

Senza Sordino

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The Colorado Symphony Plays On *by Justin Bartels and Paul Naslund*

The Colorado Symphony is projecting to end its 2012 fiscal year with a balanced budget. This revelation may come as quite a surprise to some on the outside looking in. However, for the musicians, staff, administration, and board, the hard work of the past few months has paid off.

One of the key factors in the rapid stabilization of the organization was the number of old friends of the Colorado Symphony who returned to help the orchestra. Former board chairs Mary Rossick Kern and Jerry Kern rejoined the board and were reelected as board chairs. Former chief executive officer Jim Copenhaver came on board to run the organization in the interim period. Former vice-president Gene Sobczak was named the permanent chief executive officer and president, and assumed the post in January. Evan and Sandy Lasky returned to help with financials, communications, and marketing. The organization also welcomed support from 10 new high-profile board members. Musicians and management returned to a model of collaborative governance that was established when the orchestra was founded in 1989. The message is clear: a full-time professional orchestra can and will succeed in Colorado.

Since its founding, the Colorado Symphony had been engaged in a 20-year collaborative operating model. Management and musicians have worked together to ensure the financial stability of the organization. Musicians were part of the day-to-day operations by serving on all governing committees, including financial committees, and also by serving as voting members on the board of trustees.

During the 2008–2009 season the financial picture of the orchestra started to become cloudy. The orchestra was running a deficit. In order to alleviate this deficit and in the spirit of collaboration, the musicians agreed to give back one week's pay. As the 2009 fiscal year-end approached along with the beginning of the 2009 summer season, the Colorado Symphony's financial picture had not improved. Management asked the musicians for an emergency 31%

pay cut, which the musicians accepted. However, there was another hurdle—the CBA was set to expire on August 31, 2009.

Management wanted a 24% pay concession in the new agreement, and they were firm on this demand. There was a rift in negotiations as the tenor of the meetings from the management position had turned verbally combative. This was a drastic departure from the past 20 years. The musicians were given an ultimatum: if they refused to agree, the orchestra would file bankruptcy. With days before the first pay period, an agreement was reached and the musicians gave back 24% in salary and benefit cuts.

The 2009–2010 season ended with another deficit, even after the savings from the musicians' 24% wage concession. The 2010–2011 season continued under a "play and talk" agreement with the same terms as the 2009–2010 contract. By April 2011 there was sudden movement on a new contract. Part of the agreement required the board, management, and musicians to participate in a special study to research ideas of the orchestra's sustainability. Meetings for this sustainability study began in June 2011.

When meetings began, the musicians participating in the sustainability study felt an enormous amount of pressure, as many of the ideas of the local consulting firm mirrored the rhetoric bouncing around in places such as Detroit, Louisville, and Syracuse. The musicians feared that by participating in the process, they were simply lending credibility to the report's conclusions. The study called for the elimination of many work rules and job security measures. Doubling and move up pay would be eliminated, and there would be reductions to sick leave and vacation. The worst offense of the sustainability study was to recommend a move to a per-service, A/B/C contract model. Buried deep in the study was a request that the musicians suspend their collective bargaining agreement for five years, pull out of AFM recording agreements, and use students to supplement the ensemble. In case the plan didn't work, it even included an exit strategy. It was specifically noted in the study that the musicians were not going to be asked for a reduction of salary, however less than one month later, management was back at the table asking the musicians for another pay cut.

By late August, management asked the musicians to open up the latest agreement to take another \$540,000 pay cut and also sign onto the sustainability study's recommendations. Faced with a near impossible scenario, the musicians decided that the best course of action, after only eight days of negotiations and just before the season

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Chairperson's Report by Bruce Ridge



I've been reviewing some recent headlines from the national press:

Colorado Symphony (cue drumroll) is back in the black

...the Hawai'i Symphony Orchestra will make its long-awaited debut March 4, marking the return of a professional orchestra to the state more than two years after the Honolulu Symphony played its final note.

...another milestone in Alabama Symphony's rise.

Buffalo Philharmonic shows surplus under economic challenges

St. Louis Symphony ticket sales, gifts, endowment grow in 2011

Arts giving grew 5.7% to \$13.3 billion in 2010

How Classical Music Is Changing Young Lives

Grammy win for Nashville Symphony ... signal(s) Nashville's "golden age of classical music"

Jobless rate at 3-year low

I am sensing a turn-around for the image of classical music and the arts.

Still, there are so many battles left to fight. Just this month, a member of the Virginia legislature targeted symphony musicians in a mean-spirited and short-sighted attempt to overturn case law and deny a specific group of workers their rights, even though the arts benefit the financial health of the commonwealth of Virginia, and even though Virginia supports the arts at a much lower per capita rate than its surrounding states. The musicians of Louisville still await fair treatment, and the recent publication of a tedious book by Robert Flanagan has reinforced negative stereotypes against our field.

But there is much to feel optimistic about as well, though musicians can be a cynical lot. To paraphrase Oscar Wilde, sometimes when opportunity knocks we complain about the noise.

Since 2006, ICSOM has sought to learn the lessons of the past by unifying our membership and promoting a positive message to the field, the press, and our communities. More than any other segment of the union, ICSOM members have stood by each other in times of need, donating over \$830,000 to our colleagues. Musicians sent money to fellow artists they had never even met, simply because ICSOM is a united network of friends. I believe that the members of ICSOM have stood together in the moment of our greatest collective crisis because we knew we had only ourselves to depend on. Sometimes unity is easiest to achieve when things are hardest.

