

FEDERAL MEDIATION & CONCILIATION SERVICE

-----X

In the Matter of the Arbitration

:

-between-

:

YOUNGSTOWN STATE UNIVERSITY

**FMCS # 220211-03381**

**and 220215-03467**

("YSU" or "University")

:

-and-

:

OHIO EDUCATION ASSOCIATION

**ARBITRATOR'S**

**AWARD AND OPINION**

("OEA" or "Union")

:

:

Re: Dana School of Music Retrenchments

:

-----X

Before: Jay Nadelbach, Esq., Arbitrator

**Appearances**

For the University:

Zashin & Rich, Attorneys

By: Sarah J. Moore, Esq.

Holly A. Jacobs, Esq., General Counsel

Dr. Brien Smith, Provost/Vice President for Academic Affairs

Dr. Jennifer Pintar, Associate Provost

Kevin M. Kralj, Director, Labor & Employee Relations

Dr. Michael Sherman, Vice President, Institutional Effectiveness

Dr. Phyllis Paul, Dean, Dana School of Music

For the Union:

Megann Walsh, UniServ Labor Relations Consultant

Amelia Woodward, Labor Relations Consultant

Gabriel Palmer-Fernandez, Representative

Dr. Jena Root, Music Theory Coordinator

Dr. Ewelina Boczkowska, Professor, Music History

Dr. Kivie Cahn-Lipman, Professor, Cello

Dr. Steven Reale, Grievant

Dr. Randall A. Goldberg, Grievant

Youngstown State University (“YSU”), a public university in Youngstown, Ohio, offers both undergraduate and graduate degree programs to approximately eleven thousand (11,000) students. YSU is comprised of several colleges and various departments within those colleges. The Union, an affiliate of the Ohio Education Association (“OEA”), represents over three hundred (300) of the faculty members.

In response to declining student enrollment numbers and falling revenue in the past several years, YSU undertook various wide-ranging strategic planning initiatives to examine its future sustainability. By 2021, the University was at its lowest enrollment figure since 1967. The University’s comprehensive examination, therefore, included a meticulous review of all academic departments, program offerings, and staffing needs. Ultimately, in the fall of 2021, YSU identified twenty-seven (27) programs for which full-time faculty staffing could no longer be supported. Included in that list were “music history and literature” and “music theory” at the B.A. level and “music history and literature” at the M.A. level at the University’s Dana School of Music, a department within the Cliffe College of Creative Arts and Communications. Indeed, the Dana School faculty had already decided to discontinue the music theory and music history programs. In their view, there was no impact on the courses offered nor any effect on the faculty workload.

According to YSU, retrenchment of faculty was nevertheless required. A collective decision was made among Dr. Phyllis Paul, Dean of the Cliffe College, University Provost Dr. Brien Smith, and Assistant Provost Dr. Jennifer Pinter to designate two (2) full-time tenured professors (jointly referred to as “Grievants”), Dr. Steven Reale (“Dr. Reale”) and Dr. Randall Goldberg (“Dr. Goldberg”) for retrenchment at the end of the 2021-22 academic year. Reale was a full-time Professor in the field of music theory and Goldberg was an Assistant Professor in the field of music history. The rationale was that the majors in their respective fields were going to be sunset and eliminated. Dr. Reale and Dr. Goldberg each filed a grievance under the parties’ collective bargaining agreement which the YSU Chapter of the OEA then pursued jointly to arbitration.

Under the procedures of the Federal Mediation and Conciliation Service, the undersigned Arbitrator was designated to hear a case involving the consolidated grievances and to decide the parties' dispute. Three (3) hearings were held on July 25-27, 2022 in the Williamson College of Business Administration at YSU. Both sides were given a full and fair opportunity to present testimony and evidence in support of their respective positions. The parties also filed written post-hearings briefs that were received on September 21, 2022 and reply briefs that were received on September 28, 2022. Upon receipt of the briefs, the hearings were deemed closed.

