

Senza Sordino

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Canadian Orchestras Struggle

Toronto, Winnipeg, Calgary Twist in Storm of Government Cuts

The drastic reduction in subsidies for the arts enacted by the Canadian government a few years ago has had a dramatic effect on the financial health of Canadian orchestras, and thus on labor relations in those orchestras. This financial uncertainty has exposed long-standing internal flaws in the way many Canadian orchestras have conducted their business operations. The following musician's view of the situation, which will appear in the January 2002 issue of Una Voce, the newsletter of OCSM, was shared with Senza Sordino by Steve Mosher, editor of Una Voce, and is excerpted here with permission. – Ed.



In the September 29, 2001 issue of the *Globe & Mail*, arts columnist Robert Everett-Green made a few trenchant observations on the state of Canadian orchestras under the title "Orchestras in the Pit." OCSM President Rob McCosh offers his comments.

ORCHESTRAS IN THE PIT ONLY PART OF THE PIT

There is a Canada-wide malaise and Robert Everett-Green only gets it partly right for several reasons. First of all, there was no input from the American Federation of Musicians, the union that represents musicians from Halifax to Victoria and major centres in between. Second, Mr. Everett-Green needed to flesh out the reasons behind both the successes and failures in Canadian orchestras. Third, his conclusion that orchestras will only have a bright future if they have the "will and flexibility" to change their institutions, is but a part of the solution.

The Canada-wide malaise can be explained in large extent by: lack of leadership at every level; lack of public outcry about the cuts to public funding and arts-based education; and, the one Mr. Everett-Green gets right, lack of financial support at every level, which is related to lack of leadership. Let's start with the lack of leadership.

We lack leadership on many orchestral boards because they have adopted the zero-deficit business model. That may be an appropriate for-profit business strategy but is less appropriate in a not-for-profit cultural institution which should be striving for artistic growth and excellence. There is a lack of leadership by corporate Canada, which is represented on every orchestral board, because they, by and large, have taken control of the financial agenda. Zero-deficits have been deified not only by business, but also the general public, government, granting bodies and the

(continued on page 3)

In the next few weeks a report and survey will be distributed to ICSOM orchestra members concerning the future direction of the Electronic Media Forum (EMF) and the national media negotiations. It is crucial that the EMF hear the views of as many musicians and orchestras as possible, and from as many diverse perspectives as possible. Our national negotiators can only serve our interests if they know what those interests are. Please let your voice be heard.

To help inform all ICSOM orchestra musicians of the many issues and opinions related to electronic media, a special edition of Senza Sordino will be published next month. Your views are heartily solicited for this issue.

For details, see "Preface to the Great Electronic Media Debate" on page 8.)

Information on past EMF activity can be found at electronicmediaforum.org

In This Issue

Canadian Orchestras Struggle	1
Voicings	2
Drucker Redux (Read this before doing your taxes!) . .	4
A Positive Peace	7
Preface to Great Electronic Media Debate	8



The Interest-Based Bargaining discussion in the June 2001 issue spawned a lively exchange of letters between Peter Pastreich, retired executive director of the San Francisco Symphony, and Leonard Leibowitz, ICSOM counsel. Letters are reprinted by permission of the combatants. – Ed.

August 7, 2001

From: PETER PASTREICH
To: LEONARD LEIBOWITZ

Dear Lenny,

Thanks to your intercession, I now read *Senza Sordino* regularly. Under the general principle that no good deed goes unpunished, you get my reaction to your contributions to the June 2001 issue.

The tribute to Phil was eloquent and moving. I've told the "I have the photograph" story almost as often as Phil has, when talking about negotiations, and about Phil. Phil did devise the idea of returning musicians' pension contributions, but I don't think that money came to them as a simple windfall. In every case I remember, the returned contributions were treated as part of the money package that resulted in settlement, making backloaded wage settlements feel less backloaded—to the musicians and to management. It was still an amazing idea, and Phil was an amazing—and infuriating—person.

I'm glad you spelled out your objections to Interest-Based Bargaining. I have the same emotional reaction to IBB as you do—it's so much less fun than adversarial collective bargaining. But I don't think either of us should oppose IBB simply because it's less fun, or because it diminishes our role as negotiators. We have a responsibility to our employers, to our clients, to our orchestras, and to symphonic music, to examine the issue more objectively.