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Governing Board

Bruce Ridge, Chairperson
North Carolina Symphony
505 West Aycock Street
Raleigh, NC 27608
919-833-8720 • Cell 919-971-1160
bruceridge@earthlink.net

Brian Rood, President
Kansas City Symphony
9919 Rosewood Lane
Overland Park, KS 66207
913-706-4164
brianrood@sbcglobal.net

Laura Ross, Secretary
Nashville Symphony
1609 Tammany Drive
Nashville, TN 37206
615-227-2379 • Fax 615-259-9140
lar2vln@comcast.net

Michael Moore, Treasurer
Atlanta Symphony
953 Rosedale Road NE
Atlanta, GA 30306
404-875-TUBA (Voice/Fax)
mooretuba@bellsouth.net

Richard Levine, Senza Sordino Editor
San Diego Symphony
6304 Radio Drive
San Diego, CA 92114
619-263-2545 • Fax 619-263-7087
senza@richlevine.com

Matthew Comerford, Member at Large
Chicago Lyric Opera Orchestra
2014 North Pinetree Drive
Arlington Heights, IL 60004
847-392-4135
macmusic3654@yahoo.com

Paul Gunther, Member at Large
Minnesota Orchestra
5532 Rowland Road
Minneapolis, MN 55403
612-232-8689
pbgunther@gmail.com

Cathy Payne, Member at Large
San Francisco Symphony
751 23rd Avenue
San Francisco, CA 94121
415-666-3261
paycat@aol.com

Meredith Snow, Member at Large
Los Angeles Philharmonic
13610 Emelita Street
Van Nuys, CA 91401
818-786-3776
meredsnow@gmail.com

Susan Martin, General Counsel
Martin & Bonnett, P.L.L.C.
1850 North Central Avenue, Suite 2010
Phoenix, AZ 85004
602-240-6900 • Fax 602-240-2345
smartin@martinbonnett.com



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Secretary's Report by Laura Ross



Having just completed the 2011 ICSOM Conference minutes—36 pages, thank you very much—and knowing how quickly the next Conference will be upon us, I'd like to take a few minutes to reflect upon the historic Conference that will

be held in Chicago, August 22–25, 2012, at the Westin Michigan Avenue hotel.

First, let me share my own personal excitement, because I *love* history, and we will be celebrating 50 years of ICSOM's achievements. We have a vastly improved relationship with the AFM that has led to the establishment of the AFM Symphony-Opera Strike Fund, representation at the AFM Conventions and yearly meetings with the International Executive Board, input into rank-and-file appointments of AFM pension fund trustees, and the publication of the ICSOM (and other player conferences) wage charts.

Additionally, even with the blows our orchestras have suffered the past few years, the terms, working conditions and benefits found in our orchestra contracts are, I am sure, far beyond what anyone could have envisioned back in 1962! I know some people are bored by history, but not me. I am fascinated by all we can learn from the past, but I also have such admiration and gratitude for the men and women who realized how necessary it was to reach out to their colleagues in other orchestras—to call them together in one place for a couple days—and to share information and knowledge that has guided us to the contracts we work under today.

Those pioneers of our industry did not have the means to communicate—computers, cell phones, the Internet and nearly constant 24/7 connectivity—which we take for granted these days. As I looked over some of ICSOM's archives from the first few years, I was amazed that they accomplished as much as they did when you consider that the majority of their communication was through handwritten or typed letters. Those first few years, our ICSOM



In preparation for ICSOM's 50th anniversary Conference, Secretary Laura Ross meets with representatives of the host orchestras and the Chicago local in Chicago's Italian Village. *Clockwise, from front left:* Teryl Jares, Laura Ross, Bill Buchman, Rachel Goldstein, Gary Matts, Matt Comerford, Michael Shelton.

delegates and officers were just as committed to helping to establish the National Endowment for the Arts as they were to improving their own orchestras' contracts. The first issues of *Senza Sordino* were not assembled with publishing software but with a typewriter, scissors, tape and glue. In an early version of ICSOM's bylaws, dues were established at \$2 per member, and this was to fund all the activities of the officers and board of ICSOM, as well as ICSOM communications.

Additionally, some of the musicians who served as our first leaders were themselves under attack from their employers and/or locals—I don't know how they did it! And I regret that many of these heroes are no longer with us to share their stories and to receive the grateful thanks of those who benefited from their wise decisions; I would have loved meeting them.

As the Governing Board plans the upcoming Conference agenda, it has had the benefit of working with the outstanding assistance of two wonderful individuals—retired Chicago Symphony violinist and author of *ICSOM: A 40 Year History*, Tom Hall, and current Minnesota Orchestra violinist and gifted author of *More Than Meets the Ear*, Julie Ayer. They have assisted us with Conference suggestions and have reached out to many of ICSOM's first officers and delegates. We have also been in communication with all our former ICSOM chairpersons. I am pleased that so many will be in attendance at the Conference this summer.

We continue to discuss how to celebrate ICSOM's past, present and future. It's also possible we may reach out to ICSOM's member orchestras—possibly to request photos and former documents, or perhaps to write a brief paragraph detailing your orchestra's history for a commemorative program or issue of *Senza Sordino*. If you have something to contribute, please do not hesitate to contact me.

I am also excited to meet, either for the first time or to renew my acquaintance with, our early leaders—to hear their stories, and to thank them for having the courage and intelligence to establish ICSOM. I hope that many of ICSOM's orchestra members will attend the Conference this summer. Our Chicago host orchestras—the Chicago Symphony Orchestra, the Lyric Opera Orchestra of Chicago, and the Grant Park Symphony—along with the Chicago Federation of Musicians, Local 10-208, are already working to assure the Conference is a success. So, too, is Conference host and coordinator, Bill Buchman, from the Chicago Symphony.

And me? Well, I'll be assembling a display of ICSOM's history with the assistance of Julie Ayer, who will be providing some of the materials from her book. I'm also hoping there will be materials provided by our ICSOM orchestras and retired ICSOM emeriti. The Conference mailing with all the registration materials will be ready for distribution in mid-May. The ICSOM Delegate Handbook, which I continue to update, is now in digital form and
(continued on page 7—see ICSOM'S 50TH ANNIVERSARY CONFERENCE)

Nobody's Perfect (Representing Musicians with Disabilities)

by Susan Martin, ICSOM General Counsel

Recognizing disabilities and providing reasonable accommodations as required by federal law are topics that are often overlooked or misunderstood by employers and can be perplexing for even the most experienced union representatives (and attorneys). Because the law has changed and because disability-related matters arise from time to time, the following provides a brief summary and some issues to be aware of in the orchestra workplace. We welcome your questions and comments.

