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## Some New Ways to Think about the Collective Bargaining Process

by

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### ***Some New Ways to Think about the Collective Bargaining Process***

**I**f you have not already done so, please read the review of *Pathways to Change*. It sets the stage for much of what Tom Bacchetti has to say in the essay that follows.

Bacchetti knows orchestras inside and out, having served as an orchestra executive director, and now as a consultant. In this essay, he shares his experience in looking at collective bargaining from a new perspective, and discusses the role of a third party.

#### **Beginning Anew after Failure**

*This essay begins with failure—the 1993 bankruptcy of the Alabama Symphony Orchestra. But Alabama rose again, and Bacchetti explains the critical assumptions of the planning model which gave rise to the new orchestra.*

*He then leads us through the process of assembling an orchestra, drafting a master agreement between the new organization and its orchestra, and creating a foundation of trust and good communication.*

#### **The Lessons of Birmingham**

*After explaining what transpired, Bacchetti turns his attention to what was learned. Using the rubric of *Pathways to Change* as a framework, he offers a series of observations that might be used to rethink the process of collective bargaining.*

*Bacchetti concludes his essay by emphasizing that orchestra organization relationships deserve steady, ongoing, and creative investment, well beyond the relatively short periods during which master agreement negotiations take place.*

## Some New Ways to Think about the Collective Bargaining Process

One of the most important relationships in any orchestra organization is between the musicians and the orchestra's management. And yet, more often than not, that relationship is defined by the periodic event known as collective bargaining (or "negotiating the master agreement").

As former orchestra executive director and now consultant, I have been interested in the process of collective bargaining for many years. From 1982 through 1993, I served as executive director of the Atlanta Symphony Orchestra (ASO). During that period, I represented management in three collective bargaining "events." One negotiation broke down and resulted in a six-week strike. The other two, while going "down to the wire," resulted in three-year contracts. All three negotiations were characterized by traditional bargaining: management's relationship with the union was "arms-length," and both sides used "distributive bargaining" strategies, employing high degrees of "forcing" (although neither side was consciously aware of the terms). Each negotiation resulted in incremental changes. None addressed structural change in the system, although structural change was becoming increasingly necessary as Atlanta and other orchestras entered the 1990s—a period which we now recognize as one of shrinking public financial resources and of paradigm shift in social priorities.

In retrospect, negotiators on both sides felt the results preserved past gains rather than achieving substantive improvements. Neither side felt much sense of accomplishment. In the year of the six-week strike, unrestrained escalation of the public relations battle led to damaged personal relationships, the scars of which are still visible. There had to be a better way!

After I left the ASO, my wife and I formed a consulting practice. The independence of consulting offered me the opportunity to read extensively and

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think more abstractly about collective bargaining. About a year ago, an opportunity presented itself to put this thinking and research into practice. I was asked by board leadership of the budding Alabama Symphonic Association, Inc. (ASA), to help them organize the return of a professional orchestra to Birmingham.

## **Birmingham: A Hands-On Case Study**

In January 1993, the Alabama Symphony Orchestra declared Chapter 7 bankruptcy. Some say the bankruptcy was caused by the precipitous withdrawal of substantial state government funding upon which the orchestra had grown overly dependent. Others suggest that while withdrawal of state funding was a blow, the musicians' refusal to renegotiate salaries in light of diminished revenue was the ultimate cause. The musicians believe neither that the bankruptcy was necessary nor that the board was particularly resourceful in exploring options

### ***Definitions***

The following definitions are offered to provide readers with an understanding of terms as used in this essay.

A “**forcing**” strategy operates on the premise that one party in a negotiation has the power to compel acceptance of its demands on the other party.

A “**fostering**” strategy, in contrast, operates on the premise that once differences between the parties are identified, solutions can be found which leave all parties better situated and more satisfied.

“**Distributive**” bargaining focuses on the allocation of “fixed” resources between the parties. These resources may, in fact, be incrementally increasing or decreasing, but are perceived—especially by management—as being “fixed.”

