



UvA-DARE (Digital Academic Repository)

Symphonic metamorphoses

Variations on vulnerability: orchestral musicians' employment in times of crisis

Kurzbauer, H.R.

Publication date

2022

[Link to publication](#)

Citation for published version (APA):

Kurzbauer, H. R. (2022). *Symphonic metamorphoses: Variations on vulnerability: orchestral musicians' employment in times of crisis*. [Thesis, fully internal, Universiteit van Amsterdam].

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

6. Post-crisis changes and perceptions of change

Interviews with more than 150 orchestral professionals in the U.S. and the Netherlands conveyed various ‘insider’ concerns into a discussion of musicians’ employment issues.³⁵⁰

Orchestral musicians in the second decade of the millennium continue to speak of their vocation as a calling, a ‘must’ that is synonymous to their very being. Whether based in Rochester or Rotterdam, they observe that since the financial crisis of 2007-2008 their professional lives have become increasingly gridlocked (a term used by a New York-based violinist). Not only financial issues plague the orchestras: “[O]ur musical lives take place within a hierarchical family - it is no less a profession which is part of a multifaceted musical organization governed by interactions between music director, management and board not to speak of union reps and musicians often with their own objectives and agendas.”³⁵¹

Musicians reflecting on the post-crisis orchestral situation where shrinking subsidies and reorganizations /restructuring engendered new budget models based on hours as opposed to weeks of performances speak of heightened stress levels, lack of work/life balance and, last but certainly not least, diminishing incomes. In addition to the vulnerabilities, the fact that music directors, the maestros who direct the orchestras, are in high demand internationally means that they spend much less time with their home base orchestras with less time for taking care of possible ‘on-the-job’ problems.³⁵² Orchestras are more likely to work with guest conductors during their seasons, but guest conductors are not responsible for either artistic or organizational continuity. Without judging the artistic effect that a diversity of conductors has on an orchestra as this depends on many factors including the chemistry between the guest and the orchestra, it is important to mention that the absent music director particularly in times of crisis is perceived as a negative factor on the part of the musicians.³⁵³ Crucially, the intensified careers of music director-conductors has led to an increase in performance stress for orchestral musicians who once relied on a solid schedule of pre-concert rehearsals.

³⁵⁰ See *Recitative: The interviewed*.

³⁵¹ Conversations with Judy Nelson violist New York Philharmonic Orchestra 1983-2019.

³⁵² Statistics gleaned from both major European and top-tier U.S. orchestras show that the Music Director often spends less than 30% of his/her time (between 8-12 weeks per season) with the orchestra.

³⁵³ Minnesota Symphony musicians expressed some frustration after their Music Director Osmo Vänskä resigned one year into the orchestra’s lockout following management’s cancellation of Carnegie Hall Concerts in September 2013. The maestro returned to his post after concessions were made on both sides.

“In the last few years, our rehearsal schedules have reflected a new sort of expectation: we must be prepared to perform difficult pieces even without adequate rehearsal time. It is just part of the job nowadays. Often a maestro flies in from another city with absolutely no time to rehearse a major symphony, just a few minutes to ‘run through’ tricky spots so that the evening’s soloist feels comfortable. The orchestral musicians have to sit on the edge of their chairs to pull through the concert and make sense of the conductor’s interpretation.”³⁵⁴

6.1 Discrepancies between recognition and remuneration

Individual recognition within the confines of the orchestra is rare, especially for ‘tutti’ players.³⁵⁵ Yes, the orchestra is a collective led by the maestro, however the trickle down of positive rewards is less likely to happen for the tutti. Traditionally, at the end of each composition performed in a concert setting, the performers stand, face the audience, and accept public approbation. The conductor will ask principal players who excelled in solo parts, often virtuosic or difficult in terms of execution, to take a solo bow. Along with the added accolades, section principals receive overscale pay and other contractual perks. As the *Rowe* lawsuit discloses, principal pay in major orchestras in the U.S. can exceed twice the amount of remuneration as section players.

Above and beyond the remuneration for principals is the issue of conductors’ salaries and those of CEO-Presidents-Managing Directors, whichever title refers to the orchestra’s manager. In both the Netherlands and the U.S., conductor’s and managers earn substantially more than orchestral musicians. According to a *New York Times* article aptly entitled, “Baton Inflation,”³⁵⁶ nine U.S. orchestral music directors earned over \$1 million per season in salaries paid by their home orchestras, including orchestras such as the Chicago Symphony Orchestra (CSO) that went on strike primarily to retain pensions and maintain salaries. European orchestras do not report salaries but according to ‘insider information’ gleaned from impresarios and conversations with conductors, this remuneration tendency is not merely a U.S. phenomenon. ‘Name’ soloists who take center stage charge \$30,000-\$100,000 for three concerts, analogous to a year’s salary for the average orchestral musician.³⁵⁷

³⁵⁴ Interview with Quirine Scheffers Associate concertmaster Rotterdam Symphony Orchestra.

³⁵⁵ *Tutti*, the Italian term is used universally to mean ‘rank-and-file’ (U.K.) or section players (U.S.) the musicians who make up a larger section of players: the string players.

³⁵⁶ Zachary Wolfe. “Baton Inflation: American Conductor Salaries Hit a New High” July 27, 2018 *New York Times*. Available at: <https://www.nytimes.com/2018/07/27/arts/music/orchestra-conductors-high-salaries.html>

³⁵⁷ Differences between € salaries and U.S. \$ salaries are reported as top-tier U.S. orchestras ‘generally’ pay higher fees than European orchestras, with variance reported down the line according to discussions with impresarios (see, *Recitative: The Interviewed*).

“Those who manage us are willing to pay top dollar for soloists and guest conductors, perhaps fair enough if you consider that these musicians attract sponsors and are audience magnets. Nevertheless, the discrepancy between a guest conductor who earns more in a weekend than the orchestra’s musicians earn in one year is difficult to accept. Where is the balance or at least the consideration of the rank-and-file players?”³⁵⁸

Unanimous voices from both jurisdictions studied underline that since the financial crisis and its aftermath in the orchestral sphere, “precarity is ever more present for orchestral musicians - the employed witness a diminution of their contracts and the freelancers have to fight harder for work as substitutes in an ever-shrinking number of financially solvent venues in order to survive in the profession. Musicians seem to be becoming increasingly vulnerable.”³⁵⁹

Turning to the professionals who run orchestras, whether they call themselves CEOs, Presidents or Managing Directors, their salaries are inordinately high compared to the rank-and-file musicians’ salaries. U.S. top-tier orchestras pay their directors salaries running in the six and even seven-figures with super-fundraiser Deborah Borda earning top dollar following her move from the Los Angeles Philharmonic to the New York Philharmonic in 2017.³⁶⁰ Even orchestras with small budgets (under \$425,000 per annum) reportedly pay approximately 10% of their total costs to managing directors.³⁶¹ Musicians accept the fact that those who lead whether in the musical or the management zone are entitled to excellent compensation. The disproportionality, however, between their salaries in ‘leadership inflation’ especially in times of financial upheaval is disconcerting.

6.2 Subordination and lack of influence to solve work-related problems

Orchestral musicians in the Netherlands and the United States expressed dismay at their lack of autonomy in terms of important choices such as ‘who conducts us’ and other artistic decisions. Dutch musicians who were for the most part happy about the participation of colleagues on works councils, also voiced critical opinions concerning

³⁵⁸ Conversations with Norman Lebrecht, author, and blogger (www.slippeddisc.com).

³⁵⁹ Discussions with Mark Gerrits.

³⁶⁰ Ms. Borda’s Los Angeles salary of \$1.8 million was undoubtedly raised by the New York Philharmonic ‘buyout’ when she left the LA Philharmonic to head the team at the New York Philharmonic, see, <https://www.sfcv.org/music-news/deborah-borda-agrees-to-take-the-reins-of-the-new-york-philharmonic>

³⁶¹ For more information see: <https://adaptistration.com/2005/04/12/mobile-managers-super-managers-for-tomorrow/>

participatory decision making in times of crisis. The musicians who went through reorganization processes during financial crises were critical as to how these processes played out on the work floor.

“We were being led down the garden path during the reorganization process. The more we were told how fair the process was, the more our suspicions increased that this was really not true. There was little trust between the musicians and management and sadly our works council was hijacked, caught in a difficult position and forced to agree with management.”³⁶²

Similar sentiments were registered by Atlanta Symphony musicians during their turbulent years 2012-2014. “Our general director/CEO, his board and the umbrella organization that financed us were definitely not on our side and it was the orchestra, the musicians and the community who suffered for their mistakes.”³⁶³ Save for a few orchestral musicians voted in to serve as artistic and/or negotiating committee members, most U.S. musicians are not consulted with regard to the fundamental artistic and administrative decisions that impact their work lives.

The self-governing orchestras exemplified by the Royal Concertgebouw and Vienna Philharmonic Orchestra and many London-based orchestras provide textbook examples of how musicians participate in significant decision-making processes within the orchestral organization. However, scratching beneath the surface reveals that the traditional hierarchy within the orchestra in which the music director is supported by the chief executive can devalue the actual role of musician participation.