The Americans with Disabilities Act (ADA) was enacted in 1990 to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” The ADA applies to employers who employ 15 or more employees. Unfortunately, for over two decades after the law’s enactment, the question of who qualified as disabled under the ADA was, in general, narrowly construed by the courts, including the Supreme Court, in ways that made it extremely difficult to come within the scope of the statute or to prove disability discrimination. The ADA Amendments Act (ADAAA) was enacted in 2008 in response to some of these Supreme Court decisions and became effective on January 1, 2009. The Equal Employment Opportunity Commission (EEOC), the federal agency charged with enforcement, finalized regulations under the new law in May of 2011.

What Is a Disability? Under the ADAAA, the definition of disability is to be given an expansive interpretation, in favor of broad coverage and “should not demand extensive analysis.” As under the original statute, a person has a disability if he or she meets one of three criteria and is able to do his or her job with or without reasonable accommodation. Employees are disabled under the law if they:

1. have a physical or mental impairment that substantially limits one or more major life activities; or
2. have a record of a physical or mental impairment that substantially limited a major life activity; or
3. are perceived as having an impairment.

While the basic definition of disability did not change, the ADAAA makes it much easier to meet the definition of disability by changing the way the law is to be interpreted; making clear that the law is to be construed in favor of “broad coverage” and that the question of whether someone is disabled should not require “extensive analysis.” Among other changes, the ADAAA broadened the concepts of “substantially limits” and “major life activities,” making it much easier to prove the existence of an “impairment.” An impairment is a physical or mental disorder, illness, or condition. These can include physiological disorders or conditions, cosmetic disfigurement, anatomical loss affecting one or more body systems or any mental or psychological disorder, including emotional or mental illnesses.

How Substantial Is Substantial? The ADAAA, as implemented by the EEOC, makes clear that an impairment that “substantially limits” (a major life activity) need not prevent or severely or significantly

restrict that activity. An impairment can be substantially limiting even if the condition is episodic or in remission (like asthma, diabetes or various mental illnesses). *The test is whether the condition would substantially limit a major life activity when the condition is in the active phase.* In addition, the determination of whether a condition “substantially limits” “a major life activity” must be determined *without taking into account mitigating measures* such as medications, and other medical devices or equipment, (with the exception of regular eyeglasses and contact lenses).

What’s a Major Life Activity? The ADAAA also expanded the scope of what constitutes a “major life activity” (that must be “substantially limited” to constitute an impairment covered by the ADA). Major life activities include activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. In addition, the amended law now recognizes the operation of *major bodily functions*, as major life activities. These include, for example, functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. (So yes, sex can be included.) The EEOC has stated that the list of major life activities is not exhaustive and includes the basic activities that most people in the general population can perform with little or no difficulty.

Who’s Disabled? The EEOC has stressed that “it should easily be concluded” that there are some impairments that will virtually always meet the definition of disability whereas others may or may not constitute disabilities based on an individualized assessment. But even where the determination is not a foregone conclusion, the analysis should not be extensive. By way of illustration, conditions that will always limit a major life activity include cancer (limits cell growth), major depressive disorder (limits brain function), diabetes (limits endocrine function), etc. In considering whether there is a substantial limitation, the focus is on what major life activities are substantially limited, *not on what a specific individual can achieve.* One additional point-- in order to be protected, the impairment must not be transitory or minor. But the EEOC has refused to specify a required duration. It has stated that temporary, non-chronic impairments of short duration with little or no residual effects, such as a common cold, a sprained joint or broken bone that is expected to heal completely, are *usually* not disabilities.

The amended law also makes significant improvements in the protections afforded to persons “regarded as” having a disability and who are discriminated against as a result. If an employer believes an employee has a covered “impairment” regardless of whether the employee actually does, the employee is now protected by the law.

So Why Should We Care? The recent changes to the law mean that many more people qualify for the ADAAA’s protections. Workplace policies and interactions with musicians by management should be

evaluated with sensitivity to the fact that a given musician may be protected under the Act. In reviewing and policing contracts, musician representatives should try to be aware of whether problems a musician may be having on the job are related to the existence of a disability. If so, the law requires the employer to make reasonable accommodations upon the request of a disabled employee. Disabled musicians who are not being accommodated by management may be able to file charges with the Equal Employment Opportunity Commission (“EEOC”). It is also possible that discrimination on account of disability can be addressed through the grievance process.

What follows are some of the issues we have seen in the everyday orchestra world.

Reasonable Accommodations. If requested by the employee, the law requires employers to provide reasonable accommodations to disabled employees to enable them to perform their jobs. An employer must provide an accommodation unless it is an “undue burden.” An undue burden is one that results in *significant* difficulty or expense based on the resources and operations of the business. *Employers must engage in an interactive process with disabled employees to help find an accommodation that is reasonable.* This means the employers should meet with the employees to discuss their needs, an area where representatives can be really helpful. If more than one reasonable accommodation is available, the employer can choose the one that is least costly. Union representatives can work with employers and the disabled musician to help identify a reasonable accommodation because sometimes the accommodation may not be obvious. As union representatives, you can also discuss with fellow ICSOM members what other orchestras have done to accommodate musicians. Types of accommodations that have been provided in orchestras include such things as work schedule flexibility, accommodations related to placement of and types of seating, assistive device considerations, parking considerations and travel flexibility. Some employees may be fearful of disclosing a disability to the employer. The law protects against retaliation. Musician representatives can be especially helpful in assuring employees that they will be there to protect them.

Leave Policies. Some collective bargaining agreements have provisions that require that musicians on disability leave be replaced or terminated after a certain period of time. Depending on the circumstances, additional leave may be a reasonable accommodation for certain disabled employees. The EEOC has indicated that it expects employers to engage in the *interactive process* and that blanket leave policies may be subject to challenge. The key under the ADA is whether an accommodation constitutes an undue burden. Clearly, a disability leave of absence that forever precludes replacement through an audition may at some point in time be unduly burdensome. But the employer may still be required to engage in the interactive process before permanently replacing a disabled employee and the union has a right to be involved. Sometimes the interactive process is built into and described in the collective bargaining agreement, such as in provisions for communicating with employees about their likely expected return to work and for

obtaining medical information. You might want to revisit this issue during the next round of negotiations and put in provisions for accommodation of disabled employees in your orchestra’s leave policies.

