

The Leading Tone

Atlanta Ballet Picket - October 26, 2006

On opening night of Atlanta Ballet's *Giselle* – in which the dancers were accompanied by a CD player – I walked the picket line with musicians of the Atlanta Ballet Orchestra on Thursday, October 26th. I estimate there were between 30 and 40 people in the picket line, including AFM Negotiator Nathan Kahn; ABO ROPA Delegate Tina Caterino; Kathy White, former ABO ROPA Delegate; media spokesperson for the ABO musicians Mary Kenney; Atlanta AFM Local 148-462 Secretary-Treasurer Andrew Cox; Amy Handelman, former ROPA Delegate for the Savannah Symphony; IC-SOM Treasurer Michael Moore, as well as other members of the Atlanta Symphony; members of the Communications Workers of America, Teamsters, and the International Brotherhood of Electrical Workers – plus my in-laws, Joe and Jancy Davis. It was a peaceful demonstration – if at times noisy, thanks to the CWA members who seemed to have no trouble communicating with their “outdoor voices” – and many of us observed that the patron turnout seemed meager.

The Atlanta Ballet's budget is about \$7 million annually, and the cost of the musicians is approximately 5% of that, or roughly \$350,000 – their accumulated deficit is reported in the *Atlanta Journal-Constitution* as \$2.7 million. To illustrate the contrast between the world-class Atlanta and the mere crumbs represented by what the musicians are asking for, I'll describe some of my impressions of the trip, along with a few facts I've picked up.

I arrived in Atlanta on the evening before the picket, and took the MARTA train from the airport to the Arts Center Station in Midtown, where my father-in-law, Joe Davis, picked me up. The Arts Center Station is nearest Joe's house, and serves the home of the Atlanta Symphony and the High Museum, Atlanta's exceptional art museum, where they are currently exhibiting a collection borrowed from the Louvre.

On Thursday morning Joe and I toured the Georgia Aquarium, which is touted as the world's largest

aquarium with eight million gallons of fresh and marine water. The aquarium opened a little less than a year ago, built in part through a gift of \$250 million from Bernie Marcus, one of the founders of Home Depot. Because it was fairly early on Thursday morning, there were no lines to get into the aquarium – I understand there are enormous crowds on weekends – but once inside we observed that there were already hundreds of people inside, and heard several languages being spoken, including French, Spanish, Russian, Japanese, and a Scandinavian language I could not identify. The exhibits were breathtaking, and I was overcome with awe in spite of the music that played over the speakers, which was a little overdone, but generally effective in setting a mood. Different locations made use of a variety of canned music – horns and timpani with strings reminiscent of Debussy's *La Mer* for the enormous tank with the four whale sharks; and for some of the smaller tanks, a small ensemble played spacey soothing music that could have been composed by Brian Eno. Very little of the music was synthesized. I was not able to find out how much of the Aquarium's budget was spent on music, but I'm guessing it was a buyout recording session, and won't continue to drain their resources.

On the day after the picket, I visited the High Museum of Art, and toured the Louvre exhibit. The High Museum recently built the wing where the exhibit is showing, at a cost originally estimated at \$115 million. It is named for John and Sue Wieland, who donated \$12 million for the project – the largest donation in

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ROPA

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the museum's history. The donation was accompanied by a press release, which quotes Mr. Wieland. "Sue and I are very pleased to be a part of the new High for Atlanta," stated John Wieland. "We are extremely committed to Atlanta and believe that the High's new buildings will have a lasting and positive impact on the life and character of our city."

The museum is classifying major gifts as being \$50,000 or more, which will get your name displayed in the new Wieland Pavilion Grand Lobby. It's comparing Fujis to Granny Smiths, but the Atlanta Ballet's "major gift" threshold is only \$1000.

What did I learn from my Atlanta trip? The ballet management's willingness to cut a small portion of the budget at a huge artistic cost seems absurd in light of the obvious commitment of the benefactors and citizens of the city to cultivating arts and culture on a world-class level. It displays poor priorities and general shortsightedness, and I hope the people of Atlanta take notice and stand up for the highest quality for all their arts organizations, and for the people who make live performances worth the effort.

