



The Dallas/Fort Worth MUSICIAN

Vol. 16, No. 1

The Dallas/Fort Worth Professional Musicians Association • www.musiciansdfw.org

Jan. - April 2007

Casa Manana Demanding Contract Concessions

Fort Worth's Casa Manana Musicals opened contract talks with Local 72-147 in March, demanding a five-year pay freeze for rehearsals and shows at Bass Hall, reductions in the size of its pit orchestras

and pay reductions for productions at Casa's domed theater in Fort Worth and at the Eismann Center in Richardson.

Casa musicians have not seen a pay increase since April 2004. The previous

contract expired in April 2005 with the parties agreeing to an extension that expired last year.

Casa Manana is the exclusive presenter of theatrical productions at Bass Performance Hall in Fort Worth, typically presenting a mix of self-produced and touring Broadway shows in one or two-week engagements.

Before Bass Hall opened in 1998, Casa had provided patrons with a continuous summer season of self-produced shows from its aluminum-domed theater on West Lancaster Street with its intimate theater-in-the-round setting.

With the advent of Casa's Bass Hall
(See CASA MANANA on page 4)



Bassist GEORGE ANDERSON performed with Beatlegras, a bluegrass-based Beatles tribute band on Sunday, April 22 at Fort Worth's Main Street Arts Festival. Nearly 500,000 people attended the four-day event. The live music program included 68 performances arranged by Local 72-147 through the Music Performance Fund.

ESTO Musicians Want CBA

The East Texas Symphony Orchestra Players' Committee met with management representatives on in Tyler on May 5 to open negotiations for an agreement. For the first time ever, the Committee, accompanied by their Union, proposed that management agree to a Local 72-147 collective bargaining agreement.

The May 5 meeting was preceded by weeks of anti-union posturing from a management that had opposed a National Labor Relations Board petition filed in March by Local 72-147 that would have permitted an NLRB supervised certification election to verify the Union's status as the orchestra's exclusive bargaining agent.

(See ESTO on page 4)

Aliens, Contractor Busted at Groban Concert

A last minute call to the Union office by a concerned member thwarted an attempt by a non-union Detroit contractor to pay substandard wages for mega-star Josh Groban's backup orchestra at American Airlines Center in March.

A review of the engagement's hiring list by the Union revealed two alien SMU music students had been engaged to perform Groban's concert without proper INS work authorization. One of the students was deported to Romania.

During an on-site visit to the job just minutes before it was to begin, Local 72-147 president Ray Hair obtained a signed single engagement collective bargaining agreement with the contractor that provided payment of minimum scales and pension benefits for each of the 18 musicians hired to work as Groban's

(See BUSTED on page 4)

THE PRESIDENT'S MESSAGE

Credit Union Helps Make Dreams Come True

I can clearly remember where I first learned about Musicians' Federal Credit Union. It wasn't long after I'd moved to Denton to try my luck with a master's degree at North Texas late during the Lyle Mays era.

In those days, there were jam sessions everywhere, day and night, in practice rooms on campus and off campus all over town in small dilapidated frame houses and apartments.

One of those funky little places was Ken Boome's three-room garage apartment on Scripture Street, close to school. When I arrived at Ken's place for the session, I found I could barely set up and play because of the new 5-foot Howard grand piano that occupied most of the room.

I marveled at the fact that Ken had the vision and resources to do something that few student musicians in Denton could possibly have done - he'd purchased a new instrument of enormous value, both musically and monetarily, and was busy improving his own worth financially and as a musician - despite the setting of a little bitty ramshackle apartment.

The value of the piano was obviously worth more than that of the house it was in. It looked good and its great sound contributed positively to the session experience.

When I could no longer contain my curiosity, I asked Ken how he had managed to obtain the beautiful instrument. "I got a loan from the Credit Union over at the Musicians' Union," he said. "They're great to work with."

Ken would later remark that he returned to Musicians' Federal Credit Union for help in financing electric pianos, racks, PA systems and other musical equipment. "The Credit Union was always user friendly. They provided the support I needed to reinforce and propel my career forward at a critical time in my life."

We all have those "critical times" as musicians, and it wasn't long after the Ken Boome session that I would ask the Credit Union to play the same supportive role for me.

