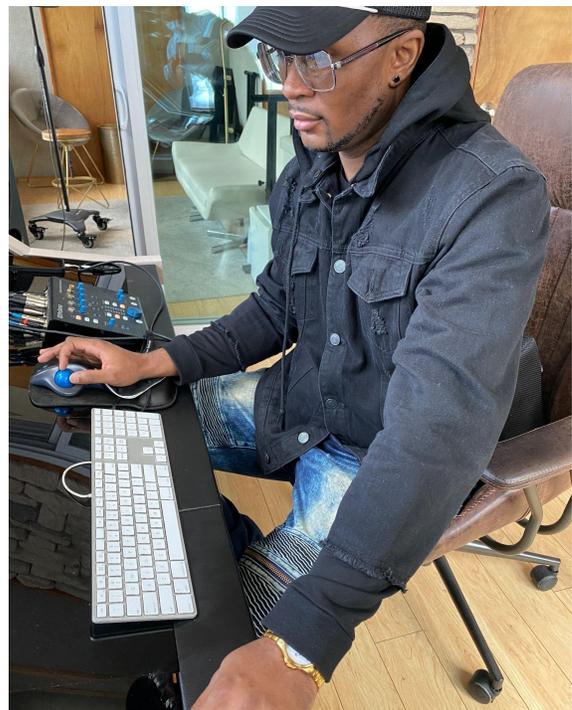


# Non-Union Blues

*Many singers, composers, record producers and others in the music industry cannot get paid at scale nor can they secure adequate health benefits because of the rules regarding union membership.*

Andre Fennell bops his head to the beat as he blends vocals with instrumentals at a digital sound board on the 16th floor of Lounge Studios near Times Square. He mixes a track, settling on a musical cue.

Fennell, 38, has been working in the music industry since he was a teenager. He has come a long way from where he grew up in Jamaica to where he is now—co-producing a song for Rihanna about lost love. It is



*Image 1: Andre Fennell at work at Lounge Studios.*

called “Biggest Lie Ever Told.” Rihanna is just one of the many collaborations he has had with some of the music industry’s top artists, including Jennifer Lopez, Beyonce, Sting, Ne-Yo, Justin Timberlake, P. Diddy and Jordin Sparks.

He has been nominated eight times for Grammy Awards, has had 60 production/licensing/publishing deals and over 50 releases. Yet, when he broke a finger in 2017 two weeks before sharing the stage and singing on tour with the electronic dance music DJ group, Showtek, in Australia, he could not get proper medical treatment.

“I went to Urgent Care and they immediately told me that I needed surgery,” recalls Fennell, who goes by “GC” when he performs. “With the trip coming up and being uninsured at the time, I asked for the best they could do on-site. They wrapped me up, gave me a finger brace and prescribed pain meds, for which I paid out of pocket. It’s been five years. I have yet to have the surgery and I’m still feeling that bill to this day.”

The injury cost Fennell \$13,000 out of pocket. If unionized and covered under the SAG-AFTRA Health Plan, he would have paid \$0.

But Fennell does not qualify for union membership in either SAG-AFTRA or the American Federation of Musicians jurisdictions. This means he has none of the protections or benefits, such as health care and guaranteed scale payments. And he is not alone.

Organizations that started out to help protect musicians have a longstanding history of ostracizing those who need support, according to music historian, Ted Gioia. It was not long ago that the American Federation of Musicians instilled a recording ban in protest

against major record labels and a royalty payment dispute. The strike, which ran from 1942 to 1944, did not include singers, as they were not considered to be serious musicians at the time, said the musician, author of “Music: A Subversive History” and founder of Stanford University’s jazz studies program.

The number of full-time independent musicians including singers in the United States has only increased since the 20th century. In 2020, the Bureau of Labor Statistics reported a total of 157,300 singer and musician jobs in the country. That was over three times the number of actor jobs in the same year. However, many of those independent musicians are not covered by unions.

SAG-AFTRA represents a range of entertainment and media workers. When it comes to singers, the union is the sole entity authorized to bargain on behalf of vocalists with major record labels. For singers, songwriters or producers who sign with such companies as Universal Music Group, Sony Music, or Warner Music Group, those artists are protected by the terms of the union’s Sound Recordings Code, which dates back to 1951, according to Kristina Gorbacsov, national director of music at SAG-AFTRA.

The code provides retirement benefits and guaranteed health coverage for all artists under contract to a signatory label. It also offers protections for background vocalists. Benefits include a guaranteed scale rate, a corresponding health and retirement contribution, and reuse payments when songs are reused in a new medium. SAG-AFTRA currently

represents over 160,000 members, although the union will not share how this number has fluctuated over time, nor will it reveal the percentage of members who fall under the recordings artist category, one thing is certain. Access to the union's protections not only depend on an artist's professional situation, but also on the artist's ability to pay the \$3,000 initiation fee, \$222.96 annual due and work dues in the amount of 1.575% of earnings up to \$750,000.