“**Integrative**” bargaining focuses on the active identification by both parties of common or complementary interests, and solutions to joint or separate problems, with the expectation of also finding ways to expand resources which can be shared by the parties.

“**Substantive**” outcomes of collective bargaining are reflected in the provisions of the resulting signed agreement, particularly as it relates to compensation and work rules.

“**Relational**” outcomes are reflected in the more qualitative, often unwritten, results of collective bargaining, including the degree of trust, the amount of cooperation, the level of commitment, and the ongoing direction of labor-management relations which are established through the bargaining process.

other than reducing musician salaries.<sup>1</sup> It does not matter who was “right.” The outcome was still a bankrupt orchestra.

Almost immediately following the bankruptcy, an effort to return symphonic music to Birmingham began. Led by volunteers, the effort quickly raised enough money to purchase key assets of the orchestra: the music library, the large instruments usually owned by orchestras, and such equipment as music stands, chairs, and sound amplification equipment. The volunteers also set about organizing funding for an orchestra’s return.

Even before the Alabama Symphony went bankrupt, plans were under way to build a performing arts center on the campus of the University of Alabama at Birmingham. The center was to be the home of the Alabama Symphony Orchestra, to present touring artists and attractions, and to serve as a venue for the music department and other campus offerings. The 1,300-seat center, a European-style music chamber with superb orchestral acoustics, opened in September 1996, with Leonard Slatkin leading performances by the National Symphony Orchestra.

Although the center opened without an orchestra in residence, a local philanthropist, whose late wife had been deeply involved in the center’s planning and funding, soon provided major aid. Determined to realize his wife’s dream, the donor led efforts to fund the return of a professional orchestra to Birmingham and the center. A skeletal board incorporated the Alabama Symphonic Association, Inc. The board researched orchestral associations in similar-sized communities and interviewed members of Birmingham’s civic and corporate sectors. From its research, the board produced a planning model which contained several critical assumptions:

- ◆ The corporate community would not support a new orchestra until it proved itself fiscally responsible.<sup>2</sup>
- ◆ Financial conditions and community attitudes demanded the new effort begin with a \$3 million annual budget, considerably smaller than the \$5 million annual budget of the bankrupt orchestra.
- ◆ Long-term financial security required an endowment three times the size of the annual operating budget.
- ◆ Orchestra backers needed to raise a \$5-million “operating fund” to provide a \$500,000 yearly floor for the annual-fund campaign for the first 10 years.
- ◆ Management of the endowment would be vested in a separate, nonprofit corporation to assure that the endowment’s corpus would not be raided.

The new board then set out to raise the \$15 million required to launch a new orchestra. By late summer 1996, it had assembled close to \$12.75 million in gifts and pledges. Confident in their ability to raise the remaining \$2.25 million, the board turned to the task of assembling an orchestral organization.

## Assembling an Orchestra

By September 1996, the ASA had a staff of three employees: a development director, a projects manager, and an office/financial manager. The president emeritus of the University of Alabama at Birmingham agreed to serve as volunteer president and CEO of the ASA. A local partner of Ernst & Young—now treasurer and chair of the ASA's finance committee—prepared a meticulously researched, thoughtful, and detailed five-year financial plan. By late September, the board had an artistic advisor for a two-year term. I joined the effort in mid-October to organize operations, to assist the artistic advisor in putting together the first season, and to help assemble the orchestra. The latter task provided a real-time opportunity to test some alternative negotiating methodology. Was there truly a better way?

Initially, the board considered the possibility of forming a non-union orchestra. Several factors mitigated against energetic pursuit of that option. For example, the president, treasurer, and business agent of the American Federation of Musicians (AFM) local were all symphonic musicians and members of the former Alabama Symphony. Then, there was the time schedule. Given the association's intent to present a season beginning in September 1997, the best option to fill vacancies that occurred during the four-year hiatus of symphonic music was the established recruiting system provided by the AFM's publication, *The International Musician*. Research with labor counsel also indicated that if the majority of the new orchestra's musicians belonged to the AFM, they could (and most likely would) elect to certify the union shortly after they were employed.