Bob Parr, Ken Rarick, Lee Kornegay and I had packed up and were headed home to Denton in my blue VW microbus on Stemmons Expressway after we'd closed many weeks of a seven-nighter jazz gig at the LeBaron Hotel in Northwest Dallas. Fully loaded with drums, amplifiers and PA equipment, we were plodding along on I-35E near Valley View when we were rear-ended by a speeding Dallas cop, off-duty and drunk.

We were shook up but okay. The bus was a complete loss,

and without transportation, I wouldn't be able to earn a living as a professional musician.

I quickly turned to Musicians' Federal Credit Union. My anxiety quickly gave way to relief as I explained the situation to my sympathetic friends at the Union. The cop's insurance company had come up with a generous settlement check which would serve as a down payment on the new Chevy wagon I wanted, but where would I get the \$5000 loan to finance the deal? As a musician and a student with very little credit, Denton banks were reluctant to finance me.

Not so at Musicians' Federal Credit Union. What little credit I had was good, and I was able to provide excellent references from my teachers at UNT, who were all Union members, of course. I got the loan, got the new wagon, and never missed a gig.

The Credit Union, located in the Union office, really came through for me. Not only did those folks keep me rolling, they helped me feel better. I remember thinking that because I had a reliable new car, I had an advantage other musicians didn't have. It was a wonderful feeling.

Musicians' Federal Credit Union made a big difference in my life, in Ken Boome's and in the lives of over a thousand other Local 72-147 members and their families. Don't just take my word for it, see for yourself what the Credit Union can do to help make your dreams come true. Call the Union office at 817-469-6040, 1-800-635-0072 and ask for Credit Union manager Rose Mathews, or go to www.musiciansdfw.org and click on Musicians' Credit Union. Take advantage of the special low loan rates in effect during June, July and August, 2007. The low rates won't last long but the effects may be long lasting.

There's something special about finding help from people who take pride in helping you. The next time you find yourself in a crunch and need a hand, try Musicians' Federal Credit Union. *It belongs to you.*



Ray Hair



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www.musiciansdfw.org

NOTES FROM KEN . . .

Union Continues in the Black

I am pleased to report that Local 72-147's finances continue to look good. For the year 2006 we had total revenues of \$531,349.17, with total expenditures of \$496,163.08. Thus, we ended the year 2006 with a surplus of a little over \$36,000. We ended the year with \$246,494.99 in total cash assets and fixed assets totaling \$143,646.74. That leaves the Local in a financially healthy position with a total worth of \$390,141.73 as of December 31, 2006.

For those of you who don't know, the Local purchased the office building we currently occupy in 1991 for a very good price following bank repossession from the previous owners. This was prior to the construction of the Texas Rangers baseball park. As I watch the new Dallas Cowboys stadium being built in our area, I am reminded once again how fortunate the Local was in



KEN KRAUSE

obtaining the property here on Stadium Oaks Court. The value of the property we own has already increased by more than three times what we paid, and its value will only go up in the future.

For some additional news related to our property's value, we received a phone call here at the Union office just yesterday from Commonwealth Energy. They informed us that they are about to begin work on drilling a gas well in our area. When we bought our property we obtained the mineral rights as well, which means that we will share in the monetary benefits of this project. Commonwealth has to pay lease money to all of the property owners within a certain proximity to the well. Our half-acre will net us \$1,500.00 initially in what Ray likes to call "mailbox money". The well is expected to be producing by the end of August. After that we will receive a portion of the royalties generated from this gas well.

Not only is the "mailbox money" a nice little piece of change, but it can only add to the overall value of our property. As far as I know, we are the first AFM Local to have our own gas well.

We'll see what comes of it.

New wage scale feature – pension contributions!

Wage scales in August 2007 include new pension contribution requirements on certain Show and Cultural Engagements.

Effective January 1, 2007, services for star policy and industrial shows of three hours in length are subject to AFM-EP Fund contributions in the amount of 10% of scale wages. Local 72-147's three hour show rate (\$180) is the minimum rate for services in venues of 1800 seats or more, such as Fort Worth's Bass Hall, Nokia Theater in Grand Prairie, or American Airlines Center in Dallas.

Effective September 1, 2006, Cultural Engagements (excluding church worship services or wedding services) now require minimum AFM-EP Fund contributions in the amount of 4% of scale wages.

A special Local 72-147 single engagement contract form, available in the Members' Area Online Library at www.musiciansdfw.org is required for use by leaders and contractors for all engagements subject to pension contributions. Aggregate pension amounts are to be collected by the leader/contractor from the music purchaser/employer on behalf

of each musician performing covered engagements for transmission within 10 days of the engagement to Local 72-147 and the AFM-EP Fund.