“There are subtle ways for our orchestra’s administration to make clear that the musicians cannot speak up without going through a great deal of control. When our colleagues at the Dutch radio were facing extermination (dismantling orchestras) we were told not to participate in protest actions, it simply was not to the advantage of the Royal Concertgebouw Orchestra.”³⁶⁴

In U.S. orchestras, strategic decisions under the ‘troika’ system are made by a core of ‘powers’ perceived as distanced from the work floor and in times of crisis: this perceived distance can lead to grave misunderstandings as case studies in Atlanta and Baltimore reveal at the end of this *movement* reveal.

³⁶² Translated from the Dutch, ‘om de tuin had geleid,’ quoted by a Netherlands Radio Philharmonic Orchestra (RFO) musician who did not lose a principal position. The statement was made in reference to how the reorganization was effectuated.

³⁶³ An Atlanta Symphony Orchestra string player looking back at the double lockout period, anonymity assured.

³⁶⁴ Principal player RCO with regard to participation in anti-cultural subsidy cuts at the *Mars der Beschaving* (March for Civilization) June 26-27, 2011. Anonymity assured.

6.3 Training deficiencies exacerbated by a lack of coherent and long-term career planning, the limited chances for advancement within orchestras

Research on employment issues should take workers' including potential workers' expectations into consideration. Musicians interviewed alluded to the fact that they were often ill-prepared for the challenges they faced in the orchestral workplace. *Of Rowe and race* considers specific problems and vulnerabilities related to gender, race, misperceptions, and difficult points of entry in orchestras. What do training programs for musicians actually do to prepare musicians for orchestral careers? While there is a great deal of observable variance between different institutions, the majority of music schools and conservatories place the focus of instrumental training on solo enhancement, especially for string players and keyboardists. Although many training institutions have added orchestral studies and course components on what to expect from an orchestral job, "this is the stepchild of the program: we have introduced it but do not take it seriously for musicians who if they are lucky would have orchestral careers in the future."³⁶⁵ As case studies and interviews on both sides of the Atlantic illustrate, contracted orchestral musicians and freelancers in the sector speak of a lack of career preparation and training with regard to employment-related issues. The International Federation of Musicians (FIM) and *confrères* (and *consoeurs*) at various international unions are taking steps to address this inadequacy. Work-life balance has become a human resources buzz word in recent years with comprehensive systems put into place at the major orchestral institutions to deal with issues associated with the employer's response to performance anxiety, injuries, ageing in the orchestral workplace and others. Yet although there is much 'talk' concerning workload and work-life balance, orchestral musicians in both jurisdictions report that stress levels and workaday demands have increased post 2007-2008 financial crisis. Additionally, secondary or regional orchestras lack these mechanisms and substitute players freelancing in both jurisdictions are 'on their own' to deal with the downside of injuries and other work-play related issues.

The road to professional orchestral music-making is arduous. The probabilities of landing a tenured job in an orchestra are slim and the chances of job switching between one orchestra and another orchestra is for the vast majority of musicians unheard of either because of limited vacancies for a particular instrument, age constraints,

³⁶⁵ A leading violin professor at a major Dutch conservatory, anonymity assured.

or simply the difficulties inherent within the audition process. Statistics provided by Berenschot in the Netherlands and the League of American Orchestras in the United States show that amongst the musicians who do succeed to gain a tenured position in an orchestra, more than 70% of professional musicians stay in ‘their’ orchestra for their entire career span.

6.4 Sidelining and increasing marginalization from mainstream approval through value-of-culture debates and ‘expert’ evaluations that question the relevance of classical music

As media reports recurrently underline, the ‘classical’ music profession embraces a small, white, and elitist segment of culture. When repeated with frequency, the public and importantly, the politicians who make decisions concerning arts subsidies with particular regard to what are perceived as ‘elitist’ orchestras places the sector in a periphery of limited social value. While this area of critique will receive further amplification in the context of cultural subsidy and decision-making elsewhere in this study the point should be made here that for the orchestral musician criticism is a central part of performing life. A truism that bears repetition: musicians are highly self-critical, an essential trait to success and to reach the level vital to maintain an exemplary professional standard. Endemic internal critical mechanisms, the scrutiny of musician-colleagues and principals, the maestros’ high-powered criticism and the close scrutiny of music critics intensifies the pressures that orchestral musicians deal with on a daily basis.

“There is simply no such thing as a margin for error in our trade: orchestral musicians are expected to be on top of their game at all times. As music directors spend less and less time with ‘their’ orchestras, the pressure to live up to the expectations of a boss who is often absent pressurizes musicians even more.”³⁶⁶

When the press and political principals dismiss classical music for its lack of general relevance, musicians who have invested so much in their art feel ‘abandoned’ and ‘misunderstood’ to quote the descriptors used most often by interviewees. The task to identify with a wider community of audience and ‘grow relevance’ is one of the greatest challenges to orchestras in the U.S., the Netherlands, and for that matter, worldwide.

Add to this mix the fact that experts hired to advise orchestral managers and boards bandy around ‘talent,’ a term used to separate ‘successful’ musicians from others who

³⁶⁶ Observation made by Bruce Ridge, President of the International Conference of Symphony and Opera Musicians (ICSOM) August 25, 2016.

'have not made it,' a concept that defies description.³⁶⁷ Perhaps defying description is a premature observation as the term talent is bandied about with great regularity when decision-makers in the Netherlands approach the task to allocate subsidy monies to cultural institutions. Musicians interviewed reacted negatively to the application of the 't-word,' to their professional activities. In the lore of musicians worldwide, a story is told of a young conservatory student lost on the streets of New York who stops an elderly stranger to query, "how do you get to Carnegie Hall?" The wise stranger, nods his head and answers, "practice, practice." Orchestra players add, "practice, practice and then blend, blend."³⁶⁸ Musicians agree that the notion of 'talent' spread throughout the literature on orchestras and multiple advisory opinions is eclipsed by years of hard training.

"Consider the subjectivity in highlighting those who supposedly show an incredible spark of originality, 'the talented' ones. Now consider that there is no such thing as a standardized measurement of talent, nor are there definable criteria to calibrate performances. So, when Dutch orchestras waived a small number of players deemed indispensable ("onmisbaar") from the lists of musicians slated to lose their jobs during the 2012-2013 reorganizations, how could this determination be fair if there were no established criteria to separate the 'saved from the doomed'?"³⁶⁹

6.5 A proliferation of financial crises in the sector, a domino effect?

The *New Yorker* magazine's Russell Platt declared seven days in 2013 as 'one hell of a week' after the city's respected venue, New York City Opera affectionately known as the People's Opera declared bankruptcy and shutdown while concomitantly the Minnesota Orchestra's Music Director Oslo Vänskä registered his frustration in that notable ensemble's intractable lockout cancelling the orchestra's return to Carnegie Hall.³⁷⁰ An atrocious week for cultural life in the U.S. paralleled a terrible year for the arts in the Netherlands following the dismantling of the prestigious Dutch radio orchestras, a result of massive cultural subsidy cuts in 2012. Each passing week documented the demise of a world-class orchestra. In 2019, the musicians of the Baltimore Symphony Orchestra were locked out by management the same week that two major Dutch regional orchestras, the Arnhem Philharmonic (Gelders Orkest) and het Orkest van het Oosten played their last pre-merger concert.

³⁶⁷ The words set apart with apostrophes refer to a conversation with several members of the faculty, The Juilliard School.

³⁶⁸ Retold often at master classes in conservatories worldwide.

³⁶⁹ Conversations with former principal player RKF, anonymity assured.

³⁷⁰ Russell Platt. "Classical Music's Hell Week" *New Yorker* October 2, 2013. Available at: <https://www.newyorker.com/culture/culture-desk/classical-musics-hell-week>

The fascinating history of ICSOM as detailed in monthly issues of the publication *Senza Sordino* document the legacy and incredible volume of management vs. musician's strife in the U.S. since the 1960s. The journal assiduously registers an incredible path forward for musicians to gain solid employment rights. In an article entitled "You've Come a Long Way, Baby,"³⁷¹ the strides forward towards 'healthy CBAs' is juxtaposed to the 1920s and 30s, "an era when anything was permitted" when "the threat of punishment...hung like a sword on a thread over the heads of orchestra members."³⁷² At the famed Cincinnati Symphony Orchestra, 37 musicians were dismissed by the exacting maestro Fritz Reiner at the end of his first season (1922). The Cincinnati contract contained such dubious clauses as, "if the musician missed both subscription concerts for two or more weeks in succession as a result of illness or for any other reason, the Company could terminate the contract by giving the musician one week's notice of such intention" and "the musician is expected and agrees to render his services at two full periods each day on Sundays or weekdays without extra compensation."³⁷³ Top-tier orchestras in the United States consider individual practice as part of general entitlement to earn a competitive salary. In the Netherlands, CAOs for orchestral musicians contain 'forfait' hours, flat-rate coefficient applied for individual practice, preparation of orchestral music and instrument care.

