

2799

AGREEMENT

Between

CITY OF OCEAN CITY
CAPE MAY COUNTY, NEW JERSEY

And

AMERICAN FEDERATION OF MUSICIANS
LOCAL 661-708

March 1, 2001 through February 28, 2003

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PREAMBLE

This agreement, entered into this 28 day of JUNE 2001, by and between American Federation of Musicians Local 661-708 (hereinafter referred to as the "Union"), and the City of Ocean City, New Jersey (hereinafter referred to as the "City").

ARTICLE I

UNION RECOGNITION

The City recognizes the Union as the exclusive representative for collective negotiations for the instrumental musicians of the Ocean City Pops Orchestra, who are non-probationary members of the orchestra and who have worked for a minimum of 70% of the performances for the previous season.

The parties agree that the provisions of this collective bargaining agreement are in force for all services provided by musicians in relation to performances of the Ocean City Pops Orchestra, as scheduled and approved by the City, with the exception of those performances sponsored or funded by the Musicians Performance Trust Funds of the American Federation of Musicians.

ARTICLE II

DUES DEDUCTION

1. The City agrees to deduct from the salaries of its employees subject to this Agreement dues for the Union. Such deductions shall be made in compliance with Chapter 310, Public Laws of 1967, N.J.S.A. (R.S. 52:14-15.9(e)), as amended. Said monies together with records of any corrections shall be transmitted to the Union Treasurer within five (5) working days from the payroll period ending date of each bi-weekly payroll period.

2. If during the life of this Agreement there shall be any change in the rate of membership dues, the Union shall furnish to the City written notice 30 days prior to the effective date of such change and shall furnish new authorizations from its members showing the authorized deduction for such employees.

3. The Union will provide the necessary "check-off" authorization form and the Union will secure the signatures of its members on the form and deliver the signed forms to the City Treasurer. The Union shall indemnify, defend and save the City harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the city in reliance upon salary deduction authorization cards submitted by the Union to the City or in reliance upon the official notification on the letterhead of the Union and signed by the President and Secretary of the Union advising of such changed deduction.

4. The Union Agrees that there shall be no discrimination, intimidation, restraint, coercion, harassment or pressure by it or its officers, agents or members against any employee who refuses or fails to execute an authorization card.

5. Any such written authorization may be withdrawn at any time by the filing of notice of such withdrawal with the City Treasurer. The filing of notice of withdrawal shall be effective to halt deductions as of January 1st or July 1st next succeeding the date on which the notice of withdrawal is filed, in accordance with N.J.S.A. 52:14-15.9(e) as amended.

6. Any employee in the bargaining unit on the effective date of this Agreement who does not join the Union within 30 days of initial employment within the unit, and any permanent employee previously employed with the unit who does not join within ten (10) days of re-entry into employment with the unit shall, as a condition of employment, pay a representation fee to the Union by automatic payroll deduction. This representation fee shall be paid in an amount not greater than 85% of the regular Union membership dues, fees and assessments as certified to the employer by the Union. The Union may revise its certification on the amount of the representation fee at any time to reflect changes in the regular Union membership dues, fees and assessments. The Union's entitlement to the representation fee shall continue beyond the termination date of the Agreement as long as the Union remains the majority representative of the employees in the unit, provided that no modification is made in the provision by a successor agreement between the Union and the Employer.

7. The Union agrees to furnish the City with a copy of its "demand and return system" which must be established and maintained by the Union in accordance with the law.

8. The Union shall indemnify, defend and save the City harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of any action taken in making deductions and remitting the same to the Union pursuant to this Article.

ARTICLE III

SIZE OF ORCHESTRA

The Ocean City Pops Orchestra as of the date of this agreement consists of the following positions:

Violin I - 4

Violin II - 4 (1 position is grant funded)

Viola -2

Cello -2

Bass -1

Flute -1

Oboe -1

Clarinet -1

Bassoon -1

Horn -2

Trumpet - 2

Trombone – 2 (1 position is grant funded)

Keyboard -1

Percussion -1

Any permanent change among these positions will be made for good and necessary reasons, and reviewed by the Director of Community Services and the Business Administrator of Ocean City, in consultation with the Union. It is recognized that the Music Director may increase or decrease the size of the orchestra according to the program needs of each concert.

