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Atlanta Harpist Wins Case; Management Refuses to Comply

by Len Leibowitz, ICSOM Counsel

At the last ICSOM conference in Vail, we reported on a pending arbitration case in the Atlanta Symphony involving the dismissal of harpist Judith Ryan for alleged insubordination.

In an Opinion and Award dated January 23, 1992, the harpist was completely vindicated and granted full reinstatement and back pay for all time lost.

The importance of this case stems from the fact that it is the first case of which we are aware that a musician has been summarily dismissed for insubordination (just cause) for allegedly failing and refusing to follow the Music Director's instructions regarding the manner in which he wanted a piece to be played, especially under a contract which contains a separate procedure for non-renewal for musical incompetence.

On April 18, 1991, J. Thomas Bacchetti, Executive Director of the Atlanta Symphony, informed Ms. Ryan that she had been fired for "willful, deliberate and inexcusable insubordination" in disregarding the instructions of the Music Director [Yoel Levi] regarding dynamics in Stephen Paulus' *Concerto for Orchestra* during concerts on April 11, 12, and 13. Allegedly, in rehearsals for *Concerto*, Levi told Ryan to perform more softly, which she did, but her cadenza in the April 11 performance was *fortissimo*. Prior to the April 12 concert, the personnel manager reiterated Levi's instructions to Ryan, who was accused of playing too loud again in the April 13 concert. Bacchetti alleged that Ryan deliberately disregarded Levi's instructions regarding performance dynamics and that such disobedience to the Music Director could not be tolerated.

The Arbitrator noted that the employer had been trying since 1985 to fire Ms. Ryan for alleged musical incompetence. She had successfully contested the non-renewal proceedings against her. On May 12, 1987, Bacchetti advised then-Director Robert Shaw to keep a close watch on Ryan. "If she is insubordinate, unprepared or in any way fails to live up to her responsibilities, call her on it, discipline her and keep a written record of the event ..."

On October 30, 1989, Bacchetti advised Ryan that non-renewal proceedings would begin due to her musical incompetence: intonation, ensemble with the Orchestra, quality of notes; her failure to respond to corrective counseling; and her unsatisfactory performance at a recent concert. He suggested that she resign. She refused, and was given official notice of non-renewal on January 1, 1990. Upon receiving notice of non-renewal, Ms. Ryan immediately filed a grievance and also filed charges of age discrimination with the EEOC. She was awaiting the arbitration hearing on her non-renewal grievance when she was summarily dismissed for just cause in 1991. On May 2, 1991, Ms. Ryan filed another grievance, this time contesting her just cause dismissal. She

claimed that the just cause dismissal was in retaliation for her having filed charges of age discrimination with the EEOC and that the employer was trying to circumvent the non-renewal provisions of the contract. She requested reinstatement with full back pay and benefits.

After reviewing the evidence and the arguments of each side, the Arbitrator found as follows:

... Levi's opinion that Grievant disobeyed his order to play more softly in the performances of April 11, 12, and 13 was colored by his knowledge that an unsuccessful attempt to dismiss Grievant on grounds of incompetence had been made in 1985-1986; that his predecessor, Shaw, had been advised to get rid of her; that Levi kept a written record of mistakes upon becoming Director, including mistakes in dynamics; and that resolution of a grievance protesting attempting again to dismiss Grievant on grounds of incompetence was pending during the performances of Paulus' Concerto. These facts lend support to Union's contention that Management regarded Grievant as incompetent and did not want to await the long drawn-out process of Article V, Section 5. If Levi truly thought Grievant was purposely playing too loudly, he was obligated to initiate a discussion about the matter with her and warn her of the consequences.

Assuming arguendo [for the sake of argument], however, that Grievant did play too loudly during the performances of April 11, 12, and 13, the evidence fails to demonstrate that disobedience of the order to play more softly was "willful, deliberate, excessive or inexcusable." It is to be noted first that Grievant's disobedience was not excessive. It was of the same kind and on a single Concerto. Further, in addition to directing Grievant to play more softly during the April 9 rehearsal, Levi asked her if she was going to play bar 1 to 1000 exactly the same. This admittedly vague and ambiguous question, while arguably referring to dynamics, was interpreted by Grievant as also applying to tempo. Myor Rosen's [former harpist, New York Philharmonic] testimony that this phrase could relate to playing like an automaton was not contradicted. Grievant's interpretation of 1 to 1000 as referring, at least in part, to tempo is a plausible explanation of why she asked Paulus [the composer] on April 10 about playing it more soloistically. It is mere speculation to infer that Grievant's discussion with Paulus indicated a deliberateness in her not playing more softly. Similarly, this overlap-