As set forth below, the Union contended that the University violated various sections of Article 13 of the parties' collective bargaining agreement in implementing the retrenchments at the Dana School of Music. The grievances alleged that YSU did not follow proper procedures in implementing the retrenchments, did not make necessary efforts to relocate the retrenched faculty, and did not insure that the remaining faculty was qualified to teach the courses of those retrenched. Aside from the alleged improper layoff of the two (2) Grievants, the Union maintained that the University's wrongful decisions will have caused lasting and irreversible damage to the School of Music. The Union sought the Grievants' reinstatement together with a make-whole remedy.

In denying the grievances and in supporting the decisions made, however, the University noted that the retrenchments were driven by the continuous decline in enrollment numbers and the economic reality confronting YSU. And in selecting the Grievants for retrenchment, the University maintained that it complied in full with the Article 13 requirements. Neither Dr. Reale nor Dr. Goldberg was qualified to teach the substantive courses of less senior faculty had one of them been let go, YSU contended. The University, therefore, urged that the grievances be dismissed.

## RELEVANT CONTRACT LANGUAGE

Article 8 (“Grievance Procedure”) provides in part, as follows:

**8.9: Step 4: Arbitration:** . . . The arbitrator shall have no power to add to, subtract from, or modify any of the terms of this Agreement. . . .

Article 13 (“Retrenchment of Faculty”) provides in part, as follows:

**13.1: Procedure:** Each fall term, as soon as 14<sup>th</sup> day enrollment reports are available, the Administration will review overall staffing needs. If it determines that retrenchment is indicated, the Administration shall prepare a preliminary report reflecting its views on the departments in which, in its judgment, retrenchment should occur. The Administration shall consult the Association regarding the matter before distribution of the preliminary report. The determination shall include the following considerations:

1. consistently declining student credit hour production;
2. academically sound student/faculty ratios;
3. the state of the development of the department;
4. the balance between academic and non-academic personnel;
5. possibilities of enrollment trend reversals;
6. the necessity of some disciplines and programs to be other than self-supporting;
7. normal attrition;
8. other pertinent factors.

This preliminary report shall be submitted to the respective departments for review. If the department faculty objects to the preliminary report as it affects the department, such objections and their rationale shall be submitted to a Joint Committee that shall consist of the Provost as Chair, four (4) individuals selected by the Administration, and four (4) representatives of the Association. The Joint Committee shall review the objection of each department and will make its recommendations to the President of the University.

**13.2: Guidelines:** The guidelines that shall be applied under the retrenchment conditions are as follows:

**13.2a:** Full-time faculty already employed by the University, except in special and unusual circumstances, have a priority of employment in their given subject matter area over part-time faculty. Tenured faculty members have a priority over non-tenured faculty, and Senior Lecturers have a priority over other Term faculty. Post-doctoral faculty will not be retrenched so long as their funding is 100% external.

....

**13.2e:** Department Chairs and Deans will make every effort to relocate extra faculty in other academic, administrative, or staff posts needing personnel when the faculty member's qualifications permit. If such shift is to an administrative or staff position, the salary and other considerations of employment shall not exceed that which is shown for the administrative or staff position in the budget. If the appointment is academic, the rank and salary shall be the same as were held by the faculty member being transferred.

....

**13.2g:** When an academic department is notified that a reduction in the number of full-time faculty members in the department is necessary and that the possibilities of reduction through normal attrition, leaves, loans, transfers and early retirements have been exhausted, the person or persons to be discontinued in the department shall be determined in inverse order of length of qualifying service, providing the remaining faculty members have the necessary qualifications to teach the remaining courses or perform the remaining duties. For purposes of retrenchment, Department Chairs shall be considered as faculty. The Joint Committee referred to above shall hear appeals from departments that seek to modify the seniority application. For purposes of retrenchment, a full-time faculty member appointed in two (2) or more departments shall be considered a member of his or her home department, and service outside the home department during the period of cross-appointment shall be considered qualifying service only in the home department. A cross-

appointed faculty member discontinued through retrenchment in the home department shall be considered for relocation in another department in which they hold appointment, based on that department's need and the faculty member's qualification.

### **ISSUE**

The parties stipulated to the issue in dispute, as follows:

Did YSU violate the parties' collective bargaining agreement when it retrenched Dr. Steven Reale and Dr. Randall Goldberg (the "Grievants") at the end of the 2021-2022 academic year?  
If so, what shall be the remedy?

