



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
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December 9, 2010

The Honorable Patti Saris
United States District Court
District of Massachusetts
1 Courthouse Way
Boston, MA 02210

Re: Pye v. The Longy School of Music
Case Number: 1:10-CV-11974 PBS

Dear Judge Saris:

Respondent's Counsel has authorized Petitioner to submit the attached document, entitled "History of Plaintiff's Deliberations and Actions Resulting in the Filing of this Complaint for Voluntary Dissolution" for the Court's review (herein, Respondent's Chronology). This document first came to Petitioner's attention on Thursday, December 2, 2010, as an attachment to a draft voluntary dissolution complaint we later learned was prepared by Respondent's Corporate Counsel. Petitioner received a true copy of Respondent's Chronology from Respondent's Counsel on December 8, 2010, which Respondent confirms was prepared by Respondent's Corporate Counsel.

Respondent's Chronology clarifies that Longy's Board of Trustees voted to authorize the signing of a Letter of Intent with Bard College on June 14, 2010, some four months later than the date reflected in the hearing record (Respondent's Chronology, paragraphs xv and xxvii). Respondent's Chronology further shows that Longy's talks with Bard College were still exploratory in nature when Longy's faculty elected the American Federation of Teachers to represent them as their exclusive collective-bargaining representative on January 20, 2010 (Respondent's Chronology, paragraphs x through xv).

Petitioner submits that the attached document may be helpful to the Court in deliberations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of the above document shall be served upon the attorneys of record for each party by means of the Court's electronic filing system and, those not appearing by means of the electronic filing system, shall be sent by electronic mail on December 9, 2010, and shall be served by regular mail on December 10, 2010, at the addresses below.

LOCAL RULE 7.1(a)(2) CERTIFICATION

I further certify, in accordance with Rule 7.1(a)(2), that prior this filing, I have consulted with Counsel for Respondent, Donald Schroeder, who has agreed to the submission of Respondent's Chronology to the Court.

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MWE DRAFT - 9/24/10

Exhibit A**History of Plaintiff's Deliberations and Actions Resulting in Filing of this Complaint for Voluntary Dissolution**

- (i) **December 8, 2008 Board of Trustees (the "Board") Meeting** - The Plaintiff's President reported that the Plaintiff had been operating at a financial deficit for three years and that its current business model was no longer sustainable. The Plaintiff's Chief Financial Officer ("CFO") projected that if the business model did not change, the Plaintiff's unrestricted cash would be exhausted by December, 2009 and the funds currently designated by the Board for the endowment would be exhausted in 2011. Two options were identified to address the Plaintiff's financial crisis; internally restructuring to ensure the Plaintiff's financial sustainability (the "Turnaround Plan"), or pursuing some form of partnership with another educational institution (the "Partnership Plan"). The Board voted unanimously to authorize the Executive Committee to meet at least once a month to explore these two options and to report to the Board regularly on its findings. The Executive Committee was charged with fully evaluating and exploring each option, and ultimately providing the Board with its recommendation about which to pursue.
- (ii) **January 23, 2009 Executive Committee Meeting** - The Executive Committee met to discuss the process of evaluating the Turnaround Plan and the Partnership Plan. A memorandum was presented, stating the committee's goals (the "Charge Memo"). With the Plaintiff's mission and vision in mind, the committee's charge was to weigh the advantages and disadvantages of the two plans to ensure the continuance and prosperity of the Plaintiff. Specifically the committee identified their tasks as:
- Developing realistic scenarios that describe the work required to execute either plan;
 - assessing the benefits, risks, and implications of executing each plan; and
 - making a thoughtful and informed recommendation to the Board.
- Lesley University ("Lesley") was identified as the most likely partner under the Partnership Plan.
- (iii) **January 26, 2009 Board Meeting** - The Board was provided the Charge Memo and the Trustees were encouraged to contact Executive Committee members throughout the process with questions, concerns and ideas. A brief discussion took place concerning the possibility of exploring a merger with institutions other than Lesley. The Board decided that a potential arrangement with Lesley should be initially pursued, and other potential partners identified and evaluated thereafter.
- (iv) **February 6, 2009 Executive Committee Meeting** - The Chair of the Board (the "Chair") reminded the Executive Committee that its mandate from the Board was to investigate and give full consideration to both the Turnaround Plan and the Partnership Plan. This meeting was dedicated to exploring issues and questions related to the Partnership Plan, specifically with respect to an arrangement whereby the Plaintiff would be merged into Lesley. The committee discussed the critical aspects of such a merger, including the

MWE DRAFT - 9/24/10

institutions' missions, identities and cultures, post-merger control and plans for growth. The President was authorized to begin meeting with Lesley administrators, and the Plaintiff's stakeholders, to explore further a potential merger of the Plaintiff into Lesley.