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1991-92 Wage Chart of ICSOM Orchestras

Compiled by
Stephanie Tretick
from data provided by
ICSOM delegates

Orchestra	Weeks	Annual Minimum Salary	+Max Seniority (35-yr Cap)	EMG	Pension	Average Services Weekly	Vacation Weeks	Relief Weeks
Alabama ¹	42	21,420	21,420	0	1.6% 403b ^m	6	3	
Atlanta [‡]	52	46,800	48,620	3,900	22,000	8	8	2 svc: str
Baltimore [§]	52	52,390	55,510	1,300	19,500	8	8	16 svc
Boston	52	61,360	65,260	0	24,000		9	3
Buffalo [*]	46	34,086	34,086	0	31	8	4	0
Chicago Lyric ²	21	24,465	25,199	0	8% EPW ^p	7-8	\$	0
Chicago ³	52	58,310	61,950	5,260	28,000		8	2*
Cincinnati	52	54,600	56,680	2,340	17,000	8	9	16 svc: str
Cleveland	52	59,280	64,480	3,557	23,000		9	1
Colorado [‡]	38	21,660	22,990	1,140	5% DCP ^p	8	4	0
Columbus	46	35,650	36,570	0	5-7% DCP ^p	8	4	0
Dallas ⁴	52	49,140	50,960	2,860	20,880	7.84	8	10 svc: str
Detroit ⁵	52	58,776	60,856	1,040	20,000	8	7	8 svc
Florida Orch	38	20,007	21,337	190	3% 403b ^m	8	3	0
Florida Phil ⁶	39	23,800	23,800	0	5% EPW ^m	8.5	1.5	0
Florida Sym	39	21,879	23,244	195	\$300 403b	8	2	0
Grant Park	10	7,725	7,725	634	8% EPW ^m	8	0	0
Honolulu ⁷	42	25,570	26,830	0	5% EPW ^p	8	3	0
Houston [§]	52	45,760	47,060	2,080	18,000	8	8	4 svc
Indianapolis [§]	53	42,390	44,510	0	54	8	8.5	8 svc
Kennedy Center ⁸	23	24,794	25,309	0	7% EPW ^p	11	\$	0
Los Angeles ^{‡§}	52	60,320	64,220	2,000	96	8	9	1
Louisville ⁹	45	22,547	23,222	1,800	250	7	4	18 svc
Met Opera					35,000		5	5
Milwaukee [*]	47	41,948	43,158	823	45	8	5	3
Minnesota ¹⁰	52	55,770	57,070	1,300	23,000	8	8	7 svc
National	52	55,250	64,090	0	23,000	8	8	1; 2 for str
New Jersey ¹¹	28	21,280	21,840	506	7% EPW ^m	7	2	0
New Orleans	season cancelled							
NYC Ballet	29	29,000	31,356	0	0		3	0
NYC Opera ¹²	26	26,100	28,130	0	8% EPW ^p	5.5	3	0
New York	52	61,880	66,300	0	35,000		8	1
North Carolina	43	26,789	27,649	0	7% 403b ^m	8	4	0
Oregon ¹³	43	27,795	27,795	444	7.25% EPW ^p	7	2.5	0
Philadelphia [*]	52	61,360	64,480	1,500	900	8.5	9	1: str
Phoenix ¹⁴	38	23,630	24,580	0	0		3	0
Pittsburgh	52	60,320	63,440	2,080	25,000	8	9	0
Rochester	49	35,084	35,924	931	4% DCP ^m	8	7	0
St. Louis	52	51,480	53,560	0	20,000	8	9	1
St. Paul Chamber ¹⁵	40	42,800	43,960	1,200	8% ^p	8	4	1: str
San Antonio	39	24,570	25,935	0	3% EPW ^p	7	3	0
San Diego	36	24,480	24,480	2,160	5.5% ^p	8	2	0
SF Ballet ¹⁶	21	20,458	21,458	900	9%	6.5	\$	0
SF Opera ¹⁷	23	42,370	42,970	1,311	8.5% EPW ^p	8-10	\$	0
San Francisco ¹⁸	52	60,320	63,180	1,300	28,000	8	10	1
Syracuse ^{*19}	44	25,512	25,906	0	formula	7.52	4	0
Utah	52	31,252	32,552	0	8% EPW ^m	8	9	0

[‡]Seniority is paid in addition to overscale payments except in **Atlanta, Colorado, Los Angeles**. A 35-year cap was used for ease of comparison.

