

## Putting the CSO Musicians' Strike in Context—And it's a long and complicated one

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Although almost all the striking musicians of the Chicago Symphony Orchestra are too young to have known this, they are on strike because the Studebaker-Packard Corporation closed its South Bend, Indiana plant in 1963, terminated its underfunded pension plan, and left several thousand aged, broken hourly automobile manufacturing line employees destitute. Walter Reuther, then UAW head, campaigned for pension reform and reinsurance, and after a bitter, exhausting eleven-year battle, through Republican and Democratic presidents and congresses, President Gerald Ford signed the Employee Retirement Income Security Act of 1974 (you've probably heard the acronym, "ERISA") into law. Reuther and most U.S. business titans were aware of the persistent epidemic of pension underfunding. They also knew that our country's working class—the people without accumulated wealth, whose talents, strengths, and intelligence called them in a different direction—were the most vulnerable. For any of us who've tried to re-enter the job market after the age of fifty, we know that we may have been middle management stars, but now we going to serve our successors food, retail goods, or greetings at a store entrance. The CSO musicians know that a safely funded pension is something to treasure, and not something to trade away in exchange for another promise. Here's why.

ERISA was a complex law that demanded all my energy when I left NYU's law school in June 1976. ERISA required almost every pension plan in the country to be rewritten to meet its non-discrimination, reinsurance, fiduciary, and, most significantly, its minimum funding standards. ERISA added a new section to our well-worn Internal Revenue Code—Section 412—which was written by actuaries for actuaries. It contained technical standards, widely accepted by actuarial and financial mathematicians, for projecting life expectancies, retirement ages, benefit commencement dates, investment returns, future compensation, and funded and unfunded liabilities. Putting the mind-numbing technicalities aside, this was a statute with real consequences and penalties, enforced not by an unaffordable lawyer, but by two government agencies—the Internal Revenue Service and the Department of Labor.

CSO management is offering a contractual promise, on its face a very generous one. To cash in on this promise, all the musicians need to do is give up all or part of its Section 412 protections. They said no to this on Monday night, April 8, 2019, almost unanimously. Several commentators have speculated that this is attributable to their lack of financial education or their failure to perceive a declining level of support by their audience.

Many of the musicians, as students, spent their free time and elective courses on music. Music is a calling, and an extraordinarily tough profession to crack, so every course, every hour of practice, was a miniscule advantage, but to our Chicago champions, well worth it. So, accounting, mathematics, investments, economics, etc., were often not a part of their formal education. Still, running a household, budgeting, learning to live on an unstable income while still freelancing, all provide a harsh financial education, insufficient to run a bank, but sufficient to avoid living in a box in front of a bus station. I contend that the CSO musicians are generally smart enough to know what they are rejecting, and why.

Neither laborers nor labor issues exist in a vacuum. While my musician friends might not know who Walter Reuther was, they read the news and are careful, insightful observers of our 2019 society. Until the current administration was elected, they took for granted that a contract was a contract, and that each party would live up to its obligations as a matter of honor and personal pride. We now have a U.S. president who bragged about not paying his bills or fulfilling his obligations to his vendors. As a lawyer, I am now seeing people who evaluate proposed contractual terms not on the rights granted and obligations imposed, but rather on the strength of, and resources available to, the counterparty. In other words, many are asking themselves, "If I don't pay up, does the other side have the resources to enforce this contract against me?" In this context, ask yourself whether you'd give up the protection of a statute enforced by the IRS and Department of Labor in exchange for a promise if, to enforce that promise, you'd have to face off against a global law firm with a few thousand lawyers, readily affordable by your counterparty. Could this happen? We all know that circumstances change. A tough year, some bad investment or capital expenditure decisions, etc., could tempt management to revisit its promises under the proposed defined contribution structure. In fact, one argument advanced by management in favor of the defined contribution plan is this flexibility.

Several commentators have argued that the CSO pension plan is an ancient relic out of step with the modern retirement planning of the business world—individual fund accounts, employer matches, and individual control. Under these plans, risk is not pooled, and workers are generally "on their own," for better or worse. Contrast that philosophy with that of the Chicago Symphony Orchestra. The best orchestra in the world has members who look out for each other, keep each other in sync with tempos, styles, new conductors, and yes, when necessary, possible and practicable, cover each other's mistakes. It is difficult to cancel out that philosophy in the world of retirement planning.

