

# PROGRESSIONS

Official publication of the Reno Musicians' Union, Local 368

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## PRESIDENT'S LETTER WE MOVED!!!

We lost our lease and have had to move the Local's office. We are now at 2400 Tampa St. #114 Reno, NV 89512. Please do not send anything to the Bible Street address as we are no longer there. This move has lowered our rent and we are no longer sub-letting, so hopefully we will be here awhile. I would like to thank Local 368 members Pete Supersano, Tom Rice, Paul January and Catherine Matovich for helping with the move. I had to downsize my work area but overall it is a much more useful space.

- Please update us when you move!
- Make sure you send us any change of address, email or phone #.
- If you would prefer to receive your newsletter online and not get this paper copy, please let us know by email or phone 77/329-7995

## LOCAL 368 BOARD MEMBERS

**President-Sec./Treas.:** John Shipley      **Vice President:** John Beckman  
**Board Members:** Paul January, Peter Supersano, Catherine Matovich  
Dave Gupton, and Linda Arnn-Arteno Alternate

## MEMBERSHIP NEWS

These members have resigned this last quarter:

Robert Kuchenmeister  
Linda Arnn-Arteno  
Vernon Watts  
Lindsey Bartlett

We are now live! Go to <http://nvmusicianshalloffame.com> to nominate your favorite Nevada musicians. "The Nevada Musicians Hall of Fame" is a website created to honor musicians of all genres and time eras that have played in Nevada's concert halls, showrooms, lounges, and bars. This website has been created and paid for by Local 368 Reno & Local 369 Las Vegas.

## 50 YEARS A UNION MEMBER

We congratulate Dale Hampton on his fiftieth year as a member of the Reno Musician's Union.

For those of you old enough to recall, 1967 was the year of *Sergeant Pepper's Lonely Hearts Club Band* and the Summer of Love; a great year for music. It was also the year that Dale stepped up and did the right thing by joining our union.

Our gratitude goes out to Dale and all our longtime members. Your combined years of loyalty make this organization possible.



## SUPERSANO SUPER VOLUNTEER

Peter Supersano is a busy guy. The Reno-based keyboard player is the first choice as an accompanist for many of Northern Nevada/Tahoe's singers.

If you have the chance to chat with the soft-spoken jazz man at one of his performances, he's not likely to tell you that despite his full schedule, he volunteers countless hours every year in support of his fellow musicians.

Peter joined the Musicians' Union in his hometown of Bridgeport, Connecticut, when he was 23. It was the early 70s and he was playing in a funk/disco band at venues all along the east coast, including gigs in New York City.

When he moved to Reno in the early 80s, he quickly found work in casinos

and clubs, including a stint at Harrah's Tahoe playing for a topless revue. Peter says the band couldn't see the dancers when they were playing, which no doubt enabled them to concentrate on the music.

A favorite long-time gig was at Adele's, Reno, playing jazz every week with Joe McKenna on bass and Tony Savage on drums. Jazz is Peter's first love, and he performs his own compositions when the opportunity arises.

Currently serving as a board member for Musicians' Union Local 368,



Supersano works closely with President John Shipley and his fellow board members to address issues facing local musicians.

In addition to his work with the union, Peter is currently serving as Secretary on the board of The Reno Jazz Society (aka For the Love of Jazz). He does everything from taking minutes, lining up performers for Society-sponsored events, to selling t-shirts at the popular series, *Poolside Jazz at the Sands*.

In recognition of all his behind-the-scenes work, the members and board of the Musician's Union would like to give a big Thank You to Peter Supersano.

Both your unfailing good humor and the many hours that you donate are greatly appreciated.

