

Drama at the San Diego Opera: A Dynamic Different Than Sweet Briar

07.01.15 | Linda J. Rosenthal, JD



We posed a question in "[Sweet Briar College: Saved – At Least for Now](#)": Does the board of directors have the final say in closing down an organization?

There, the focus was Virginia's Sweet Briar College, whose board voted unanimously in early March to stop operations at the 101-year-old women's college after the end of the spring 2015 semester. The announcement of "insurmountable financial obstacles" was a shock and surprise to faculty, students, staff, alumnae, and the community. Opposition was fast and furious.

The closure decision was challenged in the courtroom and in the court of public opinion. Through all of this, Sweet Briar board members have dug in their heels, while public officials up to and including the Attorney General and the Governor have weighed in on this highly publicized dispute. The Virginia Supreme Court made an interim ruling on June 9th, sending the key lawsuit – a request to enjoin the school's closing – back to the trial judge for further action. Three months into the controversy, the outcome is uncertain, but the damage may be irreparable. Students and faculty have had to scramble to secure places at other educational institutions for the coming academic year.

A year ago, here in San Diego, [another board of directors](#) took similar, surprise steps to shut down a major community institution, the 49-year-old San Diego Opera. The [cited reasons](#) were the same as in Sweet Briar: financial troubles on the horizon, so best to close down right away. But the trajectory was entirely different from the acrimonious and ugly fight enveloping the Virginia institution.

Almost immediately, many Opera board members had [buyers' remorse](#), demanded more information, and [acted – within a month](#) – to oust the leadership, rescind the decision, and restructure the 2014-2015 season into a leaner, more innovative, operational model.

It's an interesting study and contrast of issues of nonprofit corporate governance, transparency, and responsiveness to a broad range of stakeholders including the community at large.

The San Diego Opera: Background

"With an operating budget of approximately \$15 million, the [San Diego Opera] company was the third largest cultural institution in San Diego, ..., and the 10th largest opera company in the country..." The well-to-do residents had in the past supported this important artistic company.

Trouble, however, had lurked in the wings for several years. Music tastes evolved. But the board of directors and Ian Campbell (CEO and artistic/general director) were firm that San Diego *wanted* grand opera, and was going to *get* grand opera, despite the high cost of these lavish performances.

There had been grumblings about other extravagant budget items including the compensation package of Campbell and his assistant director-wife. To make up for these costs exceeding revenues, the gift by an important benefactress was being depleted.

The Board Vote

"The institution's executive committee and Ian Campbell concluded that the company's finances were eroding to the point where its only viable course was to cease operations. The opera's board of directors "confirmed that assertion in a 33-1 vote" on March 19, 2014.

The rationale for this emergency closure: "...a long and seemingly irreversible decline in donations and ticket sales, and the depletion of its \$10 million endowment.

But the way this unfolded was irregular, to say the least. "A vote to end operations was not listed on the March 19 special meeting agenda. Before making the decision, board members were given a "one-sheet explainer with a colored graph." There was also doubt about whether the full board (there are 58 directors) were given enough notice for the special meeting: whether the meeting was validly called in the first place.

"The vote took some board members by surprise." Some told local news outlets two weeks later that "there should have been months of discussion about company liabilities, reduced costs and new programming possibilities before casting such a momentous vote." Nevertheless, all except one attendee voted for this extraordinary decision.

Like the Sweet Briar case, everyone outside the board was blindsided: employees, musicians, and "(m)anagement at the San Diego Symphony ..." (The Opera provides employment for the Symphony and is key to that separate institution's ability to provide its musicians with full-time work.)

Questions and Buyers' Remorse

Some of the Opera board members (but not all) were surprised at the immediate backlash and opposition from all quarters. Nevertheless, they assumed that their decision was final. "Although it is a sad day for San Diego culturally, we have to thank everyone who supported us for nearly 50 years," said director Campbell. "We saw we faced an insurmountable financial hurdle going forward,' [and] 'had a choice of winding down with dignity and grace, making every effort to fulfill our

financial obligations, or inevitably entering bankruptcy, as have several other opera companies.”

“After 28 consecutive years of balanced budgets, it was clear that we could not continue,” said the chair of the board, Karen Cohn. “In spite of excellent financial management, the opera faced increasingly higher ticket sales and fund-raising hurdles.”

Notably, though, in the San Diego Union-Tribune’s first article about the vote, skepticism was expressed: “[T]he opera’s board, and at times Campbell himself ... , pointed with pride to years of balanced budgets, even during the recession. And the institution’s audited financial statements from as recently as 2012 show it with total net assets of \$16.4 million for the year ended June 30, 2012.”

Some of the directors quickly realized they may have acted hastily and with insufficient information. In the next two weeks, there was “mounting concern.” Some directors told reporters they “did not have the full picture of expenses, liabilities, or the results of a legal investigation that was prompted by a claim alleging a hostile work environment.

A growing group of board members joined with the one person who had cast the dissenting vote at the board meeting. In a March 28th letter, they demanded to see more than two dozen documents, citing the Opera bylaws and California Civil Code section 6334 (which allows each board member the absolute right to inspect and copy records and documents of any kind). “A decision like this can’t be made under the circumstances...” of that hasty board vote.

More Action

One of the items requested was “...access to a recent investigation into the management style of the Campbells.” An earlier claim of a hostile work environment didn’t go anywhere, but it “led to a broader inquiry by a new lawyer, appointed by one of the directors.”

It was reported that staff viewed top management as “closed” and “unwilling to dialogue” to “reinvent the opera for changing audiences and troubled times.” Many insiders were “conflicted because 30 years ago, Ian Campbell took a financially strapped operation and built a world-class opera company. They say he’s an artistic genius,... but [is] heavy-handed and combustible.” Staff characterized the Campbells as “...refus[ing] to entertain new ideas or consider ways to reach new audiences.”