Your article would be more convincing if you demonstrated that adversarially negotiated contracts are, on the average, better for musicians than IBB-negotiated ones. But whether we compare successive contracts negotiated each way in the same orchestra, or compare similar contracts negotiated each way simultaneously in different orchestras, this does not appear to be the case. There is no evidence that the musicians get worse contracts with IBB, and if you count the cost to them of strikes, there is substantial evidence that they do worse.

Other facts you might have missed:

1) The idea of using IBB does not always come from management. In San Francisco it was a musician who suggested that both sides try "Getting to Yes" about ten years ago. In 1997 Tom Hemphill and I jointly approached the Hewlett Foundation for assistance in the area of conflict resolution. An officer of the foundation recommended Bob Mnookin to us, and Mnookin proposed IBB to Tom and me simultaneously. We both took the idea back to our constituencies.

2) There is no evidence that adversarial "crunch" bargaining gets more issues resolved. My own experience is that it brings more issues to the table, on both sides, but that the vast majority of those issues are traded against one another and dropped; IBB can allow the important issues to stay on the table until both sides have understood and resolved them, and it creates far more understanding on both sides of the other side's point of view.

3) Finally, hard as it is to admit, much of the adversarial bargaining I've witnessed *did* consist of the parties making demands, getting locked into positions, and yelling at one another. You say you've never seen such a negotiation, but I'd be happy to remind you of several I know you saw. Eventually a contract is always agreed to, but at what cost?

The greatest value of adversarial negotiation might be the opportunity it gives musicians to express anger and frustration accumulated during three years of doing a job that, by its very nature, allows them relatively little control over their working lives, while the greatest value of IBB might be the opportunity it gives musicians to work with managers and board members at solving problems in an atmosphere of teamwork and cooperation. I've changed my mind about which matters more, and perhaps you will too.

Of course I admit that it's easier for me to change, since I won't be around for those endless brainstorming sessions. But then, I hope you aren't planning to negotiate as long as Phil did. You and I are the same age, Lenny, and we both love "tummeling." But I'm surprised to find how rewarding the "retired" life can be. We should talk about it ...

With affectionate regards,
As ever,
Peter

August 13, 2001

From: LEONARD LEIBOWITZ
To: PETER PASTREICH

Dearest Peter,

Thank you for your critiques of my recent *Senza* articles.

With respect to the Sipser eulogy, it is of course true that the cost of returning the pension contributions came out of "the money package." Don't all the costs of any settlement come from that "pie" that you guys are always throwing in our faces? But that doesn't mean that the musicians who received those "windfall" payments were shortchanged on wages or other economic improvements. Moreover, as stated, in the very same negotiations the benefits were

increased, and often the eligibility requirements were liberalized as well.

Now, on to IBB.

My reaction to IBB may be emotional, but not because I miss the “fun” of traditional bargaining or because it “diminishes our role as negotiators.”

The “objective” standard you suggest is obviously impossible to utilize. As stated in a letter from Charles Underwood which will appear in the next *Senza* [Vol. 39, No. 4, August 2001], how does one ever know what the outcome might have been in any negotiation if it had been done another way?

What I *do* know is that virtually all of the IBB-negotiated contracts are extremely long-term, something which is rarely in the employees’ interest, and almost always in the employer’s interest.

What I also know is that despite giving management a “wind-fall” of a long-term agreement, none of those contracts gave the musicians any great return for that concession. That is, the economic improvements were merely ordinary, and could have been expected as a result of traditional bargaining. It is actually giving management *two* successive ordinary contracts and thereby depriving the musicians of the right to get back to the bargaining table for 5-6 years and giving up the right to strike for that period as well—and for what?

On the other hand, the very recent Nashville Symphony settlement, achieved through traditional bargaining, was long-term, but look what the musicians achieved in return—over 50% increase in wages, seniority pay, pension, etc.

As for your other comments:

1. The only IBB negotiation that I am aware of that was initiated by anyone other than management was the one you cite.

2. There is a ton of historical evidence, as well as my own experience of over thirty years, that “crunch” or “crisis” bargaining gets the best results for the union side. I don’t care about how *many* issues are resolved, I care about *how* they are resolved.

