

JANUARY 2005



RMALA Editorial

RMALA wants more than anything to be part of a strong, empowered and effective union. The American Federation of Musicians needs strength to take on the many challenges facing working musicians. Strength comes from building strong relationships, building community, and most of all creating trust.

We can all do better – and we must.

On a daily basis, we continue to reach out to communicate in both public and private arenas. RMA has asked the International Executive Board (IEB) of the AFM to work with us to craft real solutions. We have asked the IEB to lead the way in rebuilding a sense of trust among AFM members.

Our needs are simple – we need the same kind of rights at negotiations that every orchestra in the AFM has. Our needs are simple – the ability to exercise real oversight over our services from the Federation. Our needs are simple – a strong AFM.

Musicians Rights

*This article was prepared by the RMALA Board
in consultation and cooperation with RMA General Counsel Lewis Levy.*

At the most recent RMALA General Membership meeting in Los Angeles on December 13, 2004, RMA Officers were specifically asked to review the history of the fees on Secondary Markets/Special Payments Fund distributions. We were also asked to spell out the possible ramifications in the event individual musicians questioned the accuracy of their invoices, had difficulty paying, or for whatever reason did not pay.

As a result of actions taken at the last AFM Convention the new payments are now an AFM Bylaw. RMALA does not suggest or encourage that any member violate any AFM Bylaws. We do, though, have an obligation to fully disclose accurate information in response to questions asked of us. Since each musician's situation may be different than the next, this article should not be taken as specific legal advice, and if you have more detailed questions about your particular situation, you should consult with legal counsel. We hope this will be helpful.

1. Can the AFM prevent me from working?

No. Whether you are a member in good standing or not, whether you are suspended - even if



you resign from the AFM, you cannot be kept from doing union employment, nor can the AFM discourage employers from hiring you.

2. Can my Pension or Health Care contributions be stopped?

No. All Pension or Health Care contributions must be made and credited whenever you are working under an AFM or Local Collective Bargaining Agreement that has those benefits. This is the case regardless of any monies you might owe the AFM or any action that might be taken against you. In fact, Pension and Health Care contributions must even be treated equally for both union and non-union musicians.

3. Can my Pension or Health Care payments or coverage be stopped?

No.

4. Can my Motion Picture, Sound Recording or Pension Checks be attached?

If the AFM (as is explained below) exhausts its internal remedies, and is then willing to incur the considerable expense of obtaining a court judgment against you, they could do so only for the amount of the payment. It could not collect its attorneys' fees and could collect only what it claims you owe under the Bylaws.

5. What are possible ramifications for musicians who do not make the "Payment"?

It is most likely that the AFM must, before resorting to external legal remedies, exhaust internal union remedies against the members from whom it believes the "Payment" is due. This requires the AFM, before initiating any legal action, to bring internal union charges against the members who have not paid the Payment.

6. What are Charges?

Charges are claims made against a member for alleged violations of AFM or local Bylaws.

7. How are internal charges processed and what constraints are placed on the AFM?

Consistent with federal labor law, the AFM must abide by certain "due process" procedures. These include providing the member with:

- a) Specific written notice of the charges;
- b) Adequate time to prepare his/her defense and;
- c) A "full and fair hearing."

Moreover, in any internal union proceeding, the AFM would be obliged to conduct the hearing(s) at a location that is convenient to the member (i.e., Los Angeles, for Local 47 members.) Additionally, the member has the right to have a reasonable extension made of any hearing date, as may be necessary to prepare or schedule one's appearance.

8. Can certain people be singled out?

No internal AFM proceeding can be used to selectively punish certain members because of their opposition to AFM leadership and/or remittance of the Payment. Such an act would, more than likely, violate Federal labor law if it can be established that the purpose of a selective prosecution approach was to punish members for internal union speech (i.e., opposition to the Payment or an AFM administration) and/or for the additional purpose of creating a "chilling effect" whereby AFM members are dissuaded from voicing their opinions or otherwise participating in AFM political matters.

