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THERE ARE CERTAIN names that go down in history. Everyone knows what "McCarthyism" means, thanks to Senator Joe McCarthy's Communist witch hunts of the 1950s. Ronald Reagan gave birth to the term "Reagonomics." And so on.

But there's also one not-so-pretty name that gave rise to a style of negotiations that still affects musicians today.

In 1947, General Electric's Vice President for Relations Services, Lemuel R. Boulware, developed a new collective bargaining strategy for G.E. that will forever bear his name: BOULWARISM.

Boulwarism was developed in response to a very lengthy and costly strike that had occurred at G.E. in the 1940s. After the strike, the company became committed to finding a new approach to bargaining, one that would allegedly establish G.E. as a beneficent employer who puts the needs and interests of its employees first. Thus, rather than participate in the give and take of negotiation, Boulware decided that he would present the company's last best offer first. Presenting the proposal in this way, G.E. believed that it would "cut to the chase" and conclude labor agreements without controversy. For those who are interested, a good history of this bargaining tactic can be found in reading the case General Electric Company and the International Union of Electrical Radio and Machine Workers, AFL-CIO, 150 NLRB 192 (1964). You can find it online, or e-mail me and I'll send you a copy.



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Take it or leave it?

In good news for musicians, labor board slaps **Jacksonville Symphony** management for bad faith bargaining

Unfortunately for Boulware (but fortunately for us), the National Labor Relations Board found his novel "take-it-or-leave-it" approach violated the good faith bargaining requirements of Section 8(a) (5) of the National Labor Relations Act. The NLRB held that only an agreement produced through the give and take of the negotiation process will be deemed to be the result of good faith bargaining.

In actuality, Boulwarism is the very antithesis of good faith negotiation. It is the phenomenon where management has only one proposal that it essentially refuses to vary from.

Given the NLRB's denunciation of this tactic, one would think that it has become largely discredited. Much to my dismay, however, in the arena of symphonic negotiations, Boulwarism is very much alive and well. One only need look to the management of the Jacksonville Symphony, who recently attempted to employ the Boulware approach.

Musicians of the Jacksonville Symphony have been involved in negotiation for a successor contract for many months. The musicians are represented by AFM Local 444 and their own orchestra committee, which is named the Jacksonville Player

Association. Management is the Jacksonville Symphony Association. More than 20 bargaining sessions have occurred during which management has not wavered in its insistence that the musicians' wages be cut by 20 percent. This proposal was both management's first and management's final proposal. This is take-it-or-leave-it. This is Boulwarism.

The musicians, on the other hand have made six economic proposals, each being more concessionary than the last. Their last proposal was for a three-year contract, with a three percent decrease in the first and second years and no in-

creases in the third year. Management summarily rejected the player's last proposal without even discussing it across the table. Furthermore, quite incredibly, upon receiving the union's sixth proposal, management declared impasse and implemented its last offer, including the 20 percent wage cut.

In September, Local 444 filed an unfair labor practice charge asserting that the implementation was illegal. It should be noted that legally an "impasse" exists only where both parties acknowledge that any further negotiation would be futile. Taft Broadcasting Co., 163 NLRB 475, 478(1967). Clearly, that was not the case here, since Local 444 was ready willing and able to continue negotiations. Unless and until there is an impasse, an employer may not unilaterally implement their contractual proposal.

I am pleased to report that after an exhaustive review of the party's bargaining history and bargaining notes, on Nov. 30, NLRB Region 12 issued a complaint against management. (The case is Jacksonville Symphony Association, Inc. v. American Federation of Musicians, Local 444, AFL-CIO, Case 12 CA 089629).

The complaint contains, among other things, allegations that management has not engaged in good faith bargaining, was engaged in surface bargaining, and has illegally declared impasse and implemented its last proposal. While the issuance of a complaint is not tantamount to a determination that the NLRA has actually been breached, it should be noted that the NLRB does not issue complaints unless it has compelling evidence and law demonstrating that there has been a violation. Here, the NLRB determined that there was. It should be noted that roughly five percent of all the unfair labor practice charges filed with the NLRB result in the issuance of a complaint.

The next step in the process is that a hearing will be held where an administrative law judge will make a determination whether the complaint's allegations may be sustained. I will keep you posted. For now it is good to know that the law will still provide an avenue for redress against "Boulwaristic" employers.

One curious footnote to this situation. A member of the bargaining committee recently advised me that the chairman of the Jackson Symphony Association board was previously an attorney for G.E. Makes you think. Doesn't it?