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The board understood and accepted these conditions, and chose to recognize the AFM as sole bargaining agent for the orchestra's musicians. With these preliminaries accomplished, attention turned to drafting a master agreement—negotiating.

### Agreement on Rules of the Game

Musicians and management<sup>3</sup> agreed to conduct the initial discussions without attorneys present, and to conduct them as attempts to address issues of concern, rather than as a presentation of and reaction to positions of one party or the other. All negotiators agreed to an embargo on statements to the press unless the other party had been informed at least 24 hours in advance that a public statement was forthcoming. This agreement was honored; no public statements were issued during the course of negotiations. A joint press release and joint interviews announced ratification of the agreement.

The musicians accepted the conceptual financial plan

as a starting point. The board, with some initial reluctance, accepted the last master agreement of the bankrupt symphony as the basis for discussion of work rules and format.

## The Importance of Leadership

The presidents of the board and the AFM local deserve special recognition for their roles in working through the positive process that resulted in a new master agreement. Both were open, patient, tolerant of differing views, passionate advocates, and committed to creating a strong, sustainable organization. Lines of representation actually blurred at times, with the union president arguing on behalf of a larger management staff than the financial plan envisioned (to assure full, professional execution of the business plan), while the board president argued for an improved medical insurance plan for the musicians.

Both presidents were committed to a strategic approach emphasizing fostering rather than forcing.<sup>4</sup> Although the board president chose to describe the meetings leading to a contract as “issue discussions,” and the union president considered them “negotiating sessions,” the descriptive differences were never an impediment to meaningful progress.

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## The Role of a Third Party

Early in my engagement, the board president asked me to assist in negotiating the master agreement with the musicians. He believed it was important to lead the negotiations as a way of developing relationships with the musicians through the negotiation process. He also understood the benefit of being assisted by someone familiar with orchestras and experienced in the negotiations process. I felt I could be useful as an independent facilitator, helping both sides reach agreement.

The AFM local accepted this arrangement. They considered it a plus to have the involvement of someone with orchestra management experience who was conversant with the usual terms and conditions of orchestra negotiations. They considered me an ally—at least insofar as they assumed I would explain standard orchestra practices and procedures to the novice board.

I saw my role as the interpreter of the process. But I had an agenda, too. This was an opportunity to help the association and the local union establish a sound basis—both substantively and in terms of defining relationships—for the development of an important and sustainable institution. It also provided the chance to try to persuade the parties to adopt the kind of flexible work

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arrangements many observers of the symphony industry believe to be essential to ongoing orchestral well-being.

As a consultant I felt less constrained by the formalities of negotiation than I had as an executive director. The semi-clean<sup>5</sup> slate could only be viewed as an opportunity for those involved to build a new organization in a new way. The informal nature of the negotiations allowed me to check in regularly with both parties, and to monitor progress, attitudes, and positions. Through this regular “temperature-checking,” I was able to devise ad hoc procedures to resolve budding conflicts. Although the only proof may be the agreement itself, I believe this “on-the-fly,” third-party facilitation substantially helped the parties reach an agreement that contains a number of substantive and social contract changes<sup>6</sup> from the one that governed the former Alabama Symphony Orchestra.

### **Results of the Process**

Initially, the board hoped to craft a master agreement of fewer than 10 pages. The final result was an agreement of 56 pages, a marked reduction from the 72-page agreement of the former Alabama Symphony Orchestra.

In assessing the agreement, I am drawing on the framework outlined in the book *Pathways to Change*, which is reviewed immediately preceding this essay, and the authors’ earlier work, *Strategic Negotiations: A Theory of Change in Labor-Management Relations*. The agreement contains language which denotes both substantive and relational changes for the new orchestra organization.