When the internal charge procedure is used (bearing in mind "selective prosecution" and other "due process" issues), the AFM would have a range of options as to the discipline it could impose. This of course presumes that charges are properly filed, executed and sustained – not an easy task at all.

9. What type of discipline could the AFM impose?

The AFM could impose the following types of discipline:

- a) An order requiring immediate payment of your bill, perhaps with a nominal fine, or;
- b) An order requiring immediate payment, plus a more substantial fine (or a more substantial fine held in abeyance during a period of time, to allow remittance of the payment), or;
- c) An order including all, or some, of the above plus either suspension or expulsion from AFM membership (which would include suspension of/expulsion from the member's Local Union membership as well as loss of RMA membership). Expulsion is highly unlikely since the AFM would no longer receive full membership dues from the member and work dues would be reduced.

Enforcement of any monetary component is not automatic. Thus, unless the member voluntarily remits payment, the AFM would have to seek confirmation in court, thereby converting the monetary discipline into a court judgment. Of course, a member who is the subject of any such discipline has the right to challenge the legality



of that decree in Federal Court.

It is possible, though unlikely, that the AFM would try to bypass this internal process by opting to try to collect the payment through the court system as a first step. This would be very expensive for the AFM and might not be sustainable

legally. At the end of the day, this type of proceeding would, most likely, entitle the AFM – assuming it brings suit to collect the payment and it prevails in that action – to an award of only actual damages (i.e., the amount of the payment owed by the defendant member) plus court costs (but not attorneys' fees) and interest.

As with any legal situation, there are many subsidiary issues that can arise in any such litigation. For instance, there is an argument that the AFM would have to bring such an action equally against all non-paying members or face a "selective prosecution" defense. In other words, it could be asserted that the AFM should not be allowed to select certain "high profile" RMA members as "test" defendants, since proceeding in that fashion could, as the argument would go, infringe on those members' right to exercise their federally protected right to engage in internal union free speech and politics.

As mentioned above, this article is but a very general overview of potential legal issues. We will continue to undertake our commitment to answer your questions about this matter or any other. Further, we will keep you updated with relevant information about this process, and your rights and responsibilities as a member of the AFM.

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News Flash:

The Motion Picture and Television Film Agreements, which are due to expire on Feb 16, 2005, are being extended for at least six months. This means that rates and other terms will stay the same until successor Agreements are negotiated. That is likely to occur in August or later. We will keep you advised as additional information is available.

Brian O'Connor Update

By Jay Rosen

RMALA President Brian O'Connor is making a remarkable recovery from highly successful brain surgery performed on December 13, 2004 at the UCLA Medical Center. Innovative procedures were devised for this groundbreaking surgery that will unquestionably benefit all musicians should they undergo a similar operation. The new procedures included musical tests created by Brian's close friend and colleague David Duke in conjunction with the surgical team.

The surgery was performed by Dr. Linda Liau, Co-Head of the UCLA Neurology Department. The musical and cognition tests were administered and developed by Dr. Susan Bookheimer, Professor of Psychiatry at UCLA. Dr. Bookheimer is a leading-edge researcher in the area of state-of-the-art neurological surgeries and administered all of the tests to Brian while he was awake for several hours during a portion of the surgery. Beginning more than a month prior to the surgery, Dateline NBC videotaped the entire sequence of events including the operation itself for future broadcast.

From the moment the tumor was diagnosed, Brian's wife Wendy has been nothing short of amazing - beginning with her initial research and continuing with her incredible support. Brian has already resumed playing the horn and resumed teaching at UCLA. Brian, we all look forward to seeing you back in the studios in the very near future.

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News Flash:

**We have a new member of the family - RMA Florida!
 RMALA warmly welcomes our newest RMA Chapter.**

News Flash:

**The Sound Recording Special Payments Fund website is up and running;
 check out www.sound-recording.org.**