

The 20th Conference of the Regional Orchestra Players Association

Downtown Radisson Hotel in Memphis, Tennessee

August 6-9, 2003

Conference Summary

by Stewart Williams, ROPA Editor, *The Leading Tone*

On Tuesday (August 5), attendees arrived at the Radisson Hotel in Downtown Memphis, registering and preparing for the conference. Throughout the afternoon and evening, a Symphonic Services Division Negotiating Workshop was held for delegates of orchestras currently in negotiations.

Wednesday, August 6

Entertained by musicians from the Memphis Youth Symphony, delegates continued to arrive and register for the conference throughout the morning.

During the hour previous to the opening of the conference, Jennifer Munday welcomed new delegates and provided them with an orientation, describing their responsibilities to ROPA.

Opening at 1:00 pm on August 6, President Barbara Zmich delivered welcoming remarks.

- Officers were introduced
- Roll was called - 55 orchestras present
- AFM officers and Local Officers were introduced. In attendance were John Sprott, President of the Memphis Federation of Musicians, AFM Local 71 and principal percussionist of the Memphis Symphony; Scott Moore, chairman of MSO Orchestra Committee and principal trumpet of the MSO; and Ryan Fleur, Executive Director of the MSO and former board member of ASOL.
- 2002 Conference minutes were approved

Officer Reports

President Barbara Zmich, summarizing the year, mentioned the importance of communication between the ROPA and its member orchestras through the delegates and members-at-large. She also mentioned two trips to the AFM office in New York to discuss ROPA concerns and health

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care coverage for conference orchestra members. Other topics of the address included a summit in January discussing media issues, the electronic media survey, a Symphonic Summit in July, national legislative issues (such as carry-on baggage on airplanes), the AFM convention, and ROPA representation at the ASOL conference – all to be discussed in greater depth later in the conference.

Vice President Jennifer Munday reported on her appointment as interim vice president as Marc Facci had to step down mid-year and expressed her regret at his having to leave ROPA. She welcomed the new member orchestra, The Lexington Philharmonic, to ROPA and added that other orchestras are inquiring about membership. She mentioned the update of the delegate handbook to compact disc and thanked President Zmich and Secretary Fetherston for their work on this. She also stressed the importance of updating the managers' list, conductor evaluations, and keeping in touch with members-at-large.

Also provided by Jennifer Munday was a written report on the results of the Electronic Media Survey. These included three mandates:

- To maintain the existing Limited Pressing Agreement
- To maintain the current Radio to Non-Commercial Agreement with payment changes per CD
- For a traditional bargaining format for negotiating national agreements.

She also reported that the Symphony Opera and Ballet Audio-Visual Agreement expired in July, and is now on a 6-month extension awaiting negotiations this fall. The ROPA EB also wishes to create a ROPA Media Advisory Board and needs interested people for membership.

Secretary Tom Fetherston reported upon the three resignations from the executive board. Jennifer Munday stepped in for Marc Facci, with Larry Gardner filling in for Jennifer's MAL position. Linda Patterson resigned her position as Delegate-at-Large. Leslie Braidech was elected to replace her by mail ballot, with Rochelle Skolnick as alternate. Due to a last-minute conflict, Ms. Skolnick took Ms. Braidech's place. Mr. Fetherston was appointed ROPA secretary when Betsy Start stepped down last January. The Secretary Report then summarized his work with mailings, web site development, a mail ballot election, etc.

Treasurer Dennis Danders presented the ROPA Financial Report for FY 2002-03. Income was a mere \$52 short of the budget while the expenses came in \$1,512 under budget. The total ending cash balance was \$55,485 with an excess of \$1,371 over the beginning cash balance. A budget for FY2003-04 for \$37,250 was proposed and approved.

Patricia Polach – Labor Law 101 and the Duty of Fair Representation

ROPA Counsel Patricia Polach presented a report on the Basics of Labor Law. She discussed "Rights and Duties" (the sources of which are Bylaws, CBAs, National Labor Relations Act - NLRA, and various other acts of legislation). From the NLRA, she discussed Rights of Employees, Rights of Union, and the Duty to Bargain (providing information, impasse, "good faith"). She mentioned examples of employer and union unfair labor practices and offered an introduction to the purpose and workings of the National Labor Relations Board. Also in her report was a discussion of the Duty of Fair Representation of the Union (that this duty applies to all employees in the bargaining unit), consequences of a breach, arbitrary conduct, discrimination, application to bargaining and grievance handling, and strategies to avoid DFR charges.