Medical Information That Can Be Requested. When faced with a request for an accommodation, an employer may ask for documentation from an employee’s doctor about the individual and why the requested accommodation is necessary *only if the disability or the need for an accommodation is not obvious.* For example, the employer could not ask a blind musician’s doctor to provide proof of disability, but the employer could ask an employee with a heart condition or a mental illness for documentation and why the requested accommodation is needed. The employer can ask things like how an impairment limits a major life activity, the general type of impairment, and how the requested accommodation would enable the employee’s job to be performed. An employer may also require a medical examination and can make disability related inquiries, *but only if* the employer has a reasonable belief that an employee’s present ability to perform his essential job functions is impaired by a medical condition or if the employer has a reasonable belief that the employee’s condition will pose a direct threat. For example, an employee with a psychiatric illness who threatened co-workers and then sought treatment may be asked by the employer for additional information concerning his medication or treatment, or the employer may request that the employee submit to a medical examination. During a disability leave, the employer may require an employee to provide periodic updates on his or her condition and possible date of return. However, if the employer has granted a fixed period of extended leave and the employee has not requested additional leave, the employer may not ask for such information.

A Note about the Tax Consequences of Paying for Disability Insurance Coverage. Some musicians have inquired about whether disability insurance benefits are taxable. The answer (not surprisingly) is, it depends. The tax code looks to the source of funding. If the entire premium for the disability insurance coverage is provided by the employer and not included in gross income, or if the musician pays for the benefit on a pre-tax basis such that the cost of the premiums are not includible in gross income, the benefit is taxable (includible in gross income) when received. If, on the other hand, the musician pays for the disability insurance premiums with after-tax dollars, the benefits are not taxable. In cases where a musician is offered a “buy up” (such as where the employer pays for a policy covering the first two years of a disability and the employee buys up to have insurance covering a longer period of time), the portion of the benefit attributable to the buy up would not be taxable so long as it is established that the benefit was in no part financed by the employer and that the premiums for the benefit are paid with after tax dollars. If an orchestra decides to move from an employer financed plan to a plan paid for by the musicians through payroll deductions (that are included in gross income) and the plan is an insured group plan, (as most orchestra plans are), the IRS will employ a three-policy-year “look back” to determine the taxable portion of the benefit.

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Colorado Symphony

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was to begin, was to delay a vote. The orchestra simply needed more time to consider such drastic changes. On Sunday, September 18, the musicians voted unanimously to return to negotiations by not voting on the current proposal. Later that week another proposal was given to the musicians: management and musicians would work together to discuss the sustainability study, and the musicians would take another \$530,000 pay cut. On Friday, September 23, the musicians voted to accept the pay cut and to further discuss the sustainability study. The board convened late Friday afternoon, when twenty members of the board resigned. This was a very perplexing turn of events, especially since the musicians had approved the latest board proposal for more discussion and a further pay cut.

Over the next few days there were several emergency board meetings. The remaining community and musician board members were in a very tight position. Several musicians, fearing the end of the Colorado Symphony near, approached former board chairs Jerry Kern and Mary Rossick Kern for help. They called upon other friends of the orchestra, including Evan and Sandy Lasky, who agreed to help spearhead an effort to help the orchestra survive. It was felt that the best course of action was a temporary shutdown of operations, with the orchestra still playing a majority of concerts throughout October and November for reduced pay.

Our old friends did more than just help. They started going to bat for the organization and the musicians all over town. In a show of unwavering support during these troubling times, the Kerns donated \$10,000 to the musicians' assistance fund, a gesture that will never be forgotten.

In October the Kerns rejoined the board. Soon afterward, the trustees elected Jerry and Mary Rossick Kern to serve as co-chairs. Jim Copenhagen took over as president and CEO on an interim basis. After a great deal of success rebuilding the board with prominent, influential people around Denver, the orchestra returned to full-time status on December 5, 2011. With a successful holiday concert season, special donations from the Colorado Symphony Chorus and the Colorado Symphony Guild, and renewed support from key foundations, the cash position for the orchestra gradually began to improve.

During the temporary shutdown period, the new collaborative management team and musicians met to come up with ideas on how to better serve and connect with the entire community, with an eye toward being seen as more relevant and generating more revenue for the institution. This new initiative to return to prominence is called CSO 3.0.

The 3.0 team was made up of management as well as musician board members, orchestra committee members, members of the orchestra at large, and the local union president. The goals of the committee were to maintain the full-time status of all employees in the institution, increase the audience base, increase the institution's education offerings, and emphasize the orchestra's strengths. In order to increase the orchestra's offerings, the committee came up with a novel and unique "individual services bank." The committee found that the orchestra was only on stage for around

70% of their total services. By having access to 20% of the previously unused services, musicians can be utilized for a wide range of events that would bring in revenue for the institution and provide needed community service. The many events that are available to the CSO include performing large-scale chamber orchestra performances at the venues around town, donor events, performing in the medical community, adult education, expanding our education programs for schoolchildren, and mentoring young music students. These larger chamber music performances will be outside of Boettcher Concert Hall using repertoire suited for smaller halls. The Boettcher Concert Hall concerts will focus on the large-scale masterworks that the CSO does best. The plan is to perform the same number of concerts at Boettcher, play concerts during high demand times during the holidays, and establish a concert chamber orchestra to perform concert series around the metro area.

After six months of turmoil and a remarkable 100-day turnaround, it has been a very trying time for the Colorado Symphony. Had it not been for the sacrifices that were made when the Denver Symphony declared bankruptcy twenty years ago and the musicians decided to found the Colorado Symphony, we would not be here today. Full-time orchestral music has been a staple in Denver for the better part of the last 90 years. The musicians of the Colorado Symphony are strong and are still committed to being Colorado's only full time professional orchestra.

Justin Bartels is principal trumpet with the Colorado Symphony Orchestra. He has been with the Orchestra since July 2008. He serves as orchestra committee chair and ICSOM delegate, and was on the most recent negotiations for the Colorado Symphony in September 2011. As orchestra committee chairman he was asked to participate on the Colorado Symphony's 3.0 steering committee.