On Monday, December 11, 2006, I spoke to Atlanta Ballet ROPA Delegate Christina Caterino Berman, who reported to me that the unfair labor practice case is still pending in the National Labor Relations Board, and the ballet orchestra is currently picketing *Nutcracker* performances. Christina, along with orchestra members Amy Trotz and Kathy Wood, is involved in a newly formed political action committee, which among other things is hoping for an audience with the Atlanta mayor Shirley Franklin. The committee is organizing an audience association with members of the Atlanta community. Christina reported that audience members have been extremely receptive and helpful in response to the picketing, that the newspapers have printed a number of helpful articles, and that the ballet management has received many letters very supportive to the musicians.

If you want to help the Atlanta Ballet management see the light, please send a letter in support of the musicians of the Atlanta Ballet Orchestra, addressed to:

Atlanta Ballet Karen Vareb, President
1400 West Peachtree St., NW
Atlanta, GA 30309
fax 404-874-7905

Please visit the ROPA web site article at:

<http://www.ropaweb.org/phpBB2/viewtopic.php?t=1224>

for more information about sending letters in support of the musicians of the Atlanta Ballet.

Tom Fetherston, President, ROPA

INFORMATION CENTER

- This newsletter is online at:
<http://www.ropaweb.org/lt/xxiv/> (* see note)
- To subscribe to the ROPA Internet Mailing List, visit
http://www.ropaweb.org/mailman/listinfo/ropa_ropaweb.org
The list is open to musicians in ROPA member orchestras, and AFM Local officers for those orchestras.
- The 2007 ROPA Conference will be held in San Francisco, California, July 30th — August 3rd, 2007.

* There may be a delay in getting the newsletters posted onto the web site.

Find the 2007 ROPA conference brochure at:

<http://www.ropaweb.org/files/conf/2007/ROPA2007.pdf>

www.ropaweb.org

"Kentucky River" Washes Away Settled Law

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On September 29, the National Labor Relations Board decided a series of cases that are commonly referred to as the "Kentucky River" cases.

They are referred to as the Kentucky River cases because they redefine the term "supervisor" under the National Labor Relations Act in light of the US Supreme Court's 2001 decision in *NLRB v. Kentucky River Community Care*. That case rejected the National Labor Relations Board's (NLRB) interpretation of the phrase "independent judgment," which is an important component of the definition of "supervisor" under the labor act.

The new decisions upset longstanding law holding that "lead" employees are not supervisors and are properly included in bargaining units and covered by collective bargaining agreements.

The labor community had long anticipated that the current NLRB, composed completely of Bush appointees, would use the Kentucky River cases to change the definition of "supervisor" to eliminate the protection of Federal labor law for thousands of workers. Unfortunately, our anticipation was proved to have been correct.

The three Kentucky River cases involved registered and licensed practical nurses at a nursing home, registered nurses at an acute care hospital, and leadmen at a manufacturing facility. In two cases, the Board held that the workers involved were not supervisors. In the third case, it held that charge nurses were supervisors. But what is important about these decisions is not the particular outcome in each, but rather what the Board said about the test to be employed in the future.

The labor act defines "supervisor" as follows: "any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Until the Kentucky River decisions, those words had been interpreted narrowly. Only workers who were "real" supervisors - who had real authority to hire, fire, direct, and

discipline other workers, or who had the power effectively to do these things by making recommendations that were followed by upper management--would be excluded from the labor act's coverage. Although there were disputes about the application of this definition of a supervisor to specific cases, in general everyone knew the rules.

The Kentucky River cases are likely to radically change the landscape because they allow that workers who simply have some independent authority to assign basic tasks--a function not historically understood to be "supervisory" --may be considered supervisors. These decisions have unraveled more than 50 years of established law.

It is too early to predict exactly how these decisions will affect workplace labor relations. Employers with mature collective bargaining relationships with unions will likely do nothing, since there is nothing unlawful about voluntarily including supervisors under a union contract. However, we can expect anti-union employers to try to force newly-minted "supervisors" out of union representation through a variety of tactics.

It is even more unclear how these decisions will affect the music business. While there has been a lot of speculation, we think that such speculation is premature. But what does emerge with clarity from Kentucky River is that defining a "supervisor" will depend on facts that will vary from case to case.