While one central theme of this study is how crisis affects orchestral musicians collectively as well as individually, mention must be made of the significant strides forward in terms of collectively bargained contracts for fully employed musicians. Nonetheless, the level of frustration on the part of employed orchestral musicians in the Netherlands who are witnessing their 'solid' jobs 'crumble' as a result of dismissive cultural value debates and subsidy cuts has reached what many musicians view as a 'break point.'³⁷⁴ Members of the Baltimore Symphony Orchestra, locked out by management on June 17, 2019, face a long hot summer without work: their season cancelled, their benefits dwindling. "No matter how hard we are pushed, no matter how I see my savings dwindle as the lockout progresses, I feel that there are no break points for a strong community of musicians."³⁷⁵ Orchestras regardless of geographic location traditionally face increasing debt burdens. In the U.S., this phenomenon has been exacerbated by the devaluation of endowment values after the financial crisis

³⁷¹ Henry Shaw. "You've Come a Long Way, Baby" February 1980 p. 4.

³⁷² Ibid.,

³⁷³ Ibid.,

³⁷⁴ Conversations with Caroline Cartens, co-founder PvFM.

³⁷⁵ Baltimore Symphony Orchestra musician, July 2019 anonymity assured.

of 2007-2008, while in the Netherlands, subsidies for orchestras have plummeted resulting in closures.

6.6 A lack of synchronicity between those who run the orchestral organization (boards/management) and their understanding and willingness to accommodate musicians' employment needs.

Revealing prose from newly minted tenured orchestral violinist upon joining the BSO “at the tender age of 22” speaks for many.

“It was quite an eye-opener when I saw my first organizational chart of the BSO. Scratching my head, I asked, ‘Hey, where are the musicians on the chart as for the life of me, I couldn’t find us... In the vast administrative and artistic web of the organization, the musicians of the Boston Symphony, 102-strong, were represented by a diminutive seemingly insignificant orb in the lower right corner of the page, tethered by various lines to other functionaries ‘above’ us.”³⁷⁶

Interviews with musicians on both sides of the Atlantic provided a wealth of anecdotal and documentary information on many examples of miscommunication between management and musicians, especially during crisis periods.

In the viewpoint of many orchestral musicians, management, not to speak of the boards, are often out of sync with musicians. Strikes and lockouts past and present along with the rhetoric and media reports that have been disseminated concerning these industrial actions illustrates that boards tend to retrench toward ‘fiscal responsibility’ above and beyond ‘musician’s needs.’ We have heard boards refer to the distinguished musicians in their orchestras with the quotes “we don’t let tellers run the bank nor do we let prisoners run the prison,” denigrating viewpoints at best.³⁷⁷ Robert Mnookin, the Harvard-based expert called in to develop a creative solution to CBA woes at the San Francisco Symphony, waxed eloquent concerning differences in basic viewpoints as to how stakeholders identified with the orchestra. “From the musicians’ perspective, the name “San Francisco Symphony” meant the orchestra. From management’s perspective, it meant the organization.”³⁷⁸

Turing to the board: back in the mid-20th century, the U.S. orchestral boards were classified as a mix between a business and a society board: the place to be for savvy

³⁷⁶ Posted by Gerald Elias (Jerry) as quoted in *Labor of Love: A primer in symphony orchestra musician/management relations*, 2013 on the blog *Reichel Recommends* available at: www.reichelrecommends.com

³⁷⁷ Taken from a string of confidential emails sent by Players Committee members, Grand Teton Music Festival.

³⁷⁸ Robert Mnookin. *Bargaining with the Devil: When to Negotiate, When to Fight* 2010 p. 298.

social climbing. Corporate and civic leaders mixed with socialites who inherited their positions from their forebears in boards donated and raised money for their ‘pet’ orchestra. “All was well and good until orchestral musicians gained and exercised more ‘voice’: board members felt a mistrust for the ‘unionized’ increasingly ‘militarized’ orchestra.”³⁷⁹

In the second decade of the 20th century, the BSO Board was shocked to discover that symphony musicians would go on strike simply for the right to unionize. The elitist Boston Brahmin board (a reference to the traditional elitist trappings of the East Coast upper class), was completely out of sync with the reality that faced the unrepresented and underpaid musicians when they went out on strike after demands to join the union were rejected. Whereas boards are set up to guard community interest and uphold public trust, the difference between this statement and the reality of contemporary U.S. orchestral crisis cases paint a different picture. Resentment on the part of orchestral musicians based on perceptions of proliferating mission creep defined as “the gradual addition of new tasks or activities to a project so that the original purpose or idea is lost”³⁸⁰ led to a reassessment of the relationship between board-management and orchestral musicians in recent industrial actions. Commenting on the Chicago Symphony Orchestra (CSO) strike in 2019, a longstanding orchestra member observed:

*“When a prominent board member speaks openly on the replaceability of the musicians and underlines the importance of taking the patrons’ needs into as a point of departure, the musicians realize that we are but pawns in a larger game, no longer the musicians at the heart of a unique, world-famous musical organization.”*³⁸¹

Boards and orchestral managers in both jurisdictions examined criticize restrictive CBAs and the impossibilities of raising greater amounts of money to meet deficits. “Those who run the orchestra habitually fail to reflect on the primary need to protect our golden assets: the musicians. If we regard the musicians as commodities instead of individual artists of the highest caliber, we can destroy our entire organization.”³⁸²

6.7 A lack of clarification of orchestral freelance substitute musicians as to their employment status.

In the U.S., the classification of freelance orchestral musicians by the courts has not led to resolution of the question as to whether musicians are independent contractors or

³⁷⁹ Conversations with former Philadelphia Orchestra Board Chair, Peter Benoliel, 2015.

³⁸⁰ *Cambridge Dictionary* available at: <https://dictionary.cambridge.org/us/dictionary/english/mission-creep>

³⁸¹ Chicago Symphony Orchestra musician anonymity assured, March 2019.

³⁸² Conversation with former Cleveland Orchestra President of the Board of Trustees, Frank E. Joseph.

employees. NLRB decisions are often colored by political affiliations as recent decisions under Republican boards have moved away from the traditional Democrat pro-labor stance as the *Back in the USA movement* lays out. The Dutch freelance orchestral musicians register frustration and confusion as post-crisis legislation has been enacted, retracted, and re-enacted at a rapid pace leaving employers and freelancers in a state of confusion. To illustrate:

Crucial to freelancers in both the U.S. and the Netherlands is the establishment of employment status for payment and tax purposes. In the Netherlands, prior to May 1, 2016, all self-employed freelancers were obligated to apply for an employment relationship statement (Verklaring Arbeidsrelatie/ VAR declaration) from the Dutch tax authorities. The VAR declaration clarified issues related to tax deductions: an employer whose freelance musicians, for example, submitted a VAR declaration was indemnified from tax claims related to withholding tax and social security premiums. The VAR was replaced by the requirement to file model agreements under the *Wet Deregulering Beoordeling Arbeidsrelaties* (DBA)³⁸³ with the purpose of establishing a worker's employment category. Essentially the transition from the VAR to the DBA was intended to be more of an assessment modification than a formal change. Under the VAR, the entire professional activity and/or organization was considered the point of departure for tax status determination while the DBA takes the assessment of the incidental employment relationship as relevant. In the view of both musicians and orchestral managers, "the model agreement experiment failed miserably leaving orchestral substitutes (freelancers) out in the cold, more confused than ever and now we know less than ever before as to how to determine our status."³⁸⁴

The *Wet werk en zekerheid* (Work and Security Act) introduced in 2015 to ameliorate the gap between protections for 'flex' workers and the 'permanently' employed did not go through an extensive evaluation process before yet another piece of legislation, the *Wet arbeidsmarkt in balans* (WAB) (the Labor Market in Balance Act) was adopted.³⁸⁵ Within the six statutory measures intended to meet the challenges of increasing income precarity within the freelance sector, a relaxed standard for dismissals and the introduction of a 5% premium differentiation for employee insurance between

³⁸³ *Wet DBA, Deregulation of assessment for employment relations* introduced May 2016, scheduled for amendment in 2021 see, <https://www.rijksoverheid.nl/onderwerpen/zelfstandigen-zonder-personeel-zzp/wet-deregulering-beoordeling-arbeidsrelaties-dba>

³⁸⁴ Discussions with Mark Gerrits.

³⁸⁵ *Wet arbeidsmarkt in balans* (Balanced Labor Market Act) adopted on May 28, 2019 entered into force January 1, 2020.

“flexible” and “permanent” workers mark major changes. As the WAB deadline approached on 1 January 2020, orchestral freelancers registered their frustrations about a law that should alleviate inequality in payment for freelancers who qualify as payrollers but that does not apply to the independent contractors. “In the eyes of some orchestras we are payrollers whereas to another orchestra we are independent contractors, unless this situation is straightened out with recognized agreements between employers and freelancers, we do not benefit.”³⁸⁶ Not only musicians are confused by the impending changes in legislation and associated requirements for participation as a full-fledged ‘employee’ but also, orchestral employers in the Netherlands disclose their uncertainties.

*“For employers, one of the most pressing headaches is how to deal with billing and payments. The dismantling of the VAR, the revocation of the ‘model agreement’ process and rapid succession of new laws that have yet to be reviewed within a few years has left freelancers more confused than ever. We need to know where we stand.”*³⁸⁷

To summarize, the employment law **and** tax consequences (self-employed deductions) and social security consequences (disability insurance, unemployment insurance) for employers and all workers regardless of status are substantial and largely unspecified at the present time.