### **Substantive Results**

While the initial financial-planning model called for a nucleus of 40 full-time musicians (employed on a weekly basis for a 34-week season), and a 20 percent of payroll addition for statutory and negotiated benefits, the board stressed from the outset its intent to employ as many full-time musicians, and to provide them the best benefit package possible—within budgetary boundaries. Through joint review of the financial projections, incorporation of musician suggestions, use of influential experts to negotiate medical insurance, and other adjustments, the final agreement resulted in the employment of 48 full-time musicians, and a benefit override of 24 percent.

Three significant, substantive changes from the agreement which had governed the bankrupt symphony also signaled a change in relationships (or social contract) from “compliance” to “commitment.”



- ◆ The union accepted a rising cap on the association's responsibility for medical insurance premiums.<sup>7</sup>
- ◆ The issue of leave days—identified by the local as most abused by its members in the previous agreement—was resolved by shifting the accrual of leave to an earned, rather than entitlement, basis.
- ◆ In a significant departure from traditional work rules,<sup>8</sup> agreement was reached to permit the scheduling of small ensembles and individual musician services as part of the guaranteed annual service count for full-time musicians. The change in work rules grew from mutual understanding of two issues: the challenge of reconnecting with the community following a four-year absence of symphony music and the likely presence of “excess” guaranteed services during the term of the agreement.

## **Relational (Social Contract) Results**

The Community Outreach Program is a good example of movement toward a mutually committed relationship. Once the issues surfaced, the musicians' negotiating committee was asked to propose a solution.

The musicians proposed a framework for using a limited number of smaller ensemble or individual services in an outreach program jointly managed by a committee of musicians and management. After refinement of details—including a financial incentive for expanding the number of services available for use under the terms of this program—a conceptual framework was agreed upon. It will be up to the musicians and the orchestra's new management to cooperatively refine the details and implement the program during the 1997-1998 season, and program implementation affords an excellent opportunity to foster relationships between management and musicians.

Musicians from the new orchestra will participate as voting members of the board of directors, and on all appropriate standing and ad hoc committees. This agreement for musicians to so serve is not without implementation impediments. At least one musician on the negotiating committee expressed the preference to limit involvement to just “doing my (musical) job,” and at least one member of the board negotiating team expressed reluctance to include musicians on the finance committee.

Both musicians and nonmusician board members continue to struggle with how musicians serving on the board and its committees can traverse the river between “thinking like a union representative to the board” and “thinking like a board member.” (Maybe this river isn't very deep or very wide, but it certainly is murky.)

## **The Future in Birmingham**

It would be naive to suggest this negotiation resulted in a fully trusting relationship. But it is fair to observe there is a greater degree of trust between the board and the union than there was in October 1996. Administration of this first master agreement is crucial to the orchestra's future. Key factors in developing improved levels of trust include:

- ◆ Full and open sharing of information.
- ◆ A problem-solving rather than a “positioning” approach.
- ◆ Early identification of areas of mutual interest and areas of potential conflict, along with the mutual commitment to resolve conflicts.
- ◆ Maintaining the high levels of committed leadership that both parties enjoyed during the negotiations.

The new orchestral organization in Birmingham is very much a “work in progress.” Its first season opened shortly before publication of this article. Success depends not so much on avoiding mistakes—the organization will make its share—but rather on building a committed, participatory, self-confident organization that recognizes and learns from its mistakes. To succeed, this orchestral organization must become one in which parties deal honestly with each other. It must become an organization of clear, shared expectations, coupled with a commitment to exceed those expectations. It must be an organization in which understanding of roles and respect for differences is commonplace. And, finally, it must recognize that while conflicts will arise, a commitment to resolve them successfully is essential.

## **The Lessons of Birmingham**

The Birmingham experience indicates there is a better way to develop positive musician-management relations. Discussions with both executives and musicians in other orchestras and my personal experience in negotiating collective bargaining agreements as executive director of a large orchestra (coupled with selected readings and considerable thinking about the subject) provide enough perspective for me to venture some generalized observations. This is by no means a comprehensive list, but it may be a start to rethinking collective bargaining and its relationships.