### **SUMMARY OF TESTIMONY**

#### **The Union's case**

The Union presented testimony that the retrenchments generally were unnecessary and, even if warranted, the retrenchments were implemented improperly and without consideration of the collective bargaining agreement's requirements.

In his testimony, Dr. Reale noted that he was hired by YSU in 2009 as an Assistant Professor in Music Theory. He was promoted to Associate Professor with tenure in 2014, and finally promoted to full Professor in 2020. Dr. Reale was #13 on the seniority list. He has taught music theory and aural theory courses from the lowest grade to the most advanced graduate course throughout his years as a YSU faculty member. He also pointed to his unique research specialty involving video game music and other digital audio ventures. In fact, some years ago, Dr. Reale started an annual nationwide conference on video game music. He has also served on numerous Dana School committees and has held multiple executive level positions with the Union. Most recently, Dr. Reale served as local Union President during the 2020 negotiations, ultimately leading a strike when the parties were unable initially to reach an agreement.

Despite his tenured status, longtime experience in the subject matters of music theory and aural theory, and keen knowledge of keyboard skills, Dr. Reale was selected for retrenchment. He was quite surprised, Dr. Reale testified, inasmuch as the Dana School was not reducing faculty but actually increasing it. For example, in 2021-22, two (2) new positions in the area of ensembles were created. In addition, a third person (Dr. Joseph Carucci) was brought in as the new department chair. Although it retrenched Dr. Reale and Dr. Goldberg, the Dana School thereby still had a net increase of one (1) faculty member. Clearly, Dr. Reale testified, there was no reduction in faculty that would have contractually permitted a retrenchment.<sup>1</sup>

It was also noteworthy, Dr. Reale testified, that the school had never been able to fully staff its music theory area without relying on adjunct, part-time, or non-tenured faculty. But curiously at the time of Dr. Reale's retrenchment, Professor Sean Yancer, a non-tenured faculty member, was assigned music theory courses. Clearly, a prime example of a contract violation.

Similarly, Dr. Reale, testified that he was qualified to teach many other subject matter courses which have been assigned to less senior faculty or non-tenured faculty. A perfect example is the new department chair, Dr. Carucci, who is the least senior faculty member in the department. Notably, department chairs are considered faculty under the collective bargaining agreement and do not get any priority (or "super-seniority") when it comes to retrenchment. In addition, both Dr. Carucci's duties as chair and his subject matter courses could readily have been taught by remaining faculty. Nonetheless, Dr. Carucci was retained

---

1

Dr. Reale also pointed out that the retrenchment provision in the collective bargaining agreement makes no reference to the sunseting or elimination of majors. It speaks only to a department's need to reduce its total number of faculty. Yet here, there was no legitimate basis for a reduction particularly since in the current year (2021-22) he worked a full faculty workload -- indeed an overload of twenty-four and one-half (24 ½) hours. He had never been asked to teach as many courses, Dr. Reale testified, as in that year.

when the retrenchments were implemented. And finally, as another key example of how YSU violated the parties' agreement, Dr. Reale pointed out that the University undertook "zero effort[s]" to relocate him to another position.

Dr. Jena Root, the Dana School music theory coordinator, testified primarily in support of Dr. Reale. The two (2) of them (with Dr. Root being more senior to Dr. Reale) were the only two (2) Music Theory faculty members. Dr. Root noted that she has authored textbooks, offered workshops, and has worked comprehensively with Dr. Reale over the years in developing curriculum, choosing textbooks, and developing courses at both the graduate and undergraduate levels. She has become an expert, particularly proficient at instantaneously hearing music, writing it down in notation, and playing it back in any key. Dr. Root described herself as fluent in "solfege," a language used in naming musical notes. In the coordinator role, over the years, Dr. Root has assisted the department chair annually in scheduling music theory and aural theory courses and in assigning qualified faculty to teach those courses. Over the years, there have never been issues in filling the workload or sections of two (2) full-time faculty members, she observed. Frequently, additional part-time faculty also were needed to cover the courses. Dr. Root testified that nevertheless, for the upcoming school year (given the retrenchment decisions that were being made), whatever input and recommendations that she gave were ignored by the new Dana School of Music chair, Dr. Joseph Carucci. For example, Dr. Kivie Cahn-Lipman, whose subject matter expertise was cello and who had limited piano skills, had nonetheless been assigned to teach both music theory and aural theory courses. He had expressed his own apprehensions and



concerns to Dr. Root,<sup>2</sup> and she in turn tried to convince Dr. Carucci to change the assignment. Dr. Carucci, however, refused.