GENERAL MEMBERSHIP MEETING

Sunday, June 24 • 1:30 PM

Union Headquarters

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Bug Spray or Fishnet?

by Frank Leone,

President, Local 369 Las Vegas

Editor's Note: This article originally appeared in the March, 2007 edition of *Desert Aria*, the official journal of Local 369, Las Vegas. It is reprinted with permission.

tralization. Applied to general and present worldly conditions, not excluding the music business, one can make some startling equations.

Eight legs radiate from a spider's head, representing centralization. The starfish, having no head, is emblematic of decentralization. Having no head, it's harder to kill a starfish than a spider. The spider has a body, a head, and eight legs. The starfish does not have a head, no central body is in charge, and its major organs are replicated throughout each of its arms. If you cut a starfish in half, the creature does not die, and in a short time regenerates into two complete



starfish.

Business organizations, including unions, are centralized. The head is wherever they have their national headquarters. The legs are its various branches, stores, or locals throughout the country supporting the head. The problem with some organizations is that some of its legs may be weaker than others, not contributing any support, and those legs simply drag along, carried by the others as dead weight. The *head* must provide meaningful direction, advice, signals, or other commands, expected from a control center. Otherwise, the legs then, may be

(See *BUG SPRAY* on Page Five)

CASA MANANA — (Continued from Page One)

presentations, local musicians have seen Fort Worth theater work nearly disappear as Casa's season of self-produced shows at the dome gave way to the introduction of Broadway tours and low budget touring shows carrying reduced orchestras.

In 2003, Casa re-opened its domed theater in an effort to promote an alternative venue for theatergoers. Unfortunately, Casa's attempts to present profitable musical productions in the 1100 seat renovated Lancaster Street theater

have been largely unsuccessful.

Casa began to present shows in North Dallas in 2006 when it moved its production of *A Chorus Line* to the Eismann Center in Richardson after a weeklong run at Bass Hall.

Casa Manana, Inc. operates on an annual budget of \$9 million and experienced a deficit of \$234,000 in 2006. Executive Director Denton Yockey's annual salary is \$170,000.

BUSTED — (Continued from Page One)

backup orchestra. The contractor had attempted to pay the musicians 20% underscale for the rehearsal and show, with no pension contributions.

Later, when the pension payments collected from the contractor were reconciled with the contractor's hiring list, information necessary to process the payments was omitted from several names. US law and Local 72-147's

engagement contract requires the employer to provide certain information to the Union to assure proper pension credit.

The required information was eventually provided, prompting a check with area Universities to verify the visa status of what appeared to be a number of foreign students who performed the concert. SMU confirmed that two of its foreign students had indeed performed without INS clear-

ance.

Josh Groban burst onto the international music scene in 2001 with the release of his hit single, "To Where You Are". He has made scores of TV appearances including 2 PBS specials, the Super Bowl and Oscars. His now legendary 40-city concert tour sold out in a record-breaking 20 minutes. He is a member in good standing of Local 47 in Los Angeles.

ESTO — (Continued from Page One)

The ETSO has net assets of nearly \$3 million and had annual income of \$1.7 million and \$1.2 million in 2004 and 2005, which exceeded the NLRB's \$1 million annual threshold necessary to assert federal authority in labor matters in U.S. symphony orchestras.

The ETSO employs a 60-member core orchestra to perform eight concert blocks annually at the Cowan Fine Arts Center

located on the campus of the University of Texas at Tyler. Ninety percent of the musicians are members of Local 72-147 who reside in the DFW area.

Local 802 member Per Brevig, a Julliard School DMA graduate who served as principal trombonist with the Metropolitan Opera Orchestra from 1968 to 1994, conducts the orchestra.

The players spend an average of \$200 in gas, food and lodging to travel to Tyler for each concert performance but are not reimbursed for those expenses, said bassoonist Charlie Hall, who is a member of the ETSO Players' Committee. "Having a Local 72-147 CBA would do more for the morale of the orchestra than anything," he said.

BUG SPRAY —

(Continued from Page Four)

going in different directions, ultimately ending up in the proverbial city of *Amuck*.

What does this zoology lesson have to do with the entertainment industry and its software makers' efforts to prevent the piracy of music business intellectual property? The answer is everything! Record labels were able to kill off Napster with lawsuits, because Napster, like a spider, had a leader and a central location; someone to sue who could be found and served.