Dues are lower at the American Federation of Musicians. Members pay an initiation fee of \$35 to \$100 work dues in the amount of 2.5% of the wages from each professional contract and an annual renewal fee of \$180 to \$188. For the protections that the union offers, the federation seeks a much more reasonable commitment. The organization supports over 80,000 musicians in Canada and the United States, but there are limitations here, too. Unless an independent musician is an instrumentalist, the artist is not eligible for membership.

As the largest musicians-only union in the world, the federation may be a stakeholder in the industry, but it does not serve an artist like Fennell, who relies on digital software to create sound.

To Fennell, even with his years of experience, the fact that vocalists become union eligible by way of major label contracts comes as a total surprise. Songwriting and producing are his livelihood but he does sing professionally as well. He was signed to

Ultra Records from 2013 to 2017, although it was for a publishing deal involving only songs that he had written and produced. Once again, he was not union-eligible.

Young Fennell had a simple childhood. He rode the bus to Catholic school each day, and after class, would play soccer and volleyball in a professional field with his classmates. He lived in the parishes of St. Catherine and Kingston, Jamaica, until his parents later divorced. His father, Fitz Fennell, an electrical engineer, moved to New York, and young Andre moved with his mother, Pansy Johnson, a registered nurse, to Florida.

It was around this time, his early teens, that the budding artist began putting pen to paper as a means of escape. Fennell started writing poetry, sonnets and haikus, which over time evolved into songs. When his music-making school friends began relocating to New York City, the 16-year-old Fennell decided to join his dad. Though he had no formal training in music, Fennell seemed to have a knack for songwriting and wanted to have his friends who were DJs nearby. In 2000, only two years after his move to New York, he signed on with his first music manager, Lex Luther.

Fennell went from beat-making with his friends in the garage to having his very own representative. As a result of working with Luther, each connection began leading to the next. Among the manager's contacts were Lil' Kim and Wyclef Jean. In 2004, Fennell began producing for them both. More producer collaborations followed, starting in 2005

with the dance band Cobra Starship and continuing over the years to artists like Rhianna and Sting.

Even with the possibility of some musicians becoming unionized through major label contracts, the number of full-time musicians signed to record labels began to decline sharply in 2003, according to the global business statistics provider, Statista. The drop was so drastic that the U.S. Census stopped tracking data for label-employed musicians entirely in 2016. Fennell has an idea as to why that may be the case for some musicians.



*Image 2: Andre Fennell in the vocal booth at Lounge Studios.*

“When I first signed with Ultra, I thought a big label would be great,” he said. “It was one of the biggest dance labels in the world. But it ended up being a total waste of my time. They gave me an advance of \$15,000 which they recouped in two months and after that, were still taking 50% of my publishing.”

What Fennell signed is known as a standard royalty deal. While such deals may help keep an artist afloat for a period of time, they can be highly exploitative. According to former Sony Canada A&R Vice-President Vito Luprano, the contract is set up this way intentionally. Any sums that a record label fronts are essentially loans. In order for an artist to profit, the artist’s music must generate substantially more than a label's initial

investment. It can be a burden for any music artist and Fennell, of course, is not the only musician who is trying to make the artist's life work.

In the heart of NoLita, Nina Siegel, 37, has been catching up with her girlfriend, Alicia Lanzieri at their friend Numi Dang's textile store. They are making Vietnamese Banh Mi sandwiches, which are tasty, fun and a perfect snack, especially when Siegel is taking a break from being Nina Blue, a blue-eyed soul singer who built her career through busking. There are no benefits though, and there is no guaranteed pay.

Born and raised in New York City, Siegel's father, John Hughes, a former baseball player, died of AIDS when she was 2 years old. As a professional makeup artist who was always on the go, Siegel's mother, Lorraine Altamura, had no knowledge whatsoever that Hughes was even sick.



*Image 3: On the left, girlfriend, Alicia Lanzieri. On the right, singer, Nina Blue. At the center, canine cuties Max and Ruby. At Numi Textiles store.*

A year later, Altamura met and married former actor, Harvey Siegel, known on Broadway for his roles in “The Sunshine Boys,” “Murder at the Howard Johnson’s” and “Wheelbarrow Closers.” Although the couple later divorced, Harvey Siegel legally adopted Nina Blue, which played a huge role in her life. When she was 5, Siegel took her to see her first Broadway show, “Me & My Girl.” It was that musical that inspired Nina Blue to become a performer.

She decided on the stage name, Nina Blue, based on the one trait that both of her fathers shared -- blue eyes. It took time for Siegel to overcome her shyness and the temptation of work that would provide a more stable income. After college, and a year-long stint in bartending in the mid-2000s, she longed for more.