**Member-at-Large Summary Report –
Jennifer Munday, Karen Britt, Barb Downs, Larry Gardner,
Gaylon Patterson**

Jennifer Munday spoke of the importance of each delegate maintaining good communication with his or her member-at-large. The MALs were then introduced to the delegates, each talking in general terms about their experiences with the delegates during the year.

Much of the day was dedicated to Orchestra Reports. Each delegate presented a three-minute oral report as well as a corresponding written report circulated to all delegates. These reports continued to be presented throughout the rest of the conference.

Thursday, August 7

**Paul McCarthy –
Developing Regional Orchestra Bargaining Unit
Preparedness and Power**

Mr. McCarthy presented a motivational workshop on negotiation and bargaining unit power. Topics were creating power (or the perception of it), strategizing, creating unity, personal responsibility of union members, creating coalitions, and building bridges with the community.

Conference Site 2004

Two locations were discussed. Robert Burks, delegate for the Chattanooga Symphony and Opera Orchestra spoke for Chattanooga, TN. Sharon Street-Caldwell, delegate for the Las Vegas Philharmonic, nominated Las Vegas, NV. A vote to determine the site was scheduled.

Guest Speakers

Tom Lee, President of the AFM, and Florence Nelson, Secretary/Treasurer, gave addresses of welcome and spoke of the importance of involvement from the ground up, that delegates seriously needed to show that the conferences were important to the locals. Ms. Nelson also reported on recent dues changes to the Federation: a \$2 per capita increase and .05% symphonic work dues increase. The importance of Tempo was stressed and the sale of various AFM articles (caps, jackets, mugs, etc.) during the conference to benefit Tempo was announced. Laura Ross, Secretary of ICSOM; Elaine Thompson, OCSM Treasurer; Phil Ayling, RMA President; and Phil Yao, AFM-EP Trustee nominee from the player conferences, also addressed the delegates, showing solidarity and highlighting the activities of the year.

**Patricia Polach –
Collective Bargaining Agreements in Bankruptcy**

ROPA Counsel Patricia Polach offered an overview of bankruptcy law as it applies to musicians working under a CBA. She explained the purposes of bankruptcy – noting that the employees are “just another creditor”, and that it is critical for them to attain as high a priority status as possible for making claims. She described the differences between Chapter 7 (Liquidation) and Chapter 11 (Reorganization) and how both relate to the rejection of CBAs. She discussed court standards for rejection: pre-1984 (standards varied), Bildisco (unilateral rejection), and §1113

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(congressional reaction to Bildisco forbidding unilateral rejection). She then described the process of §1113, that is, how the debtor goes about having the CBA rejected, providing necessary information, and negotiating in good faith, etc. While the purpose of §1113 was to keep the debtor from using bankruptcy as a union breaking tool, the reality is that rejection is still usually approved.

AFM Convention Report

Alternate Delegate-at-Large, Rochelle Skolnick, reported on the 2003 AFM Convention and the ROPA delegation's efforts there. There were notable recommendations and resolutions of interest to ROPA. Recommendations 17 and 18 from the IEB, affecting eligibility for representation on bargaining units and players' committees, were withdrawn after the point was made that the player conferences had been left out of early discussions. A ROPA-co-sponsored resolution, which would have added rank and file representation to the Board of Trustees of the AFM-EP Fund was not passed. Another resolution providing automation of per-capita dues refunds to players who are members of 3 or more locals was narrowly defeated. The refunds are currently available, but not automatically. Most notable was Resolution 6, limiting locals' responsibility to pay for delegates' attendance at player conferences to one every other year. This was soundly defeated on the floor after a massive educational campaign, particularly by the ROPA delegation. While this unfriendly resolution did not pass, the fact that it came to the floor at all shows the necessity to build stronger relationships with local officers. A comprehensive financial and governance package was enacted creating various dues increases to address the financial difficulties of the Federation and Locals. In addition, the ROPA delegation, along with ICSOM and OCSM went before the Finance Committee to testify on behalf of increased funding for SSD. This was well received.