Paul Naslund serves as acting principal trombone of the Colorado Symphony Orchestra. He has served with the Colorado Symphony for twenty years as 2nd/associate principal trombone. Paul is a member of the orchestra committee, former chair of the orchestra committee, alternate ICSOM delegate, and a member of the Colorado Symphony's 3.0 steering committee. He has also served on the last three negotiation teams.

Senza Sordino is the official voice of ICSOM and reflects ICSOM policy. However, there are many topics discussed in *Senza Sordino* on which ICSOM has no official policy; the opinions thus expressed in *Senza Sordino* are those of the author(s) and not necessarily of ICSOM, its officers, or members. Articles and letters expressing differing viewpoints are welcomed.

Chairperson's Report

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But with the emergence of some good news, our online newslister Orchestra-L has once again reignited with negativity over a past event, the demise of the Florida Philharmonic. People remain angry, as they should be. But anger must be harvested and invested, or else the past itself will become our fate.

I admit to feeling disheartened when I fear that ICSOM's strategy has not been fully understood by those who write on this subject. Since I became chair in 2006, following the FPO's bankruptcy in 2004, there has not been a single day that has passed without my thinking of the musicians of the Florida Philharmonic, and without my asking how we can prevent another situation like what occurred. But there are no easy answers, and many of the postings on this subject offer no solutions and merely suggest that you should be angry, and then tell you who you should blame.

That will not lead us anywhere.

No one can change the past, but we all can change the future. Indeed we *are* changing the future.

As Neil Young said, change comes slow in the country. But look at this current issue of *Senza Sordino* alone—the support given to Honolulu through ICSOM's Call to Action has helped to bring back an orchestra. The support given to Syracuse is assisting them in producing their own concerts and keeping hope alive in central New York. Thousands of musicians responded to assist in polling over the proposed destructive legislation in Virginia. These things, and so much more, we have done together, in unity, and friendship.

Your Governing Board has even bigger plans as we approach the fiftieth year of ICSOM. We intend to use the anniversary as an institutional marketing opportunity, the type we would hope that more of our orchestras' managements might seek. (After all, the Syracuse Symphony board used its 50th anniversary to go out of business, which frankly, seems like a poor marketing decision to us.)

Let us never forget the past, but let us not nurture the negative environment that could risk the progress made. There is no insurmountable division in ICSOM in 2012. Fifty years after our founding we are stronger than ever, and we are likely stronger because of the lessons learned through events of the early part of the last decade.

Orchestra-L is like any other place on the Internet. Sometimes it is easy to say things that you wouldn't say in person. There is a difference between discussion and division, and between debate and discord. It's like the way we all behave in our cars, yelling at the red light for not turning green fast enough, as if we are somehow invisible inside our vehicle. But we are not invisible of course. We can be seen and heard—and by everyone.

Much of the negative dialogue directed from musicians against musicians has been over the words of Bruce Coppock and Bruce Clinton. Let's not allow those two agenda-ridden men to cast asunder

the unity we have built. At the risk of being less than humble, I'd frankly prefer we spread the message of a different Bruce.

Let the message that is seen and heard be one of support and positive debate. Let us celebrate the recent positive news, while working harder than ever to improve the places that still need our help. Let us gather together in Chicago for the 50th anniversary to honor the founders of this organization with a message of unity and hope. In 2006 we articulated a *Message of Hope* in Nashville, a hope that ICSOM could elevate its profile as an advocacy organization and a positive beacon for the arts. We are achieving that goal and fulfilling that hope. We must not turn back the clock.

The prevailing view appears to be that orchestras have suffered in the recession, but we don't see it that way. The story to be told is how remarkable it is that so many have done well, and that in this time of economic distress such progress is being made. Together, we have all played our part, but this symphony is far from over.

ICSOM's 50th Anniversary Conference

(continued from page 3)

available both as a CD-ROM and on the ICSOM website. A task I have recently taken on is to assemble the Conference minutes from 1962 to the present, and I have also been updating the list of delegates who have represented ICSOM's orchestras over the past 50 years, a list that was originally assembled by Tom Hall for his 40-year history.

Somewhere during all that activity I'll also be finding the time to perform my job as second violinist with the Nashville Symphony—and I'll be thanking God that much of the success our orchestra enjoys is due to the knowledge and information passed down to us from our predecessors in ICSOM.

Disability

(continued from page 5)

The formula provides that the taxable portion is the total amount of the benefits received multiplied by a fraction, the numerator of which is the total amount of the contributions paid by the employer over the prior three years and the denominator of which is the total of all premiums contributed during those three years by both the employer and the employees. In other words, in a situation where the employees change disability insurance financing and begin to pay the full cost of the premiums, the non-taxable portion of any benefit received during the first three years is phased in.

It is possible this article may generate as many questions as it answers. But, as always, one of the keys to good representation is the ability to identify the issues and ask the right questions. Hope this brief summary of the law is helpful.

The Perilous Life of Symphony Orchestras: Artistic Triumphs and Economic Challenges **A Book Review by Bruce Ridge**

Title: *The Perilous Life of Symphony Orchestras: Artistic Triumphs and Economic Challenges*

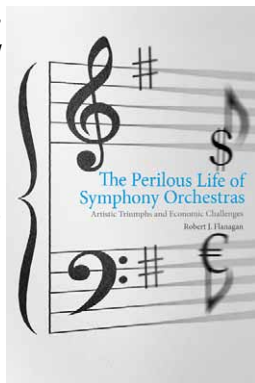
Author: Robert J. Flanagan

Publisher: Yale University Press

Publication Date: January 24, 2012
 [December 05, 2011 according to publisher website]

ISBN: 9780300171938

Hardcover: 240 pages



No one is going to read this book.

Well, perhaps I exaggerate. A handful of people will read this book, and maybe a few will actually make it all the way to the end. Such brave souls will earn my admiration, because reading this book is like shaving with a cheese grater.