6.8 Substitute players, the unsung freelance heroes in orchestras deserve to earn adequate fees, but even when Fair Practice Codes are put in place, these musicians are still fighting for equal pay

Freelance musicians regardless of nationality and employment location expressed great interest in delving into the jurisprudence related to orchestras in the hopes that information would aid in their quest for pay and benefits equality. Speaking from experience, the protagonist in the *Pintus* litigation commented, “case law is one thing, the trickle-down effect on our daily, increasingly precarious lives, is another.”³⁸⁸ Freelance substitutes further discussed the confusion caused by a lack of clarity concerning their status: independent contractors versus employees? False self-employed? Jurisprudence from the U.S that singles out some freelance substitute players as ‘necessaries,’ others as ‘rotators’ and still others as ‘subs’ without providing juridically sound definitions will be discussed in *A long and winding road*.

³⁸⁶ Caroline Cartens, quoting a popular commercial for the Inshared insurance company with the slogan, “We all benefit.”

³⁸⁷ Discussions with the PvFM co-founders.

³⁸⁸ Conversations with Tiziana Pintus, claimant in a case central to the *A long and winding road* movement.

Turning to another topic of great importance, although Dutch musicians joined other freelancers to applaud the announcement of a Fair Practice Code,³⁸⁹ they echoed the aforementioned remarks by noting that Fair Practice is admirable in the abstract but does not lead directly to higher pay, collective bargaining, and other union-related benefits: “A great concept but we need fair practice in deeds not words.”³⁹⁰

6.9 The impact of training academies and their volunteer-like schemes on the freelance market in times of financial crisis

In the Netherlands, freelancers are threatened by the plethora of academies, training institutes where trainees, often advanced conservatory students are offered residencies with a particular orchestra. At several academies, the student interns are not paid professional wages although they perform at regular series concerts. “This creates a problem for freelancers, when I was a student, I and my fellow students got professional experience by playing in an orchestra and receiving ‘normal’ substitute wages and now, interns receive next-to-nothing and replace freelancers.”³⁹¹ In the view of union negotiators:

“In our minds aside from the usual jockeying for position to receive subsidies with all that entails, one of the biggest challenges in the sector is that under the guise of flexibility, student interns are pushing the professionals out. Many of the orchestral academies create a supply of fictitious-volunteers that encroaches on the paid substitute players ‘market.’”³⁹²

6.10 The effect the #metoo ‘revolution’ has had on top-tier orchestras in the Netherlands and the U.S. unveils underlying issues concerning intra-orchestral communication and governance.

Musicians both ‘fully employed’ and the more vulnerable cadre of freelancers have registered concern with regard to #metoo issues and the borders between bona fide #metoo and ‘fake news’ #metoo cases. Reports on a bona fide #metoo matter at a top-tier U.S. orchestra will be contrasted to a troubling example at a top-tier Dutch orchestra further along in this musical study.

³⁸⁹ The Fair Practice Code 1.0 formulated by a Dutch cultural coalition was presented to outgoing Minister of Education, Culture and Science Jet Bussemaker on October 3, 2017 see, <https://www.kunsten92.nl/activiteit/engelstalige-versie-fair-practice-code-1-0/>

³⁹⁰ Conversations with Caroline Cartens.

³⁹¹ Conversations with Dorine Schoon.

³⁹² Conversations with Martin Kothman.

6.11 Orchestras in flux in the Netherlands

6.11.1 *Dutch mergers/reorganization facts and figures*

The majority of Dutch orchestras remaining after the major culture cuts (2012-2013) have undergone cutbacks in employment for the full complement of players. As the examples cited below highlight, musicians under contract are now receiving 'partial contracts for full-time work'. The Dutch Ballet Orchestra (Het Ballet Orkest) has witnessed another variation on the mergers/reorganization theme: a combination of part-time contracts and personnel cuts. It is fair to note that maximum scope CBAs are losing out to part-time contracts in the orchestral sector.

6.11.2 *Examples taken from the Dutch orchestral field*

The Rotterdam Philharmonic Orchestra (RPhO): No cutbacks in terms of number of employees, no compulsory part-time functions created. However, openings in the orchestral complement filled through auditions have set a new trend: new players entering the orchestra are offered 90% contracts in place of the customary 100% contracts offered in the past.

The Hague Philharmonic (Residentie Orkest): 70% employment contracts as a result of state and municipal subsidy cuts are standard. There has been a small reduction in the complement as a result of cutbacks since 2012.

South Netherlands Philharmonic (Philharmoniezuidnederland) (PZN): After the dramatic culture cuts announced in 2012, the two orchestras located in the south of the Netherlands, the Brabant Symphony and the Limburg Symphony orchestras lost their subsidies. The PZN is an orchestra formed through a merger between the two 'southern' orchestras, the merger netted job loss and a decrease in the total complement. Most importantly in terms of employment reality, "we spend an inordinate time on busses, fighting traffic to get to our two hub locations as the PZN is required to divide its rehearsals and concerts between the former homes of the Brabant and Limburg Symphonies, Eindhoven and Maastricht. Honestly, I sit in a bus longer than I practice my instrument: is this the result of a move towards efficiency and cost-cutting like our advisors and Culture Council tell us?"³⁹³

Orkest van het Oosten: Pre-2013 100% contracts but following near-bankruptcy and loss of subsidies (national and local) employment contracts were set at 70% for all musicians.

³⁹³ Conversations with PZN members, principal wind player, PZN, anonymity assured, 2016.

Arnhem Philharmonic Orchestra (HGO): Musicians work under 60% employment contracts.

Nota bene: The two aforementioned orchestras (OvhO and HGO) have reorganized (merged) in 2019-2020 as PHION (Orkest van Gelderland & Overijssel).

North Netherlands Orchestra (NNO): One of the few Dutch orchestras post-crisis where members have 100% contracts. There have been no official cuts or reorganization process, however an increase in the number of part-time jobs since 2015 has been observed.

Netherlands Philharmonic Orchestra (NedPhO): The complement works 100%, however there is an increase in the number of part-time contracts offered in the past several years. Musicians complain of a significant increase in work stress following the introduction of personal portfolios in which each musician must fulfill a set number of 'employment hours' above and beyond the traditional rehearsal-concert-recording duties to fulfil the requirements of the job.

Het Ballet Orkest (Dutch Ballet Orchestra (HBO): A substantial reduction in the size of the work force post-crisis and a heavy dependence on substitutes and freelancers to perform the standard 'ballet' repertoire. The reduced complement of musicians remaining under contract since the 2013 reorganization are employed under 70% contracts.

The Dutch Broadcasting Foundation Musical Entities: Stichting Omroep Muziek (SOM):

The Netherlands Radio Symphony Orchestra and the Netherlands Radio Chamber Orchestra, both renowned worldwide, were 'merged' into a single entity, the Netherlands Radio Chamber Philharmonic (NRCP) during the first major round of orchestral cuts in the new millennium, 2005-2006. The second wave of cuts occurred in 2012-2013; the NRCP was disbanded in the terminology of former players, or according to the terminology of management, the orchestra was 'merged' with the Radio Philharmonic Orchestra (RFO). HRM director Ella Broekstra corroborated the fact that 103 employees lost their jobs because of the 2013 orchestral reorganization/merger. Thirty-five employees were offered part-time contracts to replace their 100% contracts.

The Radio Philharmonic Orchestra, the sole post-reorganization Dutch radio orchestra consists of a large complement of part-time contracted musicians holding positions ranging from 50%-80%, an increase in comparison to pre-reorganization employment statistics. At present, there is no reduction in terms of pay-for-work as in Het Ballet Orkest, Orkest van het Oosten and Het Gelders Orkest. "Perhaps it is a good idea to look at what happened beneath all the numbers. Would you believe that three years after

the reorganization, we still need to employ a social worker/psychologist to deal with problems in some of our wind sections! Really unbelievable but we think this is based on old wounds from all the cuts—some colleagues who were originally employed by the Radio Chamber or even more painfully, Radio Symphony have not been welcomed by colleagues who came from Radio Philharmonic. Management won't tell you that story, but they are forced to hire mediators.”³⁹⁴

The Metropole Orchestra: The pop and jazz orchestra formerly funded by the Dutch Broadcasting Foundation, part of the same musical constellation as RSO, RKE, RSO and the GOK has undergone a complete change becoming an independent entity in 2012. All positions are now 50% (half-time) positions: orchestra members who had employment contracts over and above 50% are contracted at the 50% level. The orchestra received a monetary injection of EUR 7 million in late 2012 to ensure its survival until 2017. In 2018, the ensemble received EUR 1 million ‘extra’ subsidy, EUR 750,000 from the Minister of Education, Culture and Science and the remaining 250,000 from the municipality of Hilversum.³⁹⁵ Although the Metropole Orchestra entertained plans to enter the commercial, non-subsidized arena, the difficulties to make the switch from a subsidized entity to a commercial entity proved insurmountable.³⁹⁶ Thanks to the extra financial stimulus, “we are on track, the leading orchestra in the field, a Grammy award and an Edison as well as educational projects that reaches 120,000 students (Metropole op School). The subsidy allows us to build on these successes for the future.”