“I quit doing everything that wasn't music and went to Guitar Center. I bought a \$500 miniamp called the street cube. It’s amazing, small and easy to carry,” Siegel said. “I popped up a mic stand, attached a microphone to the speaker, used my phone to get Spotify instrumentals and started busking in the street.”



*Image 4: Nina Siegel singing on Coney Island, New York.*

Buskers like Siegel who want to perform in high traffic New York areas, such as Grand Central Station and Times Square, must apply and audition to do so. Not just anyone can

legally busk. Musicians must apply to the highly competitive official Musicians Under New York program. Only 10 are selected each year. Once brought on board, buskers may retain their public performance rights and permits for life under the Metropolitan Transportation Authority (MTA). Artists' subway performance slots are coordinated, scheduled in advance and they do not have to worry about being bothered by the authorities.

Thankfully for Siegel, busking in the subway worked out. At first, she was making \$20 to \$30 an hour, just under \$31.40, the median hourly pay for singers in the United States in 2020.

“I was like, ‘Oh shit. How many hours can I put in without having to pee, having to schlep equipment around and find a bathroom?’”

Siegel bounced from platform to platform, making around \$200 every set, until one day, when an old bartending client happened to walk by. He was blown away by her voice and had been frequenting a bar that he knew was looking to do live music.

“Art House Hotel,” Siegel recalls. “I did a free set, so they could hear me. Next thing I knew, I had a three-day-a-week residency.” She built a band and started getting requests to perform at weddings and parties. “It was the best feeling ever!”

Siegel still hopes to be a recording artist, though. In 2011, she passed several audition rounds and appeared singing in the early stages of Season 1 of “The X Factor U.S.A.” In 2012, she advanced to the Top 20 Girls on “American Idol,” Season 12. Although Melanie Amaro won “The X Factor” and Candice Glover won Siegel’s “American Idol” season, making a living from her craft alone keeps her pushing forward. It also keeps her from remembering how many musical artists remain unemployed.

According to a survey by Pew Research Center, more than 50% of music artists in the United States are not employed full-time.

Fennell is fortunate that his writing and producing allow him to live decently. He earns between \$70,000 to \$90,000 each year, with income from his writer royalties totaling \$48,000 to \$53,000. The remainder of his earnings come from producing, for which he charges anywhere from \$5,000 to \$15,000 per session. When he was touring sporadically, that gave him an added cushion.

“The fluctuation can mess with your savings at times, so creatives can’t have poor money management,” Fennell says.

He uses his investments to supplement his income when needed. Having studied aeronautical engineering in college, Fennell is thankful to have had Dwayne Shippy, a

childhood friend who studied music law at Baruch College. Fennell credits Shippy with helping him to develop the business and management skills that got him this far.



*Image 5: At Sensation Festival in Sydney, Australia. On the left, Sjoerd Jansen of Showtek. On the right, Andre Fennell.*

The deficiency in remuneration and health benefits that independent artists face is clear. The question is what can be done to guarantee those musicians better work circumstances. Create a new union altogether? Kevin Erickson, director of the Future Coalition of Music, a nonprofit organization based in Washington, D.C., has considered that question. He and his colleagues have been working since 2000 to create a music industry in which artists are fairly compensated financially and receive the benefits that they deserve. It is a difficult task.

Part of the problem, Erickson says, is that the industries that are most easy to unionize are those in which there is a relationship with an employer who is the single source of income. A Broadway orchestra, for example, may derive most of its income from its relationship with a single employer.

Unfortunately, for artists like Fennell and Siegel, income is far more fragmented. As a result, artists are often forced to juggle between working with multiple business partners and employers in tandem. From working live performances to working with labels and streaming services, each engagement is founded on its own unique contractual basis. Moreover, an artist who serves as a producer and employs singers on one project can end up being the hired singer on another project.

SAG-AFTRA Director Gorbacsov says that those who are lucky enough to be vocalists on union productions are compensated at a session rate of \$257.50 an hour. But there are no set rates on the producer side and Erickson argues that, in an ideal world, further considerations need to be made.

Of most importance? The issue of diversity of practice -- the idea that the genre in which an artist works and the scale at which the artist works will largely determine what minimum benefits the artist can expect. Erickson says that the point of scale is a key aspect of the conversation that is often left out—one that change-makers cannot possibly sit down and create policies to encompass all independent music artists without.

Looking back, Fennell says that at the start of his career, the right union would have had to include a comprehensive benefit plan. He would have wanted access to a six-month stipend in case of unemployment to cover rent, food and utilities. That, in addition to business management services to help track his passive music royalties. Fennell looked into joining SAG-AFTRA back in 2005. After exploring, he was left with the impression that the organization was geared more toward actors. Today, he is conflicted as to whether he would ever join a union at all. When it comes to SAG-AFTRA, in particular, Fennell would rather be unrestricted in the work that he can do, and not have to abide by the union's requirement to work exclusively on SAG-AFTRA contracts.