Many people, though, will *claim* to have read it. It will sit on prominent display in the offices of executive directors, and they will reach for it whenever they need to point to a chart or graph, probably out of context, to support some negative claim about the future of classical music in America. Some will even engage in some “marginalia,” but others, I suppose, will follow the lead of *The Great Gatsby*, a character who at least knew enough not to cut the pages in the unread books that merely decorated the library in his East Egg Mansion.

My initial instinct was to ignore the book, but I decided that I had to write a review. Since virtually no one will actually make it to the end (or beyond the first five pages, really), reviews will become what the book is about, and there will most certainly be reviews written.

While there is no doubt that there is some truth in this volume (which, by the way, costs \$50 for 186 pages, not counting the appendixes and such), this book seems to be written by someone who simply doesn’t understand his subject. It analyzes the state of symphony orchestras in America, but the tale is told in the unauthoritative voice of someone who sounds like he might never have been backstage at a symphonic rehearsal.

I was reading it backstage at one of my orchestra’s concerts, and when I went onstage to perform with my colleagues, I felt disoriented. Nothing I had been reading in this book seemed to have any relationship to the music we were playing—or to the nearly sold-out audience of young and old music lovers listening to the innovative program we were presenting.

This book evolves from the controversial 2008 paper “The Economic Environment of American Symphony Orchestras,” commissioned by the Andrew W. Mellon Foundation. Much has been written about that report, and musicians are likely most familiar with it from seeing it waved at them across the bargaining table.

One of the most controversial aspects of that report was the data it used. The data was supplied by the League of American Orchestras and was widely acknowledged to be inconsistent at best. In fact, the League joined with ICSOM, ROPA, and the AFM in the Collaborative Data Project (CDP) to see if sense could be made by having a shared data set. But instead of achieving success in gathering accurate industry-wide information, the CDP process was injured when the data we were examining was given to Professor Flanagan, with virtually no restrictions aside from the direction that specific orchestras could not be identified through the data.

The time frame for any such study is crucial, of course, and the appendix to Chapter One of the professor’s book identifies the dates of analyzed data as between 1987–1988 and 2005–2006. This means, of course, that many of the book’s conclusions are unaffected by the large salary concessions given by musicians as they recognized the economic crisis that began with the Great Recession of 2008.

But first, let’s just start with the cover. It is a musical staff, but instead of notes, the staff has dollar and euro signs. I think one can immediately conclude that this won’t be a book that recognizes the highest aspiration to beauty that artists seek to achieve. But to be fair, it isn’t supposed to be.

The numbers are numbers, and I won’t attempt to compete with a Stanford economist in analyzing the numbers he was given. But his peripheral analysis of the field is simply fraught with oversimplifications. On page one he writes about a specific orchestra’s difficulties, saying:

The Musicians’ union subsequently rejected that proposal, citing the impact on the income of the symphony’s musicians.

Well, no...not exactly. In my travels to meet with this orchestra as well as the board chair and CEO, I never ran into the professor. Those actually on the ground in this dispute know that the argument was not as much about salaries as it was the musicians’ view that management’s path would permanently harm the artistic quality of the orchestra, which in turn would diminish the organization’s ability to survive the economic downturn. The musicians had readily agreed to large concessions on numerous occasions.

It is this shortsighted, half-informed analysis that disturbs me so greatly. Especially since people who will never read past page one will think they know what is in the book and won’t have an opportunity to question the environment in which the analysis was completed.

I have to share my favorite passage in the book. Professor Flanagan writes:

If the trend continues, the percentage of regular season seats sold will decline by about four percentage points (for example, from 70 percent to 66 percent)....

I appreciate the illustrative example, and I think I know what he is trying to say. But, while I may not be a Stanford economist, I do know how to subtract four from virtually any number. (Did I mention that I had to pay \$50 for this thing?)

The book focuses on the “cost disease” and “structural deficits” and how musicians’ salaries outpace an organization’s ability to balance its budgets. But in a field where guest artists command huge fees negotiated by powerful and apparently untouchable artist management agencies, this book spends barely three paragraphs on those exorbitant fees. And, at a time when musicians are seeing CEO salaries reach stunning rates, of that there is virtually no analysis. I’m not picking on CEOs—really, I’m not. I am delighted that the good ones are well-paid. Some of the highest paid are doing amazing things, and that is great. I’m a capitalist (*for the most part!*), and I think everyone should make more money. But in a field that is supposedly nearly at death’s door from the cost disease, the burgeoning salaries of CEOs aren’t worthy of analysis, while the analysis of the field focuses on musicians’ salaries and how *they* are unsustainable.

Further, Flanagan writes:

Pay change shows little sensitivity on average to the financial balance of orchestras.

I think that the countless musicians who have agreed to major concessions in recognition of the financial balances of their organizations since the onset of the recession would dispute that, but since the study stops in 2006, there is no room for inclusion of that fact.

As has always been our contention, there are orchestras that are simply better managed than others. Well-managed organizations are accomplishing great things, which is even more remarkable given the world-wide economic downturn.

Even Professor Flanagan lets this obvious fact slip in two places. Perhaps the most important sentences of the book could easily go unnoticed, buried as they are in charts and graphs. He writes,

If they (orchestras) were in more direct competition with each other, one might expect superior practices to be widely emulated, generating more similar revenue and expense structures.

He then goes further, almost acknowledging what we have long said about the need to study places that are succeeding instead of a conglomeration of data from places that have failed.

While this is not an industry in which competitive forces may provoke an aggressive search by individual orchestras for better practices, the variance in actual practice at least raises the question of how much symphony orchestras learn from each other’s policies and experiences.

There are so many other points to make, but writing about this book is as fatiguing as reading it. The book misrepresents the AFM-EPF as just a union fund, without acknowledging that it is, in fact, a joint management-labor Taft-Hartley fund. I’m sure the Professor knows that, and it is probably an error of editing. There is a misspelling, too, which doesn’t mean anything to me except that probably the editors had a hard time reading his turgid prose as well.

