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at Longy School of Music
of Bard College

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Stay tuned! The struggle to save Community Programs

Stay tuned for more news on the ongoing struggle to save Community Programs at Longy in upcoming editions of *LFU News*. In the meantime, visit the [Longy Community Action](#) page and the [Longy Faculty Union Website](#). Also please sign the [Petition](#) (which is rapidly heading toward 2000 signatures) and monitor your Inbox for updates from us and others on the efforts of parents, students, faculty, alumni and the musical world at large to save this community treasure. To join the Longy Community Action email list, send an email request to:

longycommunityaction@gmail.com.

LFU News responds to Longy's misleading claims

The School recently published an email from Longy Chief of Staff Kalen Ratzlaff to Longy faculty containing numerous inaccuracies, untruths, misleading statements, and total mischaracterizations. Unfortunately, this follows a long pattern of such behavior by the School that has caused the [National Labor Relations Board](#) (NLRB) to bring several complaints against the School over the past couple of years. We are writing to tell you about the history of our recent charges against the School, and to explain the NLRB process so that you can better understand the extent of the administration's deceptive communication.

Current NLRB investigation

At present, the NLRB is deep into a lengthy investigation, of actions by the School, that has now taken more than seven months. The Boston Regional office of the NLRB, which is conducting the investigation, has already told the LFU Executive Board that they have found merit to numerous serious allegations against the School for violations of the [National Labor Relations Act](#) (NLRA).

We expect that the NLRB will issue a complaint against the School in the near future, and we will keep you apprised of any NLRB actions as things progress. In the meantime, here is an accurate and comprehensive summary of the current status of the charges, the allegations, and the investigation.

NLRB finds merit with many charges

Because the School's representations, in the letter from Mr. Ratzlaff and elsewhere, are so far from a true and accurate depiction of the state of affairs, we felt that rather than try to respond point-by-point to their false description, it would be more instructive to summarize all the salient information here and to briefly

explain the NLRB process.

Before getting into the detailed summary, however, we stress the importance that the NLRB has found merit, once again, with numerous charges against the school for violations of sections 8(a)(1), 8(a)(3), and 8(a)(5) of the National Labor Relations Act:

- 8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.)
- 8(a)(3) Discharge (Including Layoff and Refusal to Hire (not salting))
- 8(a)(3) Changes in Terms and Conditions of Employment
- 8(a)(5) Repudiation/Modification of Contract[Sec 8(d)/Unilateral Changes]
- 8(a)(5) Refusal to Furnish Information

These are serious violations of federal law, and, for the School to attempt to play a disingenuous, inaccurate and misleading number counting game of allegations is despicable. The School is trying to paint the Union in a bad light for filing charges, but the simple fact remains that the NLRB has, independently through its own lengthy investigation, determined that there is merit to at least eight serious allegations at the moment, and there are three allegations pending at the Office of Appeals.

The Union has amended its charges as the NLRB investigation has moved along, and the vast majority of those modifications in the amended charges were made at the suggestion of the NLRB based upon its investigation of the School's actions. Furthermore, the Union believes that the charge the School recently filed against the Union, just days before announcing the closure of Community Programs (perhaps not coincidentally), is completely without merit, and we expect that the Region will be dismissing it in short order.

The NLRB is on the case

- The Union has filed **three charges** since August 2012: [01-CA-086689](#) (August 6, 2012), [01-CA-09604](#) (January 9, 2013), and [01-CA-098687](#) (February 20, 2013).
- **All three of these charges** are still being processed by the NLRB both here in the Boston Regional office and in Washington, DC. None of these charges has been completely dismissed or deferred.
- **A handful of allegations** have been resolved to the satisfaction of the Union, during the course of the investigation, due to the School's eventual compliance with the law, following notification from the NLRB that it intended to issue a complaint against the School.
- Besides the handful of allegations that have been resolved during the course of the NLRB investigation—and those were resolved only with the School under the scrutiny of an NLRB investigation—the Region still retains, and has found merit with, **eight specific allegations** from the three charges.
- **Another three allegations** have been dismissed by the Region. The Union believes these dismissals were errors of law, and it has appealed them to the NLRB Office of Appeals in Washington, DC, where the appeals are still in process. **One of these three dis-**

missed allegations was originally found meritorious by the Region, which notified the School of same in November. Two months later (in January), the School took actions that caused the Region to decide to dismiss the allegation. The Union still believes that the dismissal was incorrect and has appealed.