Root then wrote to all five (5) faculty members selected to teach the core music theory courses to give them a heads-up on the skills needed to teach the classes. Concerns were voiced by several of them. For example, Kathryn Umble (whose subject matter was flute) and Jim Umble (whose subject matter was saxophone) both felt inadequate to teach music theory. Sean Yancer (french horn) expressed his discomfort with teaching aural theory, stating that he did not have keyboard skills. In Dr. Root's view, there was a clear detrimental impact on the quality of instruction by having these inexperienced faculty members teach the courses. Both student progress and student retention could be harmed. Moreover, music theory and aural theory are their own subject matter. Remaining faculty members in an academic department, following retrenchment, must have the "necessary qualifications" (per Article 13.2g) to teach the remaining courses. That was not the case here, Root testified. The remaining faculty simply did not have the keyboard, improvisation, singing, or solfege skills required.

Root testified that she was "shocked [and] baffled" by the retrenchments of Dr. Reale and Dr. Goldberg. The Dana School still had the same number of courses plus full loads of music theory and music history. No courses were cut even though the degree programs were

---

2

Dr. Cahn-Lipman had jokingly said to Dr. Root that his Julliard School teachers had called him the "worst pianist" in the school's history, she testified.

In his testimony, Dr. Cahn-Lipman, a performing cello musician who has played Carnegie Hall and other major venues throughout the world, explained that he had a quite difficult adjustment and made many solfege mistakes when he first taught music theory and aural theory courses. He had told Dr. Carucci that he would be better off with other classes, but he nevertheless was assigned to the theory courses.

Dr. Cahn-Lipman too testified that he was shocked and astonished by the retrenchments of the Grievants. Seniority rules clearly were not followed, he testified, when these long-time dedicated faculty members were let go.

eliminated.<sup>3</sup>

Dr. Goldberg testified (via video-conference from California) to his thirteen (13) years on the YSU staff as a Professor and as Director (for 5 years) of the Dana School.<sup>4</sup> With a Ph.D. in historical musicology, Dr. Goldberg has published numerous works and presented at major conferences. He and Dr. Ewelina Boczkowska were the only history musicologists on the faculty, Dr. Goldberg noted. Following the retrenchments, no remaining faculty member was qualified to teach the courses in music history. Other faculty members had specific subject matter knowledge and appropriate pedagogical skills on their musical instruments only.

In addition, Dr. Goldberg testified, less senior faculty in the department were retained to teach the remaining courses. Yet, both he and Dr. Reale as well readily could have taught those classes. In particular, the lowest ranking faculty member in seniority was the relatively new department chair, Dr. Carucci. His principal subject matter areas were jazz and saxophone and, again, other professors could readily have taught his courses. Yet, he was retained. Moreover, similar to the testimony offered by Dr. Reale, Dr. Goldberg stated that the need to offer music history courses did not disappear when the music history major was sunset. Most of the undergraduate degrees still required core music history courses. And his

---

3

Root expressed her belief that the retrenchments were retaliatory given the fact that Dr. Reale had been the local Union President.

In his testimony, Dr. Reale too suggested that both his skills and the school's need for a music theory professor had nothing to do with the retrenchment decision; rather, it was his "personal relationship" with the administration that led to the YSU determination.