3. Interesting that “much of the adversarial bargaining” you have witnessed consisted of the parties “yelling at one another.” Could the fact that *you* were one of the parties have anything to do with that? (Sorry, I couldn’t resist.)

4. While I agree that it *is* important to give musicians an opportunity “... to express anger and frustration,” that’s not the primary rationale for traditional bargaining. After all, I suppose if need be, the musicians could express their anger and frustration during IBB as well. That’s not prohibited, is it?

Finally, let me point out that from what I know about the methods of IBB, it seems inimical to the very purpose of collectivism, cum unionism. That is, individuals are encouraged to speak out without caucuses or consultation with their colleagues or representatives, thereby losing one of the true advantages of collective action, i.e. collaboration amongst workers who can only exert real influence on their employer *collectively*, and not individually.

Peter, I have nothing against “teamwork and cooperation.” I

have nothing against “peace.” It’s peace *at any price* that I oppose. That’s not peace, that’s appeasement. Not for me, thank you.

Cordially,

Leonard Leibowitz



Dear Marsha Schweitzer,

I just want you to know how moved I was by your reports on how September 11 affected our orchestras and their players. Every publication in the country put in its two cents on September 11, but for my money, yours was the best! Thank you. *Senza Sordino* is always a good read, but your October issue was special.

Your fan,

Jim Stutsman, Kennedy Center Opera House Orchestra

(CANADIAN ORCHESTRAS – continued from page 1)

managements of cultural institutions. That control often has a negative impact on the artistic agenda, to the point where Arts Stabilization programs (cooperative funding ventures between corporations and municipal or provincial governments to help fund cultural organizations) have put a gun to the heads of boards and managements in the form of zero-deficits or risk being booted out of the program.

The training for arts managers in Canada is still in the dark ages compared to the U.S., but the conundrum is that the good ones who do come to the fore are quickly snapped up by much better salaries in the private sector. Endowments are nowhere near the size they need to be to stabilize the institutions. The restrictive guidelines, such as access only to the interest generated by the endowment for operating revenue, is at best a band-aid. While there are positive examples of philanthropy in Canada, there simply is not the same history or level of philanthropy as in the U.S., which has something to do with our risk-averse national character but even more likely to do with a lack of leadership regarding federal tax laws which do not encourage giving to the arts. And why, despite repeated pleas from the cultural sector, have these tax laws not changed? Because there has been no public outcry and no independent initiative taken by our elected leaders. After all, politicians have one overriding agenda—to get reelected. If the citizens of this country want to have orchestras, culture needs to be put on the politicians’ radar screen.

Other governments have shown leadership. The city of San Francisco has recognized the incredible financial spin-offs the hospitality and tourism industry receive from cultural activity within their city. As such, the city levies a hospitality tax on the industry, which the industry recognized as only fair, considering their symbiotic relationship with the city’s cultural institutions. Our Federal Government, in its hypocritical wisdom, takes in millions of dollars from the sale of tobacco products, dollars which are then used however it chooses. Then they make it impossible for these companies to continue their strong financial sponsorship of cultural events and institutions. The institutions would not have had such a

(continued on page 5)

Before preparing your 2001 taxes, read:

DRUCKER REDUX

or

“Back in my Home Practice Studio again.”

By Leonard Leibowitz, Esq.

Some of you may recall that, in the early 1980s, ICSOM sponsored a lawsuit on behalf of a number of Metropolitan Opera Orchestra musicians whose income tax deduction for practice space in their home had been denied by IRS [*Drucker vs. Commissioner of Internal Revenue Service*, 715 F. 2d. 67 (Second Circuit. 1983)]

In that case, the musicians took a tax deduction for a portion of the rent on their apartments on the ground that the Met Opera did not provide them with a practice studio, and, of course, they needed to practice for their livelihood. In tax law, this is referred to as the “home office deduction.”

The Met musicians also demonstrated that they devoted a portion of their apartment *exclusively* to musical study and practice, and spent approximately thirty hours a week practicing there. IRS and the Tax Court had denied the deduction, holding that “off premises practice” (at home, instead of at the Metropolitan Opera House) was not a requirement of the musicians’ jobs and that the musicians “principal place of business” was Lincoln Center.