- **One meritorious allegation** has been deferred by the Region to the grievance/arbitration procedure, and that deferral has been appealed by the Union to the Office of Appeals.

During the NLRB investigation, the charges have been amended several times as new information came to light. Nearly all of the amendments to the charges have been made at the direct recommendation of the NLRB Regional Office, based on their investigation into the charges.

An NLRB lexicon

In the context of the NLRB, the words “charge,” “allegation,” “complaint,” “merit,” “dismiss,” and “defer” have very special meanings as explained below.

When a union, union member, or employer feels that their rights under the NLRA have been violated, they can file a “charge” with a regional office of the NLRB. This “charge” contains in it a brief description of the purported violations (the “allegations”), but it is not a “charge” in the normal sense of the word as in criminal investigations. It is more analogous to someone reporting what they believe is a crime to the police. In the criminal scenario, the police then investigate, and, if they believe there is enough evidence to support a successful prosecution, a prosecutor takes up the case, issues the detailed allegations and brings the case to court.

Continuing with this analogy, in an NLRB case,

1. the “Charging Party” is like a witness to a crime; a “charge” to the NLRB is like a witness report to the police;
2. the NLRB Regional office is like the police and prosecutor rolled into one;
3. the determination by an NLRB Regional Office that there is enough evidence to bring a case is called finding “merit”;
4. a “complaint” issued by the Region is like an indictment or criminal charge;
5. and the “Respondent” is the charged party like the alleged criminal.

Finding “merit” at the NLRB

If the Region finds “merit” to an allegation, they have two choices: they can “defer” it to the grievance/arbitration procedure in the collective bargaining agreement, or they can bring the case themselves to a hearing in front of an Administrative Law Judge. Even when the NLRB defers an allegation, however, it means they have found “merit” to the allegation, and they still maintain oversight of the case and can review and change an arbitrator’s decision if necessary.

If the Region determines that an allegation remaining in the final amended charge does not meet its definition of having “merit,” then it offers the Charging Party the opportunity to “with-

draw” the allegation and, absent withdrawal, it “dismisses” the allegation. A Charging Party may appeal any dismissals to the NLRB Office of Appeals in Washington, DC.

The NLRB process

Very briefly, here’s how the NLRB process for charges works:

1. After receiving a “charge,” the NLRB Regional Office investigates, gathering evidence and affidavits from witnesses.
2. If they believe that the “charge” has “merit,” they either “defer” the issue to the arbitration procedure in the collective bargaining agreement, or they issue a “complaint.”
3. If they believe the “charge” does not have “merit,” they offer the Charging Party to opportunity to “withdraw” the “charge” or, absent withdrawal, they “dismiss” the charge. If a charge is dismissed, the Charging Party may appeal that dismissal to the NLRB Office of Appeals within two weeks.
4. If a case is deferred to arbitration, the NLRB still maintains oversight of the case, and if at any point in the process the Charging Party feels that there is a violation of the NLRA, they can bring the case back to the NLRB for further review.
5. When the NLRB issues a “complaint,” it also announces a date for a hearing in front of an Administrative Law Judge. At the same time, however, the NLRB continues to encourage the “Charging Party” and “Respondent” to settle.
6. If a “complaint” is not settled at some point before or during the hearing, the case is heard by the ALJ who then issues a decision.

Amendments to charges

During an investigation into a “charge,” the Region will often, indeed more often than not, suggest multiple amendments (additions, deletions, and modifications to the individual allegations) to a “charge” as they discover new information.

The Charging Party can choose to either follow these recommendations or not, but following the Region’s recommendations is the most common and most expeditious way of ensuring that NLRA violations are timely prosecuted. As the NLRB investigators and lawyers are experts in labor law, and they are privy to all the information gathered in their investigation—whereas the Charging Party is not—it is absolutely standard and very common for the NLRB Regional Office to recommend amendments to the charges.

If the Charging Party disagrees with a final decision made by the Region, however, they can appeal to the NLRB Office of Appeals in Washington, DC.