ASOL Conference Report

Larry Gardner, Interim Member-at-Large, reported on his attendance of the 2003 ASOL Conference last June. He attended a number of seminars: such as *Tackling Today's Economic Challenge* and *Ethics in a post Enron World*. Topics included board development, downsizing, bankruptcy, dealing with crises – and ethics. Mr. Gardner made a brief address thanking ASOL for its hospitality and information at the ASOL conference.

Health Care Task Force Report

President Zmich reported on the Health Care Task Force meeting last November, fulfilling the 2002 ROPA Conference's mandate to give a report at the 2003 Conference. ROPA representatives to the task force were Rochelle Skolnick, Gaylon Patterson and Barbara Zmich.

Florence Nelson subsequently reported on the HCTF's efforts to organize group coverage for player conference orchestra members. Unfortunately, the effort up to now has been largely futile due to the lack of available nationwide insurers. Ms. Nelson suggested organizing on a local level, finding agents willing to cover small groups and building from those beginnings.

Thursday evening, delegates were treated to a delicious rib dinner celebrating ROPA's 20th Conference honoring emeritus officers – hosted by the Memphis Federation of Musicians, AFM Local 71.

Friday, August 8

Tour of the Cannon Center for the Arts

Beginning the day, delegates were given a tour of Memphis' Cannon Center for the Performing Arts, home of the Memphis Symphony Orchestra.

Ron Bauers – Orchestra Industry Report

Ron Bauers presented a report on the financial state of the orchestra industry. He displayed numerous statistical comparisons of financial data he has collected from orchestras throughout the country. Notably, he has received fewer reports each season, so conclusions were skewed by this variable. It is recommended that all ROPA orchestras file Audits and 990's with Mr. Bauers, so that he can better continue his ongoing studies of the orchestra industry.

Savannah, San Jose, and Tulsa Reports

- Sarah Schenkman, ROPA delegate, reported on the state of the **Savannah Symphony**. After a long period of poor artistic leadership and a disturbingly high turnover in administrative positions, the symphony ceased operations (January 7) and filed for Chapter 7 bankruptcy in late April. Since that time the players organization, *Orchestra Players of Savannah*, has put on benefit concerts and had a successful fund raising appeal. They are working to start up a new orchestra, *The Savannah Orchestra*, with the help of a former general manager. They are currently looking for an appropriate Board president.
- Alternate Delegate Beth Zare reported on behalf of the **San Jose Symphony Players Association**. After a cessation of activities in the Spring of 2002, the executive director of Ballet San Jose proposed a series of 4 symphonic concerts to be produced using members of the San Jose Symphony. The new "Symphony San Jose Silicon Valley" had its debut in November and performed its 4-concert season. In December, the San Jose Symphony filed for Chapter 7 Bankruptcy. Due to a successful fundraising campaign seeded by the ERF, the musicians were able buy the library, chairs, stands and computers for the players association. In May, due to economic woes of the ballet company, yet a new orchestra was formed separate from the ballet, but sharing administrations. The new orchestra, "Symphony Silicon Valley" performed its first concert in July. A new CBA is currently being negotiated for the orchestra, which includes most of the members of the old San Jose Symphony.
- Tammy Kirk, Secretary of Local 94, reported on behalf of **The Tulsa Philharmonic/Tulsa Opera Orchestra**. Unlike Savannah and San Jose, The Tulsa Philharmonic has not filed for bankruptcy. It remains in a "cessation of operations". There are no plans for performances. Philharmonic musicians performed 3 concerts last spring sponsored by the Tulsa Performing Arts Center Trust, but no future concerts are planned. Tulsa Opera plans to use the orchestra for 3 opera productions, 2 orchestra concerts and one ballet production for Tulsa Ballet. Tulsa Opera is working on a plan to expand into a presenter of symphonic music as well as opera beginning the Fall of 2004, offering the most hope for Tulsa Philharmonic musicians.

Nomination of Officers

The following people were nominated and elected by acclamation:

- Jennifer Munday, Vice President
- Tom Fetherston, Secretary
- Larry Gardner, Member-at-Large
- Craig McNutt, Member-at-Large
- Stewart Williams, Editor, *The Leading Tone*

Civil Rights Museum Trip

Conference attendees enjoyed an afternoon tour of the Memphis' National Civil Rights Museum

So Your Orchestra Wants to Self produce media? – A How-To Guide

Debbie Newmark, Director of Symphonic Media, made an informative presentation about producing recordings. She covered the different types of projects, rate structures, and provided details about limited pressing projects.

