery.

I've been using the same bottle of *Williams' Lectric Shave* for this purpose for more than twenty years — a few drops at a time. There is enough left to last for what will probably be the rest of my career — a few drops at a time.

This procedure calls for three cautions:

1. As with cork grease, the substance should be applied well away from the bowed area of the strings (cleaning what Hindemith calls "the arctic regions of eternal rosin" requires straight alcohol).
2. It should probably not be used just before an audition, since the feeling of a lubricated fingerboard is different from usual.
3. Be sure to sniff the stuff first! It's important that you like the fragrance, which will linger for a few days after application. (*is this a viola joke or what? — Ed.*)

I hope these Handy Hints will be of use to you. I hope to share more treasures and pleasures in future issues, and I invite you to join in! If you have devised, developed, discovered or daydreamed any useful techniques, please let me know. This request is open to all colleagues, from any section or with any length of experience (you don't have to be old to be an Old Pro!) Full credit will be given for all submissions used — which may well be all of them.

Just send your cards and letters to: Tom Heimberg, 1656 Ocean View Avenue, Kensington CA 94707. Thanks; I look forward to hearing from you soon.

Tom Heimberg is the ISCOM delegate for the San Francisco Opera orchestra, where he is a member of the viola section.

Underpinnings

continued from page 1

30 days notice to the FMCS. If the union strikes without giving notice to the FMCS, it violates Section 8(d). However, if the union realizes its mistake and gives late notice to the FMCS, the union can strike 30 days after giving notice.

Selection of the Bargaining Committee

Both the union and the employer have a near-absolute right to choose their respective bargaining committees. Neither party can refuse to bargain because they disapprove of someone on the other's bargaining committee.

The Duty to Provide Information for Bargaining

Unions have a broad right to information relevant to the negotiation and administration of the collective bargaining agreement. This obligation is based on the principle that the employer's duty to bargain includes the duty to provide the union with the information it needs to engage in informed bargaining.

The employer need not give assistance voluntarily so the union must request the information it wants. The information requested must be relevant to the formulation of the union's bargaining position, contract negotiations or contract administration. The union is also entitled to information needed to evaluate and process a grievance through the grievance procedure to arbitration.

Limits on the Employer's Duty

There are some limits on the employer's obligation to provide information. The union's request cannot place undue burdens on the employer. Unions may have to pay for the employer's administrative expenses (such as clerical and copying costs) when gathering large amounts of information. If substantial costs are involved in gathering the requested information, the parties may bargain over the amount the employer may charge the union. If no agreement is reached, the employer may simply permit the union to have access to the records from which the union can reasonably compile the needed information on its own.

Also, the employer can require the union to state why the requested information is relevant. Usually the employer does not have to interpret the data provided to the union or put it in the precise form the union requests. It need only make the information available. However, if the information requested is computerized or needs explanation to be understood, the employer must put the data in a useable form and give the necessary explanation.

Right to Profit Information

The union is entitled to financial information about company profits only if the employer pleads he is financially unable to pay a requested increase. This is called "pleading poverty." The union is

not entitled to this particular financial information just because it would assist it in preparing wage demands for bargaining.

Confidential Data

The Supreme Court has indicated that an employer's legitimate interest in the confidentiality of certain information may prevail over the union's need.

The Good Faith Concept

The NLRA does not require an employer and union to agree to the terms of a collective bargaining agreement. A party's only obligation is to bargain in good faith with an intent to reach an agreement. If an agreement is reached, either party may require that it be written and executed.

The law does not regulate the contents of an agreement; it only regulates the bargaining process. Each side in the bargaining process naturally wants to get the best contract it can for itself. The law does not require either party to be "fair" or to compromise its position to reach an agreement. Section 8(d) specifically states that neither party can be required to agree to a proposal or make a concession. A party may lawfully bargain for the most favorable agreement possible. An employer whose bargaining power is stronger than the union's can use that power to get a better agreement, so long as the employer intends to reach an agreement. Similarly, a union whose bargaining power is greater than the employer's can use its power to negotiate an agreement more favorable to the union.

Although both the employer and the union may bargain in good faith and intend to reach an agreement, they may eventually reach a good faith deadlock on an issue. A good faith deadlock is a bargaining impasse. The parties may move on to other issues or break off bargaining altogether at that point. The duty to bargain includes the duty to meet at reasonable times and places. But either an employer or a union can refuse to meet if a bargaining impasse has been reached and neither side is willing to change its position. This is not bad faith bargaining.