- (v) March 9, 2009 Board Meeting - The Chair reminded the Board that the Executive Committee was charged with evaluating two possible futures for the Plaintiff, the Turnaround Plan and the Partnership Plan, for which the initial candidate was identified as Lesley. A presentation was given regarding the legal aspects of a possible merger of the Plaintiff into Lesley under the Partnership Plan. The presentation explained that two-thirds of both the Plaintiff's and Lesley's Boards would need to vote to authorize of the merger and the Massachusetts Attorney General's Office would supervise the process to ensure that all of the Plaintiff's currently restricted funds remained protected and their purposes upheld. The Board discussed the fact that financial sustainability must be the Plaintiff's core goal, regardless of whether the Board ultimately voted to adopt the Turnaround Plan or the Partnership Plan.

The CFO presented the Plaintiff's most recent financial report with the Board and presented a potentially balanced budget for fiscal year 2010, which, however, included substantial budget cuts, including aggressive plans to increase revenue wherever possible and a continuation of the staff and faculty salary freezes instituted on July 1, 2008, as well as a freeze on the 403(b) match, which was instituted on July 1, 2009.

- (vi) April 14, 2009 Executive Committee Meeting - The President reported that the Plaintiff had begun discussions with Lesley, but that because of its current activities and commitments, Lesley requested an extension of the previously established timeline for discussing a potential merger. This meeting was otherwise dedicated to exploring issues and questions related to the Turnaround Plan. Various aspects of a financial turnaround strategy were discussed, such as increasing student volume through faculty recruitment and phasing out the undergraduate program over time.
- (vii) May 4th, 2009 Executive Committee Meeting - The committee reviewed the Plaintiff's and Lesley's efforts to establish a schedule of meetings to occur over the course of the summer months, with a goal of establishing a standing meeting every other week to discuss the Partnership Plan. The committee discussed the fact that Lesley's response to the Plaintiff's efforts to establish a formal meeting schedule would be an indication of Lesley's interest in the Partnership Plan. The rest of the meeting was dedicated to further discussions regarding the Turnaround Plan.
- (viii) May 11, 2009 Board Meeting - The Chair of the Finance Committee reviewed the Plaintiff's deficit for the last three years and described the budget for fiscal year 2010, which projected an \$8,000 surplus. The Chair of the Executive Committee gave a presentation regarding its recent Turnaround Plan and Partnership Plan discussions. The Chair of the Board reminded the Board that their task was to consider both plans and weigh each in light of the ultimate question of which plan offered the best opportunity for the Plaintiff to have a long-term, sustainable future. The President then presented the Executive Committee's most recent strategy for the Turnaround Plan.

MWE DRAFT – 9/24/10

- (ix) Partnership Plan Discussions Occurring between June and September of 2009 – Between June and September of 2009, the Plaintiff and Lesley discussed a potential merger of the Plaintiff into Lesley that would support the long-term sustainability of the Plaintiff. The parties reviewed the 1998 merger between Lesley and the Art Institute of Boston as a potential model for the Partnership Plan. Ultimately, however, the financial pressures resulting from the national economic downturn presented significant barriers to consummating a merger that was in the best interests of both institutions. Accordingly, the Plaintiff and Leslie mutually agreed to put their discussions on hold. The Plaintiff focused its efforts on implementing a sustainable Turnaround Plan.
- (x) September 12, 2009 Board Meeting – The Board reviewed the Plaintiff's strategic plan, budget deficit and the absence of further discussions with Lesley. The President informed the Board that, although a merger with Lesley was no longer being actively pursued, the Plaintiff was evaluating and seeking out other potential partners. The President stated that the Plaintiff had met with representatives from Bard College ("Bard") over the course of the summer and that the institutions agreed to discuss a potential merger of the Plaintiff into Bard. Under the contemplated Partnership Plan with Bard, the Plaintiff would maintain its own board and its own budget, which would be approved by Bard's board, a model similar to Bard's governance of Bard College at Simon's Rock in Great Barrington, Massachusetts. A presentation on Bard was given, which highlighted a number of advantages to pursuing the Partnership Plan with Bard, including:
- the Plaintiff maintaining substantial control of its finances;
 - additional fundraising opportunities through Bard's established relationships;
 - economies of scale with respect to technology, market development, human resources and personnel;
 - opportunity for the Plaintiff to have significant influence with respect to Bard's recently-established music conservatory;
 - potential for the Plaintiff to develop and begin to offer a Master's Degree in music teaching;
 - Bard's international reputation; and
 - Bard's leadership's interest in music education, which is aligned with the Plaintiff's mission.