The Royal Concertgebouw Orchestra (RCO): 100% employment contracts governed by a ‘special’ RCO CBA. Although a few members of the RCO work part-time under part-time contracts, these contracts have been mutually agreed upon thus totally unrelated to a discussion of post-crisis ‘forced’ part-time employment.

6.12 A concise review of recent U.S. orchestra lockouts and strikes post 2007-2008 financial crisis:

- 2010 Detroit Symphony Orchestra strike, six months in duration. After the musicians’ three-year contract expired management proposed a 20% pay cuts with starting members first joining the orchestra at 40% below that level. Musicians accepted a 25% first year cut, a complement reduction from 96 to 81 musicians with an increase to 85 in the 2013-2014 season. The total season weeks dropped from full-time (52 weeks) to 40 weeks.

³⁹⁴ Interview with a member of the RFO wind section, 2016, corroborated by follow-up discussions with other members of the section in 2017.

³⁹⁵ News reported in: <https://nieuws.nl/algemeen/20180918/metropole-orkest-krijgt-miljoen-subsidie-erbij/>

³⁹⁶ Interview with Metropole’s Director Jan Geert Vierkant, available on the Metropole Orchestra website: <https://www.mo.nl/2018/09/grote-slag-gemaakt-om-toekomst-metropole-orkest-zeker-te-stellen>

-
- September 2012: Atlanta Symphony Orchestra lockout. Musicians complement reduced; musicians conceded to a shorter season and pay cuts.
 - September 2012: Indianapolis Symphony Orchestra lockout one month in duration, pay cuts.
 - September 2012: Chicago Symphony Orchestra went on strike for wages and healthcare, ending up with a slight raise and higher health insurance costs.
 - October 2012: Minnesota Symphony Orchestra locked out for a record 16 months, the longest lockout in U.S. orchestral history. Radical changes in board composition and the departure of Michael Henson, President and CEO announced in August 2014. The complement of 96 musicians was initially reduced to 77 with an increase to 77 musicians in 2017. Wages are set to reach the 2012 pre-lockout level in 2020.
 - 2013: San Francisco Symphony musicians on strike. Results: increased cost for health care; 4.5%.
 - 2014: Atlanta Symphony Orchestra, second lock out in two years. Health care costs increase, small salary increase to repair 2012 cuts.
 - September 2016: Fort Worth Symphony Orchestra strike, three months duration. Vacation period is shortened.
 - October 2016: Pittsburgh Symphony Orchestra strike. Considerable concessions: 7% pay cut for several consecutive years. Defined-benefit pension plan is discontinued.
 - 2018: Lyric Opera of Chicago strike. The season is cut by several weeks, complement decreased, and the residual members receive a 5.6% salary increase.
 - 2019: Chicago Symphony Orchestra musicians go on strike. Main issues: higher pay and the preservation of the defined pension plan. Pay increases are linked to the CSOs competitive level as international top orchestra, if salaries fall below other top orchestras, the status of the orchestra is lessened and its ability to attract top players is diminished. It is interesting to reiterate that this same argument was presented by Jan Raes, the Managing Director of the Royal Concertgebouw Orchestra (RCO). Mission of the Board held to be out of sync with the Board's core pledge to protect and serve the musicians.

6.12.1 Seriatim lockouts and why boards are main 'players'

In 2010, the League of American Orchestras study entitled 'Fearless Journeys' focused on five innovative U.S. orchestras chosen as examples of exceptional governance and organizational management in the face of economic crises, labor disputes, dwindling audiences and poor prospects for financial security. Amongst the chosen few, the Atlanta Symphony Orchestra (ASO) was cited for its admirable ability when "faced with financial challenges and widespread disaffection among its constituents, the ASO focused on a cross-constituent approach to building a collaborative organizational culture that eliminates silos and increases synergy."³⁹⁷ With nine administrative divisions under an executive director working with five staff conductors, a hundred plus musicians, a board of directors, volunteers, and countless collaborators, today's ASO was often cited as one of **the** best organizational models for orchestras in the

³⁹⁷ Lela Tepavac. "Fearless journeys: Innovation in Five American Orchestras" *League of American Orchestras* 2010. Available at: <http://www.giarts.org/sites/default/files/fearless-journeys-innovation-in-five-american-orchestras.pdf>

United States. In order to get a symphony to “sound together” and “work together,” the ensemble depends on an institutional structure to raise funds, structure rehearsals, operate the stage, advertise, sell tickets, select music, etc. This structure reflects not only the ensemble’s practical requirements, but also its aesthetic goals and social mission. It is a structure rooted in a particular place under a particular set of circumstances and at a particular time in history. It also affects nearly every aspect of an orchestra’s performances, from ticket prices to programming.³⁹⁸

6.12.2 Atonality in Atlanta: two lockouts in the space of four years

It may seem unorthodox to present a pair of mini case studies in a *FAQ movement* intended to answer basic questions that feed into a discussion of the orchestra and challenges following the financial crisis 2007-2008. The justifications for examining several case studies of U.S.-based orchestral labor disputes are trifold. Firstly, the reader will be introduced to a large cast of characters ever-present in orchestral labor disputes. Secondly, the complexity, the many layers of legal, organizational, and cultural issues will afford the reader an opportunity to delve deeply into the ups and downs of orchestral management, musicians concerns and the realities of a labor crisis unfolding through social media in a ‘breaking news’ approach. Lastly, while it may be unorthodox to quote from social media and certainly irresponsible to assess the impact of Twitter, Facebook, and Instagram on labor disputes in the orchestral workplace without the proper tools to measure impact, nonetheless a brief presentation of social media reporting deserves some attention as it has led to victories on the part of musicians in some of their industrial actions as we soon shall discover.

A closer examination of the 2013 ASO’s compromise CBA that diminished the orchestra’s complement from 95 to 88 musicians after contentious attempts at reconciliation, the 2012 lockout and the musicians’ ‘acceptance of a much-disputed salary cut brings this point home.³⁹⁹ For the musicians of the Atlanta Symphony, these cutbacks were a portent of things to come. A second wave of disruptions took place in 2014 when the orchestra was locked out for the second time in two years.

The crisis at the ASO that escalated in the 2010s with a record of two lockouts within two years was attributable to a variety of factors. Although a subsequent *movement* will disclose many aspects concerning financial ups and down in the orchestral workplace,

³⁹⁸ Taken from, “Building the American Orchestra: The Nineteenth-Century Roots of Twenty-First Century Musical Institutions” lecture by Mark Clague University of Michigan January 8, 2008.

³⁹⁹ See, https://members.afm.org/uploads/file/20130510_AtlantaSymphony.pdf

several factors are of special importance to come to grips with the ASO lockouts. One important factor was that in terms of governance and financial control, the ASO fell under the aegis of the Woodruff Art Center (WAC), a nonprofit organization that ran the Woodruff Concert Hall and several other resident organizations including the Alliance Theatre. Major parties within the dispute were entrenched in positions that made it increasingly difficult to offer concessions without losing face amongst peers and followers. The lockout timeline below illustrates the lack of commitment toward the orchestra on the part of WAC executives. “For the musicians of the ASO, this sounded like a declaration of war when WAC’s President/CAO Virginia Hepner, declared that ASO musicians had to take a ‘flexible’ approach to her attempts to set artistic and financial priorities for WAC, priorities that meant cuts in the ASO’s complement and budget.”⁴⁰⁰

Referring to comments made by CEO Hepner, in which balanced budgets were emphasized at the cost of orchestral personnel, an ASO violinist retorted:

*“this, in a nutshell, is the root of the orchestra’s problem. So glad Virginia has come out so soon to voice her opinion so that we can understand why there has been such a fundamental shift in policy, since 2012, from nurturing world- class quality to simply keeping the books tidy and the money flowing. I think it’s time for a public debate.”*⁴⁰¹

America’s top-tier orchestras list 100 musicians as a minimum on their rosters. The ASO, which was trimmed from 95 to 88 full-time players in the 2012 collective bargaining agreement, began the delayed 2014-15 season with 77 remaining musicians. The “complement” is contracted to grow to 84 by the end of year three and 88 by the fourth year. Commenting on the fight for the complement, Danny Laufer, the head of the ASOs orchestral bargaining committee cellist Danny Laufer underscored: “We fought like dogs to maintain our complement in 2014 having lost that battle in 2012 when we lost seven players.”⁴⁰² In 2019, another major U.S. orchestra, the Baltimore Symphony Orchestra fought for its future following a board’s announcement of the cancellation of the orchestra’s summer season, a cutback from a 52-week to a 40-week season with the concomitant pay cuts in 2019. Editorial comments on the crisis in Baltimore intimated a change from a fully employed orchestra to a pay-per-service’ model to solve immediate financial woes. Cutting to the heart of the complement issue,

⁴⁰⁰ Conversations with Juan de Gomar, contrabassoonist the Atlanta Symphony Orchestra.

