

# Legacy and lawsuits

## Local 802 does its part to preserve the history of the Brooklyn Philharmonic

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**THE BROOKLYN PHILHARMONIC** Orchestra has had a long and storied history. It traces its roots back to the Philharmonic Society of Brooklyn, which was formed in 1857. In 1954, the current orchestra was created by Julius Bloom, the director of the Brooklyn Academy of Music. Since that time, the orchestra has had notable music directors – including Lukas Foss, Robert Spano and Michael Christie. In its prime, the Brooklyn Philharmonic was considered “one of the most innovative and respected symphony orchestras of modern times,” according to orchestra biographer Maurice Edwards.

However, in more recent years the Brooklyn Philharmonic fell upon hard times. Encroaching infrastructure demands and contractual commitments

negotiated by its prior CEO that the orchestra could not rightfully support dealt it a glancing blow that ultimately it could not recover from. In 2013, the orchestra stopped performing. That year, Crain's New York Business reported that the Brooklyn Philharmonic was on the verge of bankruptcy and that it was actively seeking merger partners who could infuse cash into the venerable institution to keep its doors open. Crain's also noted that in its last season, the orchestra undertook novel approaches to attract greater audiences. For instance, it utilized the talents of hip hop artist Yasiin Bey (formerly known as Mos Def) as its artist in residence. The New York Times praised the orchestra's efforts to “meet the needs of its audiences in a way that has been truly inspiring.” Despite this, the economic burden placed upon the orchestra as well as the harm inflicted on fundraising efforts due to revelations about criminal charges previously brought against the orchestra's former CEO led to the revelation that the orchestra was simply incapable of surviving on its own. It engaged in a valiant effort to find a merger partner, but efforts failed.

Local 802 tried to help the Brooklyn Philharmonic stay alive. In 2011, I agreed to represent the orchestra in litigation (once I had secured conflict of interest waivers from Local 802). Composer Nathan Currier had sued the orchestra in state court on a breach of contract claim. The details of that suit (which I wrote about here in my July/August 2013 column) concerned a 2004 performance of Mr. Currier's extremely long composition “Gaian Variations.” The piece was so long that the composer literally ran out of money – he couldn't afford to pay the musicians overtime, so the piece simply

ended in the middle of the concert, much to the composer's chagrin. That suit was ultimately settled, but in 2015 Mr. Currier initiated a federal lawsuit against Local 802 to acquire the right to use an archival recording that the orchestra had made of the 2004 performance.

The orchestra, in the winding down of its affairs, gave Local 802 the ability to settle that suit. It assigned Local 802 the right, title and interest of the “Gaian Variations” recording. With the assistance of the AFM's electronic media division, we settled with Currier by permitting him to sign the AFM Internet Agreement. This settlement will give Mr. Currier the ability to stream his recording for the next seven years.

Furthermore, the Brooklyn Philharmonic has assigned to Local 802 the rights to its complete music library, which consists of over 50 boxes of music. Local 802 will be entering into an agree-

ment with the Brooklyn Public Library that will permit Local 802 members to rent music from the Brooklyn Philharmonic collection at preferential rates.

The Brooklyn Philharmonic still owes \$95,000 to Local 802 for unpaid health benefit contributions. But the orchestra has agreed to assign to the union all residual payments it had been receiving from Warner Music for recordings that it had released while the orchestra was still active. While it is not expected that these assignments will garner a large amount of money to offset the debt the orchestra owes us, it will still provide an ongoing payment. Additional archival recordings will be donated to Lincoln Center.

The Brooklyn Philharmonic was a historic icon among freelance orchestras. It will be sorely missed. However, I am happy to acknowledge that Local 802 has done its part in preserving some small piece of the Brooklyn Philharmonic's legacy.



The Brooklyn Philharmonic (pictured above at an outdoor concert in 2012) has wound down its operations. Local 802 is helping the orchestra handle some of its affairs.

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