The Board granted approval to move forward and explore the Partnership Plan with Bard.

- (xi) October 19, 2009 Board Meeting – The Chair gave a presentation regarding her recent visit to Bard.
- (xii) November 2, 2009 – The Plaintiff established a subcommittee of Trustees to serve on a task force responsible for evaluating a potential Partnership Plan with Bard and communicating its findings to the Board. The task force was named the Longy Merger Task Force ("LMTF").
- (xiii) November 6, 2009 Board Meeting – Dr. Leon Botstein, the President of Bard, attended the Board meeting to meet the Longy Board of Trustees and to share his views on the potential merger of the two schools.

MWE DRAFT - 9/24/10

- (xiv) January 15, 2010 LMTF Meeting - The LMTF reviewed and accepted a memorandum stating its goal of evaluating all pertinent information relating to a proposed relationship between the Plaintiff and Bard. The LMTF acknowledged that the Board authorized it to explore a potential relationship with Bard thoroughly and to recommend a course of action to the Board. Three possible partnership scenarios between the Plaintiff and Bard were presented. The only scenario that seemed to be acceptable to both parties was Bard's acquisition of a membership interest in the Plaintiff, pursuant to which the Plaintiff would become a wholly controlled subsidiary of Bard (the "Sole Member Structure"). The LMTF emphasized that Bard's commitment to treat the Plaintiff's assets as being for the benefit of the Plaintiff was a critical component of any arrangement between the two institutions. The LMTF discussed entering into a letter of intent ("LOI") with Bard to record the parties' intentions in writing.
- (xv) February 22, 2010 Special Board Meeting - A special meeting of the Board was convened to review an initial draft of the LOI. The Board was updated on the current status of the negotiations with Bard, including the execution of a confidentiality agreement, the initiation of a due diligence process by both institutions and initial negotiations of the LOI.
- (xvi) March 5, 2010 LMTF Meeting - The LMTF reviewed and commented on the latest proposed draft of the LOI and discussed the potential governance structure under the Sole Member Structure. The Chair presented the reasons given by Bard for an interest in the Sole Member Structure, which included combining the Plaintiff's established educational program with Bard's established music tradition and a desire to become an innovator of new approaches to music education.
- (xvii) March 12, 2010 LMTF Meeting - The LMTF discussed the fact that the Sole Member Structure ultimately meant that the Plaintiff would cede certain governance and financial controls to Bard and that, in order to move forward with the relationship, the LMTF must conclude that the Sole Member Structure offers the Plaintiff a better opportunity for long-term sustainability than what it could achieve through the Turnaround Plan.
- (xviii) March 12, 2010 Board Meeting - The Board discussed the potential for organizing a Trustees' trip to visit Bard in April, 2010. The Board's attorney gave a presentation summarizing the legal aspects of the Sole Member Structure. Following the presentation, the Chair introduced special guests Dr. Leon Botstein, the President of Bard, and Emily Fisher, the Chair of the Board of Overseers of Bard College at Simon's Rock. Dr. Botstein stated that following the parties' initial discussions, it was clear that the Plaintiff and Bard had similar visions and that a partnership between the two institutions would present both with strategic opportunities to further their missions. Dr. Botstein stated that developing a successful relationship with the Plaintiff would be critical to Bard's future in music education. Mrs. Fisher explained that, despite being controlled by Bard, Bard College at Simon's Rock manages its day-to-day affairs with support, but limited oversight, from Bard.
- (xix) March 26, 2010 LMTF Meeting - The LMTF also discussed the Massachusetts Attorney General's Office's involvement in reaching and formalizing the Sole Member Structure.