⁴⁰¹ In response to the Denis O’Hayer interview with Paul Murphy, President of the Atlanta Symphony Orchestra Players Association, and Virginia Hepner, President and CEO of the Woodruff Arts Center. aired on WABE FM 90.1 an Atlanta-based radio station on September 9, 2014, available at:

<http://wabe.org/post/aso-lockout-puts-season-opener-jeopardy-conversations-both-sides>

⁴⁰² Comments taken from interview, August 4, 2016.

a cogent reader posted: “a symphony can’t reduce staff because it can’t, for example, play a piece of music written with three trumpet parts using only two trumpeters.”⁴⁰³

The ASO’s Music Director Robert Spano and Principal Guest Conductor Donald Runnicles took an unprecedented step to break the conventional maestros’ omerta by publishing a widely circulated open letter that warned the greater Atlanta community and orchestral aficionados worldwide that “there are artistic lines that cannot and must not be crossed.”⁴⁰⁴ Remarking on this unusual advocacy a few months later, he observed: “there are times when one cannot stand by and watch a great orchestra suffer injustice.”⁴⁰⁵ A comment made by the ASO’s Board Chair, Douglas Hertz, scion of a culturally aware philanthropic family tells volumes concerning not only his frustration levels at the money-raising board level but the abject contempt on the part of the spokesperson for the orchestra’s caretakers: “maybe Robert’s feeling a little bit guilty because he’s getting paid and the musicians aren’t.”⁴⁰⁶

Across the Atlantic, conductors registered their dismay at the proposed cuts suggesting that an orchestra with less than 90 players moves into “a danger zone in terms of the repertoire they can handle not to speak of reputation.”⁴⁰⁷

The dilemma concerning the complement opens another question that weaves its way through the *movements* devoted to freelance substitute orchestral musicians: is it not possible to substitute high-level freelancers to bolster the complement especially following cutbacks? “Yes and no! This is of course the solution most orchestras that have been reduced are obliged to take. With all respect for the excellent level of freelancers who substitute in great orchestras, there is a great difference between our guest players and those who grow and are nurtured by the orchestra’s culture year-in-year-out.”⁴⁰⁸

Another observation points to general malaise and the standoff between the ‘haves’ aka board members and the ‘have nots’ or workers in general, orchestral employees

⁴⁰³ Charles T. Downey. “BSO bids reluctant farewell” *Washington Post* June 9, 2019. Available at: https://www.washingtonpost.com/entertainment/music/bsobids-a-reluctant-farewell-with-mahlers-ninth-symphony-at-strathmore/2019/06/09/efae61e-8974-11e9-a870-b9c411dc4312_story.html?utm_term=.3aaf3af3f827

⁴⁰⁴ See, <https://www.artsatl.org/2014/09/breaking-news-spano-runnicles-express-fear-aso-quality-compromised-2/>

⁴⁰⁵ Conversations with Sir Donald Runnicles.

⁴⁰⁶ See, Howard Pousner. *Atlanta Life and Culture Blog* October 4, 2015 available at: <https://www.ajc.com/blog/arts-culture/woodruff-arts-center-board-leader-takes-stands-atlanta-symphony-crisis/bvsW0IjrkI0R183N0ryK9J/>

⁴⁰⁷ Conversations with Sir Mark Elder.

⁴⁰⁸ Conversations with Edo de Waart. The maestro has served as Music Director of many orchestras including: the Milwaukee Symphony Orchestra, the Royal Flemish Philharmonic, the New Zealand Symphony Orchestra, the Rotterdam Philharmonic Orchestra, and the Netherlands Radio Philharmonic (RFO) to mention but a few.

specifically. A particularly savvy U.S.-based orchestral musician and close friend waxed eloquent on what many musicians find to be a valid appraisal of the ‘bigger picture’:

“We here in the New World are crippled by an irrational toxic religious cult with no discernible tie to any known reality. Of course, I am referring to Free Market Fundamentalism. Our leaders in the world of business by and large have utter contempt for the fine arts which cannot pay its own way in the ‘market.’ Even worse, U.S. musicians are unionized, which is a foul sacrilege unto all that is virtuous in the eyes of Milton Friedman and his minions. So, you get circular firing squads such as we saw last year in Minnesota and are seeing in Atlanta. Your charming little country has a significant advantage which also gives it a leg up in pretty much everything else.”⁴⁰⁹

6.12.2.1 Atlanta Symphony crisis timeline

May 31, 2012: According to statistics released by WAC, after 10 consecutive years of operating deficits, the ASO’s accumulated debt rises to \$23 million, including \$18 million borrowed against earnings on the orchestra’s endowment. Financial managers and economists tend to look askance at this type of borrowing referring it as “partial relief in return for imminent disaster.”⁴¹⁰

August 25, 2012: ASO management locks out musicians after attempts at collective bargaining fail. Management calls for pay cuts, complement cuts, and season cuts. Musicians receive no salaries or benefits.

“The lockout is essentially the board and management punishing the orchestra: it means they have no access to the place where they work, where they make music; it means their health costs are not going to be paid. And what on earth has that punishment got to do with two invested parties in a discussion-finding consensus? It’s a one-sided attempt to force the orchestra to its collective knees. It also paints the orchestra as this intransigent group of musicians. But in fact, they have shown extraordinary willingness to come to a common agreement, as what happened two years ago proves. The fact that it should have come to a lockout again is simply devastating.”⁴¹¹

September 26, 2012: The musicians accept a collective \$5.2 million wage reduction over the period of two years, an individual annual decrease of \$14,000. The complement is reduced from 95 to 88 full-time musicians.

November 26, 2013: The WAC receives a negative alert from Moody’s Investors Service based on the center’s deficits and “challenges presented by the symphony division.”

⁴⁰⁹ This sharp-witted musician has been quoted anonymously as promised.

⁴¹⁰ Adopted from Robert Mnookin. *Bargaining with the Devil: When to Negotiate, When to Fight* (introduction) 2010.

⁴¹¹ Principal Guest Conductor, Atlanta Symphony Orchestra, Music Director Deutsche Opera Berlin, the BBC Scottish Symphony, the Grand Teton Music Festival. The author has worked with Sir Donald Runnicles at the Grand Teton Music Festival since 2006.

May 31, 2014: Orchestra finishes the 2014 fiscal year with a \$2 million operating deficit on a budget of \$37 million, its 12th consecutive year of red ink. Seeking to ease the financial pressure, the ASO and Woodruff's boards agree to treat the \$18 million borrowed against the ASO endowment as a distribution. That reduces orchestra's accumulated debt to \$5 million owed the Woodruff.

Bargaining attempts take place over an eight-month period,

September 2014: Management locks out players for the second time in two years and cancels concerts. Although music directors are often silent at times of industrial action, Music Director Robert Spano speaks out in the *New York Times*: "This is a dire and critical juncture for the city of Atlanta, which is in danger of losing the flagship of its culture. If the 10th-largest urban economy in America is incapable of sustaining its cultural jewel, what does that signal about our country?" Principal Guest Conductor Donald Runnicles joins in the cry for musicians' support with statements published in major U.S. news media. To the maestros, two lockouts in two years represented more than a dishonorable record, it set a trend towards disastrous labor relations, to quote Maestro Runnicles, "it's a one-sided attempt to force the orchestra to its knees."⁴¹²

September 18, 2014: The ASO Players Committee submits a press release refuting the WAC's finance-related actions and fact-patterns.⁴¹³

September 29, 2014: ASO CEO-President Stanley Romanstein submits his resignation.

October 4, 2014: Responding to allegations by the musicians and their supporters of mismanagement and malfeasance, Woodruff governing board chairman Douglas Hertz tells the Atlanta Journal-Constitution, "[i]t makes you wonder, you know, are we supporting a bunch of crazy people." Musicians issue statement that Hertz is more interested in the bottom line than in "preserving the high artistic standards of the institution he has a duty as a steward to serve and protect" and that he's willing to "break the backs of employees."

October 2014: Federal Mediation and Conciliation Service mediators renew talks between musicians and manager and announce a four-year collective bargaining agreement. The ASO's 70th anniversary season welcomes the audience to its belated opening concert in November.

The ASO's delayed opening night gala was given a grandiloquent name, *Ode to Joy*. All signs for a grand opening were in place: the hall was sold out, and the crowd

⁴¹² Ibid.,

⁴¹³ See Press Statement 9-18-14 *Epilogue: Appendix 8*.

was enthusiastic. and the orchestra more than elated. On stage, 71 musicians were euphoric to return to perform, and to put the stress and strain of the lockout behind them. Of the complement, 40 musicians were fully contracted ASO players, 31 were substitute players hired for the week. The opinions expressed by ASO musicians show that concerted (word choice intentional) efforts involving a united community of musicians, audiences, municipal leaders, and union reps is key to influence management and boards to change approach and method related to financially driven challenges.