There was a public outcry as well. A huge petition drive was launched, garnering over 18,000 signatures. A “White Knight Committee” of “opera staff, union members, seasonal employees, vendors and supporters ... organized to encourage the board to rescind its vote.”

As opposition from all quarters grew, the board chair, Karen Cohn, strongly defended the board’s action: “The ... decision was the result of years of deliberation as we watched the inexorable trend sweeping towards us....dwindling financial support indicated an irrefutable decline in appetite for grand opera in San Diego.” She criticized “‘conspiracy theorists’” casting “‘aspersions on Ian and his wife,’” noting that the Campbells had the most to lose with the Opera going under.

She stood her ground, despite an increasing chorus of doubt and dissent, and public sentiment supporting the idea of changing the San Diego Opera into a more innovative musical operation. “

[W]e're about world-class grand opera. That's what subscribers and supporters supported, neither audience was particularly in the market for alternative or radically new programming.”

Activities on Various Fronts

The union representing solo and chorus singers and stage management personnel challenged the board's action in a grievance filed with the NLRB.

“Critics inside and outside the opera have questioned the opera's expenses and whether it did enough to curtail them. The cost of office space and the compensation packages for the Campbells have been central.”

KPBS sought copies of key operational documents, including that investigation report, internal board documents, and employee compensation packages and expense reports. A lawyer representing the Opera company denied this public records request, but the news outlet was able to get the compensation documents from another source. The documents indicated that Campbell's contract extended to 2017.

On April 2, 2014, the union filed a second NLRB complaint. Together, these two complaints allege that management had not provided the union with information related to its financial condition, and that management had refused to engage in bargaining with the union at all over the effects on its members of the pending closure. The NLRB took up the matter.

Following a “lengthy meeting,” the board – now with a growing faction of dissenting members taking on an active role – voted to delay the closure until April 29th. Also, a committee of board members was authorized to “review financial, personnel and other documents related to closure, and consider other options that could save the next season and perhaps future seasons.”

Leadership Ousted

By mid-April, the dissenters had gained more power. In a “stormy meeting,” president Karen Cohn resigned along with 12 other board members. A new acting president, Carol Lazier, was installed; she had pledged \$1 million to save the Opera. The closing was deferred to “at least” May 19th. The extra time was to give the board the opportunity to “seek out donors and consider options, including a proposal for new fundraising models, repertoire and production techniques.” According to Ms. Lazier, “We have a devoted staff, an energized association and board newly focused on finding novel and fiscally responsible ways to present great opera” to San Diego.

She indicated also that the board would soon call a special meeting for the membership of the San Diego Opera Association. Anyone who donated more than \$100 toward the 2014 season was eligible to vote. This was an especially interesting move because, according to the California Nonprofit Public Benefit Corporation law, such “members” (if they are indeed “statutory” and eligible to vote) have the right to overturn the board's closure of the Opera and sale of the assets.

By April 25, 2014, the Campbells were put on paid leave, and removed from the day-to-day operations of the organization.

A \$1-million crowdfunding campaign was launched, because the viability of the 2015 season was still in question. It took in over \$2.1 million, and \$2 million more in new contributions were raised.

Complete Turnaround

By mid-May, the Campbells and the Opera “ended their formal association” and agreed to try to resolve differences; there was still time left on the Campbells’ employment contracts. Eventually, these issues were settled.

A few days later after the cutting of ties with the Campbells, the board of directors voted officially to reverse and rescind the closure vote, and announced a new 2015 season, scaled back from the regular four productions to just three, with a budget cut from \$15 million down to \$10.5 million.

Issues

The matter was swiftly settled, with relatively few lawyers poking their noses into the fray, and without any grand lawsuits erupting from the turmoil.

The distinction with the Sweet Briar College chaos is striking, although the events began in much the same way. There was a heavy-handed inner circle of board members and management working behind the scenes to accomplish the closure of a venerable community institution. There was a surprise board vote with unanimity (Sweet Briar) and near-unanimity (San Diego Opera). There was no input from stakeholders and the community at large, and they were stunned by the devastating decision. Opposition arose immediately from all quarters.

In San Diego, though, enough board members had immediate doubts that quickly — and legally — there was a coup d’etat. The initial board action — (which may, in any event, have been successfully challenged on procedural grounds like meeting and notice irregularities) — was reversed, and a new direction of sustainability was mapped out.

In the Sweet Briar case, there are provocative legal questions. In the San Diego Opera crisis, there were also tantalizing legal issues. Most became moot when the closure vote was reversed and rescinded, but it’s worth mentioning them (and exploring them later): Topic examples include:

- Board governance: Was the special meeting properly called and was notice sufficiently given?
- Excessive compensation: How much is too much, particularly in organizations in precarious financial condition?
- Employee terminations: How are employee relationships properly ended when there are employment contracts in place?
- Financial mismanagement: What is the board’s role and responsibility in setting and enforcing sound fiscal policy?
- Fiduciary duties: Did the original board fail to perform due diligence for such an important vote, or did they rubber-stamp the work of the executive committee and Ian Campbell?

- Membership rights: Did the board really want or expect that the “members” would have the statutory right to vote and overturn the board’s decisions?
- Stakeholder considerations: Did the board sufficiently consider the interests of all people involved with the Opera as well as the community at large? Should (or must) the board have considered this wide array of people with a direct or indirect connection to the Opera?
- Union rights: How do they play into board decisions like this one to permanently shutter an organization?

Conclusion

Across the spectrum of philanthropic institutions, the opinions of stakeholders and supporters are emerging as counter-weights to the traditional primacy of the trustees as decision-makers.

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