However, if an impasse is broken by a change in the position of either party or by a change in circumstances, the parties are once again obligated to meet at the request of either side. The NLRB frequently regards a strike following an impasse as a changed circumstance. Thus, if an employer breaks off negotiations before a strike begins, the employer may be required to begin bargaining again if the employees strike.

There is no set amount of time before the parties can reach an impasse. In theory, the parties could reach an impasse after a few minutes of bargaining on a particular matter. That, however, would be unusual. If the parties bargained with the intent to reach

continued on page 6

Underpinnings

continued from page 5

an agreement and they are deadlocked, there is an impasse regardless of the time taken to reach that point.

The main consequence of the impasse is that the Employer then has the legal right to unilaterally impose, or "implement," the terms and conditions of its last offer to the Union. The Union, of course, can strike immediately, or it can work under the Employer's conditions temporarily or even permanently.

If an employer simply refuses to meet with a union to negotiate an agreement, the employer is obviously not bargaining in good faith as required by Section 8(a) (5). Most employers, however, are more sophisticated than that. An employer who meets with the union, but only goes through the motions of bargaining with no intent to reach an agreement, is using the tactic called "surface bargaining."

How does the NLRB distinguish an employer who is engaging in hard bargaining, which is legal, from one that is bargaining in bad faith? No single factor determines whether an employer or a union is bargaining in good faith with an intent to reach an agreement. Good faith is judged on the totality of a party's conduct. There are, however, certain acts that are usually considered evidence of bad faith bargaining. These include: agreeing on minor bargaining issues, but refusing to give in on any major point (such as agreeing to general contract language but maintaining a fixed position on all major economic issues); refusing to agree to provisions found in most collective bargaining agreements (such as a "just cause" clause or seniority provision); proposing wages and benefits that are no better than those under the prior contract or before the union was certified; rejecting union proposals without making any counter proposals or indicating why the union's proposals are unacceptable; reintroducing proposals which have previously been withdrawn in order to avoid reaching an agreement; and delaying meetings.

No one factor is controlling. An employer may have perfectly legitimate reasons for refusing to have any seniority provisions in a contract or for not offering any wage increase. Whether an employer is engaged in surface bargaining is a matter of overall intent. All factors are considered, including whether the employer has displayed hostility toward the union or engaged in coercive activities.

Circumventing the Union

An employer violates the duty to bargain under Section 8(a) (5) if he attempts to go around the union during bargaining and deals directly with the employees on their terms and conditions of employment. An employer can lawfully keep its employees informed concerning the employer's bargaining position, the reason for its positions, and bargaining progress. The employer cannot, however, make an offer to the employees that it has not made to the union or attempt to undermine the union's bargaining position.

Boulware in a China Shop: Take It or Leave It

Can an employer adopt a "take it or leave it" attitude on its bargaining proposals, a technique frequently referred to as "Boulwarism?" Lemuel R. Boulware was chief of labor relations for General Electric for many years and developed the technique bearing his name. Under this approach, the company did extensive preliminary research on its bargaining position. Based upon its research and the union's proposals, the Company devised what it regarded as a "fair but firm" offer which it then presented to the union. The company would listen to whatever counterproposals the union made, would explain its reasons for rejecting them, but would not change its position.

The Board held that this technique was unlawful, but for a very narrow reason. The company not only held to a rigid position at the bargaining table, but also circumvented the union through a widespread publicity campaign to convince the employees that the company's offer was best. The company disparaged the union in its literature. The Board held that it was unlawful for the company to make it appear that union representation was futile by acting as if there were no union at all. Thus, the company's conduct was in bad faith because the totality of its conduct, not just the one technique, indicated that it had no true intent to bargain.

Section 8(d) provides that neither party can be required to reach an agreement or make a concession. Therefore, bargaining techniques close to Boulwarism are lawful, as long as the employer's other conduct does not indicate he has no intention of reaching an agreement.