But still, I wish the professor well. While I believe his work has done harm to a field I love, I’m certain he doesn’t understand why I feel that way. I suspect that I am one of the people he dismisses as “optimists” and “those who wish to maintain the status quo.” Maybe someday he’ll allow me to take him to visit the incredible musicians who spent their lives in selfless dedication as they seek to preserve the greatest music ever written as well as the organizations that serve the public by elevating the human spirit, enhancing the business community and educating the next generation of Americans.

Actually, I think people *should* read this book—but nobody will. Still, be prepared to see it sitting on the table at bargaining sessions. You might want to check to see if the book’s spine shows any signs of wear.

Defined Benefit Plans Make Sense by Richard Levine, Editor

The San Francisco Symphony newsletter on pensions in the December 2011 issue of *Senza Sordino* generated considerable interest. One reader pointed out that the loss due to lower rates of return on investments in defined contribution plans compared to defined benefit plans was actually understated. If the defined contribution plan experiences a return that is 1% lower each year, after 14 years the difference would be more than the 14% mentioned in the newsletter because of the effects of compounding. But that just scratches the surface. Another factor that pulls down defined contribution plans is the longevity dilemma. As individuals grow older, it is prudent for them to reduce their risk by investing less heavily in the broad market. And, unless they plan to control the time of their death, they need to plan not to fully utilize their assets during their lifetime in order to avoid outliving their assets. Yet another factor is the higher fees paid by individuals in 401(k) or 403(b) plans. All of this suggests that defined contribution plans can be expected to underperform defined benefit plans by between 40% and 50%.

New York State Comptroller Thomas P. DiNapoli, who is the sole trustee of the \$146.9 billion New York State Pension Fund, seems to have been on a one-man campaign to debunk some of the myths surrounding defined benefit pension plans and how they compare

(continued on page 11—see DEFINED BENEFIT PLANS)

Orchestra Newslets

The **Buffalo Philharmonic Orchestra** finished its 2010-2011 fiscal year with a surplus of \$46,000. There were many contributing factors. The musicians of the BPO had agreed to contract concessions over the previous two seasons, allowing the orchestra to get on solid financial ground in the current financial environment. Management positions were trimmed and streamlined as well. During the orchestra's 2010–2011 75th anniversary season, overall attendance rose nearly 4%, with the orchestra playing to nearly 173,000 people at 119 concerts. Attendance for the educational program alone topped 40,000. Contributed revenue increased nearly 7% to \$4.3 million, while the endowment fund grew to \$26 million, up from \$23.8 million. All of these positive contributing factors occurred while both state and local government support decreased. Corporate dollar contributions dropped 20%, as well.

According to BPO ICSOM delegate Dan Sweeley, the current season continues to see positive news. The musicians of the BPO agreed to a five-year contract in September, showing modest gains throughout the life of the contract. Not even half way through the current season, subscription sales have already surpassed last year's mark, hitting an all-time high of \$1.75 million. There is also a 7.5% increase in total subscribers.



Photo by Rob Smith

ICSOM Chairperson Bruce Ridge makes a site visit to meet with musicians from The Florida Orchestra.

In preparation for upcoming negotiations, the musicians of **The Florida Orchestra** welcomed ICSOM Chairperson Bruce Ridge to the Tampa Bay area January 15–17 to share his advice and expertise. Delegate Warren Powell says that during a three-day visit, Bruce met with the orchestra committee, officers of Local 427-721, members of TFO's management and the executive committee. He also met with the local arts critic, was the special guest at a Florida Orchestra Musicians Association meeting, and attended a TFO concert and rehearsals. Bruce's presentation to the musicians was well received, and all who met with Bruce were very impressed with his preparation and knowledge of the local economic conditions, as well as his understanding of important orchestra issues, both

local and national. His message of positive advocacy resonated with everyone who heard him. Warren sends Bruce profuse thanks from TFO musicians for his generous gifts of time and knowledge.

Oregon Symphony musicians are celebrating some excellent reviews of their first commercial recording with Music Director Carlos Kalmar. The recording has seen such success, including a debut on Billboard's classical chart, that PentaTone is starting a second pressing of the hybrid SACD, "Music For A Time Of War."

Musicians recently ratified a new three-year contract, but those aren't the only stories in the news. The blogosphere was abuzz after the *Oregonian* reported OSO President Elaine Calder's decision to withdraw from the League of American Orchestras. "It was a business decision about a discretionary expenditure... and we couldn't justify continuing our membership." ICSOM delegate Alicia DiDonato Paulsen reports that the OSO has ended the last two seasons in the black under Calder's administrative leadership and is looking forward to three more recordings with Carlos Kalmar. In 2013, the OSO will return to Carnegie Hall and will also play at Seattle's Benaroya Hall for the first time.

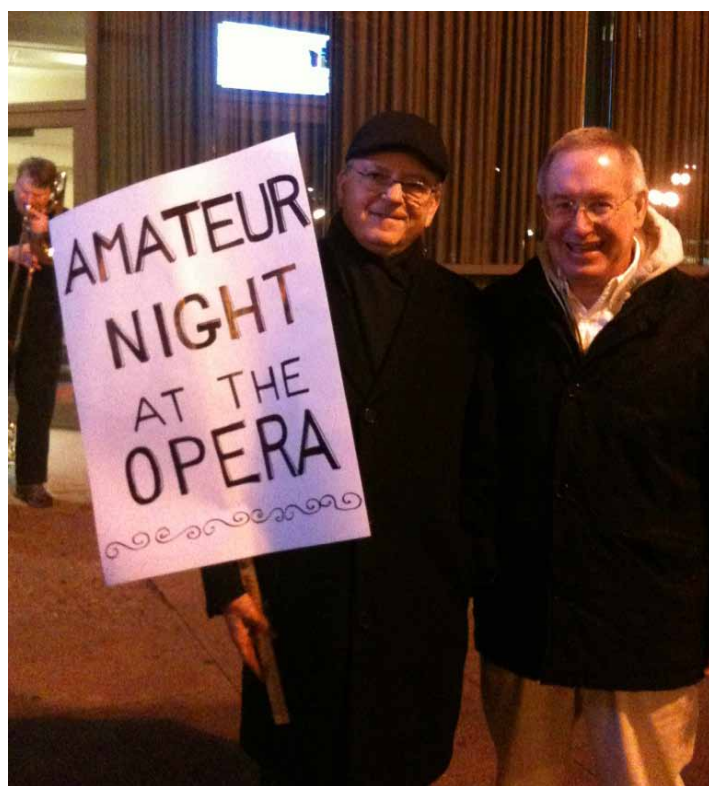


Photo by Bruce Heim

Former music director of the Louisville Orchestra, Uri Segal (*left*), and Louisville Orchestra musician Steve Causey are seen outside the Brown Theatre on February 17 protesting the use of replacement musicians by the Kentucky Opera. As reported by Chris Quay for the *Courier-Journal*, Segal came from Bloomington, Indiana, to show his support. "These people are giving so much to society and giving so much culture," he said. "They are being treated as if they are a burden on the economy. Something is wrong here."

