

LEWIS BRISBOIS BISGAARD & SMITH LLP

MEMORANDUM

Privileged Attorney-Client Communication

TO: New Era Scoring
FROM: Lloyd C. Loomis
DATE: December 6, 2006

You have asked our firm to prepare this memo to explain the rights of current members of the American Federation of Musicians concerning their membership status in the union. The legal advice and opinions contained in this Memorandum are intended as legal advice and counsel to the client only. The advice and opinions contained in the Memorandum are not intended to be, nor do they constitute, legal advice for any other person or entity.

The musicians are concerned about the possibility that if they perform work not covered by a Musicians Union Collective Bargaining Agreement (“CBA”), they will be subject to fines or other forms of discipline by the union, that ultimately, may affect their ability to obtain future union employment. The question presented is whether there is a way that these musicians can accept work that is not covered by a collective bargaining agreement without jeopardizing their ability to work on union jobs when such jobs are available. As will be discussed in more detail in that which follows, there is such a way: a current union member may resign his membership in the union and elect to become a “core dues member.”

Unfortunately, the law in this area is somewhat confusing and often, unions do not fully explain the various options that are available to their members. Also, the terms of collective bargaining agreements, oftentimes, can be somewhat confusing. Under the law as applied by the

National Labor Relations Board (“NLRB”) and the United States Supreme Court, a union can negotiate a “union security” clause in its collective bargaining agreement. This type of clause can require that all employees working under a union contract, be “members” of the union.

“Member” in this sense, however, is not synonymous with the every day use of this word. The question thus becomes what does it mean to be a union “member” such that it satisfies the prototypical union security clause?

The NLRB and the U.S. Supreme Court have redefined the term “union membership” as it is applied to union security clauses in collective bargaining agreements.

If an employee joins a union and becomes a “full union member,” the employee will be required to comply with the terms of the collective bargaining agreement, *i.e.*, the rules, regulations, and bylaws of the Union. The member will also be required to pay all initiation fees, regular dues, fines levied by the Union, and assessments. Also, as part of these obligations as provided in the American Federation of Musicians’ bylaws, the member will agree that he/she will not accept any work that is not covered by a union collective bargaining agreement, *i.e.*, non-union work. Under these bylaws, a member who does accept such non-covered work (non-union) can be fined and possibly, expelled from union membership.

Irrespective of the language of the collective bargaining agreement, however, the law (the National Labor Relations Act) provides that “full” union membership cannot be required as a condition for employment under a collective bargaining agreement.

The United States Supreme Court, in the case of *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), held that the “union membership” requirement can be satisfied by an employee

if the employee pays to the union an amount equal to regular periodic dues and the regular initiation fee. The employee does not need to be a “full” member of the union. This is known as a “dues-paying only member.” When an employee becomes a “dues-paying only member,” the employee is not subject to all of the internal union rules regulations, bylaws, etc. Further, the “dues paying only member” is not subject to any union discipline so long as the regular periodic dues are paid. Despite the fact that the “dues paying only member” is no longer an actual member of the union, the union is required not to discriminate against such non-member and must represent him/her in the same manner as it represents full members.^{1/}

“Dues paying only members” are entitled to all of the benefits provided under the collective bargaining agreement such as pension, health and welfare benefits, and residuals, *i.e.*, special payments, for work performed under the collective bargaining agreement.

The U.S. Supreme Court again reviewed the union “membership” requirements that Unions can impose in their decision in *Communication Workers v. Beck*, 487 U.S. 735 (1988). In *Beck*, the court held that the union could only require a “dues paying only member” to pay core financial dues. Core financial dues are defined as the individual’s proportionate share of union expenses that are related to representational expenses of the union. These core dues do not include money for political purposes, or other purposes unrelated to the representation of the employees in the collective bargaining unit.

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^{1/}Employees who only pay dues and are not “full” union members, cannot vote in union elections or contract ratifications or participate in internal union meetings.

Thus, there are two types of “dues paying only members.” The first type, despite no longer being a full member of the union, still elects to pay full dues as though he/she were an actual union member; The second type, which is a subclass of the first, pays a lesser amount, constituting his/her core financial dues. In both cases and despite the use of the word “member,” the “dues paying only member” is no longer an actual member of the union. It is to be noted that for the rest of this piece, we will focus on the rights of those individuals that elect to pay only their core financial dues (“core dues member”).

Irrespective of whether an employee is a “full union member” or only a core dues member, the union has an obligation not to discriminate against any employee who is part of the collective bargaining unit represented by the union. This is known as the duty of “fair representation.” If the union does discriminate against an employee who is a core dues member, it is in violation of the National Labor Relations Act and an unfair labor practice charge can be filed with the NLRB.

Further, the union cannot require an employer to terminate or not engage an employee who has become a core dues member because the employee did not otherwise comply with union rules, regulations and bylaws, or pay fines, special assessments or attend meetings or pledge loyalty to the union. The only circumstance where a union may require an employer not to continue the employment of a core dues member is when the person does not pay their required dues.

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Most importantly, the union cannot require core dues members not to accept jobs that are not subject to the union's contract and cannot penalize the employee if such non-union work is accepted.

WHAT DOES THIS MEAN FOR CURRENT MEMBERS OF THE AFM?

(1) Current "full members" are subject to fines for breaking the current rules and bylaws of the union. This includes the rule that prohibits union members from accepting work that is not subject to an AFM Collective Bargaining Agreement.

(2) Current "full members" can resign from their "full member" status by notifying the local union Secretary Treasurer of their desire to withdraw from union membership. This does not excuse the member from the obligation to pay the periodic dues. A current union member will continue to be a "full member" until her/she resigns from union membership.

(3) At the time of resignation, the musician can also request that the musician only be obligated to pay core financial dues. It should be noted here, that if the resigned member wishes to continue to pay full dues, he/she may do so.

(4) After a musician resigns from full membership and becomes core dues member, the union is obligated to continue to represent the musician without discrimination. Core dues members must be eligible to be assigned union work on the same basis as "full union members." This also means that the core dues member is entitled to all of the benefits under the union contract with respect to work covered by a union contract, *i.e.*, a union job.

(5) The union cannot require core dues members not to accept work that is not covered by a union collective bargaining agreement.

(6) If the union attempts to discriminate against core dues members, it will be subject to unfair labor practice charges before the National Labor Relations Board. In certain circumstances, the union may be subject to claims filed in Federal Court.

Procedure for Changing Status from Full Union Membership to Core Dues

Changing membership status to from a full union member to a core dues member may be accomplished by sending the local union Secretary Treasurer a notice of resignation with or without a demand that dues be reduced to core dues. A suggested letter is attached.

Caveat

While we believe the legal analysis contained in this memo is accurate and current, we cannot represent that the union will not attempt to dissuade members from resigning their “full” union membership. Further, we cannot represent that the union will not attempt to disadvantage members that withdraw from “full” union membership. Legal proceedings before the NLRB and/or the courts may be necessary to fully enforce the rights of musicians who withdraw from full union membership. The analysis contained in this memo is a general analysis of the law. There may be special individual circumstances that would make this analysis inapplicable.

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