ARTICLE IV

ARTISTIC DISMISSAL

The Music Director may not initiate non-renewal for artistic reasons in his/her first year or his/her final year of employment.

ARTICLE V

PROBATION/NON-PROBATION, TERMINATION AND DEMOTION

1. Non-probationary musicians shall have the right of first refusal for all scheduled services of the Ocean City Pops Orchestra. All musicians must perform a minimum of 70% of performances offered in order to retain non-probationary status (See Appendix "A" for a listing of all non-probationary musicians who will be offered the right of first refusal for all performances of the Ocean City Pops for the following season). The only missed services that do not count toward the 70% threshold are those related to illness, injury or emergency.

2. The first season of a newly hired musician's employment shall be considered probationary. The Music Director may extend the probationary period of a musician, not to exceed one more consecutive season. A probationary musician must be given notice, no later than January 1st, if he/she will not be re-engaged for the next season, or if the probationary period will be extended. A probationary musician not receiving notice of non-engagement or an extended probationary period by January 1st shall be considered a non-probationary member of the orchestra and shall be offered a contract for the following season, provided there is a position available.

3. A non-probationary musician cannot be terminated or demoted except for demonstrated consistent and unremedied failure of musical performance or for just cause.

4. The Music Director shall convene a meeting with a non-probationary musician whose performance is under serious review. A representative of the Union shall be present. The musician will have the opportunity to voluntarily accept the preliminary evaluation of the Music Director to terminate or demote.

5. A non-probationary musician who does not accept the preliminary evaluation of the Music Director shall be sent a written notice within 14 days of the meeting as set forth in Number four (4) above. Such notice shall include specific reasons for the Music Director's decision to so notify the musician, with copies to the Union and the Director of Community Services of Ocean City. A musician receiving such notice shall have the right to remain in his/her current position for a review period equal to, at a minimum, 70% of the musician's scheduled performances for the current season, or, at a maximum, the entire following season.

6. If, at the end of the period of review, the Music Director is still dissatisfied with the musician's performance, the Music Director may so notify the musician by registered mail of his/her decision to terminate or demote, with copies to the Union and the Director of Community Services of Ocean City. Such notice must include specific reasons for the Music Director's decision to terminate or demote.

7. If a musician disputes the action of the Music Director as set forth in number six (6) above, the musician shall have the right to appeal such decision to the Appeals Committee. Appeals to the Appeals Committee must be made to the Director of Community Services of Ocean City no later than 14 days from the date of the postmark of the notice to terminate or demote, with copies to be sent to the Union and the Chair of the Appeals Committee.

8. Demotions apply to all principal players and to members of the first violin section, who are permanently moved to the second violin section.

ARTICLE VI

APPEALS COMMITTEE

1. Non-probationary musicians and the Music Director, each person having one (1) vote, shall elect five (5) non-probationary members of the orchestra and one (1) alternate to serve on the Appeals Committee. These five (5) members shall elect their chairperson. The Election will be held during the first rehearsal/concert series of the summer season. If an Appeals process is already underway at the first rehearsal/concert series of the summer season, the Appeals Committee responsible for implementing that procedure will conclude that procedure, and the new Appeals Committee will implement any new appeal process.

2. Within 14 days of receipt of a request for Appeal, the Appeals Committee shall convene a meeting. At this meeting the Music Director may explain his/her reasons for the decision to terminate or demote the musician. The Music Director shall not be present during any deliberation of the Appeals Committee. The Appeals Committee may also take testimony and evidence from other sources. No performance or audition will be required of the appellant, nor shall any tapes be used against him/her. However, the aggrieved musician may play for the Committee if he/she so desires. After discussion, the Appeals Committee shall vote by secret ballot, majority vote rules, to uphold or oppose the action of the Music Director. The Appeals Committee shall conclude the Appeals Procedure within 14 days of its first meeting.