# GOOD-BYE TO IRIS MAYTAN & DON REA

*Long time members Iris Maytan and Don Rea made their transitions this summer. Both were personal friends of mine and their smiling faces will be missed by all that knew them. I visited both Iris and Don a few days before their passing and what a joy it was to talk with each of them. Good Shepherd Lutheran Church was the church of my youth and I was in the choir and an acolyte during many services there, as Iris played the organ. She was an amazing musician and an inspiration to my career.*

*Don became a friend when I returned to Reno after living in Southern California. We talked and traded stories about the biz and he even came to audit one of my lectures of the history of Rock and Roll at Western Nevada College. I included him and the Gaylords into the discussion with the students about 1950s era pop. I will miss you my friends.*

## Iris Maytan

Iris Eleanor Hultberg joined Local 368 in July of 1943 shortly after graduating from Reno High School. Here application lists her instruments as piano, accordion and oboe.

From Iris' obituary in the RGJ:

Iris was born in Great Falls, Montana on February 1, 1925. She moved to Reno with her family in 1942 and graduated from Reno High School in 1943. Iris began her professional music career immediately, playing piano, organ, oboe, English horn, bassoon, glockenspiel, musette and accordion. Her love of music evolved through activities with Unity Chapel, Trinity Episcopal Church and Good Shepherd Lutheran Church. She was a founding member of the Reno Philharmonic Orchestra in 1969, played in the Nevada Opera Orchestra and was the first female member of the Reno Municipal Band in 1942 and continued to play until 2016. Iris was also a member of the UNR Orchestra and the UNR Symphonic Wind Ensemble.

In 1959, she and her husband Steve bought Modern Music Center and developed it into a full-service music store, Maytan Music Center, which included sales, repairs, lessons and performance venues.

Her primary focus was building an

impressive sheet music department. The store served Northern Nevada for 55 years and its legacy as a premier musical entity is woven into the fabric of the community.

Her Masonic involvements included holding the high offices of Worthy Matron and Grand Organist in the Order of Eastern Star and Honored Queen of the Daughters of the Nile. Iris was a driving force behind everything musical in these organizations and the community at large.

Mrs. Maytan was a dedicated music teacher and accompanist to thousands of young musicians, imparting her joy through her instruction and her involvement in their life-long musical enjoyment. She bestowed her passion for humanity through her passion for music. So vivid was her influence that many who knew her called her "Mom." Iris was considered a dynamic strength behind music education and performance in the community. She has become an irreplaceable face of music to us all.

## Don Rea

In 1961 Don moved his family to Reno Nevada, joining Local 368 soon afterwards. When he was not touring with the Gaylords he played piano with local bands, community events, and even did some studio session work!

From Don's RGJ Obituary:

At around 13 years old Don started playing piano, and went on to become an accomplished pianist/keyboardist. He joined the *Gaylord's* in 1949. A musical trio on the Mercury label, that performed throughout the country, and landed gold records and top 10's on the Billboard charts in the late 50s: *The Little Shoemaker*, *Tell Me Your Mine*, *From The Vine Came The Grape*. Along with Don Rea the original members were Burt \*Holiday\* Bonaldi, Ronnie \*Gaylord\* Fredianelli, and Billy Christ. These four men went on to be lifelong friends, and "brothers."

In 1950 Don entered the army, and was stationed at Fort Leonard Wood in Waynesville Missouri. He played in the Army band, and went on to achieve the rank of sergeant before leaving his service.

In the 60s *The Gaylord's* became the musical comedy team of Gaylord & Holiday. Don was their keyboard player, musical director, conductor, and arranger. They made numerous appearances on *The Colgate Comedy Hour*, *The Mike Douglas Show*, *The Merv Griffin Show*, *The Tonight Show*, *The Flip Wilson Show*, and *Rowan and Martin's Laugh In*. They worked with other major headliners throughout the country, including Duke Ellington who called *The Gaylords* "purveyors of tonal zest."

# MUSICIAN vs. MUSICIAN:

## HARASSMENT, BULLYING & HOW

TO HANDLE IT - Reprinted from Senza Sordinoby permission

One of the most vexing challenges an orchestra committee faces is what to do when one musician levies an accusation of improper behavior against another. Often the accuser will claim he or she has been “harassed,” or that the alleged perpetrator is creating a “hostile work environment”.