For now, the Federation is working with the AFL-CIO in the courts and in other forums to challenge this radical departure from settled law. We are also developing legal and bargaining strategies to respond to any attack in the entertainment industry that might follow from Kentucky River.

Until the Board's unwarranted actions have worked their way through the courts, we strongly urge any local confronted with a supervisor challenge to contact the AFM to discuss the most appropriate way to respond.

Jeffrey Freund, AFM General Counsel,
and **Patricia Polach**,
AFM Associate General Counsel, Bredhoff & Kaiser

New Recording Opportunities

I wanted to take a moment and encourage ROPA musicians to become familiar with the newly ratified AFM Symphony, Opera and Ballet Live recording agreement. This summer at the ROPA conference, Debbie Newmark highlighted the new terms of the agreement. I spoke to Jennifer Munday, the ROPA representative on the negotiation team, and she said the following about the agreement, "I think the cost of the recording is one big reason why it will look more attractive to ROPA Orchestra Managements." Jennifer also added, "the musicians have to approve each project that they will do."

What makes the recording agreement appealing to management is that there is a smaller up-front payment with revenue sharing based on units sold. The agreement also includes Internet downloading. Debbie Newmark shared with us in the AFM's *International Musician* the following information:

"The up-front payment for symphony orchestras is 6% of weekly scale or 48% of per-service performance scale, whichever is applicable, subject to a minimum up-front payment of \$80 per musician. The up-front payment for opera orchestras is 6% of weekly scale or 37.5 % of per-service performance scale, whichever is applicable, also subject to a minimum up-front payment of \$80 per musician. The up-front payment entitles management to produce and sell 15,000 units. The units counted include both CDs and digitally distributed files from the same project.

"After the sale of the 15,001st unit, each musician will receive a tier payment of \$10. Thereafter, each musician will receive a \$10 tier payment for every additional 1,000 units sold, without limit. Musicians will also receive a percentage of the gross receipts to the institution after the institution recovers its agreed-upon direct costs.

"The musicians' revenue share percentage is 50% (inclusive of pension contribution). There are specific terms for revenue sharing in opera based on the participation of other constituencies that may share in revenue.

"The up-front payment covers a recording (including a recording of a choral work) containing 78 minutes of music or less. For up to every 13 additional minutes, an additional payment will be made that is 1/6 of the original

up-front payment. In the case of opera, the up-front payment will cover a recording containing 126 minutes of music or less (whether the orchestra plays in the pit or on stage). For up to every 21 additional minutes, an additional payment will be made that is 1/6 of the original up-front payment.

"One full digitally downloaded album will count as one physical album sale for the purpose of calculating entitlement to tier payments. There are also formulas for calculating tiered payments and revenue sharing based on partial album downloads and subscription streaming license revenue."

The recording agreement does not allow the recording to be used to displace pit orchestra musicians. Additionally, there are caps on the number of projects per contract. There is a formula in the agreement to allow for patch (editing) sessions, but they must be agreed upon through the orchestra's approval process.

With classical music keeping in time with the new digital age, I encourage orchestras to learn more about the new opportunities provided in the newly ratified agreement. The best way to begin a new recording project is to talk to Debbie Newmark of the AFM Symphonic Services to become familiar with all of the agreement guidelines to ensure a smooth process. Ask your ROPA delegate for more information on this issue.

Information compiled by Carla Lehmeier

Welcome Steve Gelfand

The AFM is pleased to welcome Steve Gelfand to the Symphonic Services Division as Contract Administrator. A member of Local 802 since 1972, Steve has experience as a freelance bass player and in administering collective bargaining agreements and other union contracts. Steve has worked in the development of software programs that facilitate quick and accurate payments to musicians and generate reports of the work to the AFM and Local 802. Steve is available to answer questions on issues relating to the administration of CBAs, bylaws, contract language, internal governance, comparative information, and other matters concerning AFM symphonic orchestras. He can be reached at 212-869-1330, ext. 1211.

What's Happening with ROPA Orchestras?

Opera Cleveland reports that its first meeting of the new opera company, Opera Cleveland, between the management and the new orchestra committee, was December 13th. There was one meeting with the new committee where several things came up which needed to be addressed, including hiring processes with two different contracts and ways of hiring merging, and how much prerogative a conductor can have in reducing sections and rewriting scores with reduced orchestrations.

