

'American Idol' is sued by the union

\$500K for ring tones and more is claimed by the AFM

"AMERICAN IDOL" is in trouble with the union. In June, the AFM and Local 47 (Los Angeles) initiated a lawsuit in district court against the producers of "American Idol" due to their failure to pay the performing musicians for secondary uses of the music recorded during the show and for their failure to pay residuals into the Film Musicians Secondary Markets Fund.

In accordance with the terms of the AFM's Television Videotape Agreement, the musicians in music director Ricky Minor's band were entitled to be paid for new uses of the recorded music in accordance with the terms of the Sound Recording Labor Agreement.

The suit also seeks payment to the secondary markets fund in the amount of 2 percent of the distributor's gross receipts.

For those who are not familiar with it, the secondary markets fund is a nonprofit entity that collects and processes payments from motion picture or television producers for residual uses of the music recorded for the film or television program and distributes these residual payments to film and television musicians.

To put it simply, if you play on the soundtrack for a movie, and the movie gets released on DVD, you're entitled to payments from the fund. The DVD is considered a "secondary market." (This is assuming that everything is done union.)

LEGAL CORNER



By HARVEY MARS, ESQ.
JurMars566@aol.com

Harvey Mars is counsel to Local 802. Legal questions from members are welcome. E-mail them to JurMars566@aol.com. Harvey Mars's previous articles in this series are archived at www.HarveyMarsAttorney.com. (Click on "Publications & Articles" from the top menu.) Nothing here or in previous articles should be construed as formal legal advice given in the context of an attorney-client relationship.

The fund was first established in 1972 as part of a collective bargaining agreement negotiated between the AFM and the Alliance of Motion Picture and Television Producers.

The fund periodically makes distributions of residuals received throughout its fiscal year to eligible participating musicians. Musicians must have worked on film and television projects scored under the AFM agreements to be eligible to receive residual payments. There are literally thousands of participating musicians currently entitled to receive residuals.

The obligation to pay residuals is a continuing one and must be adhered to whenever the recorded music is utilized. Furthermore, the obligation to pay residuals

remains with the production regardless of how many times the ownership or distribution rights are changes or transferred.

Some of the new uses the "American Idol" recordings are being used for are, among other things, ring tones for cell phones and sales on iTunes.

Apparently, "American Idol" has been exploiting these recordings since its fourth season and the expected recovery should exceed half a million dollars.

The suit also seeks ten percent pension contributions to the AFM pension fund.

Suit was initiated under Section 301 of the National Labor Relations Act since the applicable collective bargaining agreement does not contain arbitration provisions.

This section of the NLRA permits the initiation of breach of contract suits in federal court based upon provisions within collective bargaining agreements.

Since the claims are not subject to arbitration, under the NLRA, the AFM can seek interest and counsel fees if they prevail. Suit was commenced after efforts to settle the claims failed.

This is the first suit of its kind in recent history and should be closely watched by all recording musicians.

Vince Trombetta, president of Local 47 said with regard to the suit that "I find it unfortunate that we must rely on the courts to ensure that employers adhere to our agreements. At Local 47, we are committed to both upholding the integrity of the contracts we bargained and representing the interest of our AFM musicians."

Dennis Dreith, administrator of the secondary markets fund, told Allegro that "the payments specified in this law suit are only a portion of what is owed the musicians who contributed so heavily to the success of this show, and it is my hope that they will ultimately get everything that they are entitled to."

Supreme Court surprise

WHAT IF YOU could erase two year's worth of court decisions? That's exactly what the Supreme Court may have just done.

As most Allegro readers know, the National Labor Relations Board is the highest labor court in the land, and many of its decisions affect union organizing, including Local 802's efforts to win justice for musicians.

But from January 2008 through March 2010, something strange was going on at the NLRB.

For those two years, the board issued over 600 decisions. And each of these decisions was made by two judges – one Republican and one Democrat, trying to find common ground. That's right – just two judges, even though there are supposed to be five judges on the NLRB.

The Supreme Court didn't like this and has issued a ruling that might render all 600 of these decisions null and void, including at least one decision that may affect Local 802 in a positive way.

But we're getting ahead of our-

selves. Let's back up and do the history.

In 1947, the Taft-Hartley Act increased the size of the National Labor Relations Board to five members from three.

The act also increased the quorum requirement to three from two and permitted the NLRB to delegate its authority to a three-member panel.

Fast forward to 2007. On Dec. 20, 2007, the provisional appointments of two members of the NLRB were going to expire.

At the same time, there was still a vacancy in one of the five positions.

Therefore, the NLRB was going to be left with only two members.

So the four sitting members delegated the full authority of the board to three of its members.

The NLRB reasoned that since the two remaining members would constitute a quorum of the delegated panel, it had authority to continue to render decisions until all vacancies were filled.

NOW COMES THE Supreme Court. On June 17, 2010, in *United Process Steel v. National Labor Relations Board*, 560 U.S. (2010), the court held that the NLRB had improperly delegated its authority and that it had violated Taft-Hartley because a two-member quorum could not possibly exist unless there actually were three sitting members on the board at the time.

The effect of this decision is profound. It potentially renders 600 board decisions null and void.

Whether this will actually be its effect or whether corrective legislation is enacted remains to be seen. Obviously, this decision will be very closely watched by labor advocates, including myself.

One of the opinions it places in doubt is an advisory opinion issued by the NLRB regarding an unfair labor practice charge that Local 802 had filed with the New York State Employment Relations Board against SSI, a spin-off of Steven Scott Entertainment.

In that matter the NLRB stated that it, rather than the state board, had jurisdiction of the charge.

The effect of this decision was that the unfair labor practice was dismissed.

Therefore, one positive effect of the Supreme Court's decision is that it might revive Local 802's unfair labor practice charge against Steven Scott Entertainment.

As usual, we'll keep you posted.



PHOTO: DARREN WITTKO VIA FLICKR.COM

"American Idol" may owe half a million dollars to musicians and various union funds.