

DRASTIC MEASURES

What happens when orchestra musicians believe that the answer to their troubles is to kick out the union?

LAST MONTH, I was very saddened to learn of the decision of the musicians of the Charleston Symphony Orchestra to decertify AFM Local 502 as their long-time bargaining representative. With regard to that decision, musician Michael Smith, the chair of the symphony's negotiating committee wrote, "For the health of our organization, it's really important that the musicians have a collaborative working relationship with management."

Such a comment is extremely perplexing, since it erroneously assumes that a "collaborative relationship" between management and the union is impossible. Collaborative relationships between labor and management abound.

For instance, the management of the Los Angeles Philharmonic enjoys a mutually beneficial and cordial relationship with AFM Local 47. In fact, the L.A. Philharmonic just successfully negotiated a new four-year agreement. Musicians won considerable gains in the contract, and this was accomplished without great friction.

Nevertheless, the Charleston Symphony's decertification is now a reality. The details of this drastic action should be subject to great scrutiny, lest it happen again. While hopefully this incident is an aberration, we must still understand why it happened. To do this, we must first understand what a decertification is in the first place.



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Just as certainly as a union can be certified as the exclusive bargaining representative of a group of employees sharing a community of interest with each other, a union may also be decertified through the same process. Through certification, a bargaining representative is selected. Decertification is the diametrical opposite. Decertification strips the bargaining agent – the union – of its authority. The process is relatively simple. A petition may be filed with the National Labor Relations Board seeking a decertification



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election. This election process will proceed, provided a proper showing of interest accompanies it. At least 30 percent of the bargaining unit employees must express a desire to decertify their union. However, rightfully so, there are several legal obstacles to the initiation of a decertification proceeding.

For instance, if a collective bargaining agreement is in effect, the agreement itself serves as a bar to any election that might affect the union's representational status for a period of up to three years. This period, known as the contract bar, is the very reason why most collective bargaining agreements run for three years. The upshot of this rule is that decertification can only happen during periods where a contract has expired and musicians are working without a contract. Also, a union cannot be decertified within the first year of its initial certification. This is known as the certification bar.

While the process of decertification may be relatively easy, the impact of decertification is extremely severe. The decertification of a union is more than just the renunciation and rejection of the union itself. The legal implications are as profound as they are devastating. When workers have a union, the National Labor Relations Act compels the employer to bargain in good faith. Without a union, true bargaining is not legally sanctioned and most likely will not occur. Once decertified, the workers' voices at the table are silenced. Regardless of how benevolent management may appear to be, it is now free to exercise complete discretion over all terms and conditions of employment. And they will. No pair of rose-colored glasses will shield an unrepresented employee from the cold, hard fact that management will act solely within its self interest. Any protections that workers had already won under previously negotiated union

contracts will now be eviscerated. No matter how collegial and cooperative a labor-management relationship may be, without a bargaining mandate, workers have no power. And without exception, negotiations are always about how much power each party has at the table.

The history behind the Charleston Symphony vote is largely unknown to the public. It may very well be the product of incompatible bargaining tactics and strategy. It may be a fundamental difference in union philosophy. It may be an internal power struggle. It is not uncommon for internecine disputes to occur within unions. However, such disputes are almost universally resolved internally. Regardless of how dysfunctional things get, decertification is never a viable option. The reason is clear. It is better to move forward as a fractured whole than as separate individuals.

If members believe they are not being properly represented by their union, there are at least two remedies. Neither is easy, but both are infinitely better than decertification.

The first remedy is that workers can vote the bums out. Every union is required to have fair and transparent elections. It's not easy to run for office, but it is possible. In 1982, Local 802 experienced a sea change when John Glasel and the Members Party were victorious over the Max Aarons administration. That election victory changed the very fabric of Local 802 and is still with us to this day. (On a side note, if workers believe that their union elections are rigged or unfair, they can complain to the Department of Justice, which will investigate.)

Another remedy exists for workers who believe their union is not representing them well. Workers can file a "duty of fair representation" complaint against their union, through the National Labor Relations Board. As a matter of law, each union has the requisite duty to fully and fairly represent its members. Failure to heed this obligation may lead to remedial action.

Ironically, now that it is officially decertified, the union has no duty of fair representation obligation to the musicians of the Charleston Symphony. But that is not all. The musicians' entire collective bargaining agreement has been extinguished as well. Any first call or tenure list, grievance procedure or dismissal procedure is now gone.

Further, Charleston Symphony musicians cannot seek a new bargaining representative for a period of one year. (The certification bar I discussed earlier applies also to decertification orders as well.)

Finally, there will be an impact upon the management of the Charleston Symphony. Now that the union contract has been eliminated, the symphony no longer has to pay pension payments on behalf of the musicians. That may seem like a money-saver to management, but there is a big catch. Whenever an employer withdraws from an underfunded defined benefit pension fund, it triggers something called "withdrawal liability." Presently, like almost every other defined pension fund in this country, the AFM Pension fund is underfunded. Thus, since the Charleston Symphony's contribution obligation to the AFM Pension Fund has been terminated, it has now incurred withdrawal liability. Technically, this is the employer's share of the fund's vested unfunded pension liability. (I've written about this in past columns.) This money that the Charleston Symphony will have to pay to the AFM Pension Fund will present a significant obligation that may overshadow other debts they currently have.

There is a moral to this story. Those who are covered by a union contract should not take the union for granted. While times are extremely tough and more orchestras are under attack in this country than I can recall, a collective bargaining agreement remains a levee against the storm. It serves as a barrier to indiscriminate management action.

Regarding the musicians of the Charleston Symphony, only time will tell how long it will take them to realize what a horrible mistake they made. We should all wish them well.

DiCapo musicians win \$66K judgment

Local 802 has obtained a federal court judgment in the amount of \$66,140.92 against the DiCapo Opera Theater for unpaid wages, work dues, pension contributions and penalties owed for performances of "Most Happy Fella," "Bleeker Street," "Tosca," "Tolanta," "The Consul" and "La Traviata." We are currently in the process of negotiating a payment schedule with Executive Director Michael Capasso. If unsuccessful, Local 802 will attempt to garnish the opera's assets to satisfy this judgment.



The author (at right) helps a blind student get a feel for playing snare.

Shining a light

Working with blind musicians turns into a life-changing experience

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Usually it took a few rounds to create a good piece, but it seemed that everything we did was very funky and danceable. (In fact, there were frequent "dance explosions" in the course of a session – it was unforgettable.)

Some of my students were either at risk personally or coming from very economically challenged families and under-served communities. Most had never been in a music class before or even held an instrument in their hands.

One of the first things I noticed when first giving a drum to one of my students was that she ran her hands all over the drum head, around the body, and inside. As I explained to her that sound travels in waves, I beat the drum and let her feel the rush of the rhythm's air as it escaped the drum. Music is a very physical, tactile experience for them, and vibration is also great pleasure. I played various bells and my berimbau for them (a huge

hit) and then – my secret weapon – the slide whistle!

Only one of them had any previous training. He was a pianist and singer, and especially enjoyed writing lyrics. He was also very supple with his voice-activated iPhone, which was his window to a global listening habit. They all told me, at different times, that music is one of the best things about being a human being. Vocal and physical exercises were always a part of our creative warm-ups together.

I have worked with special-needs children in the past, including severely autistic children, but this group has opened my eyes and heart to a musical journey that was beyond my imagination and experience. I am deeply grateful and humbled by these young musicians, who truly experience the world through a musical prism that is beyond comparison.

Local 802 members who want to learn more about this experience can e-mail me at NanetteLedet@aol.com.