The Second Circuit Court of Appeals in New York (one of nine Circuit Courts which are just below the U.S. Supreme court) reversed the Tax Court. The court first rejected as clearly erroneous the Tax Court’s conclusion that practice was not a “requirement or condition of employment.” The court then concluded that the musicians’ principal place of business was their home practice studios, finding that this was “the rare situation in which an employee’s principal place of business is not that of his employer.”

Accordingly, the musicians were granted the deduction for “home office” expenses.

Because the issue did not go to the U.S. Supreme Court, IRS took the position that the decision of the Second Circuit was only applicable in the Second Circuit (covering New York, Connecticut and Vermont). Based upon this decision, many orchestra contracts were negotiated with provisions which state that the employer does not provide practice space at the hall or elsewhere—and, in some cases, that the musicians are expected to practice at home.

In 1993, the U.S. Supreme Court decided a case involving an anaesthesiologist who spent 30-35 hours per week with patients at three different hospitals. None of the hospitals provided him with an office, so he used a spare room at home for contacting patients and other doctors, maintaining billing records and patient logs, preparing for treatments, and reading medical journals.

The Supreme Court denied him a deduction for his home office, holding that the “statute does not allow for a deduction whenever a home office may be characterized as legitimate.”

Instead, they ruled, courts must determine whether the home office is the taxpayer’s “principal place of business.” In this regard, said the court, the two primary considerations are “... the relative importance of the activities performed at each business location and the time spent at each place.” [*Commissioner vs. Soliman*, 506 U.S. 168 (1993)]

With respect to the “relative importance of the activity... at each location,” the Court held that “...the point where goods and services are delivered must be given great weight in determining where the most important functions are performed.” Since Dr. Soliman’s services were actually delivered at the hospitals, this definition worked against him. Likewise, as for the “time spent at each place,” the doctor spent considerably more time in the hospitals than he did at home, thereby failing to meet either criterion.

Although the Supreme Court in *Soliman* did not expressly overrule the *Drucker* case, the two tests enunciated therein seemed to deprive musicians of their “Drucker” arguments, at least the one pointing to “where the goods and services are delivered.” And so the matter stood until April 17, 2001.

On that date, the Ninth Circuit Court of Appeals in California decided a case entitled *Popov vs. Commissioner of Internal Revenue* 246 F. 3rd 1190.

A musician who played regularly with the Los Angeles Chamber Orchestra and the Long Beach Symphony, as well as for various studios making recordings for motion pictures, was denied the “home office deduction.” In 1993, Ms. Popov worked for twenty four contractors and recorded in thirty-eight different locations. The recording sessions required that she be able to read scores quickly, since she and the other musicians did not receive the sheet music in advance of the sessions. And, again, none of her employers provided her with practice space.

Thus, Ms. Popov used her living room to practice and to make recordings which she used for practice and demos. The room was used exclusively for her practice and she spent four to five hours a day practicing there.

As usual, IRS and the Tax Court rejected her deduction of 40% of her rent and 20% of her electric bills. She appealed to the Circuit Court.

In applying the “Soliman Tests,” the Ninth Circuit stated, with respect to the “relative importance” test:

We simply do not find the “delivery of services” framework to be helpful in analyzing this particular problem. Taken to extremes, the Service’s argument would seem to generate odd results in a variety of other areas as well. We doubt, for example, that an appellate advocate’s primary place of business is the podium from which he delivers his oral argument, or that a professor’s primary place of business is the classroom, rather than the office in which he prepares his lectures.

We therefore conclude that the “relative importance” test yields no definitive answer in this case, and we accordingly turn to the second prong of the *Soliman* inquiry.

(CANADIAN ORCHESTRAS – continued from page 3)

With respect to the “amount of time” test, the Court wrote:

The Service argues that the evidence is unclear as to “how much time Mrs. Popov spent practicing at home as opposed to the time she spent performing outside of the home.” It is true that the evidence is not perfectly clear and that the Tax Court made no specific comparative findings. However, the Tax Court found that she practiced four to five hours a day in her apartment. If we read this finding in the light most generous to the Service and assume that she only practiced four hours a day 300 days a year, Popov would still have practiced 1200 hours in a year. She testified that she performed with two orchestras for a total of 120-140 hours. If she spent a similar amount of time recording, she would still be spending about five hours practicing for every hour of performance or recording. The only plausible reading of the evidence is that Popov spent substantially more time practicing than she did performing or recording.