“I guess what I boil down from all of this is that it takes a decision from the highest levels of boards-management. In a right-to-work state having a CBA is not an easy sell for powerbrokers. Move the leaders, influence their choices and yes, you can make change happen. It’s incredible to look back and see how our situation has turned around in the past few years. First and foremost, it came from an understanding from our highest levels of board leadership that they were heading in the wrong direction: what starves the musicians, starves the community. Certain key board members took leadership roles and fired senior staff wholesale—those who plummeted us into the 2014 lockout. Lots of public pressure and negative PR helped as well as in all this, our parent organizations (WAC) looked inept and even vindictive especially after locking us out twice within two years!”⁴¹⁴

Another member of the orchestra alluded to differences between U.S. orchestral financing and European models in her response:

“It seems like private philanthropy and our dependence on that, and corporate support sets us apart from orchestra in Europe. In Atlanta, our pillars of support had a special history going back generations to several leading families. In 1962, there was a horrible plane crash in which 103 of Georgia’s leading arts patrons were killed at Orly airport Paris. Their families banded together to create a strong legacy in memoriam and spearheaded a new arts center and many initiatives. Back in that era of the 20th century reports predicted that U.S. orchestras would go the way of the dinosaurs, nevertheless our Atlanta community proved that culture was important for all. During our ‘one-after-the-other’ lockouts, the musicians made a strong case for our role as a leading part of the city’s identity, on equal footing and just as important to the civic image as our sports teams. Our motto became: ‘The ASO, a world class orchestra for a world class city.’ We were mocked for this by the CEO of the WAC, Virginia Hepner who ended up agreeing with us before she stepped down! When organizations turn a corner, the momentum starts to tilt, a sort of domino effect takes place – the WAC received an infusion of \$38 million, the orchestra received the promise to endow 11 chairs and a renovation of the Alliance Theater was schedules. The drumbeat shifted and we have received a new lease on our orchestral lives.”⁴¹⁵

The Atlanta Symphony case with its ultimately ‘happy ending’ after years of discord and strife shows that for U.S. orchestras it is vital for the board to place the orchestra

⁴¹⁴ Conversations with Juan de Gomar.

⁴¹⁵ Conversations with Judy Cox, violinist, ASO.

and the musician's employment needs at the center of their mission. The complement, the number of work weeks and solid pension plans are in no way superfluous but an integral part of what constitutes institutional success for a musical operation that enriches an entire community.

6.12.2.2 Quotes from inside the ASO



Chat conversations start

Thursday 21:02

Trying to write something coherent on behalf of the ATL Musicians. . .working on a PhD thesis comparative labor law on orchestral musicians in NL and the U.S.!! Now, in June I had read a long piece of ICSOM bla bla 'Fearless Journeys' in which ATL Symphony was featured as one of five orchestras unique for innovation in terms of high involvement of orchestra members on committees/active with board and management etc. Sounded great on paper! Any insights on how the situation could get SO horrible for musicians other than your disastrous CEO?? Lots of love and support from Amsterdam

Friday 1:09

2 disastrous CEOs!!! V. Hepner heads up the WAC. And 2 Boards– what a nightmare, oy! WAC consolidation of development staff, structure for giving dictates that only 1 donation from a given source can be tapped by any part of the WAC each year, so now the theatre, museum and ASO are totally dependent on how the WAC doles out contributions, because the WAC gets to the trough first. Romanstein spread a nasty rumor around the chamber of commerce that we suffer from an: "Antiquated orchestra model"– yes, the one that has 90 players and can play Mahler, Bruckner– the 19th c. version He wants to update us to a: "Contemporary orchestra model"– maybe this is where he thinks ASO is innovative. . . 50- 60 players, core group, add on subs when necessary. Already raised \$3.7 mil from a private donor to retire 25+ who have 30yrs or more of service. We have about 35 in that category, which means over a third could eventually get the axe. Love you lots, thanks for watching out for us.

Friday 8:20

Thank you! Let me know if you need anything else– did you see this article in *The Guardian*?



[Atlanta Symphony Orchestra's crisis matters for orchestras everywhere
www.theguardian.com](http://www.theguardian.com)

6.12.3 Baltimore Symphony (BalSO): the 2019 lockout

Founded in 1916 by city ‘fathers’ and patrons with significant support from the municipality of Baltimore, the BalSO was privatized in 1942. Beyond the many recordings, tours and significant artistic endeavors that have garnered great respect for the orchestra worldwide, its importance as a social and cultural force within the community is particularly noteworthy. Maestro Marin Alsop, the first woman appointed to conduct a major U.S. orchestra appointed as Music Director of the BalSO in 2005 has engaged and revitalized ‘forgotten’ communities with year-round music and social mentoring through OrchKids and other related programs.⁴¹⁷

In 2018, the BalSO and the local engaged in difficult contract negotiations. Due to budgetary concerns, management proposed a drastic cut in the musicians’ contracts, from 52 to 40 weeks and a decrease in the number of paid vacation days. A cut in weeks lowers the orchestra’s status and fuels the fear that the ensemble will not be able to attract superlative musicians who are wont to audition for orchestras with better employment contracts.

While negotiations were ongoing, the musicians’ union and the orchestra’s management agreed to a contract extension through January 2019, entering into a talk and play scenario: as musicians were participating in rehearsals and performances for the

⁴¹⁶ Sir Donald Runnicles in action.

⁴¹⁷ For further information see, <https://www.bsomusic.org/education-community/young-musicians/orchkids.aspx>

2018-2019 season, they were engaged in collective bargaining negotiations. While ‘talk and play’ might point to a U.S. phenomenon, it is common practice in the Netherlands during bargaining ‘season’ as orchestras there continue to perform while social partners discuss and flesh out the finer points in employment CAOs.



In May 2019, management cancelled the BalSO summer season including its community blockbuster: the annual Star Spangled Spectacular Fourth of July concert. The municipality’s Artscape, the most extensive free arts festival in the U.S. was forced to announce that the BalSO musicians would not be able to participate. On June 11, 2019, management locked out the musicians: no salaries nor benefits were paid to the musicians until the lockout ended in November. An estimate of \$2.5 million was ‘saved’ by the orchestra’s management/administrators in terms of musicians’ wages and benefits during the cancelled summer season, an observation that shows some cynicism as the ‘savings’ came at the cost of the musicians’ non-too-deep pockets.⁴¹⁸ “It was not as if this was the first time we were hit by concessions, we have moved

⁴¹⁸ Brian Precht, co-chair Baltimore Symphony Musicians shared comments in diverse media and conversations summer 2019 at the Grand Teton Music Festival detailing the BalSO musicians’ plight amplified by the ‘voices’ of symphony members.

backwards to the financial level we were at a decade ago and that really hurts all of us.”⁴¹⁹

In an extraordinary move of support, the Maryland General Assembly, the state’s legislative body approved a House Bill 1404 to appropriate \$1.6 million in funds to the orchestra. While locked out, the musicians offered countless concerts at venues throughout the region. Symbolically, the musicians replaced the cancelled Star-Spangled Spectacular with another iconic performance that same day. Deep insights into the BalSO’s challenges, provided by the former Baltimore-based arts critic Tim Smith crystallizes many facets of the musicians’ viewpoints and exposes their willingness to sacrifice hard-earned salaries as part of a compromise deal. His cogent observations on the problems of applying business models to cultural organizations are instructive not only for U.S. orchestras but the Dutch orchestras facing similar financial quandaries.⁴²⁰ Is the BalSO a healthy organization post-strike? Voices from within the orchestra are cautiously optimistic, “after a strike, you need to regroup your energies and focus on what is really important: making music for as many people as we could possibly reach out to.” Music Director Marin Alsop summed the situation up tersely, “sadly, a one-year deal does not resolve all the issues, let’s see what happens.”⁴²¹

6.13 Closing observations

#1: the 52-week season, full-time employment

History teaches us that the move from part-time contracts to a full 52-week season for U.S. orchestras took place in the 1970s.⁴²² The post 2007-2008 financial crisis moves to cut seasons that have shaved off weeks in Atlanta, Detroit and St. Louis are a reminder that a 52-week season at least for U.S. orchestral musicians is not to be taken for granted. Although the state subsidized orchestras in the Netherlands offer year-round employment, as mentioned above, orchestras have been ‘downsized’ as a result of post-crisis budgetary cuts. One of the most disconcerting consequences of downsizing as it plays out in the Netherlands is the extensive pressure placed upon those musicians who ‘remain.’ Employers expect the ‘remaining’ musicians to produce the same number of services (concerts/recordings etc.) and thus maintain the same level of production as before the implementation of the cuts. The health and welfare

⁴¹⁹ Ibid.,

⁴²⁰ Available at: <https://bytimsmith.com/f/a-few-more-thoughts-about-the-bsos-woes>

⁴²¹ Email exchange with Marin Alsop, dated September 27, 2019.

⁴²² *Senza Sordino*, ICOSM’s monthly publication provides a great deal of material on the march forward from shorter seasons to a full-time, fully remunerated orchestra job as its 1970s editions attest.

of the ‘working’ orchestral musicians has deteriorated in terms of a rise in burnouts and requests for sick leave. This affects not only the quality of employment for the individual orchestral musician but ultimately the artistic quality of the orchestra.