At last summer’s ICSOM conference, I gave a presentation regarding this issue, using a hypothetical scenario of a principal violinist dressing down his assistant in a rehearsal. In response to many requests for more information on this topic, this article expands on that presentation.

Part I explores the legal meanings of “harassment” and “hostile work environment”, the emerging law of bullying, and how these issues may be viewed by musicians. Part II discusses workplace policies regarding musician conduct. Part III addresses the obligation of the Orchestra Committee or Union in cases of musician-on-musician conflict.

### Harassment, or Something Else?

Last year, the Equal Employment Opportunity Commission (EEOC) published a report summarizing the findings of its Select Task Force on the Study of Harassment in the Workplace. The Study noted that almost one third of all charges received by the EEOC in 2015 included an allegation of workplace harassment. The largest portion of those charges alleged sex-based harassment.

The symphonic workplace is not immune. I would be willing to bet that every member of an ICSOM orchestra, in their own workplace or at some point in their education or career, has either witnessed or been on the receiving end of conduct that would be universally regarded as sexual harassment. I would also venture that such behavior has been tolerated—even accommodated—in the music world more than in many other industries.

But among instances of musicians behaving badly towards each other is conduct that might seem “harassing” or “hostile” but that is not considered illegal harassment under the law. Those instances are the hardest to deal with, because the behavior is plainly wrong—but it isn’t illegal. Simply put, there is no law against being a jerk.

Part of the problem is that laws often contain terms that have a legal meaning that may have little to do with their common-sense meaning. The law of workplace harassment is a prime example, for “harassment” in employment law is a term of art. It refers to Title VII, the federal law prohibiting discrimination on the basis of traits like race, color, religion, gender, and national origin. (Some state laws go further and include sexual orientation or gender identity in this list of traits.) What that means is that (1) the victim must be a member of a “protected class” of people who share one of those traits; and (2) the acts complained of must be because the victim was a member of the class. In other words, to be unlawful, the harasser must be shown to have had intent to discriminate on the basis of race, color, gender, etc. There is no

free-standing prohibition on “harassing” behavior.

Similarly, a “hostile work environment” isn’t what it sounds like. It is a specific kind of Title VII claim, typically alleging sexual harassment. It requires acts or conduct that (1) are subjectively and objectively hostile; (2) constitute severe and pervasive harassment; and (3) are based on membership in the protected class. So again, being “hostile” isn’t enough; the hostility must be associated with animus towards gender or sex. Moreover, hostile work environment claims are often difficult to prove, as courts have held that “isolated incidents” are insufficient, and the nature of the workplace makes a difference. (I.e., if employees banter or joke about sex, and such behavior is generally accepted, it is much harder for any individual employee to claim that the behavior was hostile or severe. This has been a problem in the entertainment industry in particular.)

The bottom line is that “harassment” and “hostile work environment” don’t mean what most people think; and the law regarding “harassment” and “hostile work environment” doesn’t protect against a wide swath of “harassing” and “hostile” behavior. But such behavior can be extremely detrimental and destructive to a workplace. So what can be done? Increasingly, the conversation has turned to a new term: “bullying”.

Bullying has received increasing attention in recent years. Many may remember the Miami Dolphins football player who quit the team because he couldn’t take the bullying from his teammates anymore. That story put



the issue of workplace bullying squarely in the public eye, for it begged a question: if a NFL offensive lineman can't handle bullying behavior from his colleagues, then what are the rest of us supposed to do?

