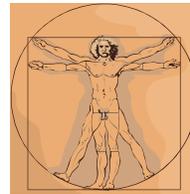


# CBA ANATOMY & PHYSIOLOGY 101

## ROPA NEGOTIATING ORCHESTRAS WORKSHOP

JULY 27, 2019



### DISCLAIMER

- This presentation is intended to familiarize you with the types of provisions that typically appear in symphonic CBAs but do not necessarily pertain to the nuts and bolts of day-to-day work.
- It is NOT intended as a guide to provisions that SHOULD or SHOULD NOT be included in your CBA.
- CBAs are living documents and each evolves over the years in response to the specific conditions in that particular workplace. There is no such thing as “one size fits all” with regard to most CBA provisions.

## RECOGNITION

- The Symphony recognizes the Union as the sole and exclusive bargaining agent for all musicians and librarians employed by the Symphony.
- *The Symphony recognizes a committee of musicians (herein the “Orchestra Committee”) to assist the Union in the negotiation, enforcement and administration of this Agreement. The Symphony also recognizes a Union Steward to assist the Union in the negotiation, enforcement and administration of this Agreement.*

3

## UNION SECURITY

- As a condition of employment, all regular musicians covered by this Agreement who are members of the Union on the execution date of this Agreement shall maintain their membership in the Union. Those who are not members shall, no later than the thirty-first (31st) day following the date of execution of this Agreement, become a member of the Union and maintain such membership in good standing. All probationary musicians hired after the execution of this Agreement shall, no later than the thirty-first (31st) day of their first service as a probationary musician, become members of the Union and maintain such membership as a condition of employment. Maintenance of membership shall be interpreted to include the proper payment of the Union initiation fees, membership dues, player conference dues, Orchestra Committee dues and work dues uniformly required.

4

## DUES CHECK-OFF



- Pursuant to a voluntary Dues Check-Off Authorization Form, supplied by the Union, the Symphony agrees to deduct from the wages of each musician, work dues, in such amounts as are uniformly required by the Union and/or the AFM of its members. The Dues Check-Off Authorization shall be **irrevocable** for a period of one (1) year or until the expiration of the then-current Agreement, whichever occurs sooner, and the Authorization shall be **renewable automatically** for successive periods of one (1) year or for the period of each succeeding applicable Agreement, whichever is shorter. The Symphony shall remit to the Union all monies deducted along with an itemization, by name and amount, of those musicians for whom deductions have been made, no later than five (5) days following each pay period.

5

## DUES CHECK-OFF

- Upon presentation of a check-off authorization from a musician, the Symphony will deduct from each musician's compensation and remit to Local X the work dues required by the Bylaws of the American Federation of Musicians and/or Local X. **The Symphony will furnish the check-off authorization forms to each musician at the beginning of each musician's employment.** All monies deducted will be remitted to Local X, along with an itemization of those musicians for which deductions have been made, concurrent with orchestra payroll. **The Symphony will also include, in the remittance of work dues, the attendance list for all Services which indicates the names of all musicians who have performed Services during the applicable pay period.** Each musician's check will indicate the amount deducted for work dues.

6

## MANAGEMENT RIGHTS

- The management of the Symphony and the direction of its activities are vested exclusively in the Symphony except where expressly limited by this Agreement.
- Except to the extent abridged by specific provisions of this Agreement, the Symphony and its Music Director affirmatively reserve all of their inherent rights to manage the orchestra including, but not limited to, the right to establish and enforce reasonable rules and regulations and the right to maintain discipline.

7

## NON-DISCRIMINATION

- The parties to this Agreement shall not discriminate against any musician or any musician applicant on the basis of race, age, sex, religion, disability, national origin, sexual orientation, union activity or political affiliation.
- The Symphony is an Equal Opportunity Employer and provides programs and services without regard to race, color, religion, national origin, age, sex, weight, height, handicap, sexual orientation, gender identity, veteran status, or marital status.
- *Anti-discrimination provisions also prohibit harassment, because harassment is a subspecies of discrimination.*
- *Steer clear of non-discrimination provisions that incorporate anti-discrimination statutes by name (ADA, Title VII, etc.) and watch for arbitration language that requires arbitration of disputes arising under such statutes.*

8

## HARASSMENT

- It is the policy of the Association to provide a working environment that is free of unlawful harassment, including sexual harassment. Sexual harassment occurs when an employee is subjected to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, and submission to such conduct is made either explicitly or implicitly a term or condition of employment or submission to or rejection of such conduct is used as the basis for employment decisions affecting the individual. Sexual harassment can also occur when unwelcome sexual conduct creates an intimidating or hostile work environment sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.

9

## HARASSMENT

- The policy of the Symphony is to provide a work environment free from harassment, discrimination, and intimidation of any kind. The Society will not tolerate verbal or physical conduct by any employee that harasses, disrupts, or interferes with another's work performance or that creates an intimidating, offensive, or hostile environment.