Ann Gilbert

The **Erie Philharmonic** is conducting a music director search this season, and thanks to a previously negotiated CBA mandate, there are equal numbers of orchestra musicians and board members serving on the search committee - five and five. The musicians hope for a good artistic outcome.

LeAnne Wistrom

The **Hartford Symphony** ratified a contract on October 19th that includes: a 3.5% service rate increase over the next three years (ending at a base rate of \$120 per service in 08-09); a summer season guarantee (11 services for Core, six for Basic); an increase in management's payment to health insurance for musicians; and increased pension contributions from 4% to 5% over two years. The Symphony's second horn, Emery Tapley, recently became Director of Education and Community Programs. The second trombone, George Sanders, recently became part-time Artistic Planning Advisor (temporary). Local musician/organist/church music director Jim Barry is our new, but temporary, Operations Manager. The Symphony also has many new musicians from auditions in October and November.

Hillary Ledebuhr

The **Huntsville (AL) Symphony** will be acquiring a new shell for their Concert Hall in the Von Braun Center. It will greatly improve the sound in the hall, and among the musicians on stage. The shell will arrive this summer and be in place for the 2007/8 season.

Dorrie Nutt

The **Memphis Symphony Orchestra** is holding a Principal Pops Conductor search this season. Final candidates are Matt Catingub, Robert Moody and Michael Krajewski. Please supply delegate David Roode with any information you may have about these candidates. David's email is: davidroode@bellsouth.net.

David Roode

The **Pacific Symphony** is enjoying a brand new concert hall, the Renee and Henry Segerstrom Concert Hall in Costa Mesa, CA. The Pacific Symphony is presenting some wonderful performers and contemporary composers in early 2007. Performers will include Cho-Liang Lin, Shai Wosner, Janice Chandler-Eteme and Susan Platts. Composers include Chris Theofanidis and Pierre Mercure. Pacific Symphony's flagship educational program, Class Act, is trying out a pilot program incorporating Orff Schulwerk into eight Orange County schools, grades K-2. The pilot program so far is a success, and hopefully will be expanded next season.

Nancy Eldridge

Welcome

Wisconsin Chamber Orchestra!

ROPA welcomes its newest member.

The orchestra's delegate is

Todd Jelen

216.314.2000; tj7118@msn.com

The **Minnesota Opera Orchestra** begins rehearsals for Ricky Ian Gordon's new opera *The Grapes of Wrath* in January 2007. The Company commissioned the work in conjunction with the Utah Symphony and Opera.

Amy Morris

The **Pittsburgh Opera** hired a new conductor, Australian Antony Walker. Among the youngest directors of a major American opera company, Mr. Walker begins immediately, with productions of Mozart's *The Magic Flute* and Britten's *Billy Budd* in the spring. Mr. Walker will continue to be based in Washington, DC, where he is music director of the Washington Concert Opera.

Annie O'Neill, Pittsburgh Post Gazette

Portland Opera just completed four performances of Gounod's *Faust*. It was a bit too exciting, since the lead tenor got sick after the dress rehearsal, and the company had to fly in Richard Crawley to open the title role with no rehearsal. Fortunately we had as guest conductor one of our finest in the last 20 years: Vjekoslav Sutej from Zagreb. Sutej pulled it all together in spite of the fact that his father died in Yugoslavia the night of our dress rehearsal. Sutej managed to be present 100% with the production in spite of his personal tragedy.

Sherill Roberts

Colorado Springs Philharmonic Orchestra:

Local 154 won a big court case in the Denver Tenth Circuit Court of Appeals. The court ruled that orchestra management had to pay musicians for being available between when the orchestra filed for reorganization to when they filed for dissolution. This sets an important precedent. Management is unlikely to appeal this decision since the next step up would be the US Supreme Court, and they would be unlikely to hear the case.

Larry Gardner

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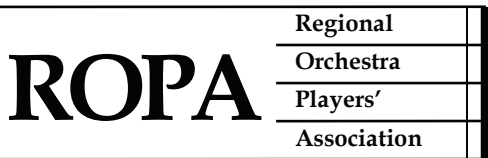
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