Tentative Agreements

During bargaining, either side has the right to keep all agreements tentative until a complete agreement is reached. It is not necessarily bad faith bargaining for either an employer or a union to change position on an item previously agreed to. The Board permits the parties to retract tentative agreements because it understands that a party may agree to particular contract language or certain benefits during bargaining on the assumption that the overall agreement will be acceptable or that it will win some concession from the other side. If the entire agreement falls short of expectations, a party has the right to revise its total proposal. However, it may be evidence of bad faith if a party puts issues already agreed to back on the bargaining table at the last moment without any reason.

The Board has held that an offer remains on the bargaining table, even after the other party has initially rejected it, until it is expressly withdrawn, and that a party can change its mind and accept an offer until it is withdrawn. For example, an employer may propose a package settlement agreement which the union rejects. The parties may then continue to bargain without any progress being made. The

continued on page 7

Underpinnings

continued from page 6

union can decide to accept the employer's prior bargaining proposal, and the employer would be bound by the proposal, unless it had been expressly withdrawn before then.

Both the employer and the union may make agreements negotiated at the bargaining table conditional on higher approval. Thus, the union negotiators can reach an agreement contingent on membership ratification. The negotiators for the employer can make their agreement contingent on approval by higher management or the board of directors. However, the employer's representative must have sufficient authority to conduct meaningful negotiations to reach a tentative agreement. It is bad faith bargaining if the negotiator continually has to check every major point with someone who is not present.

It is assumed that both the employer and the union negotiators have full authority to reach a binding agreement on their own. If a negotiator's agreements are subject to approval, he must advise the other party of this restriction at the beginning of negotiations. If a negotiator does not indicate the limits of his authority, a party may be bound by an agreement the negotiator reaches even though he exceeded his authority. Neither the employer nor the union is bound by the internal ratification procedures of the other unless it has notice of them or there is a past practice of ratification. For example, if a union's by-laws require that contracts be ratified, but the union's bargaining committee does not tell the employer about this requirement, the union is bound by an agreement the committee reached even though it went beyond its authority.

Economic Force During Bargaining

The Supreme Court has held that economic pressure is not inconsistent with good faith bargaining. In that case, the union engaged in a work slowdown. The members refused to fill out paper work, reported to work late and left early, and engaged in other harassing tactics to pressure the employer into accepting the union's bargaining position. The Court held that it was not bad faith bargaining for the union to use economic pressure to force the other party to concede. It stated that economic power has a legitimate role in the bargaining process.

Thus, a union has the right to strike or engage in other concerted activity to support its bargaining position. Similarly, the employer has the right to lock out employees in support of its position.

There is a common misunderstanding that a union can only strike if negotiations have reached an impasse following good faith bargaining. That is not so. As long as a no-strike clause is not in effect, a union has the right to strike at any time to force an agreement, even though bargaining is still going on and the parties are not deadlocked. Economic force is not inconsistent with a good faith intent

to reach an agreement, although the agreement sought is one favorable to the union.

Union Bad Faith Bargaining

Although the emphasis has been on employer conduct constituting bad faith bargaining, a union can also be guilty of bad faith bargaining. Suppose a union has a master contract with a multi-employer association that the union wants other smaller independent employers in the same industry to sign. An independent employer suggests a change in the master agreement, but the union insists that all employers sign the same agreement without the change. That may be bad faith bargaining because the union has no intention of engaging in the give and take of bargaining with the employer, just as an employer using Boulwarism tactics has no intention of engaging in true bargaining with a union.

This article, which is intended to give the very basic legal principles underlying the negotiating process, was adapted from *Labor Guide to Labor Law*, Second Edition, by Bruce Feldacker, published by Prentice-Hall, Inc. It is not intended to be an exhaustive treatment of a very complex group of statutes and cases.

Product Watch

continued from page 8

used for comparison, which ended on December 31, 1988, TIAA-CREF provided the highest bottom-line results: cash accumulation of \$62,539 in the fixed-income vehicle and \$83,405 in the mutual fund. When taken in the form of a life ten-year certain annuity at age 65, the fixed-income vehicle and the mutual fund vehicle would provide a monthly income of \$637.42 and \$762.31, respectively.

If you had contributions to the AFM-EPF of \$36,000 over any period, under the current pension rate at age 65 of \$4 per \$100 of contribution you would receive a monthly income of \$1,440. In addition, the AFM-EPF pension has survivor and disability benefits even before you're vested, if you have one year of vesting credit. And it only takes scale wages (not contributions) of \$1,500 in a year to get a year's vesting credit. If you only had scale wages of \$375 in a given year, you would still earn one quarter of vesting credit, and the vesting period is only five years. It's a very easy plan in which to earn vesting.