4

Dr. Goldberg stayed on as Director until Dr. Carucci came aboard following an external search.

overall workload could have remained constant had he been kept on.<sup>5</sup>

Dr. Ewelina Boczkowska, a full professor of music history, testified in support of Dr. Goldberg. They were hired in the same year and have worked together in the department. Both of them, the witnesses testified, were musicologists specializing in the historical and scientific study of music -- she in European film music and Dr. Goldberg in early western music. Other faculty have some form of musical arts background which requires a different type of training. As such, the remaining faculty after Dr. Goldberg was retrenched were not qualified to teach upper division and various core courses in musical history. Typically, Dr. Boczkowska and Dr. Goldberg taught all the music history core courses over the past thirteen (13) years. Now, multiple sections of a course have been collapsed into a single larger class, and fewer upper division courses are being offered.

The Union noted that, once the retrenchments were announced, Dean Phyllis Paul met with the remaining faculty. She informed them of their right to appeal the retrenchments, but the faculty needed to identify two (2) other members of the department who should be retrenched in their place. An appeal was then filed to the retrenchment committee, but the faculty did not identify or recommend anyone to be retrenched. That was not their job, the Union noted, and in any event the elimination of the Music Theory and Music History programs should not have impacted the staffing needs for those continued courses. Subsequently, the committee did not consider the faculty's appeal, the retrenchments remained in place, and the instant grievances followed.

---

5

On cross-examination, Dr. Goldberg stated that he currently is employed at California State University as the Director of their school of music. His contract term is for three (3) years at the rank of Associate Professor and at a salary higher than he enjoyed at YSU. Of course, his living costs in California are much higher than the cost of living in Ohio. He relished the opportunity to return to YSU.

### **The YSU case**

As a consequence of reduced student enrollment and less revenue over the recent number of years, YSU had no choice but to downsize the faculty to meet its operational needs. It could no longer hold off on faculty reductions. Future projections showed an anticipated greater decline in enrollment throughout the State of Ohio and, in particular, within the University. The YSU fall 2021 annual review, consistent with reviews conducted in prior academic years, was based upon the University's ongoing strategic plan and its accreditation requirements. It should be evident and undisputed, therefore, that retrenchment of faculty was necessary to address program curtailment and the decreased number of student credit hours.

In implementing the retrenchment process, all of the University's contractual obligations were met. The administration consulted with Union leadership prior to distributing a preliminary report to each department for review and comment. Subsequently, a joint committee (which included Union representatives) reviewed all the concerns and objections filed. In particular, as it relates to the instant case, the joint committee rejected the Dana School's objections, and the retrenchments followed. Notably, Dr. Reale's general subject matter is music theory and Dr. Goldberg's general subject matter is music history and literature. Both men are the lowest in seniority in their subject matters, as compared with other full-time faculty members having the same general subject matter in the Dana School. Simply put, in the area of music theory, Dr. Root has more seniority than Dr. Reale. And in the area of music history and literature, Dr. Boczkowska has more seniority than Dr. Goldberg. While the two (2) Grievants, in their testimony, pointed out other less senior faculty members, those faculty had different subject matter areas. Such a comparison is not valid, YSU maintained, under the Article 13 language.

Moreover, YSU did indeed conduct a valid review through its Human Resources department to relocate the Grievants to other positions. It considered the Grievants' education, skills, and experience based upon their CVs. Yet none of the open YSU positions

were ones for which they qualified.

By way of background information, Michael Sherman, Vice President for Institutional Effectiveness, testified to the many steps YSU took and the various factors it considered in developing an overall strategic plan in 2020. YSU was cognizant of and sensitive to regional demographics and also to the decreasing rate of graduation among high school students. In addition, the University had an overarching need to maintain its accreditation to insure continued federal and state financial aid. YSU wanted to increase educational quality, to focus on research in a strategic manner, to enroll new students and insure their programs' completion, and to build strong collaborations with external shareholders. These were not simple tasks given the duplication of programs among the regional universities located in the northeastern Ohio geographic area. Significantly, all the other area universities had already retrenched their faculty staff, he noted.

