

# 'WANTED: non-union musicians'

## How an illegal job posting ended in an unfair labor practice charge

### LEGAL CORNER

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**ONE OF THE** fundamental tenets of labor law is that union affiliation may not be used by an employer as a basis to either accept or reject an individual from a job. According to Section 8(a) (3) of the National Labor Relations Act, it is an unfair labor practice for an employer to "discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." Thus, it is illegal for an employer to question a potential employee about whether or not they are a member of a union or condition an offer of employment on the potential employee being or not being a member of a union.

Recently, Local 802 encountered a situation with New York University that appears to be a flagrant violation of Section 8(a) (3). There, NYU had posted a notice on Facebook that sought out "any great

Aaaand one more time: If you know any great non-union percussionists/drummers who are available to jump into rehearsals and performances for a show at NYU, 3/17-3/26, email me at [REDACTED]@nyu.edu. Must read scores and **not be a member of AFM.**

Above, a screen shot of an actual job posting by NYU via Facebook. The university was specifically seeking non-union musicians, which is against labor law.

non-union percussionists/drummers who are available to jump into rehearsals and performances for a show at NYU." (See screen shot above). When this post was brought to our attention, Local 802 immediately filed an unfair labor practice charge against NYU with the NLRB.

(Prior to this incident, NYU had already been placed on Local 802's unfair list because the university is refusing to cover Local 802 musicians under any agreement. See yellow box at right.)

Not surprisingly, when presented with the evidence above, NYU agreed to settle, while also denying liability. A musician who had lost the gig because he was a member of Local 802 received a settlement check from NYU for more than what the job would have paid in the first place. That's a good settlement! The settlement also required NYU to post a formal NLRB notice affirming that it will not fire employees because of their union membership or affiliation, including their membership in Local 802. This formal notice is required to be posted in prominent locations at both NYU's Steinhardt and

Tisch Schools. We view this settlement as a significant step towards compelling NYU to give its musicians and other workers the rights guaranteed to them by the National Labor Relations Act.

Despite the settlement, NYU will remain on the unfair list below, as the university still has refused to negotiate

with Local 802. We hope, however, that the resolution of this unfair labor practice charge will be a catalyst for NYU to change their tune and negotiate with us. Until then, Local 802 musicians are discouraged from seeking work with NYU and are requested to contact Local 802 before accepting employment there.

## NYU ON UNFAIR LIST

New York University and Vice Dean Ted Magder have been placed on the AFM International Unfair List due to their unwillingness to cover Local 802 musicians under any agreement. NYU employs Local 802 members as independent contractors in its film scoring workshops as well as in theatrical engagements and other work. Local 802 members should not work at New York University, including recording engagements, theatrical work, or any other kind of performance or recording work. (NOTE: This does not include the duties that Local 802 members may have as NYU faculty.) Musicians should notify us if they are called for any work at NYU. Contact Recording Vice President Andy Schwartz directly at (212) 245-4802, ext. 111.