Unlike Title VII, there is no federal law prohibiting bullying in the workplace. (Nor is there likely to be in the foreseeable future, given the current political climate.) At the state level, however, a model law, the "Healthy Workplace Bill", has been introduced in 31 legislatures. It would make it unlawful to "subject an employee to an abusive work environment," and defines an "abusive work environment" as one where an employee is subjected to "abusive conduct that is so severe that it causes physical or psychological harm." The law turns, therefore, on its definition of "abusive conduct":

*acts, omissions, or both, that a reasonable person would find abusive, based on the severity, nature and frequency of the conduct, including, but not limited to: repeated verbal abuse such as the use of derogatory remarks, insults and epithets; verbal, nonverbal or physical conduct of a threatening, intimidating or humiliating nature; or the sabotage or undermining of an employee's work performance. It shall be considered an aggravating factor if the conduct exploited an employee's known psychological or physical illness or disability. A single act normally shall not constitute abusive conduct, but an especially severe and egregious act may meet this standard.*

If enacted into law, this would fill in a gap left by Title VII. Workplace conduct that is clearly abusive, but that doesn't carry with it the intent to discriminate because of the victim's membership in a protected class, would now be prohibited.

But the law has not yet been passed in any state. (There's still no law



against being a jerk.) Some states have cherry-picked parts of it or watered it down—for example, defining bullying or abusive conduct but not making it unlawful, or failing to provide a mechanism for enforcing it, or creating a commission to study it. California has given the law the most substance, as it requires employers to provide training to supervisors regarding "prevention of abusive conduct," and adopts the definition of "abusive conduct" noted above.

Why the resistance? One expects business lobbyists like the Chamber of Commerce to oppose bills like this, because they oppose anything that might subject an employer to a lawsuit. But can't we at least agree that it would be a good thing if abusive conduct—bullying—were excluded from our workplaces?

It appears not. The opposing philosophy is typified by remarks attributed to a lawyer from a management-side firm:

"some people may need a little appropriate bullying in order to do a good job."

"those who claim to be bullied are really just wimps who can't handle a little constructive criticism."

(See <http://www.bizjournals.com/sanfrancisco/stories/1999/07/19/story8.html>.)

That attitude is one that I have often seen (and experienced) in the music world. Think of certain teachers who were famous for making their students run crying out of their studios; or conductors who go stand by stand and humiliate string players unaccustomed to being put on the spot like that. Such behavior has not held these figures back; in fact, many

have risen to the top of the profession. Why?

I think it may be the result of two, long-standing philosophies in our world:

if you play/teach/conduct well enough, your behavior doesn't matter.

The performance justifies everything.

Perhaps it is time for musicians to consider rethinking those maxims. Yes, this is a performance-based business; and yes, it is the result that our audience gets to experience, not the process. But does that mean we must sacrifice the opportunity to make music in a humane workplace, free of abuse, just for the sake of making the performance a little better? And do these goals need to be mutually exclusive? To me, the answer is no.

## Workplace Policies: Not So Fast

In the absence of new federal or state laws prohibiting bullying, employers across many industries have tried to address the issue by promulgating policies regarding workplace conduct. Orchestras have done so as well—often, the musicians will simply receive the policy via an all-employee mass email, or find it in their mailboxes. Such policies usually contain similar exhortations:

*"treat all employees with courtesy and respect at all times"*

*"maintain a positive work environment"*

*"communicate in a manner conducive to harmonious working relationships"*

*"don't make insulting, disparaging, negative or otherwise hostile comments"*

*"avoid starting or perpetuating rumors, false statements or gossip"*

Similar standards are applied to online behavior, especially with respect to social media. The policy typically goes on to provide that

## MUSICIAN VS. MUSICIAN (CONT.)

employees who violate those standards may be subject to discipline “up to and including termination.”

Musicians who see one of these policies handed down without notice often call me and ask, “Can management really do this?”

Usually, no. In a union workplace, terms and conditions of employment must be bargained for. An employer rule, the violation of which could lead to discipline or discharge, necessarily is a term or condition of employment. Policies like this must therefore be bargained for, and it is an unfair labor practice to unilaterally promulgate it or discipline a musician for violating it.

Like every rule, however, there are exceptions. Unions can waive their bargaining rights, if the waiver is “clear and unmistakable.” Management typically tries to argue that a “management-rights clause” in the CBA constitutes such a waiver. (Management-rights clauses are usually found next to the union-security clause; it reserves certain rights to management if not explicitly addressed in the CBA.) Employers have not had much luck with that argument, however, because the NLRB has consistently required very specific language before finding a waiver. If, for example, the management-rights clause says something like, “management reserves the right to manage its business and its workforce,” then that is too broad and vague to amount to a “clear and unmistakable” waiver of bargaining rights over a policy that sets forth specific standards of behavior. But if the clause instead says that management is authorized to “promulgate rules of employee conduct,” then management’s argument might have a better chance of success.