This second factor tips the balance in the Popovs’ favor. They are accordingly entitled to a home office deduction for Katia Popov’s practice space, because it was exclusively used as her principal place of business.

Finally, with respect to the viability of the *Drucker* case, the Court stated:

We are unpersuaded by the Service’s contention that *Drucker* is no longer good law. The Service has not directed us to any decision that has ever called *Drucker* into question. The Supreme court cited *Drucker* twice in *Soliman*, but never suggested that it was overruling *Drucker*’s result. *Soliman*, 506 U.S. at 171, 172, 113 S.Ct. 701. Although the particular “focal point test” employed by the Second Circuit may no longer be valid, we are unwilling to conclude that the Supreme Court *sub silentio* overruled a long-standing precedent. Uniformity of decision among the circuits is vitally important on issues concerning the administration of tax laws. Thus the tax decisions of other circuits should be followed unless they are demonstrably erroneous or there appear cogent reasons for rejecting them.

Because of the apparent confusion on this particular point of law, it is quite likely that the *Popov* case will ultimately be decided by the U.S. Supreme Court.



Stay tuned. Meanwhile, if you meet the requirements of *Popov*, take the deduction. In sum, those requirements appear to be as follows:

1. A room which is used *exclusively* for practice.
2. Unavailability of practice space at your employer(s) facility.
3. Significantly more time spent practicing at home (as opposed to any other location) than spent at a concert hall, recording studio, jazz club, etc.



problem with the end of this association had the federal government shown leadership or a plan to replace this sponsorship. The Australian government took the same problem and created a healthy solution by taxing tobacco products and then using this “sin tax” to help fund its sport and cultural programs. The world knows how healthy their sport program is.

Mr. Everett-Green cites Symphony Nova Scotia’s near-death experience in 1995. What he fails to mention is that it was the musicians who showed leadership by refusing to accept the board’s wish to declare bankruptcy. They were also the leaders in convincing the board and management to go public with their financial problems, whereas the appointed “leaders” wanted to keep their situation quiet, in the mistaken belief that it would damage ticket and donor revenue. The people of Nova Scotia responded by donating \$250,000, which got the orchestra to the end of the season. Furthermore, it was the musicians who finally convinced the “leaders” that they needed to be more relevant to their community by structuring a Pops series that hired local musicians to play the music of their region, which at least initially, was phenomenally successful from at least a community and revenue point of view. In the past few years, a major donation has been given to tour the province to bring the orchestra to schools outside of the metro area.

This brings me to the second issue: cuts to arts-based education. Every time the federal government uses cuts to federal transfer payments to the provinces to reduce their deficit, the provinces cut in kind to their education funding. And what always goes first? The arts, because they are viewed as a frill. This, even though more studies than I care to dust off have shown a direct positive correlation between the performance of students in core areas such as math and their involvement in musical activities. How does this affect our orchestras? We are losing our future audience. Further to that, our donors and board members often come out of our audience. Even at the most basic level there is a loss of understanding in the general public, and we are creating a nation of specialists instead of well-rounded citizens—those able to apply the creative, outside-the-box thinking associated with arts education. Now the Canada Council, through a return to higher levels in federal funding, have passed on this funding to orchestras with the codicil that orchestras become more involved in education and outreach. While all orchestral musicians recognize the importance of education, it must be stressed that orchestra education programs cannot be viewed as a replacement for music education in our schools. Orchestras could do better in these areas, but there needs to be a focused discussion among all the stakeholders and communities as to how these programs can best fit the needs of their “clients” and communities.

