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The Options on the Ballot: Just the Facts

by Leon Shernoff

At the town hall meeting last Sunday, November 18th, the board of the Hyde Park Co-operative Society asked its members to vote for one of two strategies (labeled Option A and Option B) to deal with the Co-op's current financial situation. Put most simply, Option A is a proposal to disband the Co-op, while Option B is an attempt to keep the Co-op going. Ballots were mailed out to members last week with an accompanying letter. The accompanying letter was at best unclear in many important regards – for instance, at no point does it state outright that to vote for Option A is to vote to disband the Co-op. Since the purpose of this newspaper is primarily to transmit information about the Co-op to its members, I have taken the primary purpose of this issue (and especially this article) to give the members a clear and accurate account of what is going on.

Members who are reading important information here for the first time, please note that because the Co-op's mailing list is always a little behind, many members may not receive this newspaper in the mail, or their ballots to vote on these strategies. Please tell everyone you can about the information in these pages – help spread the word! For people who haven't received a ballot, replacement ballots can be picked up at the member services booth in the Co-op. If you have received misinformation and want to change your vote, you can likewise pick up a replacement ballot at the store.

I will start with an outline of the situation, and then proceed to give more details. Since many members are concerned with how these options fit in with the bylaws that are the legal framework of the Hyde Park Cooperative Society, I will also compare them with the bylaws. Co-op members may recall that the board was planning to revise the bylaws this year, and so printed an official copy of them, sent to me by the board committee working on the matter, in the June/July issue of this newspaper. Thus, both I and every member who has saved a copy of that issue has an officially issued copy of the bylaws handy.

Complicated matters such as how the Co-op should proceed in the current situation are fraught with conflicting interpretations both of what is entailed and what may result. In this lead article, I have tried to limit myself to stating what is simply factual, and label issues that are disputed as such. For Co-op members to make up their minds on the disputed issues, I have included documents where these issues were discussed with board members: a record of the town hall meeting at which these options were announced, and a transcript of the discussion at the most recent official board meeting, Monday November 26th. I have also re-printed the relevant portions of the bylaws on page four, where this article continues. And I have solicited statements on the situation from a variety of Co-op board members and other personnel, as I will list below

What the Situation Is

In February 2007, the board of the Co-op decided to stop paying rent to the University of Chicago on its 55th St store location. Why did it do this? Well, this is the first point where I refer you to those discussions I mentioned elsewhere in this newspaper. The board gave many reasons for this in the discussion of this issue at the November board meeting, so you can read what they said on page 6. For the purposes of this quick summary, however, let's just note that they stopped paying rent in February.

By summer the university was expressing its dissatisfaction with this to the board, and suggesting that the board might want to disband the Co-op if it couldn't pay its bills, at which point the university would put a different grocery store into the 55th St space. That still is the essence of Option A.

Naturally, some board members went looking for an alternative. At this point, the only one remaining of the ones they examined is the one presented as Option B. This is to file for protection from creditors under the Chapter 11 bankruptcy law, which allows the Co-op to shed (the legal term is "reject") the lease on the empty store at 47th St. The idea is that operations at 55th St are profitable and thus the Co-op as a whole will likewise be profitable if it can get out of the 47th St lease. Under this plan, the Co-op would gradually repay its creditors with these profits, and if all goes well would eventually resume its pre-47th St status as a simply profitable business paying dividends to its share-holders.

In the meantime, the Co-op has continued to pay the lease on the empty 47th St location, which has virtually exhausted the Co-op's cash. This has significantly restricted its options.

The Details – Option A

Under Option A, the Co-op's store would close, permanently, and the organization would be disbanded. Shareholders would not receive any money for their shares, and all the employees would lose their jobs. The university would permanently lose the $1.2 million dollars that the Co-op currently owes it in rent. At present, the university is saying that they will require whatever new store takes over the space to interview for a job any Co-op employee who wishes to do so. But of course, they have no say over whether that store choose to hire these people. So why would anyone choose such a plan? Under this plan, the university is promising to pay off all existing debts to the Co-op's other creditors – to the tune of about four million dollars – so that they will not sue for the money that they are owed. If those vendors (or the university) sued and the Co-op was unable to pay, this would lead to an Involuntary Bankruptcy under Chapter 7. I will pause here to point out that as the current situation stands, there is really no danger of the vendors suing – the Co-op actually took the money that it would have paid the university and used it to pay the vendors, so they're actually quite happy with us right now. The only current legal threat is from the university.