3. The Appeals Committee shall report its finding in writing to the Mayor of Ocean City, whose decision shall be final.

ARTICLE VII
AMERICAN FEDERATION OF MUSICIANS AND
EMPLOYER PENSION FUND (AFM-EPF)

On behalf of each musician covered under this Agreement, the Employer shall contribute to the American Federation of Musicians' Pension Fund (AFM-EPF) an additional amount equal to five percent (5%) of all wages earned under this Agreement. Each payment shall be accompanied by the appropriate personnel or AFM B Report Form, setting forth for each musician on behalf of whom pension is being paid, the musician's name, Social Security number, date (or month) of services(s) for which pension is being paid, and the amount of pension contributed. All contributions to the AFM-EPF shall be paid no later than the end of the month following the month in which the services occurred, and shall be furnished to the Administrator of such fund at a place designated by the Union.

ARTICLE VIII
COMPENSATION

Musicians shall be compensated as set forth on the following pay schedule:

2001	2002
Base Pay: \$97.29 per performance	\$100.70 per performance
\$76.18 per rehearsal	\$ 78.85 per rehearsal

Concertmaster - 100% over base pay

Principal Pay - 12% over base pay, includes the following positions:

- First Chair Violin II
- First Chair Viola
- First Chair Cello
- First Chair Bass
- First Chair Flute
- First Chair Oboe
- First Chair Clarinet
- First Chair Bassoon
- First Chair French Horn
- First Chair Trumpet
- First Chair Trombone
- First Chair Keyboard
- First Chair Timpani/Percussion

Performance as a soloist, in a work for solo instrument, 50% above base pay.

Performance as part of a duo, 50% above base pay.

Performance as part of a trio, 35% above base pay.

Performance as part of a quartet, 25% above base pay.

Performance as part of a quintet, 20% above base pay.

Premium pay for soloist, duo, trio, etc. shall be for full work with specific recognition.

Keyboard Accompanist/Vocal Coach, 50% above base pay

Doubling - 20% over individual scale for those services during which more than one (1) instrument is required. First double: 20%, second double: 10%, third double: 5%.

Doubling combinations include:

1. Flute/piccolo
2. Oboe/English Horn
3. Bb Clarinet/Eb Clarinet
4. Bb Clarinet/Bass Clarinet
5. Bb Clarinet/Saxophone
6. Trumpet/Piccolo Trumpet/Flugelhorn
7. Timpani/Drum Set/Mallets
8. Piano/Celeste/Harpsichord
9. Other doubling combinations as agreed upon by the doubling musician and the Music Director.

Cartage: Percussion - \$10.00 per round trip for drum set

\$25.00 for two (2) timpani per round trip

2001 - Per Diem, \$15.00 for dinner (on days when two services are scheduled)

2002 - Per Diem, \$16.00 for dinner (on days when two services are scheduled)

New Year's Eve "First Night" three-hour performance will be paid at the rate of two (2) times the agreement scale.

ARTICLE IX

SERVICES

1. Musicians shall be sent a schedule listing all services for the ensuing season as soon as practicable, but no later than April 15th. Once the season schedule is set with a musician's established number of concerts, a musician must notify the Musical Director if they cannot make a concert. A minimum of two (2) weeks notice is required. If less than two (2) weeks' notice is given, a provision in the Substitute Policy must be followed.

2. A service (rehearsal or performance) shall be defined as a unit of work upon which wages are based.

3. A rehearsal in excess of two and one-half (2½) hours shall be considered overtime and compensated in 15-minute increments. For each 30 minutes of overtime, there shall be a five (5) minute break at the beginning of each 30-minute segment. If, in the judgment of the Musical Director, the required overtime will not exceed 30 minutes, the placement of the first five-minute break may be changed to the end of the overtime, if the majority of the musicians present approve.

4. Overtime for rehearsals shall be compensated at 150% the individual per service rate.

5. A performance in excess of two (2) hours shall be considered overtime, following a five (5) minute grace period for which no compensation shall be paid. Fifteen (15) minute overtime increments will begin at the end of the two (2) hour allotment for a performance. Overtime for a performance shall be compensated at 100% the individual per service rate for the first 30 minutes of overtime, and 150% the individual per service rate for the second and subsequent 30-minute periods of overtime.