(thanks to Michael McGillvray)

Product Watch

Gloves to Warm the Cockles of Your Tendons.

An article found while surfing the Internet describes a product that has helped at least one sufferer of repetitive stress injuries to the hands. The sufferer is Adam Engst, editor of an online newsletter called "TidBITS;" the product, Handeze gloves. He writes:

"These \$20 fingerless gloves are made from stretch Lycra subjected to a special process called "Med-A-Likra" that expands the individual fibers in a thread, thus reducing the space between threads and working better to hold body heat. The cuffs are double-layer Lycra and help keep the hand in a neutral position while allowing flexibility, unlike wrist braces. The strangest part of the gloves is that they only have four holes for the fingers - the middle finger and ring finger share an opening. The New England Therapeutic Research Group designed the gloves to help relieve pain in three specific ways - by providing warmth, support, and massage. Although ideal for computer users, the company that sells the gloves, Dome, notes that they have been used successfully by musicians, farmers, carpenters, seamstresses, and dentists, along with people in many other occupations susceptible to RSI."

Engst claims that his wife, who suffers from tendinitis, was helped by the gloves as well.

Dome / (800) 432-4352

(reprinted by permission of TidBITS)

Music May Sooth the Savage Beast, but What's It Doing to Your Lumbar?

ICSOM's first venture into book publishing, *The Musicians' Survival Manual: A Guide to the Prevention and Treatment of Injuries in Instrumentalists*, is available from MMB Music. The book, which was written by Dr. Richard Norris and edited by former *Senza Sordino* editor Deborah Torch, offers information about the anatomy, diagnosis, treatment, and prevention of many injuries that can befall instrumentalists.

MMB Music / St. Louis MO / (800) 543-3771

Mute Experimental (MX)

A Texas company has announced the development of a practice mute for brass instruments called the Peacemaker Practice Mute. The product is a mute with acoustic headphones. The company claims that the mute "drastically reduces the sound level far below

that of a common straight mute **and** allows the player to hear the sound clearly through the innovative use of headphones... top professionals and students report that the mute does not noticeably affect the playing characteristics of their instrument." Models are currently available for trumpets in various keys, French horn, and tenor and bass trombone. Models are promised soon for euphonium and tuba.

Finally, the answer to *Mars, the Bringer of Deafness*.

Peacemaker Music Products

9722 Railton

Houston TX 77080

Everything you wanted to know about percussion parts, but were afraid you'd get used for a gong if you asked

A percussionist with the City of Birmingham (UK) Symphony Orchestra, Maggie Cotton, has written a book entitled *Percussion Work Book*. She says "since I was a student some thirty-seven years ago, I have always kept a record of what pieces I have played, what percussion instruments are required, and how many players are needed for each work. This record was indexed and, over the years, has become an invaluable reference book. It is unique; no other orchestra books break down the exact percussion demands."

It must be unique; how many other books can (or would) boast of a "Timpani Appendix?"

M. Cotton / 57 Elmfield Crescent / Birmingham B13 9TL / United Kingdom

Performers' Pension Fund Really (Out)Performs

Any comparison of different financial products is difficult, and sometimes not even appropriate. So, with that caveat, here's a comparison of the financial performance of the American Federation of Musicians and Employers Pension Fund with that of another type of retirement vehicle, a tax-deferred annuity.

The National Education Association commissioned the consulting actuaries Milliman & Robertson, Inc. to do a comparative analysis of 403(b) (tax-sheltered annuity) products available. They used as a yardstick for comparison a total contribution of \$36,000, made over ten years in monthly amounts of \$300. Over the decade they

continued on page 7

Letters to the Editor

We, the orchestra committee of the Saint Louis Symphony Orchestra, are writing to respond to an article published in a newsletter entitled *Alternate Fingerings* dated December 1993, and specifically to a paragraph entitled *What's in a Name*.

The article refers to contractual language concerning payment of ICSOM and orchestra dues as being a requirement of maintaining membership in the union, often referred to as the "St. Louis clause."