^{*}Pension amounts are paid per month per year of service in **Buffalo, Indianapolis, Los Angeles, Milwaukee, Philadelphia, and Syracuse**.

^pPension contribution based on personal salary.

^mPension contribution based on minimum scale.

[§]Relief weeks or services for strings, 2nd winds.

¹**Alabama**: additional 50% contributory formula: base rate is \$500 from musician, \$250 from Association.

²**Chicago Lyric**: vacation pay 12% of yearly salary.

³**Chicago Sym**: 1 sub + 2 summer programs additional relief.

⁴**Dallas**: Rule of 85 applies with 30 years of service

⁵**Detroit**: additional relief of 2svc/yr/5 yrs seniority, up to 8 svc/yr. EMG for radio only.

⁶**Florida Phil**: 2-tiered orchestra; 16 players earn less than shown on chart.

⁷**Honolulu**: 20-yr. cap on seniority.

⁸**Kennedy Center**: season shortened by 5-week lockout. Vacation pay 4% minimum scale.

⁹**Louisville**: mgt. will match up to \$400 of player contribution.

¹⁰**Minnesota**: 1990-91 figures given because negotiations not completed at press time.

¹¹**New Jersey**: EMG for radio.

¹²**NY City Opera**: \$1950 reh pay.

¹³**Oregon**: \$1616 vacation pay.

¹⁴**Phoenix**: 1 recording guaranteed.

¹⁵**St. Paul**: pension is individually vested annuity.

¹⁶**San Francisco Ballet**: \$1637 (8%) vacation pay.

¹⁷**San Francisco Opera**: 4 weeks minimum salary vacation pay.

¹⁸**San Francisco Symphony**: Violas and cellos get 1 additional relief week every other year.

¹⁹**Syracuse**: pension is .004/monthly salary/yrs svc.

1990-91 ICSOM Orchestra Recording Sessions

Orchestra	2 Hr	3 Hr	4 Hr	Location Hrs	Total Hrs
Alabama	0	2	0	0.0	6
Atlanta	0	9	6	0.0	51
Baltimore	0	6	0	0.0	18
Boston	0	14	5	7.5	70
Buffalo	0	0	0	0.0	0
Chicago Lyric	0	0	0	0.0	0
Chicago	0	9	2	53.5	89
Cincinnati	0	15	0	0.0	45
Cleveland	0	20	4	0.0	76
Colorado	0	0	0	0.0	0
Columbus	0	0	0	0.0	0
Dallas	0	5	0	7.0	22
Detroit	0	2	2	0.0	14
Florida Orch	0	0	0	0.0	0
Florida Phil	0	0	0	0.0	0
Florida Sym	0	0	0	0.0	0
Grant Park	0	0	0	0.0	0
Honolulu	0	0	0	0.0	0
Houston	0	3	0	0.0	9
Indianapolis	0	3	1	0.0	13
Kennedy Center	0	0	0	0.0	0
Los Angeles	0	6	17	0.0	86
Louisville	0	3	1	0.0	13
Met Opera	0	43	0	0.0	129
Milwaukee	0	1	2	0.0	11
Minnesota	0	3	0	0.0	9
National	0	0	0	0.0	0
New Jersey	2	0	0	0.0	4
New Orleans	0	0	0	0.0	0
NYC Ballet	0	0	0	0.0	0
NYC Opera	0	6	0	0.0	18
New York	0	11	1	5.5	43
North Carolina	0	0	0	0.0	0
Oregon	0	0	0	0.0	0
Philadelphia	0	14	0	3.0	45
Phoenix	0	0	0	0.0	0
Pittsburgh	0	7	0	0.0	21
Rochester	0	4	0	0.0	12
St. Louis	0	10	10	0.0	70
St. Paul Chamber	0	19	8	0.0	89
San Antonio	0	0	0	0.0	0
San Diego	0	2	1	0.0	10
SF Ballet	0	0	0	0.0	0
SF Opera	0	0	0	0.0	0
San Francisco	0	6	4	0.0	34
Syracuse	0	0	0	0.0	0
Utah	0	0	0	0.0	0
Total	2	223	64	76.5	1006

Compiled by
Brad Buckley

Location recordings are made of the orchestra playing live during a concert. The orchestra is paid when the recording is released as a record. This chart shows the number of hours of recording for which each orchestra was paid.

United We Stand

New York Philharmonic Musicians Were Prepared for 1991 Negotiations

Although none of us had any idea in September just how long the negotiating process would last (four months!), I would like to think we were prepared for any eventuality.