6. A break (intermission) of 15 minutes shall be given to the entire orchestra at all services. No rehearsal shall extend beyond one (1) hour and 15 minutes without a 15-minute break.

7. All services offered to and accepted by the musician must be attended. Excused absences will be granted for illness or emergency. Excused absences for other reasons may be granted at the discretion of the Music Director. Excused absences will not be counted in the 30% absence allowance.

8. Musicians who have maintained non-probationary status for at least four (4) consecutive years may request for a good and sufficient reason an unpaid sabbatical for one (1) season or part thereof. Sabbaticals cannot be taken more than once during any five (5) year period. Requests for an unpaid sabbatical shall be submitted to the Director of Community Services of Ocean City, stating the reasons for, and the duration of, the requested sabbatical. Request for a sabbatical must be made within ten (10) days of receiving the performance schedule for the season. Requests for sabbaticals will be

considered on a first come, first serve basis. No more than five (5) musicians may be granted a sabbatical in any one (1) season.

9. Musicians are required to be seated and ready to play five (5) minutes prior to the start of any service. The City shall make every effort to make the stage available to Musicians a minimum of 30 minutes prior to the start of any service.

10. The first 30 minutes of any interruption or delay of a service caused by factors over which the City has no control, such as power failure (affecting the Music Pier and other boardwalk locations), injury or illness to anyone in the facility, weather, fire, fire alarm, or other emergency delay, shall not be counted in determining whether an overtime period has been reached.

11. If a show is scheduled for more than one performance, the same Musicians are required to perform for the length of that show's run. Musical Director may use his discretion to waive this.

12. Lateness/Early Departure: Wage penalty subtracted per 15 minutes or fraction thereof (rounded up), based on each musician's hourly rate per service. The first infraction will result in a letter of warning. Early departure is with prior approval of Music Director only, except in the case of illness or emergency.

ARTICLE X

GRIEVANCE PROCEDURE

1. The purpose of this procedure is to secure, at the lowest possible level, an equitable solution to the problems which may arise affecting the terms and conditions of employment under this Agreement.

2. Nothing herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate members(s) of the Community Services Department.

3. The term "grievance" as used herein, means any controversy arising over the interpretation, application or alleged violation of this Agreement affecting the terms and conditions of employment. An individual or the Union at the request of or on behalf of an individual or by the City may raise a "grievance".

4. The following constitutes the sole and exclusive method for resolving grievances between the parties covered by this Agreement, and shall be followed in its entirety unless any step is waived by mutual consent:

A. Step One - Music Director: The aggrieved musician shall file the grievance in writing within ten (10) days after the occurrence of the event giving rise to the grievance. An earnest effort shall be made to settle the differences between the aggrieved musician and the Music Director for the purpose of resolving the matter informally. Failure to act within the said ten (10) calendar days shall be deemed to constitute an abandonment of the grievance. The Music Director will answer the grievance in writing within ten (10) calendar days of receipt of the written grievance, with copies to the Union and the Director of Community Services of Ocean City.

B. Step Two - Director of Community Services: If no agreement can be reached at Step One, the musician or the Union may present the grievance in writing within ten (10) calendar days thereafter to the Director of Community Services or his designated representative. The grievance at this step shall contain the relevant facts and a summary of the preceding oral discussion, including the applicable section of the contract violated and the remedy requested by the grievant. The Director of Community Services or his designated representative will meet with the parties and answer the grievance in writing within ten (10) calendar days of receipt of the written grievance, with copies to the Union and the Business Administrator.

C. Step Three - Business Administrator: If the Union wishes to appeal the decision of the Director of Community Services, or his designated representative, such appeal shall be presented in writing to the Business Administrator or his designated representative within ten (10) calendar days, accompanied by a brief outline of the material facts and the rationale for the grievance, including the article of the contract that was violated. This presentation shall include copies of all previous correspondence relating to the matter in dispute. The Business Administrator or his designated representative shall respond in writing to the grievance within ten (10) calendar days of the submission, with a copy to the Union.