But putting Napster out of business increased piracy by triggering a proliferation of other less centralized players such as Kazaa, eDonkey, eMule, etc. These companies are so decentralized, that they are beyond the reach of any label's lawyers. There's no trace of a leader or anyone else to sue, yet they continue to hack away at profits. The authors use the historical analogy of the conquest of the Aztec empire by Cortés. They remind the reader that Cortés killed the Aztec emperor, Montezuma, and starved out the population of the capital, Tenochtitlan. Within two years, the Aztec empire collapsed, as soon did the Inca Empire. The Spanish armies appeared invincible in the 1600's until they ran into the Apaches.

The confrontation took place in the deserts of what is now the state of New Mexico. This meeting parallels today's struggle of the music industry's fight against the P2P (person to person) sites. Why? Because the Spanish lost, state the authors. The Apaches were not defeated because they were like the starfish and were able to fend off the Spanish for 200 years. The Spanish attacks made the Apaches stronger. The Apaches might have surrendered if their villages were crucial to their society, but they weren't. Instead the Apaches simply moved like nomads across the desert, as the starfish crawls away along the bottom of the sea.

The existing centralized music labels have been greatly challenged by decentralized (starfish) organizations, starting with Napster. The ability to download and share music freely has significantly impacted music label revenues. But as one downloading site is shut down, new ones emerge. It's hard to kill a starfish. Also, it's impossible to prevent individual file sharing or copying. Technically this is in violation of copyright laws, but any attempts to start suing individual teenagers, would cause revolt by every parent in the USA.

The book concludes with a section devoted to a mythological sweet spot—the point along the centralized continuum that yields the best competitive position. The idea is that as industries change, business



BASSIST FRED NICHELSON, center, and VOCALIST TIM JONES are shown performing with the Fingerprints Band at the Denton Arts and Jazz Festival on Sunday, April 29 in Denton's Quakertown Park. Favorable weather and great Local 72-147 entertainment drew a record 200,000 attendees to the three-day event.

needs to continually adjust the balance between centralized and decentralized structures. Apple, Inc., is an example. The computer company has hit the sweet spot. It is a centralized company, but achieved an agreement with the record industry allowing legal downloading of music to its iPod device. If you want more innovation and creativity in your organization, move toward a starfish. To empower *individuals*, be more like a starfish. Never underestimate the importance of catalysts who have an uncanny ability to bring people together. For example, Alcoholics Anonymous has reached untold millions with only a shared ideology and without an obvious leader.

The Internet is a breeding ground for leaderless organizations. Various websites offer free music through file sharing, while others like "YouTube," offer similarly, thousands of videos, much of it copyrighted material. However, "YouTube," owned by Google, is not leaderless, but plenty others are. The question is—what about royalties for intellectual property, or services provided by musicians for all the recordings? CD sales are down - 20% for 2006. Apple's iTunes had a billion sales last year, but a billion songs a month are being freely exchanged, vs. only 82 million CD's sold last year. Noted music industry analyst Jerry Colliano offers blunt advice to record companies; "Save yourselves by getting into the concert and management business." Perhaps the time has come for the musician to get as much as possible for any initial recording or other types of electronic media service (tantamount to a so called buyout price), because sale royalties, new-use, or other residual payments seem less likely to be garnered as the Internet and technology pass us on the left. We need to learn how to survive in a world of decentralized collaboration; flatten or be flattened. Centralized systems cannot defeat

decentralized systems. Iraq may become an example of this, as the U.S. military continues to engage tribes warring on themselves and all others that happen to be present.

How recording musicians or performers can best protect themselves from piracy and the wholesale usurping of their creative output remains to be accomplished. Meanwhile, we must all be vigilant, and keep an eye out for the starfish. Too bad starfish aren't as tasty as tuna. I'll have a starfish sandwich on rye toast, with mayo, tomato, lettuce, and onions. Hold the attorneys, I'll pay for the music!



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Why We Belong

Be Professional, Be Union!

By Jennifer Garner, Esq.

Editor's note: this is the fifth in a series of articles published and distributed to non-members to encourage union membership. Jennifer Garner is a violinist in the Richardson Symphony and an attorney with the Kellett Law Firm in Dallas.