Mr. Everett-Green identifies “the assumption of broader responsibility by musicians and more open management” as “another important trend.” This trend has been around for at least a decade when concessionary agreements were the norm across the country. By and large this was the bone tossed by boards and managements as a way to ease the financial pain the musicians were experiencing by supposedly sharing the power. It is unfortunate that it took crises such as near-bankruptcy, strike or lockout to get the

(continued on page 6)

(CANADIAN ORCHESTRAS – continued from page 5)

boards and managements to consider musician input and representation. However, oftentimes the increased representation that the musicians had at the board and management committee level was one of blatant tokenism. Some actually believe that, if musicians were truly intelligent, we would have gone into a career that actually paid a living wage. Without a shared trust, open communication and respect, this “trend” has only meant increased frustration for the participating musicians, with some fortunate exceptions.

If there is one bright light in this malaise it has been the continued striving for performance excellence by the musicians. Canadian orchestras are not headed for extinction but the landscape will look very different unless 1) creative solutions are found for stable, ongoing funding; 2) our corporate and elected leaders go the more challenging road of raising revenue as opposed to the easier path of cuts; 3) charitable giving is increased to a 100% tax deduction for not-for-profit cultural organizations; 4) we return to stable arts programs in our public schools; 5) there is better training and programs in arts administration; and 6) there is real communication, trust and respect among the stakeholders within our individual orchestral constituencies. Above all, the public has to show politicians and boards they want a high standard of excellence from its cultural institutions. The people of Nova Scotia said yes; it’s time for the rest of the country to respond in kind.

Rob McCosh, OCSM President

What’s going on in Canada?

On December 13, 2001 the Winnipeg Symphony Orchestra was locked out by its management. They were preceded in that strategy by the Calgary Philharmonic in October. At the same time, the Vancouver Symphony Orchestra reopened their agreement and The Toronto Symphony was threatened with bankruptcy for the second time in 10 years.



A few years ago I commented in the *International Musician* that Canadian orchestras have a spotty history of work-stoppages, and by that I meant that neither management nor musicians seemed to have the stomach for them. Up to that time, the only strikes were in Ottawa at the National Arts Centre in 1989 and Montreal in 1998. There had been crises, of course, like the Vancouver Symphony shutdown in 1988 and threats of bankruptcy in Toronto in 1992, and Symphony Nova Scotia in 1995. No one was getting rich through the ’90s, but at least there were no devastating concessions. We still don’t have the appetite for labour unrest, but it is quickly becoming the reality in Canada.

In October 2001, **Calgary** Philharmonic Orchestra Board Chair Byron Neiles characterized the CPO contract as “too rich” for the environment so he, along with Calgary Philharmonic Soci-

ety President Jack Mills, locked out their 64 musicians. This in a boomtown where according to recent studies, “Calgary has been doing very well, growing 6.5% in GDP in 2000,” and the majority of Calgarians “support an increase in municipal funding for the arts.”

In a nutshell, the management proposed cuts totalling 16% including 4 fewer weeks, 5% less weekly base salary and pension at 6% rather than the current 8%. After a four-week lockout the season was reduced from 41 weeks to 38 weeks and paid vacation weeks reduced from 4 to 3. The weekly rate for musicians is frozen in the first year and there is a 5% increase in the second.

In **Vancouver**, the Vancouver Symphony Orchestra jiggled the final year of their contract. By all accounts they were able to work out a mutually agreeable deal that maintains the 19% increase over the four-year term of the agreement, but the musicians are donating four weeks of salary this year only. Salaries for all staff are frozen at 2000-01 levels. There was no finger pointing, and to be fair, there were many external influences that led to the reopener.

In **Toronto**, the serial that began in 1999 (or perhaps 1992) resumed in September, and finally played itself out with a ratification vote on Dec. 17. Following the strike in 1999 the TSO, with the help of the Symphony Orchestra Institute, set up a joint committee to address the state of relations in the orchestra (reported in *Una Voce* v.8 n.3). It never went anywhere after Executive Director Ed Smith took over the reins. Before the first media blackout in the current crisis, Smith (former ED of the City of Birmingham Symphony Orchestra) threw in the towel with the words:

“The cancer has spread too far into the body. It’s not just a matter of treating one limb or one organ. These are strong words, I know. But that’s the best analogy I can think of. The cancer within the TSO is everywhere.”