D. Step Four - Binding Arbitration: In the event the grievance has not been satisfactorily resolved at Step Three, the Union and only the Union may submit the matter to arbitration on the following conditions:

1. The request for arbitration must be filed in writing with the Public Employment Relations Commission (PERC) no later than thirty (30) calendar days after receipt of the response or expiration of the time to respond at Step Three.
2. Nothing in this Agreement shall be construed as compelling the Union to submit a grievance to arbitration. The Union's decision to request the movement of a grievance to arbitration or to terminate the grievance prior to submission to arbitration shall be final.
3. For all grievances, the cost for the service of the arbitrator shall be borne equally by the City and the Union. Any other expenses, including but not limited to the presentation of witnesses and the preparation of transcripts, shall be paid by the party incurring same.
4. The arbitrator shall be bound by the provisions of this Agreement and the Constitution and Laws of the State of New Jersey, and be restricted to the application of the facts presented to him involved in the grievance. The arbitrator shall not have the authority to add to, modify, subtract from, or alter in any way the provisions of this Agreement or any amendment or supplement thereto. The decision of the arbitrator shall be final and binding.

5. The time limits expressed herein shall be strictly adhered to. If any grievance has not been initiated within the time limits specified, then the grievance shall be deemed to have been abandoned. If any grievance is not processed to the next succeeding step of the Grievance procedure within the time limits prescribed, then the disposition of the grievance at the last preceding step shall be deemed to be conclusive. If a decision is not rendered within the time limits prescribed for decision at any step in the Grievance Procedure, then the grievance shall be deemed to have been denied. Nothing herein shall prevent the parties from mutually agreeing to extend or contract the time limits provided for processing the grievance at any step in the Grievance Procedure.
6. Any aggrieved party may be represented by the Union's representatives at all stages of the grievance procedure.

ARTICLE XI

UNION ACCESS

Representatives of the Union shall have access to the place of any service for the purpose of conferring with the musicians, or conducting any other legitimate business, provided the conduct of said business shall not diminish the effectiveness of the designated representative's Division, and further provided that permission is granted in advance by the appropriate Department or his/her designee.

ARTICLE XII

NON-DISCRIMINATION

The City shall not discriminate against any musician on the basis of race, color, religion, sex, sexual preference, age, national origin, marital status, union activity or political affiliation.

ARTICLE XIII

MANAGEMENT RIGHTS

The City hereby retains and reserves until itself all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the Laws and Constitution of the State of New Jersey and the United States.

The exercise of the foregoing powers, rights, authority, duties or responsibilities of the City, the adoption of policy, rules, regulations and practices and furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and then only to the extent that specific and express items hereof are in conformance with the Constitution and Laws of the State of New Jersey and United States and the ordinances of Ocean City.

Nothing contained herein shall be construed to deny or restrict the City of its rights, responsibilities and authorities under N.J.S.A. 40:1 et.seq., N.J.S.A. 40A:1 et.seq., N.J.S.A. 11:1 et.seq., N.J.S.A. 11A et.seq., any other national, state or county law or administrative code.

ARTICLE XIV

ORCHESTRA PLANNING LIAISON

The City and the Union will meet periodically to review plans for the growth and expansion of the Ocean City Pops Orchestra.

ARTICLE XV

RESCHEDULING/CANCELLATION OF SERVICES/FORCE MAJEURE

It is the responsibility of the City to notify musicians in writing of any change in the schedule within 48 hours of such a change having been made. If a musician cannot accommodate the schedule change, any resulting absence will be excused, and not counted in the 30% absence allowance.

If musicians are notified four (4) weeks or less before a change in the schedule of more than thirty minutes and are unable to accommodate the change, they will be compensated at the rate of 50% of the compensation they would have earned, had they played the engagement. If such notification is made two (2) weeks or less before a change in the schedule, full compensation will be made to those musicians who cannot accommodate it.