Sherman further testified to the series of YSU Board efforts and resolutions in 2019 and 2020 that were all aimed at insuring future sustainability, community engagement, efficiency of its organizational structure, and a strategic allocation and distribution of its resources. To accomplish its research goals before reaching any recommendation and/or implementation regarding required changes, the YSU Board also engaged the services of Gray Associates, a higher educational consulting firm, to collect institutional data and to assist in the review of academic programs. Gray Associates met with every department chair, reviewed all academic components, and investigated enrollment by departments, majors, and individual courses. All of these steps were in addition to the voluntary separation retirement program ("VSRP") that the University had previously instituted in another attempt to avoid retrenchments. With regard to the instant case, YSU ultimately determined that the Dana School of Music had significant decreased enrollment, negative margins, and was not performing economically at a satisfactory level. But the School remained a valuable resource for community engagement because it served as an arts and cultural model for the region.

Dr. Brien Smith, YSU Provost, testified to the specific retrenchment decisions that were made. Falling enrollment, reduced revenue, and fewer classes all combined to lead to the sunset of programs and the reduction of faculty. Dr. Smith said YSU followed the process outlined in the parties' agreement and, after drafting the fourteenth (14th) day preliminary enrollment report for the fall term of 2021, it became apparent that retrenchment would have to take place in the Dana School of Music. Dr. Carucci, on behalf of his department, thereafter objected to the report and provided the rationale for the joint committee to consider. This step was consistent with the collective bargaining agreement that permits a department's faculty to submit objections to retrenchment plans. The objections, however, were rejected by a vote of the committee and the retrenchments were then determined in inverse seniority order. Dr. Smith, together with Associate Provost Jennifer Pintar and Dean Phyllis Paul (of YSU Cliffe College) handled the seniority decisions.<sup>6</sup> The caveat throughout

---

6

Both Provost Pintar and Dean Paul also testified to the inverse seniority process that was followed. Both maintained that, in collaborative discussions with Provost Smith, they appropriately considered all less senior faculty members for retrenchment but decided that no one, certainly not Dr. Reale or Dr. Goldberg, could teach or take over the substantive music instrumental areas that the other faculty members taught. They were:

- Dr. Wendy Case - no one was qualified to teach her violin courses
- Dr. Sean Yancer - no one was qualified to teach his horn courses
- Dr. Kate Ferguson - no one was qualified for her role as director of athletic bands
- Dr. Michael Butler - no one was qualified for his role as director of bands and orchestra conductor
- Dr. Andrew Mitchell - no one was qualified for his role as trombone instructor
- Dr. Kivie Cahn-Lipman - no one was qualified to teach his cello courses
- Dr. Joseph Carucci - no one else wanted to be department chair and no one was qualified to expand the recording arts program (although there was one other faculty member with a jazz background)
- Dr. Daniel Keown - with the exception of one other faculty member, no one else was qualified to teach music education courses (and since music education was the school's largest program, two full-time faculty members were needed)
- Dr. Cecilia Yudha - no one was qualified to teach her piano courses
- Dr. Paul Louth - no one (other than Dr. Keown) was qualified to teach his music education courses

the process was: if someone was discontinued, would the remaining faculty members have the necessary qualifications to teach the continued courses and perform the remaining duties? By applying this contract requirement, they determined that none of the faculty with less seniority than the Grievants could be let go because their subject matter expertise was in all cases required. In this way, the qualification considerations went up the inverse seniority ladder until Dr. Goldberg and Dr. Reale were reached. And they could be retrenched, Dr. Smith testified, because other faculty had the qualifications to teach their courses. With specific regard to Dr. Carucci, he too could not be retrenched, Dr. Smith testified. Dr. Carucci had a jazz and recording arts background, which were two (2) incredibly important components for the Dana School. Moreover, none of the remaining faculty had been interested in taking on Dr. Carucci's role of department chair. Significantly, Dr. Carucci too was qualified to teach both music theory and music history courses. Dr. Smith further testified that efforts were made to relocate the retrenched faculty. Yet, neither Dr. Reale nor Dr. Goldberg were qualified for any available positions.

## **DISCUSSION**

Upon a thorough and lengthy review of the entire record produced by the parties, I find that YSU violated Article 13 of the parties' collective bargaining agreement in retrenching the Grievants, Dr. Steven Reale and Dr. Randall Goldberg, at the end of the 2021-2022 academic year. All of the parties' contentions have been fully considered and evaluated whether or not specifically examined and discussed herein.

