

LEGAL CORNER

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MANY OF OUR musicians who are drawing pensions from the AFM pension fund are still playing union gigs. There's usually nothing wrong with this, and our pension fund allows it under many circumstances. More on this later.

But recently, I became involved in an unemployment insurance appeal board proceeding where the following question was posed:

Does entitlement to pension benefits mean that the pensioner cannot file for unemployment benefits?

The answer is: not necessarily. This is as surprising as it is counter-intuitive.

It would seem, at least at first blush, that receipt of pension benefits ought to foreclose a pensioner from receiving any other income supplements from their employer. Otherwise, it would appear that they were "double-dipping."

However, a 1980 amendment in the Federal Unemployment Tax Act, as applied in New York, permits pensioners to receive unemployment benefits as well as their pension under certain circumstances.

This was not always the case. Prior to 1980, in New York, if an employee's pension was more than the maximum unemployment weekly benefit available (currently \$405), pension benefits would totally offset unemployment compensation. But this has changed.

Before delving into the rather byzantine interplay of federal and New York unemployment insurance law, a little



PHOTO: STEVE H VIA FLICKR.COM

Many of our musicians continue working even after they retire. That raises a big question...

Are pensioners entitled to unemployment benefits?

pension review is in order.

First, under the rules of the AFM pension fund, a musician who is vested in the pension plan can start collecting full pension benefits at age 65. Furthermore, these musicians can still work for their former employers and receive new pension contributions.

On the other hand, musicians who retire early at age 55 must stop working for their former employers. No further pension contributions will be accepted from their former employers until they turn 65. However, these musicians can still work for *other* employers.

For example, imagine a musician who has worked for the American Symphony Orchestra her whole life. Now she retires and takes earlier pension benefits at age 55. She may not work for the ASO, but can still play Broadway shows. However, at age 65, she may start working for the ASO again.

There may or may not be benefits to working while you're retired. If you are drawing a pension and you start working again, your additional work may or may not result in a bump up in your monthly check from the pension fund.

This is where it gets complicated, but this is the important point.

The reason that working while you're retired may not actually gain you more pension has to do with the fact the pension fund reduced its benefits multiplier in 2010. That topic is way too big to get into now, but Allegro covered it in its April 2010 issue. (Here's a link: www.TinyURL.com/pension2010).

So when you work after you retire, any additional pension benefits that you are entitled to may be offset by the pension multiplier reduction.

Believe it or not, this actually is good news, for purposes of unemployment benefits.

Under Section 600 (7) of the New York Unemployment Insurance Law, unemployment compensation benefits will be reduced due to receipt of a pension only if employment during the unemployment eligibility period resulted in an increased amount of pension benefits.

If pension benefits are *not* increased by current employment, the pensioner should be entitled to the full amount of unemployment compensation that he or she would have earned, without any reduction.

Of, course, if pension benefits are in-

creased due to post-retirement employment, there will be a consequent reduction in unemployment compensation. In those cases, the total weekly pension amount will offset the amount of unemployment benefit earned. If the weekly pension amount is greater than the unemployment benefit, the pensioner will receive no unemployment.

This point of law that we're discussing was added as an alternate condition. It was never actually meant to be applied when the law was enacted.

However, since 1980 it has applied, since the federal government started requiring this method of calculating a pensioner's unemployment benefits entitlement as a condition of the state's receipt of federal funds

As a practical consequence, this means that musicians who are receiving a pension and are still employed in union work should still apply for unemployment benefits if they lose their gig, as long as their pension benefits have not been increased. Due to the reduction in the pension multiplier, this will most likely be the case for a while.

Lastly, one footnote: what if you're also receiving Social Security? Un-

employment insurance law provides that receipt of Social Security benefits has no effect upon unemployment compensation.

HOW TO APPLY

If you're ready to apply for unemployment benefits, we have all the information for you right here: www.Tinyurl.com/MusicUnemployment

Management stalls Lancaster Symphony Musicians

LAST WROTE ABOUT musicians in the Lancaster Symphony Orchestra in my February 2012 column. Musicians there have been waiting five years to negotiate their first union contract. The NLRB has ordered management to bargain with musicians, but management is "testing certification" by appealing in federal court. This is a classic union-busting tactic designing to fatigue workers and wear down support for the union. We'll keep you posted.

— Harvey Mars

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