10

## ZIPPER CLAUSE



- This Agreement is complete in writing and excludes all matters from further negotiation for the duration of this Agreement, **whether or not previously mentioned**, and except as specifically provided to the contrary herein. Further, this Agreement shall not be amended, changed, altered or qualified except by an instrument in writing duly signed by the parties signatory hereto.
- This Agreement is agreed upon in final settlement of all demands and proposals **made by either party during negotiations**, and the parties intend thereby to finally conclude contract bargaining throughout its duration. The contract may be amended at any time only by mutual consent.

11

## MAINTENANCE OF BENEFITS

- All conditions or provisions beneficial to employees now in effect that are not specifically provided for in this Agreement or that have not been replaced by provisions of the Agreement shall remain in effect for the duration of the Agreement, unless mutually agreed otherwise between the Symphony and the Union.

12

## SEVERABILITY

- If any section of this Agreement is held to be invalid or unenforceable by operation of law or any tribunal of competent jurisdiction, or if compliance with or enforcement of any section or part should be restrained by such tribunal, the remainder of this Agreement will not be affected thereby.
- Each provision of this Agreement is separate from every other provision and any illegality or invalidity of any section, paragraph, sentence or clause shall not affect any other portion of the Agreement, which, except for such invalid part, shall continue in full force and effect.

13

## FORCE MAJEURE



- In the event a service cannot be held, or a series of concerts or rehearsals cannot be held by reason of an act of nature such as emergency weather conditions, fire, flood, or pestilence, acts of public enemy, war, rebellion, insurrection, or catastrophic accident, or through action taken by local, state, or federal officials, or any other circumstances beyond the control of the Association, **but not including financial exigencies**, the Association shall have the right to cancel services and shall not incur financial obligation to any Musician for the duration of the emergency beyond that for services already performed for the duration of the emergency. The Association shall make every reasonable effort to reschedule canceled services within the same season.

14

## NO STRIKE/NO LOCKOUT

- The musicians shall not engage in any strike or work stoppage during the term of this Agreement.
- The Symphony shall not engage in a lockout of the musicians during the term of this Agreement.



15

## GRIEVANCE: DEFINITIONS

- **Narrow:**
  - “A grievance is a dispute concerning the interpretation, application, or claimed violation of a specific term and/or condition or provision of this Agreement.”
- **Middling:**
  - “All questions, complaints or disputes concerning the interpretation or application of any provision of this agreement or a wage, term or other condition of employment reasonably related to this agreement...”
- **Broad:**
  - “A grievance is defined as any and all disputes between the parties.”

16

## GRIEVANCE AND ARBITRATION: PROCESS

- Typically a series of “steps” through which the grievance moves before arriving at arbitration.
- When drafting contractual grievance language try to keep it simple and consider avoiding the following:
  - Requirement that all provisions violated be listed in the grievance
  - Requirement that employee and steward (or OC Chair) sign
  - Time limits for filing, especially any shorter than 30 days
  - Time limits for moving between steps, although time limits within a step are okay. Should leave at least 30 days between last step and demand for arbitration.
- If grievance procedure requires written statement of grievance at any stage, employer should be required to provide a written response at that stage.

17

## GRIEVANCE: WAIVER

- The parties agree that time is of the essence with regard to this procedure. Failure to adhere to any time limitations set forth in this Article, unless mutually extended in writing, will result in the grievance being settled against the party failing to adhere, and said grievance will not be subject to further action of any kind.

18

## DISCIPLINE: JUST CAUSE AND ARTISTIC STANDARDS

- Avoid defining what constitutes “just cause.” It is a term of art that has a settled meaning in arbitral law. That accepted definition creates a high hurdle for an employer wishing to discipline an employee. Defining just cause creates a risk an arbitrator would apply a less-favorable definition of just cause than that commonly accepted as a matter of law.
- On the other hand, it is appropriate to include a standard for artistic dismissals.

19

## ARTISTIC STANDARDS LANGUAGE

- “A tenured Musician cannot have his/her position with the orchestra changed (reseated), terminated or otherwise modified except for **demonstrated, continual and un-remedied failure of musical performance or Just Cause.**” (Pacific Symphony)
- “A Member whose **musical performance significantly deteriorates and falls below the musical standards of the Orchestra** may be terminated in order to maintain the musical standards of the Orchestra.” (Chicago Lyric)

20

## PRE-DISMISSAL PROCEDURES

- Concept of just cause contemplates an employee will have received due process and progressive discipline.
- Same concepts should apply in discipline for artistic reasons.
- Spelling out pre-dismissal procedures in artistic discipline can serve as a road-map for the smart employer or a trap for the unwary/sloppy employer.
- As an alternative to such provisions, could include requirement that even where termination is for artistic reasons, employee must have been afforded due process and progressive discipline.

21

## APPEALS OF ARTISTIC DISCIPLINE

- May be appealed to traditional labor arbitration or peer review committee or some combination.
- Preserve impartiality of process by electing peer review committee well in advance of any individual termination action and preserving anonymity of committee members until activated.
- Ensure hearing provides due process protections, e.g.:
  - Employer bears burden of proving termination was justified, presents evidence first
  - Musician has right to representation throughout
  - Musician and representative have right to hear, probe and respond to all the employer's evidence
  - No audition requirement

22