#2 cross-cultural considerations

European musicians including of course Dutch musicians were mystified by their U.S. counterparts’ industrial actions, lockout after lockout and strike after strike in rapid succession. Pre-crisis Dutch colleagues viewed their colleagues’ actions in the United States as ‘over the top,’ ‘exaggerated’ and even, ‘unnecessary.’⁴²³ “We really do not understand why these Americans are picketing their own orchestras not because we feel they shouldn’t but because we are of the view, where will all this disorder lead to? Will they really gain something other than mistrust on the part of their managers?”⁴²⁴ Well-documented information concerning strikes at U.S. orchestras from the first major musicians’ strike in Philadelphia in 1966⁴²⁵ to the recent seven-week Chicago Symphony Orchestra (CSO) strike ending in April 2019 prove that strikes can benefit musicians to attain greater leverage in terms of collective bargaining for specific employment benefits.⁴²⁶

A grain of salt must be inserted into the previous statement as public opinion needs to be taken into consideration during work stoppages and public opinion does not always take kindly to strikes. The aforementioned CSO strike 2019 gleaned such responses published in media reports such as: “the impression of most of the concert-loving audience appears to have gradually shifted over the last four weeks—from vague sympathy to dismay, impatience, frustration, anger and even outrage. Words like ‘unrealistic,’ ‘out of step,’ ‘spoiled,’ ‘childish,’ ‘pampered,’ and ‘selfish’ are increasingly being voiced.”⁴²⁷ The recurring theme of the ‘overpaid top-tier U.S. orchestral musician’ voiced in infamously by Ivan Hewett, ‘why should musicians be paid so well for doing what they love?’⁴²⁸ and recast in *The Guardian* one year later was replayed countless

⁴²³ Gleaned from conversation with Dutch orchestral musicians fully employed as well as freelancers.

⁴²⁴ Conversations with Jan Spronk, former principal oboe Royal Concertgebouw Orchestra (RCO).

⁴²⁵ *Senza Sordino*, see *supra* at fn. 422 provides ample historical evidence from U.S. orchestras since 1963 to back up the statement. Strike reports cross country, from the top-tier orchestras to regional ensembles are well-documented.

⁴²⁶ Ending on April 27, 2019, the longest strike by CSO musicians centered on pensions: musicians and board agreed to a CBA that will shift the players from a defined-benefit pension to a defined-contribution pension plan.

⁴²⁷ Lawrence Johnson. “CSO musicians, management need to end strike now – for the good of Chicago and themselves” *Chicago Classical Review* April 19, 2019.

⁴²⁸ Ivan Hewett. “U.S. orchestras are greedy and overpaid” *Telegraph* 2 October 2013. Available at: <https://www.telegraph.co.uk/culture/music/classicalmusic/10350252/U.S.-orchestras-are-greedy-and-overpaid.htm>

times in commentaries concerning the CSO strike.⁴²⁹ The tenor of this commentary ran as follows: these musicians should be grateful to play in such a jewel of an orchestra and to receive salaries (minimum salary 2019: \$181,000) that most people, not only musicians could only dream of. Both journalists mounted their criticism of U.S. orchestral ‘compensation’ paying special attention to the Minnesota Orchestra’s lengthy lockout taking issue with the very core of the musicians’ demands: an adequate salary. Comparisons between well-paid U.S. orchestras (the Los Angeles Philharmonic) and Manchester’s notoriously low paid Hallé Orchestra were brought forward to support the argument that U.S. orchestral musicians should reconsider their demands for competitive wages and compensation packages as they are ‘too high and unreasonable.’ Of all comparisons, the mention of the Hallé is painful at best. An article published in *The Guardian* reporting on the miserable wages received by British orchestral professionals prior to the salary slam bore the subheading, “The money’s terrible, the stress is awful...No wonder so many of Britain’s orchestra players are choosing to hang up their bows.”⁴³⁰ Its closing quote brought home the exigencies of working in Britain’s underpaid orchestras brought home, “People say to you, ‘Oh, you play in the Hallé, how wonderful. What’s your day job?’”⁴³¹

A comparison of successful well-paid orchestral employees with those who face penury is damaging and sadly pervasive in media reports on key issues in the post-crisis orchestral world. From U.S. examples mentioned above to present-day litigation and the ‘buzz’ concerning ‘adequate’ wages for musician freelancers in the Netherlands, there is a tendency to judge the value of musicians’ output and gloss over many of the pressing issues that engender lockouts and financial allocation crises. If such critics were to take a more celebratory stance by applauding the fact that orchestras enrich communities and deserve remuneration for these services such an observation could contribute mightily to ongoing discussions of the orchestra’s importance in terms of impact and value. The Los Angeles Philharmonic called in a negative light as ‘overpaid’ deserves a quick revisit. In its celebratory centennial year, the orchestra feted for its financial stability and superlative musician remuneration is noteworthy for much, much more than that. A musical organization that puts social justice and community building smack in the middle of an ambitious musical mission to promote 50 new

⁴²⁹ Tom Service. “Why are salaries so markedly different between British and U.S. orchestras?” *The Guardian* 26 June 2014. Available at: <https://www.theguardian.com/music/tomserviceblog/2014/jun/26/orchestra-salaries-higher-in-america-than-uk>

⁴³⁰ Anna Price. “Pit of Despair” *The Guardian* 2 February 2006. Available at: <https://www.theguardian.com/music/2006/feb/02/classicalmusicandopera3>

⁴³¹ *Ibid.*,

commissions in one year and has nurtured a cadre of young professional players from ‘underprivileged’ areas of the city is an “inspiration” for orchestras worldwide.

Missing from the nay-saying articles was a mention of the crucial role played by unions in the orchestral workplace. Although most industries in the U.S. have witnessed continuing declines in union representation, the orchestral workplace reaps the benefits of strong union representation in terms of strong collective bargaining traditions. “A branch where labor thrives and reinvents new forms of cooperation,” according to Tino Gagliardi. Mr. Gagliardi President of Local 802, the world’s largest local union of professional musicians, shared concrete examples as to how the MET averted a crippling protracted labor conflict in August 2014 by moving ‘out-of-the-box’ supported by innovative thinkers at the local union level. An independent financial auditor was hired to ‘study the books,’ to present coherent financial information that convinced both sides in what was up to that point a standoff dispute concerning wages and other employment-related issues to ‘get to yes.’ The musician’s ‘stuck to their guns’ concerning MET’s General Manager questionable strategic decisions and dubious financial practices to the detriment of the orchestra that were confirmed by the independent auditor. “A situation was created in which the equality of sacrifice became synonymous with the equality of success.”⁴³² Carrying the theme of innovation across the ocean to the Dutch orchestral scene, unions are expanding their constituencies through linkages with newly initiated musicians’ platforms, a topic that will be revisited in the *Coda: Quo Vadis?*

From the personal anecdote file: my first visit to a tax accountant in the Netherlands was unforgettable. Upon proudly disclosing my salary, I received the response “that cannot be true, you earn almost nothing.” The fact that Dutch orchestras offer salaries that are not only lower than orchestral musicians’ wages in a significant number of European countries (for starters, Austria, Belgium, Denmark, France, Germany and Scandinavian countries ranging from 10%-50% higher) but lower than salaries for starting positions in many other sectors is partially related to the fact that Dutch conservatory degrees are categorized as vocational degrees, akin to Hoger Beroepsonderwijs (HBO)-level diplomas,⁴³³ not (WO) university degrees.⁴³⁴

⁴³² Ibid.,

⁴³³ In Dutch, Hoger Beroepsonderwijs (HBO) translated as Higher Vocational Education. Since 2016, a trend to call the Dutch HBOs Universities of Applied Sciences has been noted. In Dutch, university studies are referred to as: wetenschappelijk onderwijs (WO).

⁴³⁴ Martine de Mooij, Marleen Geerdinck, Lotte Oostrom en Caroline van Weert. “Studeren loont. Inkomens van afgestudeerden in het mbo, hbo en wetenschappelijk onderwijs” prepared for the report, *Inkomens van afgestudeerden 2007–2009* Centrum van Beleidsstatistiek, 2011.

“It seems absurd to place a musician’s advanced degree at a lower level than a university degree especially since so many professional musicians working in the Netherlands hold advanced university degrees! As a Hungarian and U.S. trained orchestral musician, I hold two university degrees in music, yet my Dutch orchestra salary system places all of us at a vocational level with salaries that are certainly not in step with the cost of living in the cultural hub cities.”⁴³⁵

William Baumol whose ground-breaking cultural economic studies inspire the *Follow the money movement* reveals:

“Wages of performers do rise, but they do not always manage to keep up with wages in the rest of the economy. Because performers frequently are dedicated individuals who are willing to work under economic conditions which would be considered appalling in other activities, the performing arts are relatively insensitive to general wage trends. . .whereas most unskilled workers, for example, are likely to regard the hourly wage as their primary reward for working, the typical performer presumably receives, in addition, considerable pleasure and personal satisfaction from his work. It is largely for these reasons that performing arts organizations in financial difficulty have often managed to shift part of their financial burden back to the performers.”⁴³⁶

The following *movements* and *intermezzi* decipher a nexus of monetary and non-monetary challenges that increase orchestral musicians’ vulnerability.

⁴³⁵ Conversations with Amsterdam-based violist and entrepreneur Örzse Adam.

⁴³⁶ William Baumol. *Performing Arts: The Economic Dilemma* 1966 p. 169.