Not Siegel, though. At the start of her recording career, she wants industry connections and a representative body to help get her there, and perhaps some health benefits too. "I would want to be unionized as long as it didn't limit me from being able to take on creative work. A union that fights for your well-being and vision and keeps you protected in ways you might not be able to would be great," she says.

Not only would the ideal independent artist's union need to account for diversity of scale, style and preference, but it would also need to account for the significant fact that the term "independent musician" can be defined in different ways: There are musicians who are signed to independent labels; musicians who are self-releasing recording musicians;

and, of course, there is a population of musicians who do not primarily participate in the recorded music marketplace, such as songwriters.

Given the significant organizational challenges that present themselves in adopting traditional union models, the Future Coalition of Music has found a more modern approach for artists to have collective leverage. That is, pushing for individual benefits incrementally on a smaller scale, in order to build each independent artists' bargaining power.

Collective leverage is something that most artist representatives can insist their clients have, regardless of whether that representative is a business partner, agent, or manager. However, there are factors that limit the amount of collective leverage that individual creators have. One such factor is the small number of major labels that hold the music industry power.

In the first quarter of 2021, Spotify controlled 32% of the music market share, according to Statista. Next in line was Apple Music at 16%. This creates a huge imbalance between buyers (or investors) and musicians. Platforms like Spotify exert a downward pressure on price by paying only \$0.004 per stream, which forces independent artists to accept whatever terms are given to them.

Now, new legislation before Congress, introduced in October 2021, aims to allow independent artists to band together to negotiate with streaming platforms and refuse to license their music to online services that refuse to abide by market value. The proposed legislation, called the Protect Working Musicians Act, also ensures that antitrust laws are no obstacle to negotiations. The bill is being backed by industry players like the American Association of Independent Music, the Artist Rights Alliance, and the Future of Music Coalition. They say that as the laws are now, artists who unite to represent themselves outside of a union risk being targeted by antitrust law as an illegal cartel.

Another proposed bill, the American Music Fairness Act, introduced by Rep. Ted. E. Deutch (D-FL), seeks protections to ensure that artists are fairly compensated for the use of their music no matter how large or small the radio station playing their song.

To industry veterans like singer-songwriter Rosanne Cash, the digital counterparts to traditional radio are not pro-music at all. “They are tech companies,” she says. The focus is usually on building multibillion-dollar corporations.

As a board member of the Artist Rights Alliance, whose mission is to fight for healthier digital creative economies, Cash is challenging a new Spotify feature called Discovery Mode, or as Cash calls it, “payola for the digital age -- a disguised royalty cut that artists are forced to pay.” The term “payola” referred to the practice of record labels or artists paying radio stations for airplay. Today, payola also means digital services that

essentially do the same thing. It is a practice deemed illegal by the Federal Trade Commission (FTC). However, the FTC has no jurisdiction in the online world.

Spotify Discovery Mode is undergoing early testing. Once launched, it will give artists the option of paying for preferential placement through algorithms and playlists. According to the Artist Rights Alliance, Spotify is expected to take as much as a 50% cut of artists' royalties. If 20% of all Spotify streams end up falling within the feature, it will reduce annual royalty payments to music creators by over \$200 million.

Are there better avenues for benefit security and change than unionization and government policy? George Howard, a professor of music business and management at Berklee College of Music, thinks so. He says that he is weary of policy measures to fix music industry-related problems. Aside from the Music Modernization Act, no government body has succeeded in setting in motion any program with positive industry impact.

Instead, Howard has devoted much of his time to researching music in the context of blockchains. That is, the foundational technology for non-fungible tokens and cryptocurrency. He sees an application of the digital space to musician contracts and intellectual property. On a blockchain called RAIDAR, Howard and colleagues at Berklee and the Massachusetts Institute of Technology have created a platform to help music artists and clients connect. Since blockchains are decentralized, artists can be fully

compensated without having to give up any cuts or ownership. In cases where clients wish to license music through RAIDAR, computer servers ensure that an accurate transaction record is kept. Once a song is used by a client, a computer block attributed to the song shifts, triggering the appropriate payments to be made.

This prevents a whole set of issues, such as unauthorized use of music on sites like YouTube. For now, RAIDAR remains a pilot program available only to students. But for artists like Siegel, releasing her music exclusively in the blockchain space could easily be the future. For a musician who has already made it to the top against all odds, there may be little, if any, incentive for change.

But as Candice Stephenson, a lawyer who founded Poshrebel Entertainment, says, “It’s a shame that a lot of these artists, songwriters and producers spend all this time creating amazing things; music so incredible that it can create jobs for an entire label staff, and provide that staff with benefits that extend to their spouses and children, only for the artist to not get that themselves.”