It was in that atmosphere that the TSO teetered on the brink of bankruptcy. The result is stunning. As a point of reference, the TSO agreement at the end of the 1991-92 season averaged \$1,140 per week for a 50 week season (\$57,000 per annum). The cleaver came down later that year with a 16% cut. Ten years later it looks like this:

Weeks cut from 46 to 43 this season; down to 40 in the next 2 seasons. Salary for the 24 weeks beginning with ratification is \$1091. In 2002-03 it is \$1406 per week for an annual salary of \$56,240. The negotiated fee for a third year (extension) is \$1475 per week. On top of that are numerous changes to working conditions.

At the last minute there was a misunderstanding about the last 3 weeks of this season—they were completely gone, not a 15% (or even 20%) cut—they simply disappeared. Despite the severity, a clear majority voted in favour of the measures to avert bankruptcy.

All of this was done through a media blackout, even though it was not officially a negotiation. Since the musicians of the TSO ratified the agreement on Dec. 17, there has yet to be anything in the news and we’re not expecting any until early January. We know that there’s a deal (this was written on Dec. 27), but the public still doesn’t.

In **Winnipeg**, the WSO management’s final offer included

laying off two of 67 musicians (including the chair of their negotiations team) and the option to reduce the current season from 38 weeks to as few as 34. In addition, weekly wages would be frozen this year. [As Senza was going to press, Winnipeg reached a mediated settlement. The new agreement reportedly includes an 8% pay raise over three years—zero in the first year, 3% in the second year and 5% in the third year. – Ed.]

[Late-breaking news from **Edmonton**—In the midst of Edmonton Symphony contract negotiations, it was announced that the ESO's recently fired music director, Grzegorz Nowak, and a group of his supporters have proposed starting a rival orchestra, the Edmonton Philharmonia. Millions of dollars have already been raised to fund the new orchestra, and the Philharmonia's founders expect musicians to leave the Edmonton Symphony to join the Philharmonia, offering the musicians a larger role in the new organization's governance. – Ed.]

Can Canadian orchestras survive as a top-flight ensembles after suffering these measures? Most think they will survive, but no one seems to think they will flourish for years to come. For the TSO, 1992 was not devastating, but this one? There are currently 93 players under contract. Two principal players have already found employment elsewhere. There are approximately 30 musicians who will reach retirement in the next eight years.

There are many questions being asked across Canada. Did the TSO Board agree to a contract that they had no intention of honouring? Is there some sort of collusion among orchestra managements in Canada? Why impose unpalatable terms to force a strike or lockout? Is that simply an easy cost-cutting measure to save a few weeks in musicians' salaries?

And where is Orchestras Canada [Canada's counterpart to the American Symphony Orchestra League – Ed.] in all of this? OCSM removed itself as ex-officio Board member of Orchestras Canada (OC) at the 2000 OCSM Conference in Calgary. We had a unique situation in Canada where the AFM and OCSM both attended OC meetings. The AFM is still there, but OCSM has no intention of going back until there is a clear indication from Orchestras Canada that they will address these questions. The feeling of cooperation is quickly dissipating. If there has been a nationwide breakdown among the major players in symphonic music in the past decade, this is it, and it must be rectified.

Steve Mosher, OCSM 2nd Vice President

Newsletter

On January 2, a federal judge threw out President Bush's 2001 anti-worker executive order that required employers working under federal contracts to post notices telling workers about their rights to avoid unionization and dues obligations derived from collective bargaining agreements. The Bush order, however, did not compel contractors to inform workers about their rights to join a union. U.S. District Court judge Henry H. Kennedy, Jr. ruled the Bush administration had no authority under the National Labor Relations Act to issue the measure and permanently enjoined the administration from enforcing it. (from "Work in Progress," January 7, 2002, AFL-CIO)

From the Editor:
A POSITIVE PEACE
Reflections on Martin Luther King Day
January 21, 2002

The editors of *The Nation* (April 30, 2001) wrote this about the controversial 2000 U.S. Presidential election:

What would Martin Luther King, Jr. think if he heard that the Voting Rights Act had not guaranteed access to the polls for all Americans—that barriers and outright intimidation continue to deny the vote to millions? Would he agree with those who say we should move on to other legislative issues? Or would he reaffirm the centrality of the vote in a democracy and call for renewed voting-rights drives, condemning—as he did in 1963—those who prefer “a negative peace, which is the absence of tension, to a positive peace, which is the presence of justice”?