Initially, there can be no doubt that retrenchment of faculty had become a necessity throughout the University. YSU needed to confront a growing dismal economic picture based upon decreasing student enrollment and falling revenue over the past several years. YSU's primary witnesses, Provost Smith and Vice President Sherman, described with great

---

particularity the inescapable, recent economic realities faced by the University and the witnesses sufficiently demonstrated in great detail the steps that the University undertook to develop and implement a strategic plan that ultimately resulted in the unavoidable decision to retrench staff. Its decision to retrench, and in particular the need to reduce faculty at the Dana School of Music, must be viewed as reasonable and acceptable under the totality of the circumstances.

Indeed, the Union too recognized the general economic state of the University, the specific enrollment concerns at the Dana School of Music, and the academic issues that the University needed to grapple with going forward. The Union did not disagree with the substantive analysis and detailed presentation offered by Vice President Sherman and Provost Smith regarding decreased enrollment, the University's strategic plan, and ultimately the need for faculty retrenchments. The Union actually described the University's determination to implement retrenchments as "sound enough."

The Union nevertheless contended that, once YSU decided that retrenchments at the Dana School of Music were required, the University failed to properly apply several sections in Article 13 of the collective bargaining agreement. I agree. Based upon a definitive and precise reading of Article 13, the University did not fully utilize or implement the contract language that provides full-time faculty already employed with a "priority of employment in their given subject matter." The hearing record demonstrates that the University did not properly consider or weigh this contractual status granted to both Dr. Reale and Dr. Goldberg in relation to the several other faculty members in the Dana School of Music.

First, Article 13.2(a) distinctly provides that full-time faculty have a "priority" over part-time faculty, "tenured" faculty members have a priority over non-tenured faculty, and



senior lecturers have a priority over other “term” faculty.<sup>7</sup> Yet, there was no testimony or evidence produced that the University’s retrenchment committee ever examined, considered, or utilized this contract language, or how the University handled or sought to apply the priority granted to the Grievants in assessing the capabilities of the entire faculty. Seemingly, such a contractual “priority” was apparently never even cited or acknowledged by any of the YSU retrenchment committee members.

Next, Article 13.2(e) requires the University, and in particular the department chairs and Deans, to “make every effort” to relocate faculty when the “faculty member’s qualifications permit.” The contract language does not define or delineate what is meant by “every effort.” What exactly is the process to be followed in employing “every effort” and are there certain steps to be followed? While the agreement may be silent on what is required of the University, surely a studious attempt must be made to relocate a faculty member. Yet here, the record evidence demonstrates that no such high-standard contractual effort was undertaken. At best, the retrenchment committee conducted a perfunctory and limited review only based upon what it believed were Dr. Reale’s and Dr. Goldberg’s qualifications as set forth on the CVs that were on file in the HR department. No request or effort was made to obtain their current CVs, neither of the Grievants were interviewed, and neither one was called to a meeting for the purpose of reviewing their credentials or of gaining a better

---

7

One striking example provided by the Union was the status accorded by YSU to Dr. Sean Yancer, a term faculty member only who nonetheless was assigned to teach an Aural Theory class despite the fact that the course was not in his subject matter area. Dr. Yancer himself had expressed his apprehension or misgivings about being assigned to teach. While the retrenchment committee may have believed that Dr. Yancer had the ability to teach Aural Theory, what happened to the contractual priority that should have been granted to Dr. Reale?

The record further established that YSU, certainly through the information and concerns brought to department chair Carucci’s attention, knew that other faculty members had complained and expressed their uneasiness with being assigned to teach either Music Theory or Aural Theory courses in which they had no particular talent or prior experience. Apparently, those concerns as well as Dr. Root’s recommendations to Dr. Carucci were ignored or overlooked.

understanding of their background, skills, and qualifications. In fact, there was no communication at all from the administration to either Grievant prior to the retrenchment decisions.<sup>8</sup> And even after the retrenchment decisions were announced, no attempt was made to meet with either individual Grievant to explore any other possible available positions. Ostensibly, YSU would have me accept the self-serving general representation that its committee looked at other positions, both before and after the retrenchments, and reasonably determined that the Grievants simply had to be let go because they were not qualified to teach other Dana School of Music courses. I find that level of effort to be unacceptable given the Article 13.2(e) requirements.