In almost every profession, there are certain credentials that distinguish those who strive for the highest degree of professionalism. One of those credentials is usually membership in a professional association. Although joining an organization is not likely to make one smarter or more talented, active engagement in a community of one's peers does tend to separate those who care about the bigger picture from those who just care about what they can take from it.

Organized groups of professionals in



various fields, including educators, physicians, brokers, accountants, lawyers, and airline pilots, have each developed and articulated general standards of competence and conduct in order to enhance the dignity of their respective professions and engender the confidence of the public. Though not always formally written, these standards recognize the fact that professionalism encompasses more than just being able to perform in the job; it includes a broader duty to the industry and the patrons who are served by it. Professional associations exist to promote

professionalism, and membership in these organizations is legitimately viewed as a gesture of commitment to the standards adopted by one's professional peers.

The Musicians' Union is the preeminent professional association for musicians. For over one hundred years, Union musicians have set the standard of professionalism throughout the music industry. Our Union not only protects the interests of its members, it also serves the broader interests of the industry and the public by advancing the principles of professionalism established by generations of the finest musicians in the world.

Of course, the way we conduct ourselves in the performance of our jobs is the primary indication of our sense of professionalism. As musicians, we must not only be musically prepared, but must also maintain our instrument or voice in top condition. We have to continuously strive for technical perfection and be consistently on top of our game no matter what time of day or night. A musician's

(See UNION on Page Seven)

Affirmed and amended by the Local 72-147 Executive Board, February, 2007

LOCAL 72 DEATH BENEFIT RULES

- In accordance with Local 72 By-laws and upon presentation to the Secretary-Treasurer of a valid certificate of death within 365 days of the date of death, the designated beneficiary of each member in-good-standing shall be entitled to a benefit payment of \$2,000.00.
- Suspended, expelled, or resigned members shall lose their benefits immediately. There shall be no grace period whatsoever. Resigned members lose benefits at 3:00 P.M. on the final day of membership which in no case shall extend beyond the final day of the quarter involved. Suspended members lose benefits at 3:00 P.M. on the day of suspension. Expelled members lose benefits at 3:00 P.M. on the date of expulsion.
- Payments of any benefits will not be made if a claim for benefits is presented after 365 days have elapsed after death, or in the event of a suicide occurring within two (2) years from the date of a member's initiation or reinstatement.
- Any outstanding indebtedness of a deceased member to the American Federation of Musicians or any of its locals will be deducted before the payment of any benefits is made.
- The individual benefits shall commence at 3:00 P.M. on the date that membership is obtained or is reinstated.
- A beneficiary card system shall be utilized for the required and mandatory signatures thereon of all the members eligible to designate the beneficiary or beneficiaries to whom the above-scheduled and particular benefit proceeds are to be payable upon the members' death. Any member may, however, designate his "estate" as the recipient of death benefits, without naming another beneficiary. Unless each eligible member signs such a card and makes proper provision for the benefits in the manner shown above or hereinafter indicated, no benefits shall be payable to any particular beneficiary, it being the intention of these present to effect a single manner to provide for and/or to effect a change of any designation of a particularized beneficiary or beneficiaries. Eligible living members shall at all times have and reserve the right to so name one or more beneficiaries or thereafter to change prior beneficiary designations.
- Notwithstanding any other or above declared provision hereof, in the event an eligible member fails ever to sign a card or to name a beneficiary or beneficiaries thereon, any proper and scheduled benefits occurring shall be then payable to his/her estate, and/or the legally proper heirs thereof; additionally, if all designated beneficiaries pre-decease the member and no replacement designation or designations are effected by the member prior to his death, benefits shall then be payable to the member's estate, and/or the legally proper heirs thereof. In the event of a situation involving the designation of multiple beneficiaries, should anyone or more of them pre-decease the member, without the member thereafter (prior to his death) re-designating either a replacement beneficiary or other beneficiary in the place and stead of anyone or more so deceased, then the proper and scheduled benefits shall accrue, accrete and be payable to any surviving beneficiary or beneficiaries previously named.
- In all instances of proper re-designations of beneficiaries, the last card signed and executed by the member prior to his death (replacing any prior card or cards) shall be the card governing the payment of benefits to any beneficiary or to the members' estate. Prior executed cards are to be considered as cancelled, annulled, revoked, nullified.
- These rules of operation set forth above may be changed by a majority vote of Local 72 Executive Board members in attendance at any of its meetings.