But there is another problem with such policies. Section 7 of the National Labor Relations Act (NLRA) affords all employees—not just

unionized employees—the right to engage in “concerted activities for the purpose of collective bargaining or other mutual aid or protection.” That includes the right to discuss (and complain about!) work conditions, pay, supervisor behavior, etc. Section 8 of the NLRA prohibits employers from interfering with that right. So, if a work rule or policy “reasonably tends to chill employees” who wish to exercise that right, then the policy is unlawful.

The NLRB has invoked those principles to invalidate a score of workplace policies in recent years. Policies that mandate treating “all employees with courtesy and respect” fail because objections to pay, conditions, or supervisor conduct can be inherently disrespectful, and that activity is unquestionably protected Section 7 activity. (It is permissible, however, to require that employees treat customers—for us, audience members—with respect. As if we wouldn’t.) Demanding that employees maintain a “positive work environment” or “harmonious relationships” suffer from the same flaw, because disagreements with managers or supervisors won’t be positive or harmonious; and, if employees consequently avoid controversial or contentious communications for fear of running afoul of the rule, then their Section 7 rights are violated.

Employees have the right to make “disparaging” or “negative” comments for the same reasons. Employers are not even permitted to maintain a policy prohibiting “false statements”—such a policy is allowed only if it prohibits false statements that are made “maliciously.” (Oddly, however, the NLRB has upheld policies that prohibit “gossip.” I’m not sure I see a principled distinction there.)

In short, it is very difficult for management to issue and maintain anti-bullying policies without the Union’s agreement. Managers who

attempt to hand these policies down by edict, without bargaining or a waiver, are violating the law.

But . . . how badly do we want to fight that battle? Think about the language of the Healthy Workplace Bill, which would prohibit “repeated verbal abuse,” “insults and epithets,” “conduct of a threatening, intimidating or humiliating nature,” or the “sabotage or undermining” of a colleague. Do we really want to be on the side of protecting musicians’ rights to engage in such behavior in the workplace?

Additionally, what’s good for the goose is good for the gander. Bullying policies are typically applied equally across the organization. That means the Music Director and guest conductors would likely be subject to the policy as well. Many musicians, I suspect, would welcome that.

In other words, there may be valid reasons to avoid a confrontational response, even when management acts heavy-handedly in issuing an anti-bullying or workplace conduct policy. Perhaps it would be better to instead work with our managements to craft a policy that contributes to a healthier workplace, yet still protects musicians’ rights to express themselves freely. The possibility of a win-win scenario exists.

### Member vs. Member: “Do something!”

Legalities aside, most Orchestra Committees and Union locals encounter issues of bullying and/or harassment when one musician complains to the committee about the behavior of another musician. Say you’re a committee chair, and the complainant comes to you and says, “Do something about it!”

### What do you do?

There are legal answers, and there

are practical answers. Legally, a union (and by extension, an Orchestra Committee) is subject to a strict rule: the union must do its best to fairly represent all of its members—even when the success of one necessarily requires the failure of another. That means that in a member vs. member situation, you cannot simply pick one side and decline to represent the other (like a lawyer can). You must give fair consideration to the interests of both the accuser and the accused.

That does not, however, mean that you are powerless to make judgment calls. The duty of fair representation (DRF) owed by union officers requires that you must act upon rational considerations, and not for arbitrary or capricious reasons or in bad faith. Stated differently, it means that your determinations will not violate DFR unless arbitrary, capricious, or in bad faith.

That means you are permitted to make credibility determinations between members. It is wise, though, not to do this until you have made a full investigation, including by talking to all witnesses to the incident (if there are any—the toughest calls are when there aren't!). Gather as many facts as you can, and don't make a determination that one member is lying unless you are sure of it. Or, in a case that seems likely to go to arbitration (such as a termination), you can remain neutral and leave it up to the arbitrator to decide.