Evening Breakout Sessions

- **Pit Orchestra Issues** – Delegates from various pit orchestras met to discuss shared concerns
- **Mellon Orchestra Issues** – Delegates from the Richmond Symphony, New Mexico Symphony and the Toledo Symphony reported on how Mellon grants have affected their orchestras. Overall the support has been appreciated, but some of the forums where management and musicians were brought together were less clearly successful.
- **Musicians on Orchestra Boards** – Lenny Leibowitz, ICSOM Counsel, led a discussion about the propriety and effectiveness of musicians serving on orchestra boards. Delegates shared examples of contractual language relating to this. Mr. Leibowitz is concerned about this being an example of tokenism and the source of possible conflicts of interest. He fears that musicians serving on boards may become more sympathetic with management than to musicians' concerns. On the other hand, it serves a way for musicians to communicate more directly with boards and have a voice in board decisions. For more information on this, see articles by Mr. Leibowitz and Robert Levine in the June 2003 issue of *Senza Sordino*.

Saturday, August 9

Bargaining in Today's Economic Climate

Lenny Leibowitz, ICSOM Counsel, gave a detailed talk providing "the ABC's" of a CBA. He discussed the important clauses to have and the best kind of language to use. He also mentioned examples of particularly bad clauses that should be avoided. Delegates were

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encouraged to peruse their own contracts during this discussion and share questions and concerns about language within their own contracts.

Conference Resolutions

Conference Resolutions were proposed and passed bestowing emeritus titles to former ROPA Executive Board members, Betsy Start, Marc Facci and Ann Drinan. Also, a resolution of thanks to Danna Sundet for her service as MAL was also approved as well as a resolution honoring the absent Parliamentarian Richard Totusek, and wishing his speedy recovery and return to ROPA for many years. In addition, a resolution to amend bylaws requiring delegates of member orchestras to forward the names of any newly elected delegate/alternate delegate within two weeks of election.

Conference Site Selection

After balloting during the morning session, Las Vegas was announced as the site for the 2004 ROPA Conference.

A Panel Discussion of the Developments in Colorado Springs

Don Hilsberg, Susan Greene, Diane Merrill, Nathan Kahn, Lenny Leibowitz

Susan Greene, Executive Director of the Colorado Springs Philharmonic Orchestra and former Executive Director (had been let go) of the Colorado Springs Symphony, gave an impassioned talk about the turn of events that brought about the demise of the CSSO and the birth of the CSPO. Her unusual affection and respect for Colorado Springs musicians brought her to lead them in the creation of a new orchestra. Diane Merrill, Nathan Kahn, Lenny Leibowitz and Don Hilsberg also shared their experiences and insights in regard to this remarkable situation.

In summary:

After missing payroll in December 2002, The SCSA filed for Chapter 11 bankruptcy. In February the CBA was set aside by the bankruptcy judge. In the process unfair labor practices were filed, and the CSSO was placed on the International Unfair List. In March the CSSO changed bankruptcy filing to Chapter 7. Dissolution occurred on March 12. Five days later, the Colorado Springs Philharmonic Orchestra (a name they registered in January) was publicly announced. Key Personnel were named - including former musicians of the CSSO. In April the Executive Director of the CSPO proposed a business plan to the community. As of July, the SCPO had raised \$180,000+ and has a full 2003-04 Season scheduled.

Learning From the Past; Planning For the Future

Colorado Springs, Savannah, Tulsa, San Jose, with SSD, Ron Bauers, and Lenny Leibowitz

Delegates and Representatives from the 4 troubled orchestras in Colorado Springs, Savannah, Tulsa and San Jose served in a panel discussion with SSD, Ron Bauers, and Lenny Leibowitz. They discussed the similarities of each situation, the differences, and what is to be learned from these experiences.

Upon the conclusion of this presentation, the continuing and newly elected ROPA officers collected in the front of the chamber. Thanks were given to all AFM officers in attendance, to the Memphis Federation of Musicians, Local 71 for graciously hosting the conference, and to the SSD.

All delegates were thanked for a successful conference.

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The 2003 ROPA Conference was adjourned.