MWE DRAFT – 9/24/10

The LMTF discussed the proposed names for the Plaintiff following the transaction, and emphasized that the name must include "Longy."

- (xx) April 2, 2010 LMTF Meeting – The LMTF reemphasized that the Plaintiff would be giving up control to Bard and therefore must be convinced that the union of the two institutions will enhance the Plaintiff's efforts to carry out its mission in the future. The LMTF discussed language for an agreement between the Plaintiff and Bard that would protect the Plaintiff's endowment, real estate and other assets from being applied to purposes that are inconsistent with the Plaintiff's mission or to uses outside of the Commonwealth of Massachusetts.
- (xxi) April 3, 2010 Board Retreat – The Board retreat was dedicated to presentations about the current status of LMTF's findings and progress with respect to the Sole Member Structure. The Board discussed whether Bard was the best partner for the Plaintiff, and ultimately agreed that an arrangement with Bard offered the best opportunity for the Plaintiff to continue its mission, and that Bard's resources and reputation presented an opportunity to transform the Plaintiff into a leader in the world of classical music education. The Board agreed that the compatibility of the two institutions' missions was clear.
- (xxii) April 16, 2010 LMTF Meeting – The Plaintiff's attorney presented an alternative model for an arrangement with Bard. Under this model, the Plaintiff would donate all of its programs, operations and assets to Bard, except for real property and the endowment, which would be held by the Plaintiff. The Plaintiff would lease its facilities to Bard. The Plaintiff would remain a Massachusetts charity, but its purpose would change to become a supporting organization of Bard. This structure (the "Alternative Structure") would allow the Plaintiff to immediately access certain benefits provided by Bard, such as access to Bard's operations, health benefits and enterprise software. The LMTF authorized its attorney to explore the Alternative Structure in greater detail.
- (xxiii) April 30, 2010 LMTF Meeting – The Plaintiff's attorney provided an update to the LMTF on the Alternative Structure. The LMTF agreed that it is not opposed to a full merger of the two institutions, but that pursuing the Alternative Structure as an intermediate step would offer the Plaintiff an opportunity to gain the benefits of the relationship sooner than it could through the Sole Member Structure. The LMTF discussed that either the Alternative Structure or the Sole Member Structure would be an intermediate step towards the consummation of a full merger, which would require the passage of a special statute by the Massachusetts legislature.
- (xxiv) May 10, 2010 Board Meeting – The Alternative Structure was presented and described to the Board. The Board voted to authorize the LMTF and the negotiating team to negotiate and implement the Alternative Proposal with Bard, and to pursue the eventual merger of the institutions by special statute.
- (xxv) May 28, 2010 LMTF Meeting – The LMTF discussed Bard's request for control over the Plaintiff's real estate and endowment, as well as the Plaintiff's operations. The LMTF agreed that this was acceptable because the Plaintiff's endowment would remain

MWE DRAFT - 9/24/10

devoted to the Plaintiff's purposes. The LMTF authorized the Plaintiff's attorney to contact the Massachusetts Attorney General's Office to discuss the proposal.

- (xxvi) June 4, 2010 LMTF Meeting - The Plaintiff's attorney described his discussion with Bard's attorney and the Massachusetts Attorney General's Office about the Sole Member Structure and the Alternative Structure. The result of this conversation was the suggestion that the Plaintiff to seek approval from the Massachusetts Attorney General's Office and the Supreme Judicial Court of Massachusetts to dissolve, wind up its affairs and transfer its assets, liabilities and operations to Bard, with the requirement that the Plaintiff's endowment could only be used to support the Plaintiff's operations (the "Dissolution and Transfer Structure"). The LMTF agreed to present the Dissolution and Transfer Structure to the Board.
- (xxvii) June 14, 2010 Board Meeting - The Board reviewed and discussed a memorandum provided by the Plaintiff's attorney describing the Dissolution and Transfer Structure. The Board unanimously voted to authorize the Plaintiff to enter into a non-binding letter of intent with Bard to pursue the Dissolution and Transfer Structure.