- ◆ Most orchestra executives and musician bargaining representatives tend to concern themselves more with negotiating tactics and desired outcomes than with strategy. Consequently, in the spectrum of available strategic choices, orchestra managements and musician-negotiators generally adopt hard-bargaining, forcing strategies, with little thought given to the “social contract” implications and effects of collective bargaining. A few orchestras report employing pure fostering strategies in their negotiations. Fewer still choose the complex route of mixed

forcing-fostering (or fostering-forcing) strategies. Both musicians and management will benefit from using mixed strategies, in which fostering is the predominant mode, but which recognize that divergent interests on some issues may be resolved only by “hard bargaining.” A move away from primary reliance on forcing, coupled with a mutual commitment to honesty, trust, and openness will, over time, sufficiently strengthen the social contract to allow periodic episodes of forcing that will not damage the organization.

- ◆ A fostering strategy is best developed outside the event of periodic collective bargaining. Put a different way, the period of “contract administration” affords the chance for management or musicians to initiate fostering steps to positively redefine the social relationship between the parties. I do not suggest fostering is without pitfalls. It is not. But if American orchestras are to adapt to our continually changing environment, a new paradigm of cooperation and commitment is essential.
- ◆ The use of independent, third-party assistance in areas of musician-management relations, including negotiations and contract administration, is undervalued by most American orchestras. The options for third-party assistance have broadened significantly in recent years to include lawyers with facilitation training, independent facilitators, skilled mediators, and practitioners in the growing field of alternative dispute resolution. Orchestra executives and musician committee leaders owe it to their respective constituents to explore these alternatives as they prepare for and conduct negotiations.
- ◆ Collective bargainers need to agree on the rules of negotiation before negotiating. The ground rules should be designed to expedite the negotiating process, and to preserve essential aspects of the social contract between the parties. Unrestrained escalation of a forcing strategy, particularly combative public statements and postures, can result in long-term damage to the organization and all individuals associated with it. Public name-calling, attempts to recruit public opinion to one’s “side” by inflammatory and often misleading statements, and similar tactics produce undesirable results.
- ◆ Information should be shared. If things are going well, let everyone in the organization know and celebrate the success. If there are dark clouds building, let everyone know before it starts raining; one never knows where a good idea may surface. The corollary to sharing is asking for

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information. Ask carefully for information useful in addressing issues, not just to satisfy curiosity. When sharing or asking for information, remember that context is important.<sup>9</sup>

- ◆ Leadership is essential in musician-management relations. Leadership carries responsibility for the process of negotiation as well as its outcome. This is a more difficult challenge for the musician-leader than for the management-leader. Orchestra executives are more likely to be trained in organizational leadership than are their musician counterparts. Often musicians inexperienced in negotiation are thrust into the role of representing the orchestra. Some rise to the occasion well, others do not. Orchestra committees, union locals, and national union organizations should consider investing in training musician leadership. Consideration should be given, too, to compensating musician-leaders for their organizational leadership responsibilities.
- ◆ Negotiations provide a setting for listening, learning, and growing. There are many areas of common interest between the parties. Skillful listening, brainstorming (as opposed to blameworthy), and honesty go a long way towards emphasizing common interests and resolving those that conflict.
- ◆ Trust is fragile, but not as fragile as we sometimes make it out to be. All parties to negotiations need to act honestly, fairly, and with the degree of civility warranted by the orchestral profession. If issues sit, fester, germinate, and grow, everyone shares responsibility for the destruction of trust. Get the process back on track. Toughening one's skin and confronting the sources of misrepresentation, truth shading, selective memory, and other trust-busting tactics is a responsibility that all share.
- ◆ The national union organizations have an unrealized opportunity to improve labor relations in orchestras. They can provide training, or access to it, to professionalize their interests in musician-management relations at the local level. Union sponsorship of a musician-management-relations institute, patterned after similar programs offered by other labor unions, provides a great opportunity to move the field forward. And if the national union organizations were to partner with America's orchestras to reassert the value of symphonic music to education, business development, and spiritual enrichment, they would be formidable forces.