So you've investigated, and you believe you have a reasonable handle on what happened. Then what?

For starters, you cannot impose discipline. Only the employer can do that. This is often difficult for musicians on the receiving end of bad behavior to grasp. That is understandable: they want the union to protect them, after all, and they want to be good union members and not go to management to complain about another musician. But orchestra committees and union locals don't have the authority to discipline anyone in the workplace. Nor should you, as a committee member, go to management and ask

that discipline be imposed (because then, the disciplined musician might have a DFR claim against you). If management is unaware of the incident, then it is incumbent on the complainant to bring it to management's attention. (However, the complainant can authorize you to do so on his/her behalf if that is more comfortable.)

The next step depends on whether management imposes discipline on one or both musicians. If not, then in most instances, the union's obligation will end there. No one's employment has been put at risk. But first you must make a critical determination: has the CBA been violated?

Usually in member vs. member cases, the answer will be no. The CBA primarily imposes obligations on management vis-à-vis the musicians, and vice versa; it typically doesn't impose obligations on musicians vis-à-vis each other. But say the CBA (or a side letter) includes a bargained-for, legally acceptable policy against bullying, and your investigation determines that the accused is indeed a bully. In that case, if management has failed to impose discipline on the bully, then the committee and/or the union must evaluate whether to file a grievance over management's failure to enforce the policy. If you don't make that evaluation—or haven't investigated—then the complainant may have a DFR claim against you for failing to enforce the CBA.

Another wrinkle: if the policy has been violated and discipline has been imposed, then you have to make the evaluation on behalf of both musicians. You must determine from the complainant's perspective whether the employer appropriately enforced the policy (i.e., whether the discipline of the bully was harsh enough); and then you have to turn around and determine from the bully's perspective whether the discipline was warranted (i.e., whether it too harsh). That's a lot of different hats to wear, but remember: you must always fairly represent both members.

Most of the time, however, there is no

CBA violation; and if the incident is more than trivial, management will discipline one or both members. At that point, you must evaluate whether the discipline was warranted in light of your investigation. If both members were disciplined, then you need to evaluate each one separately (i.e., switching hats again). If you don't do so, or if you don't bother with an investigation at all, then the disciplined musician(s) might have a DFR claim.

But that doesn't mean you always fight the discipline. As I said, you can make credibility determinations and judgment calls. If you've made an investigation, and you've analyzed the situation rationally and in good faith and determined that the discipline was fair, then you can decline to file a grievance.

Bottom line: at the risk of oversimplifying, most situations can be handled if you follow these principles:

*always make an investigation*

*always be as fair as possible to both members*

*take action only in response to what management does*

*evaluate the appropriateness of management's actions (or lack thereof) from each member's perspective separately.*

So that's how you do it by the book. Of course, every workplace is different, and in some orchestras, the Orchestra Committee or Local officers have assumed the role of peacemakers when musicians behave badly towards each other. If the incident clearly is not serious and will not lead to discipline, then that kind of informal conflict-resolution can be valuable. There is something to be said for taking care of business in-house, so to speak, and keeping poor musician behavior out of management's view. But that kind of process should never be used to silence a musician. Musicians have the right to be treated fairly—by management, by their colleagues, and by their Union. It's a right worth protecting.

**RENO MUSICIANS' UNION  
LOCAL 368 A.F.M.**

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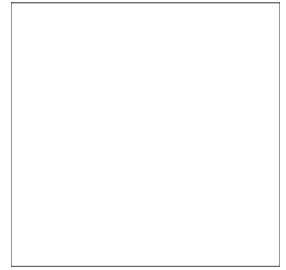
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**WORDS OF LOUIS ARMSTRONG**

*If you have to ask what jazz is, you'll never know.*

*We all do 'do, re, mi', but you have to find the other notes yourself*

*What we play is life.*