Still, the argument goes, no one has a pension anymore, so why should the musicians of the Chicago Symphony Orchestra? Let me ask the same question but with slightly different words: Most workers, whether hourly or salaried, white-collar or blue-collar, have by now given up their rights to collective bargaining protections, so why should the CSO musicians be allowed to retain those rights? The answer is because they have retained the courage to sacrifice income, usually unreplaceable, to preserve those rights for themselves and for the generations of CSO musicians to come. The most unwieldy aspect of this bundle of rights is that when we allow one straw to be pulled from the bundle, we know the bundle is more fragile, but we don't know when it will collapse. It is true that these musicians did not themselves form this union. It was formed in response to the mercurial, arbitrary, dictatorial reign of Fritz Reiner, who kept everyone in line by the threat, and sometimes promise, to end a career with a curt dismissal from the rehearsal stage. Still, these musicians understand deeply the sacrifices and courage of their predecessors who, in the 1960's, formed the collective bargaining unit. This is as much a part of their legacy to be preserved as the six centuries of music in their repertoire.

Is it true that the musicians are out of touch with the declining level of support from the citizens of Chicagoland? I don't agree that there is a declining level of support. Two pieces of evidence cited against me are that the days when Solti filled the hall with sellout crowds are long gone, and the CSOA must frequently offer specials, perks, and promotions to sell seats. This is true for a variety of reasons, but not that the public doesn't support the cause of labor. The solution to declining attendance is better education and more creativity, not to undermine musician beliefs and values. See, for example, Aubrey Bergauer's work described at <https://www.southwestmag.com/aubrey-bergauer/>, where she challenged some fundamental assumptions about audience engagement and filled the house. The CSO

has tried other ideas with mixed results—Music Now, movie nights, Beyond the Score, etc.—all good ideas but not providing a silver bullet. Perhaps it is time to reinvigorate that endeavor with new blood.

One commentator observed that the support from the public has been short-lived and shallow—Maestro Muti walking back his appearance on the picket lines, opportunistic politicians who've never attended a CSO concert, enthusiastic teachers now disgruntled because of cancelled field trips, etc. That last one is a surprise. The newspapers have covered the close support that the Chicago Teachers' Union have provided the CSO musicians. I'm sure many of them have never attended a CSO concert, but a worker is a worker, and a collective bargaining unit is a collective bargaining unit. Said another way, they believe that labor is stronger when it stands together. They also see that the current administration has forced the adoption of regulations that have weakened the National Labor Relations Board (yes, it still exists). As a retired lawyer/certified public accountant, I've had the honor and time to spend many hours on the CSO picket line. Countless times I've been greeted by plumbers, electricians, carpenters, structural iron workers, pipefitters, railroad workers, UAW workers, AFSCME members, teamsters and others, proudly wearing their buttons and proudly offering to walk a circle with the sign. I don't think many of them have attended a concert, but it is irrelevant. One's taste in music (or spending priorities) should not affect the sincerity of a belief in the principle that workers have a right to bargain, to strike, and to preserve a defined benefit retirement structure. I see that support every day, and this is week five of the strike.

The same commentator argued that the orchestra musicians are disconnected from the populace because they perform abroad so frequently. I am a life long Chicagoan, but I've been fortunate to travel around the world and work in different cities because of my profession. Chicago's reputation might be currently at its worst because of a fragile public education system, a persistent pension problem, and, most significantly, the tragic and unrelenting shooting deaths, despite the most sophisticated policing technology available. The CSO cannot fix these problems, but what is arguably the world's greatest orchestra can visit another U.S. or foreign city and associate, perhaps indelibly, the name Chicago with an inspiring interpretation of Mahler, Beethoven, or Mozart, a moment that will live on in the heart long after the passing of yesterday's headlines.

One last point: The CSO has had, arguably, the top compensation structure for U.S. symphonies (at least the "Big Five"—Chicago, Boston, New York, Philadelphia and Cleveland). In exchange for this, the musicians have fulfilled their part of the bargain by being the top symphony in the United States.

I agree that ending the strike sooner rather than later will mitigate the damage done to the institution, but bear in mind that the defined benefit pension plan reflects a value system residing in the hearts of its musicians, that we now live in a commercial world where contracts no longer carry the same weight, and that just as our musicians steward their musical legacy, they also steward the rights for which their predecessors sacrificed.

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