Quoting from the article:

"the mandatory orchestra and ICSOM dues contract language is often called the "St. Louis clause" because it first appeared in the Saint Louis Symphony contract in 1983. Brad Buckley, a member of the orchestra and ICSOM's chairman, was instrumental in the negotiation of the clause. (What a coincidence!) Unfortunately, the union officers of St. Louis Local 2-197 chose political expediency over union values, and eventually succeeded in silencing all the dissenting voices in the orchestra by moving to get them fired. It's too bad that the name of such an excellent musical ensemble has become associated with such a disgraceful event."

While we find the spirit of this article offensive, it is also factually incorrect. To imply that anyone has been fired from the SLSO as a result of the ICSOM dues or orchestra dues payment language in the contract is pure fantasy. This clause was conceived and carefully considered by the musicians of the SLSO, led by our negotiating team. The officers of Local 2-197 are signatories to the contract acting only on our collective wishes. Brad Buckley was neither an officer of the union nor a member of the negotiating team for this contract, which was ratified in 1982, not 1983 as the article claims.

These misrepresentations and unfortunate innuendoes regarding our contract are regrettable, especially from our colleagues in New York.

We would be delighted to provide further facts about the Saint Louis Symphony and its collective bargaining agreement to anyone who wishes more information.

THE SAINT LOUIS SYMPHONY ORCHESTRA COMMITTEE

Newslets

continued from page 10

"CSO members had considered donating coffee, cocoa, muffins and such for the musicians, but discovered when they called the Coffee Trader that that commissary function had been usurped by players from the Atlanta Symphony Orchestra.

"An anonymous donor started the trend Saturday, according to David Boxer of the Coffee Trader, who also logged a call from the New Orleans Symphony. Perhaps if the Lawrence Welk Orchestra could supply champagne, it might induce a more congenial atmosphere for the symphony's board to resolve its differences with the musicians."

~

Starting this issue, *Senza Sordino* sports a slightly more modern look. The major typeface used in *Senza* for many years has been Times Roman, but this issue uses Adobe Minion as its main font. Minion is the work of Adobe Systems designer Robert Slimbach, one of the recognized leaders in digital typeface design. Your comments on both the appearance and content of *Senza Sordino* are not only welcomed, but are liable to be printed.

~

Violist Markus Wasmeier of Germany won two Gold Medals in the Winter Olympics in Lillehammer during February; one for the giant slalom event and one for the super-giant slalom. It would not be fair, however, to infer from Wasmeier's victories that violists go downhill faster than anyone else; Wasmeier also paints antiques and plays the zitar.

~

A group of neurologists at the University of Düsseldorf in Germany compared magnetic resonance images of the brains of a group of right-handed male pianists and string players with a control group of right-handed male non-musicians. They found that, in the group of musicians, a brain structure associated with auditory processing was larger in the left hemisphere of the brain and smaller in the right hemisphere than in the control group of non-musicians. The neurologists also found that, among the musicians who had started their training before the age of seven, the corpus callosum, which is a bundle of nerve fibers that connects structures between the two hemispheres, was 10 to 15 percent thicker than in the control group, or even in the group of musicians who had begun their studies later in life. Gottfried Schlaug, one of the neurologists, hypothesizes that early musical training can strengthen and even create neural connections in the brain.

The only remaining problem would seem to be figuring out how to fit "Musicians do it with a thicker corpus callosum" on a bumper sticker.

Newslets

Florence Nelson, treasurer of AFM Local 802 (New York City), has been appointed director of the Symphonic Services Division of the American Federation of Musicians by AFM President Mark Tully Massagli. Ms. Nelson was ICSOM treasurer for many years before becoming treasurer of Local 802. We look forward to the continuation of a long and productive relationship with Ms. Nelson and Symphonic Services.

On December 29, a Federal District Court in Honolulu confirmed arbitration awards requiring the Honolulu Symphony Society to pay nearly \$400,000 in back pay and benefits owed the musicians of the Honolulu Symphony Orchestra as a result of unilateral cuts imposed by the Society during the 1992-93 season. On another front of the HSO musicians' continuing struggle to be treated as something other than pond scum, the Musicians' Association of Hawaii, AFM Local 677, and the Hawaii Opera Theater have concluded negotiations establishing an orchestra for the Opera Theater, which in past seasons has used the HSO as its pit orchestra. According to *The Bugle*, the newsletter of the HSO musicians, "the conditions agreed to with the Hawaii Opera Theater will bolster the Musicians' efforts to preserve the integrity of the Honolulu Symphony's size and compensation schedule, which have been under constant attack by the Symphony Society leadership for over two years."