With the exception of an emergent condition, if musicians are notified four (4) weeks or less before the cancellation of a service, they will be compensated 50% of what the cancelled service(s) would have paid. If musicians are notified two (2) weeks or less before the cancellation of a service, they will be compensated in full.

In the event that it becomes impossible to hold or continue one or more services by reason of an act of nature such as inclement weather, fire, flood or pestilence; acts of war or other circumstances beyond the control of the Employer (but not including financial emergencies), the Employer shall have the right to cancel services for the duration of the force majeure situation and shall not incur financial obligation to any musician beyond that for services already performed and any payments and benefits due.

ARTICLE XVI

DRESS REQUIREMENTS

Concert Attire: Women - White blouse, black slacks or skirt, black shoes.

Men - White jacket, white shirt, black bow tie, black pants, black shoes and socks.

Theater Pit: All black for men and women.

OPENING AND CLOSING NIGHTS OF THE SEASON AND AS DIRECTED:

Women - Black blouse and skirt or slacks or black dress, black shoes.

Men - Black tuxedo, white shirt, black bow tie, black shoes and socks.

ARTICLE XVII

RECORDING

1. No performance or rehearsal of the Orchestra shall be recorded, reproduced or transmitted from the place of the service by any means whatsoever, by the City, in the absence of a specific written agreement between the parties.

2. Union approval of tapes made for grant purposes; artistic review, civic projects, personal use and video brochures shall not be unduly withheld.

3. Tapes made for the purposes noted in item #2 shall not entitle employees represented by the union to any additional wages or benefits.

4. Terms and conditions related to tapes or recordings for purposes other than those noted in item #2 above shall be negotiated separately from the contract between the parties.

5. Should any product created and/or utilized under the terms of this Article ever be utilized for any purpose not explicitly set forth herein, the City shall enter into and fulfill all conditions required by the appropriate agreement of the American Federation of Musicians, including, but not limited to, the payment of 200% of wages provided for in the collective bargaining agreement between the parties.

APPENDIX "A"

The following are considered non-probationary musicians of the Ocean City Pops Orchestra as described in Article V:

1st Violin:	Olga Konopelsky (Concert Master) Luigi Mazzochi Lucia Calabro Tammy Seymour
2nd Violin:	Xi Chen (on leave of absence 2001) Sally Scheible Carmina Gagliardi
Viola:	Anthony Simmons Marka Kasker-Simmons
Cello:	Anthony Pirollo Charles DePasquale
Bass	Laura Ruas
Piano:	Jeffrey Uhlig
Flute:	Pamela Whitman
Oboe:	Steve Labiner
Clarinet:	Arne Running
Basoon:	Andrea Herr
French Horn:	Kenneth Soper Robert Rynkiewicz
Trumpet:	James Hala Steve Heitzer (half position) Eric Schweingruber (half position)
Trombone:	Cathy Bridge W. Barry McCommon (grant funded)
Percussionist:	Mark O'Kain

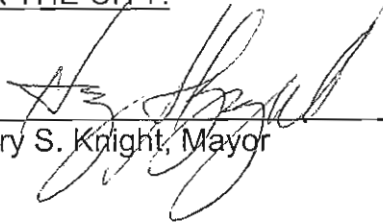
ARTICLE XVIII

TERM OF AGREEMENT

This Agreement shall be in full force and effect from March 1, 2001 to and including February 28, 2003. This Agreement shall continue in full force and effect from year to year thereafter unless one party or the other gives notice in writing no sooner than 150 days nor no later than 120 days prior to the expiration of this Agreement of a desire to change, modify or terminate this Agreement.

AGREED AND ACCEPTED:

FOR THE CITY:



Henry S. Knight, Mayor

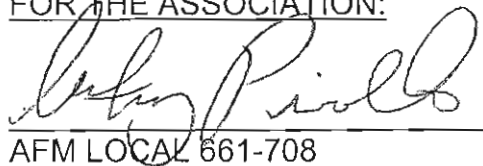
DATE 6/28/2001

Attested By:



Cindy Buffete, Deputy

FOR THE ASSOCIATION:



AFM LOCAL 661-708

DATE 6/28/2001