Consider our relationships in the music business in the light of these words. The labor movement is, after all, a civil rights movement, and Martin Luther King, Jr. was assassinated while in Memphis supporting a strike by sanitation workers. Many labor-management relationships today, including in our industry, bear an unsettling similarity to the forced accommodation to power that characterized the negative peace of slavery. Cooperation in the workplace is not always voluntary (as the absence of black voters at the polls is not always voluntary); it is often coerced—management's play upon the employees' fear. Often, employees are not equal partners in decision-making processes; they are forced to play the hand dealt to them by the boss, to choose from among only unacceptable alternatives, to pick their poison, to submit quietly to the employer's unilateral action. Many orchestra musicians around the country now enjoy that kind of negative peace.

People died on the way to the passage of the Voting Rights Act. They could have saved their lives, avoided the fight, accepted their lot, and had their negative peace. But they wanted a *positive* peace, not just any peace, not peace at any price. They wanted a positive peace, complete with justice, respect and freedom for all.

Anyone who thinks that positive peace, justice, and respect can be earned by simply being quiet and cooperative has not recognized his own condition of servitude. He has mistaken passivity for tranquility, acquiescence for satisfaction, silence for truth.

If there is no struggle, there is no progress. Those who profess to favor freedom, yet deprecate agitation, are those who want crops without plowing up the ground, and want rain without thunder and lightning. Power concedes nothing without demand. It never did, and it never will. Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them. The limits of tyrants are proscribed by the endurance of those whom they oppress.

– Frederick Douglass (1818 - 1895)
 orator, editor, and former slave



Preface

to the Great Electronic Media Debate

Soon you will receive a report on the state of the recording industry from the Electronic Media Forum (EMF). We urge you to read the EMF report carefully, talk with your orchestra colleagues locally and nationally, contribute to the February/March "town meeting" *Senza Sordino*,* and then thoroughly consider the views expressed in that issue of *Senza* before completing and returning the EMF survey.

But first, here are some insights on the process of public intellectual debate that are worth noting:

How do we reconcile ambition and virtue, expertise and accessibility, multicultural sensitivity and the urge toward unified theory? Most important, how do we reconcile the fact that disagreement is a main catalyst of progress? How do we battle the gravitation toward happy consensus that paralyzes our national debate?¹

... the role of public intellectuals [is put at risk by] the triumph of the therapeutic culture, with its celebration of a self that views the world solely through the prism of the self, and much of the time a pretty "icky" self at that. It's a quivering sentimental self that gets uncomfortable very quickly, because this self has to feel good about itself all the time. Such selves do not make arguments, they validate one another. ... I'm struck by what one wag called the herd of independent minds; by the fact that what too often passes for intellectual discussion is a process of trying to suit up everybody in a team jersey so we know just who should be cheered and who booed. It seems to me that any public intellectual worth his or her salt must resist this sort of thing, even at the risk of making lots of people uncomfortable.²

So, let us have a great public intellectual debate, free of rightness and wrongness, free of "icky" selves, free of team jerseys, free of paralytic "happy consensus"—and full of the disagreement that is "a main catalyst of progress." (Civil, respectful disagreement, of course.)

* **Rules for the Great Debate:** Please keep your comments brief and to-the-point, so that as many letters as possible can be printed without editing. Don't attempt to swell the editor's mailbox with multiple statements expressing the same idea; the goal is to publish many different ideas, not the same idea many times. Writers' names will be withheld from publication upon request. (Do identify yourself to the editor, however; letters from unidentified persons will not be printed.) ROPA, OCSM, and ICSOM Emeritus opinions are also welcomed. Any topic involving electronic media is fair game—recording, Internet, radio or TV broadcasting, new use—and also topics involving the process of media negotiations—IBB, traditional bargaining, with or without facilitators, lawyers, caucuses, proposals, etc., and variations on any of the above. Please mail, fax or email your thoughts by February 20 to editor Marsha Schweitzer at the addresses/phone on this page.

Marsha Schweitzer, Editor, *Senza Sordino*

¹ John Donatich, "The Future of the Public Intellectual," *The Nation*, Feb. 12, 2001.

² Jean Bethke Elshtain, *ibid*.

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