***“Leadership is essential in successful musician-management relations. Leadership carries responsibility for the process of negotiation as well as its outcome. This is a more difficult challenge for the musician-leader than for the management-leader.”***

- ◆ Finally and most importantly, musician-management relations must be seen as a high-priority, full-time concern for all associated with orchestras. No longer should these relations be viewed as episodic “necessary evils” for management, or “here’s our once-every-three-year shot at redressing all real or perceived wrongs and getting paid what we’re worth” for musicians. Musician-management relations should be among the top three relationship-building tasks within any orchestra organization (the others being orchestra-customer and orchestra-donor).

For orchestra managements, this has many implications. It means scheduling time to cultivate the relationship; it means allocating financial resources to support the relationship; it means welcoming musicians to governance participation; and it means making a sustained commitment to new ways of working together.

For musicians it means many of the same things. It means scheduling time to participate and time to prepare for participation; it means struggling with when it is appropriate to “act like a board member” or to “act like a union musician”; it may mean some financial sacrifice, such as foregoing an outside, paying gig to serve on a committee or the board; and it, too, means making a sustained commitment to new ways of working together.

The threats to American orchestras are real and grave. These threats demand that orchestras explore new ways of working. The most fundamental relationship in the orchestra is that between musicians and management. Yet this relationship is the one to which little attention is paid outside of the event of master agreement negotiations, usually once every three years. Perhaps the time has come for all parties to invest in rethinking the basics.

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## Notes

- <sup>1</sup> *Pathways to Change* describes a third strategy, “escape,” in detailing strategic choices, although the authors view it more as a tactical threat than a useful strategy. In a corporate setting, escape is closing a plant in one location while opening another in a location with more favorable labor conditions. The bankruptcy of the Alabama Symphony Orchestra could be viewed in this context: closure of the orchestra as an attempt to escape what the board determined to be an untenable labor contract.
- <sup>2</sup> The bankruptcy of the Alabama Symphony Orchestra left substantial unpaid debts with banks and vendors. Although the new ASA is a different organization, interviews indicated that the bankruptcy tainted any “symphony” organization. To address the perceived confidence problem, the new board vowed to operate in the black, and included a bylaw prohibition against borrowing.
- <sup>3</sup> Because an executive director had not yet been hired, nor had a players’ committee been elected, ASA negotiations took place directly between the board and the local musicians’ union. For purposes of generalization in this article, the term “management” includes both board and paid executive staff, and the words musicians and union are used interchangeably.
- <sup>4</sup> Although the clear emphasis was fostering, there were necessary episodes of mild forcing during the negotiations. For example, the board refused to move higher than the \$3 million expense budget projection. They made it clear they would abandon the effort to bring an orchestra back if the local union insisted on a larger budgetary commitment.
- <sup>5</sup> It wasn’t a completely clean slate because there remained baggage, commitments, feelings, and attitudes from the former orchestra’s collapse.
- <sup>6</sup> Substantive changes are those affecting compensation and work rules, e.g., scheduling of orchestra services, length of services, and, as noted later in this article, ways in which contract musicians may or may not be officially scheduled in groups less than the full orchestra. Relational changes are those affecting the nature of the “social contract” between the employer and the employees. *Pathways to Change* describes social contracts in such terms as compliance, cooperation, and commitment.
- <sup>7</sup> The association agreed to pay the full premium for employed musicians in the first year (of a two-year agreement) and to raise its commitment up to 5 percent in the second year. If premiums increase more than 5 percent in the second year, a joint committee will review the situation and resolve a way to keep liability within the 5-percent boundary.

- <sup>8</sup> From the union's perspective, prohibition against any orchestra scheduling of small ensembles of individual musicians as part of the "service count" is a significant condition of the "social contract" between employer and musicians. The musicians work for the employer as a group, or collectively, but are free to engage in other income-generating employment as individuals. This outside employment also provides the freedom of creative expression absent in the orchestral setting.
- <sup>9</sup> Comparative information, like that provided by the ASOL and ICSOM, while useful, has limitations. Given social complexities, orchestras in different cities are generally not comparable.