Regarding the University's contractual obligations, the Union also provided the striking example of Dean Paul's blanket testimonial assertion that there were no open positions within the Dana School of Music for which Dr. Reale was qualified. Yet again, no effort was undertaken to meet or speak with him to determine his current qualifications or his interest in any other position (eg, even thereafter when a Recording Arts lecturer position became available in 2022, the administration did not contact Dr. Reale).<sup>9</sup> Certainly, such inaction on the part of the University does not meet its "every effort" contractual obligation.

Finally, with respect to the retrenchments themselves, Article 13.2(g) requires the faculty members who are to be discontinued to be determined in inverse order of seniority, "providing the remaining faculty members have the necessary qualifications to teach the remaining courses . . . For purposes of retrenchment, Department Chairs shall be considered as faculty." Yet, the record evidence in this case reveals that several faculty members with

---

8

The University sought to shift the responsibility to the Grievants for their failure to have a current CV on file or to produce one for review. That position is untenable, however, given that the contractual responsibility falls on the University to make "every effort" to relocate faculty.

9

Dr. Reale may not have been interested in that position, but his lack of interest does not justify the University's failure to contact him and notify him of the available position.

less seniority than Dr. Reale and Dr. Goldberg were retained though their courses could reasonably have been covered by remaining faculty members. Importantly, the least senior member in the department at the time of retrenchments was department chair Dr. Carucci. YSU witnesses asserted that no one could cover for Dr. Carucci's expertise in jazz, or teach jazz studies and/or music education. They also noted that no one in the department had previously indicated an interest in taking on the position of department chair. Perhaps that bit of knowledge helped to sway the retrenchment committee to keep Dr. Carucci aboard and bypass him from retrenchment. Yet, the testimony and evidence presented did establish that other faculty members more senior to Dr. Carucci had the expertise and ability to teach his courses. And with a little nudge -- certainly faced with the prospect of retrenchment -- it is quite possible that someone else, even Dr. Goldberg, could have changed their perspective and agreed to assume the position of chair. But the retrenchment committee apparently did not consider that possibility nor make any inquiries to learn if anyone else would step forward at the time to assume the role of department chair. And again, where does the Article 13.2(a) "priority of employment" that Dr. Reale and Dr. Goldberg were supposed to be granted fit into the University's retrenchment thought-process and consideration? The University's insistence that Dr. Carucci, as the least senior faculty, could not have been replaced is simply unconvincing and improbable. And given this finding, it is not necessary to further analyze the University's decision to retain other faculty members, aside from Dr. Carucci, also less senior than the Grievants. Suffice to say, the University's decision-making process did not comport with the contractual requirements of Article 13. Remaining courses and duties could have been covered had less senior faculty been retrenched.

### **AWARD**

The grievances are sustained. Consistent with the Discussion herein, the University violated the collective bargaining agreement when it retrenched the Grievants, Dr. Steven Reale and Dr. Randall Goldberg, at the end of the 2021-2022 academic year.

As a remedy:

- 1) Dr. Steven Reale shall immediately be reinstated as a full-time tenured Professor in Dana School of Music and Dr. Randall Goldberg shall immediately be reinstated as a full-time tenured Associate Professor in the Dana School of Music.
- 2) The Grievants shall be made whole for all lost wages and benefits, minus interim earnings, from the date of their retrenchments to the date of their reinstatement.
- 3) This award is final and binding. I shall, however, retain jurisdiction for the limited purpose of resolving any disputes that may arise in the implementation of the remedy granted herein.

Dated: December 8, 2022

New York, New York

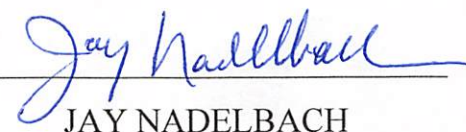


JAY NADELBACH

#### AFFIRMATION

STATE OF NEW YORK            )  
  :SS.:  
COUNTY OF NEW YORK        )

I, JAY NADELBACH, affirm upon my oath as Arbitrator, that I am the person described in and who executed this instrument which is my Award.



JAY NADELBACH