UNION —

(Continued from Page Six)

schedule can be grueling, yet, Union musicians understand that taking care of our health and our instrument are as relevant to our overall competence as a regular practice routine.

In addition, the way in which we treat others in the performance of our job, for better or for worse, reflects on the dignity of the entire industry. While professional musicians are highly competitive by nature, denigrating a colleague with personal attacks is demeaning to the profession and casts the field as a whole in a negative light. On the other hand,

being respectful of our peers has the effect of making us appear more confident in our own ability while enhancing our standing as a community of true professionals in the eyes of the public.

Professionals have a further obligation to improve their profession. Union musicians do this in many ways, from teaching music and mentoring aspiring young professional to composing new music, selling and repairing the instruments that we play, assisting with the bargaining of better deals with our employers, and advocating for the legal and legislative interests of musicians. There are countless other opportunities for people of diverse talents to contribute to the vitality of our industry.

Membership in the most outstanding

professional association in your field is an indication of respect for your peers, a commitment to further individual development, and a desire to contribute to the betterment of the profession for the sake of the public interest that you serve. The Musicians' Union fosters these values of professionalism by supporting performance-readiness, expecting fairness and civility when dealing with others, and encouraging musicians to give something back to the profession that provides their livelihood.

Join the Musicians' Union as early in your career as possible. Membership will not do what years of practice can do, but it will definitely make an already talented performer a better professional musician.

LIFE LINES

BIRTHS

Boy, Fisher Hawk, to Wynne and Pierce Meisenbach March 22 in Dallas. Wynne, a violinist, and Pierce, a cellist, are freelance orchestral musicians who perform services as a chamber ensemble, *Joie de Deux*.

DEATHS

Felipe Sanchez, 98, of natural causes November 17, 2006 in Dallas. Felipe was a drummer and performed for many years with Dewey Groom and the Texas Longhorns at the historic Longhorn Ballroom on Industrial Boulevard in Dallas. Felipe was a life member of Local 72-147.

David Oakley, 56, of lung cancer November 20, 2006 in Plano. David was a freelance oboist. He was a native of Philadelphia, Pennsylvania and grew up in Pompano Beach, Florida. He served in the US Army doing two tours of duty in Vietnam as an air traffic flight controller. He earned a Bachelor's degree in oboe performance from Portland State University, and completed his Master's degree at the University of Washington. His primary instruments were oboe and English horn but he also performed on flute, clarinet and saxophone. He taught private woodwind lessons in several area schools. He joined Local 72-147 in 1993.

Suzanne C. Hebert, 78, of natural causes December 7, 2006 in Oklahoma City. Suzanne was a violinist and a founding member of the Fort Worth Symphony Orchestra serving first as a violinist, then as a violist. She was a native of Dijon, France and was an honors graduate

of the Dijon Music Conservatory. She resided for nearly 50 years in Arlington.

Olive E. "Polly" Nixon, 89, of heart failure December 16, 2006. Polly was an upright bassist and performed for the better part of the twentieth century in popular show and dance bands, from the Pixler Sisters Three during the 1930's to 2005 with the Western Flyers. She was a life member of Local 72-147.

Frank D. Mainous, 88, of pneumonia January 1, 2007 in Denton. Frank was a pianist and was a University of North Texas Professor Emeritus of Music. A native of Appalachia, Virginia, he joined the faculty at North Texas State Teachers College in Denton in 1947. He served as teacher and coordinator of music theory, assistant dean and acting of music until he retired in 1983. Frank wrote several books, including several in collaboration with the late music theorist Robert Ottman, who was also a UNT Professor Emeritus. He was a life member of Local 72-147.

Gordon Kilgore, 91, of prostate cancer January 18, 2007 in Wichita Falls. Gordon was a saxophonist and arranger who led a popular big band for many years in the Wichita Falls area. He was a life member of Local 72-147.

Tommy Morrell, 68, of emphysema January 29, 2007 in Little Elm. Tommy was a steel guitarist who was considered a genius by his contemporaries in Western swing and jazz. While mainstream country music listeners probably didn't know him, they undoubtedly heard his session work on recordings by

artists such as Willie Nelson (*The Sound in Your Mind*) and Asleep at the Wheel (*Tribute to the Music of Bob Wills and the Texas Playboys*). He left behind his 15-volume Tom Morrell and the Time Warp Tophands "How the West Was Swung" series on WR Records that chronicled his passion for jazz and Western swing. The recordings feature a roster of Texas' best musicians such as Rich O'Brien, Bobby Boatright, Randy Elmore, and Leon Rauch. "There's nobody that can even touch him," said Leon Rauch. "He was a stone genius." The recordings are available for purchase at www.westernswing.net. Tommy had an on-screen part in the 1990 movie, *Daddy's Dyin'... Who's Got the Will?* His music is featured in the soundtracks of *Savannah Smiles* and *True Stories*. He was inducted into the Steel Guitar Hall of Fame in 2001.