The Music Returns to Honolulu

by Steve Flanter, ICSOM Delegate

In March 2012, the musicians of the former Honolulu Symphony will return to the concert stage. The board of the new Hawaii Symphony has announced a shortened 16 week season that will kick off the start of a new professional orchestra in the islands.

It has been a long journey. The old Honolulu Symphony played its last concert in October 2009. At that time the old board cancelled all concerts and then filed for Chapter 11 bankruptcy in December 2009. A required reorganization plan from old orchestra management never materialized, and one year later, in December 2010, the bankruptcy was converted to Chapter 7 liquidation.

Meanwhile, a new group of community leaders had begun a dialogue with the symphony musicians and our union about bringing professional symphonic music back to Hawaii. Calling themselves the Symphony Exploratory Committee (SEC), they began to build a new organization. They enlisted the help of Steve Monder, former executive director of the Cincinnati Symphony, and JoAnn Falletta, music director of the Buffalo Philharmonic and the Virginia Symphony, both of whose expert guidance has proved invaluable to the SEC.

In March 2010, as part of the bankruptcy process, the SEC purchased the music library, instruments, and other assets of the old organization. Shortly afterwards, it changed its name to the Hawaii Symphony Board. In April, a collective bargaining agreement with the musicians' union was negotiated. That collective bargaining agreement has since been modified to reflect the board's desire that the season should be well within the capabilities of the organization.

There is still a lot of work to be done to assure that the orchestra will succeed. Many Honolulu Symphony Orchestra musicians have left the islands during the more than two years in which there was no orchestra here, and it will be a challenge to assemble all the musicians needed to get the full orchestra playing again. In addition, Steve Monder has been working hard to recruit an effective management staff. One positive note is that the old Honolulu Symphony endowment, totaling about \$10 million, was not liquidated in the bankruptcy and is being used to support the new Hawaii Symphony.

At one point the musicians and the public had been told that performances would begin in the fall of 2011, but the process has taken a bit longer than expected. In the wake of the failure of the old Honolulu Symphony, there has been skepticism from some quarters that an orchestra can thrive here.

But now we are starting, and the initial reaction in the community is very positive. The musicians feel that, with an excellent board and management at the helm, the Hawaii Symphony should have a bright future.

Defined Benefit Plans

(continued from page 9)

with 401(k)-style defined contribution plans. DiNapoli has posted a video in support of defined pension plans on his official New York Comptroller's website in which he speaks to the issue. "Dollar for dollar, defined benefit plans are more cost effective and certainly do a better job of providing retirement security. 401(k)-style plans come with a greater cost. There's more risk involved [in 401(k)-style plans]."

DiNapoli made some interesting points in a lecture he gave at the Schwartz Center for Economic Policy Analysis on December 12, 2011. "According to the National Institute on Retirement Security, defined benefit plans cost 46% less than individual 401(k)-style savings accounts for several reasons. First, individuals investing their own 401(k) pay significantly higher fees and earn significantly lower rates of return. Also, individuals must base their asset allocation on their age and whether they are nearing or in retirement, while a defined benefit plan bases its allocation on market conditions. And, finally, individuals must save at a rate that ensures that their funds will last well into the nineties. In contrast, large institutional plans like ours have assets based on the average mortality of our members."

In an interview with Robin Young on NPR's *Here & Now*, DiNapoli expounded further. "I do think the essential point is that a defined benefit plan is a much smarter, more cost effective way to provide retirement security for retired workers. . . . When you take a pool of capital, you professionally manage it and invest it, it's a much more efficient way to provide the benefit than if you say to folks: 'Put in your money. We'll match it with some money.' People tend not to have the investment expertise. So when you start adding in the fees. . . and then, some people will then go to financial planners to get advice on where to put their money if they're in a 401(k)-style defined contribution plan. It's going to cost more money. . . . Also, if you're an individual, you're going to base your decisions on how to invest your money based on where you're at, age-wise, how close are you to retirement, and you may not be able to maximize the opportunities that are in the marketplace. When you're part of a defined benefit plan, and money's being managed for a whole pool of people that constantly has people at all ends of the age spectrum and retirement spectrum, you can take advantage of market opportunities. And the other piece, of course, is that we all think we're going to live forever. . . . So, as an individual, you will target your investment strategy on an assumption you're going to live to your nineties. The reality is that not everybody is going to live that long, and money through a defined benefit plan that's being managed can base it on the reality of the mortality of the membership. All of that results in higher investment return, more efficient way[s] to deploy the capital, [and] less administrator cost as well. So it's more efficient and, at the end of it, you get a more secure benefit as well."

It's good to know that the San Francisco Symphony is not alone in its conclusions about the need to preserve its defined benefit pension plan. Expect to see further coverage of pension plan issues in future issues of *Senza Sordino*. Our thanks to the readers who helped quantify the losses.

2012 ICSOM Conference

ICSOM's 50th Anniversary

August 22–25, 2012

**Westin Michigan Avenue Chicago
909 North Michigan Avenue
Chicago, Illinois 60611**

*Delegates will be mailed
Conference packets in May*

*All attendees must register
with Secretary Laura Ross*

Call for Photos

We request delegates both past and present to send photos (hardcopy or electronic) to Secretary Laura Ross for possible inclusion in displays at ICSOM's 50th anniversary celebration this summer.

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