Once our season started, the orchestra began meeting regularly. We immediately established a strike fund into which each member contributed \$250 to be used as loans for personal emergencies. Through the efforts of Local 802 and the generosity of a local bank, low-interest loans and a deferred-payment plan were made available. As we did not strike, nobody needed to use the loans, and the \$250 assessment was returned to each player when our contract was settled.

In an effort to involve and organize our entire membership, we formed several sub-committees, including a media committee, a political committee, an audience support association, an orchestra benefit concert committee, a picketing committee, and a telephone chain.

The newly-formed committees generated many ideas to encourage the public's support. The chamber music committee presented almost 20 different concerts in homes of supporters, including the home of novelist E. L. Doctorow! At each concert, we gave a brief talk to familiarize the audience with our position. The concerts were a wonderful way to introduce ourselves more personally and to increase our exposure in the press. The audience responded by sending the management letters in support of the musicians.

The political committee set up meetings with local, state and federal politicians. (Ideally, this should be done in years before the negotiations.) Although we receive very little funding from government sources, we recognized the importance of establishing ties to the system. The political committee recommended that we begin work on some type of community service program. Thus was born our "Adopt-a-School" program. We established a relationship with a school in Harlem where we continue to donate educational programs at least once a month.

The media committee drew up documents that could be used at our chamber music concerts, distributed to audiences in Avery Fisher Hall, and used as press releases. The media committee met with a representative from the press trade union, who helped us write press releases and coordinate publicity. We found that there were many unions with special skills willing to support us in the event of a strike.

Every two weeks the negotiating team had a lunch meeting with the orchestra. The meetings and a committee newsletter kept the orchestra informed about the negotiations and kept morale high.

Fortunately, we were not forced into a strike, as was the Chicago Symphony last fall. We were able to perform and talk with management throughout our negotiations. It was a lengthy process and there were those in ICSOM who accused us of "do-si-do-ing". We think we achieved our primary goals without being forced into a work stoppage from which lost earnings could never be recovered.

Sherry Sylar
New York Philharmonic ICSOM Delegate



Harpist

Continued from page 1

ping of tempo and dynamics tends to give Grievant an excuse for not playing as softly as Levi wanted.

The fact that Grievant asked Ms. Ottzen [pianist] to give a signal regarding when to start playing illustrated only Grievant was having difficulty following Levi's directions and shows,

not that she wanted to disobey Levi, but that she wanted to follow his directions.

The foregoing analyses support the conclusions (1) that it is doubtful that Grievant played too loudly during the performances of April 11, 12 and 13 in disobedience of the Director's order to play more softly and (2) that even if she did disobey the order to play more softly, the disobedience was not, in the words of Article V, Section 6.1, "willful, deliberate, excessive or inexcusable." These analyses make unnecessary any discussion of whether or not Levi used, or should have used, hand signals and of the import of Paulus saying "Bravo," if indeed he so said, in Grievant's direction following his taking bows at the end of the performances.

Award

The Grievance is sustained. Grievant is reinstated to the position and status she held on April 17, 1991, with commensurate back pay.

The most disturbing aspect of this case, in addition to the mistreatment of Ms. Ryan, is that management has now refused to reinstate Ms. Ryan despite the Arbitrator's ruling. Their reason for non-compliance is based on an argument which they presented to the Arbitrator at the hearing, and which, obviously, the Arbitrator did not accept. According to the transcript of the hearing, manage-

ment argued as follows:

[MANAGEMENT COUNSEL]: . . . even depending on the outcome of your decision, should you decide that the termination was not for just cause, Ms. Ryan is also under another determination for musical incompetence; and, as such, you would have no right to reinstate her, because there is no position to be reinstated to.* I think you have the authority to grant her some back pay but not reinstatement. I just wanted to clarify that at the outset, as well.

[UNION COUNSEL]: We don't agree with that position.

[MANAGEMENT COUNSEL]: Okay.

[THE ARBITRATOR]: That may be a matter of contract interpretation; it may be a matter of evidence. We'll just have to hear it.

Local counsel Bob Giolito is now preparing to have the Award confirmed in court and will ultimately seek to hold management in contempt if they refuse to comply with the judgment of the Court. We will follow this matter and keep you posted.

*The post of harpist is not being eliminated. However, the management contends that because Ryan's contract was not renewed in 1990, she had no job to return to.

Worth Noting

- In the December *Senza*, Carol Beck, Grant Park Symphony ICSOM delegate, was mistakenly identified as the Chicago Lyric Opera Orchestra's ICSOM delegate. Barbara Haffner is the Chicago Lyric's delegate.
- After carefully reviewing all entries, the Governing Board has decided not to award a cartoon contest prize this year. Thanks to those who sent cartoons.

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