Fred Polansky, 82, of multiple injuries January 30 in San Antonio. Fred was a banjo player who served as a fighter pilot in the 56th Army Air Corp Fighter Group, Wolfpack Squadron, flying P-47 Thunderbolts. He joined Fort Worth Local 72 in 1958 and was a life member.

Leroy Millican, 90, of injuries February 2, 2007 in Irving. Leroy was a guitarist who played on the WFAA radio Early Bird Show, the Novell Slater Show, and with many other bands in the Dallas area from the late 1930's to the 1960's. He attended Hardin-Simmons University in Abilene and graduated Phi Beta Kappa from Southern Methodist University. He worked a Texas Instruments where he helped develop the guidance system for the HARM missile. He joined Dallas Local 147 in 1938 and was a life member.

When You're Discriminated Against, for a Discrimination Complaint

By Harvey Mars, Esq.,
Local 802 Legal Corner

*Reprinted with permission from Allegro,
Volume CVI No. 1*

In a recent column concerning employment discrimination, I briefly noted that in order for an employee to have a successful retaliation action under the anti-discrimination laws, it was unnecessary for her or him to prove that they were actually discriminated against. (Both state and federal laws make it unlawful for an employer to retaliate against an employee for asserting a discrimination claim). For this reason retaliation actions have a far greater probability of success than the underlying discrimination claims do. A suit I just litigated, in fact, proves this very point.

The facts of this case are as follows: An individual had retained me to negotiate a severance agreement with his employer. Apparently, he had just returned from a medical leave precipitated by a serious case of viral hepatitis. Upon his return, he noticed that his supervisors were treating him horrifically. Rather than commencing suit, he decided upon a more diplomatic approach: to negotiate a package so that he could leave on good terms. Unfortunately, since he was "voluntarily" resigning, his employer, an extremely wealthy insurance company, offered him a mere pittance (only four weeks pay).

Once I was retained, I sent a letter to the company advising them that my client actually had a viable disability discrimination action and that in order to entice him to release this claim a more generous severance proposal had to be offered (three months pay and a percentage of his bonus). Rather than agreeing to the proposal, my client was dismissed several days after my letter was received by the company and was sent a

severance agreement containing a figure less than what we had requested with a letter indicating that his "resignation" was accepted. Immediately, we rejected the proposal and requested that he be allowed to return to work. When that request was rebuffed, with my client's consent, I promptly initiated suit in state supreme court.

The outcome of the suit may be a little surprising. While the court stated that my client did not have a viable disability discrimination action based upon the facts in the record, he did have a viable retaliation action, because it was clear that a jury could reasonably find that he was terminated for hiring an attorney to assert his potential disability discrimination claim. Now the company will wind up paying several times more than the amount they originally offered.

In order to assert a valid retaliation claim, a plaintiff must demonstrate: (1) she has engaged in protected activity; (2) her em-

ployer was aware that she participated in this activity; (3) she suffered an adverse employment action based upon the protected activity and; (4) there was a causal connection between the protected activity and the adverse action. (See *Forrest v. Jewish Guild for the Blind*, 3 N.Y. 3d at 295.) In the case in which I was involved, all four criteria were satisfied by the facts. The protected activity was my client's hiring an attorney to assert a potential discrimination claim. An adverse action proximately resulted from the protected activity because he was terminated mere days after the assertion of that claim.

The moral of this story is clear. If an individual is terminated or demoted immediately after they complain about workplace discrimination, the chances are good that they have a valid retaliation claim, even if their original discrimination claim lacked merit. Under those circumstances it always pays to assert a retaliation claim.

The Name of the Dallas Bach Society was placed on the AFM's INTERNATIONAL UNFAIR LIST on November 17, 2004

AFM bylaws provide for fines not exceeding \$50,000 and/or expulsion for members who render musical services for organizations, establishments, or persons who have been placed on the International Unfair List.



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