As was discussed in the October 1993 issue of *Senza Sordino*, the latest report emanating from the American Symphony Orchestra

League, *Americanizing the American Orchestra*, was released into a firestorm of criticism last spring. Now it appears that some of the major figures in American orchestra management have unleashed their own broadside into the sinking ship *S.S. Americanizing*. Edward Rothstein of the *New York Times* reported on February 20 that "managers of some of the largest American orchestras objected to the way the report was prepared and released, and they argued that some of its conclusions were 'seriously flawed'... their resolution criticizing the report was presented to the [ASOL]." To which we can only say, "better late than never."

Quote of the Bi-month: (Milwaukee Symphony Orchestra Executive Director Joan H. Squires discussing management's proposal to reduce the season from 48 weeks to 41 weeks with a concomitant decrease in 14.7% in annual compensation for the musicians, in comparison with the 7.5% cut taken by her): "[The musicians are] 'not going to be paid less for their work. They're going to work less.'"

Michael Horne wrote, in his column in the *Milwaukee Sentinel* of January 11, that "demonstrating Milwaukee Symphony Orchestra musicians were treated to Edwardo's pizza Sunday as they marched in the bitter cold (8° F before factoring in windchill—Ed.) for the third day at the Performing Arts Center. The donors: members of the Chicago Symphony Orchestra, demonstrating in a Dickensian sort of way that music builds bridges between peoples.

continued on page 9

ICSOM Governing Board

Chairperson Bradford D. Buckley St. Louis Symphony 6607 Waterman St. Louis MO 63130 Phone: (314) 863-0633	President David Angus Rochester Philharmonic 284 Castlebar Rd. Rochester NY 14610 Phone: (716) 244-2514	Secretary Lucinda-Lewis New Jersey Symphony 4 W. 31st St. #921 New York NY 10001 Phone: (212) 594-1636	Treasurer Carolyn Parks Kennedy Center Orchestra 3730 Brandywine St. NW Washington DC 20016 Phone: (202) 966-1874	Editor, Senza Sordino Robert Levine Milwaukee Symphony 7680 N. Longview Drive Glendale WI 53209 Phone: (414) 352-6090
Member-at-Large James Clute Minnesota Orchestra 447 Newton Ave. S. Minneapolis MN 55405 Phone: (612) 374-9373	Member-at-Large Michael Moore Atlanta Symphony 953 Rosedale Rd. NE Atlanta GA 30306 Phone: (404) 875-8822	Member-at-Large Charles Schlueter Boston Symphony 60 Otis Street Newtonville MA 02160 Phone: (617) 964-4019	Member-at-Large Stephanie Tretick Pittsburgh Symphony 3979 Boulevard Drive Pittsburgh PA 15217 Phone: (412) 422-7275	

ICSOM Orchestras

Alabama Symphony Orchestra Atlanta Symphony Orchestra Baltimore Symphony Orchestra Boston Symphony Orchestra Buffalo Philharmonic Orchestra Chicago Lyric Opera Orchestra Chicago Symphony Orchestra Cincinnati Symphony Orchestra Cleveland Orchestra Columbus Symphony Orchestra Colorado Symphony	Dallas Symphony Orchestra Detroit Symphony Orchestra Florida Orchestra Florida Philharmonic Orchestra Grant Park Symphony Orchestra Honolulu Symphony Orchestra Houston Symphony Orchestra Indianapolis Symphony Orchestra Kennedy Center Orchestra Los Angeles Philharmonic Louisville Orchestra	Metropolitan Opera Orchestra Milwaukee Symphony Orchestra Minnesota Orchestra National Symphony Orchestra 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 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
--	---	---	--

Counsel
Leonard Leibowitz
400 Madison Avenue
New York NY 10017
Phone: (212) 832-8200

ICSOM Emeritus Program
Abe Torchinsky
777 W. Germantown Pike #1028
Plymouth Meeting PA 19462
Phone: (215) 277-3981

Subscription: \$10 per year, payable to:
Senza Sordino
Robert Levine, editor
7680 N. Longview Drive
Glendale WI 53209

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. Unauthorized reproduction of any part of *Senza Sordino* is strictly forbidden. Copyright © 1994. All rights reserved. ISSN 1074-7850