The university, quite rightly, is not happy with being stiffed for nine months, and has said that they are ready to take legal action that would result in the involuntary bankruptcy. This would lead to the store being shuttered for a considerable length of time while the Co-op's physical assets were assessed and other legal wrangling took place. The university is reluctant to take an action that would result in major disruption to local residents' grocery shopping and an associated drop in business throughout the 55th St shopping center that the Co-op is in. Basically, they are taking the position that the Co-op *is* going to go down no matter what, and they are willing to put up money to pay off the Co-op's creditors so that a transition to a new grocery store could be accomplished quickly, without a lengthy shuttering of the storefront.

The Details – Option B

Under Option B, the Co-op would have protection from creditors under the Chapter 11 bankruptcy law, which allows the Co-op to shed (the legal term is "reject") the lease on the empty store at 47th St. Free of this lease, the Co-op is only operating the 55th St store, so it would resume profitability. All the employees would keep their jobs, the members' shares of stock would have value; the university would receive its back rent due and the Co-op would resume paying it on time. Basically everything would be straightened out.

Why then is the board not simply going for this option? Well, first of all, filing for Chapter 11 bankruptcy costs money – $400,000 – and the board has let its cash run down so far that it no longer has the cash on hand to do this. It also requires an equivalent value in credit to acquire a new major supplier for its groceries, because Certified Grocer, its current major supplier, is also our landlord at the 47th St location, and they have previously indicated that they will cut off their supply of groceries if we take any action against the lease. Failure to secure these sums by borrowing or fund-raising would mean that the Option B actions would fall through. Other financing (probably a loan from the Co-op National Bank) would also be necessary to pay off some creditors (including the university) immediately, but in late-breaking news at the November 26th meeting, news from them was good; so it looks like the success or failure of Option B would hinge on being able to raise the $400,000 necessary to apply for Chapter 11.

There is also risk because the Co-op would be extremely cash-poor for a while, so another large one-time disaster like the front-end outage might throw it back in the position of being unable to pay its bills, but this time with the Chapter 11 option already exhausted.

Option B thus is a more optimistic approach, and has a much better outcome if it works, but it may fail, whereas Option A is fairly sure, being as trustworthy as the university is. The university has pledged to withdraw Option A if the Co-op does not select it in this vote. Thus if Option B fails, it would leave the university with the choice of going ahead with legal action against the Co-op, renewing the offer of Option A, or perhaps even funding the Co-op's Chapter 11 filing itself.

Why Was This Not Explained Before?

The letter of explanation accompanying the ballot was put out in a great hurry, and there are grave problems with it. On one possible cause for these problems, please see board member James Withrow's statement in this paper, where he states that the letter was actually written by a public relations employee of the university and included with the ballot against the express wishes of himself and other board members favoring Option B. In any case, at no point does it state that a vote for Option A is a vote to voluntarily dissolve the Co-op, which is fundamentally misleading right there. It also makes at least one misstatement of fact: the Co-op has been using the rent money to pay its vendors, so there certainly has not been "ever-mounting debt owed to our vendors" "over the past 11 months." Other misstatements may come to light, but these were all that popped out at me in my quick perusal while trying to assemble (and make sense of) all this material.

It's hard to address the constant flow (and change) of information that the university has been putting out over the last week. In addition to what it originally proposed, the university is now saying that under its plan, all the Co-op employees would receive all their accrued sick days and vacation time, but it's unclear what that would mean – are they proposing financial compensation? Are they saying that such employees who are hired by the new supermarket will enter with these days already accrued? The university has only just started saying this, so there's no discussion asking them what the details are for this claim, or how it might enforce them on the next occupant of the 55th St space. Hopefully there will be dialog and clarification of this in the near future.

At the November 26th board meeting, the board pledged to address the most frequently-asked questions about this decision and have them written up to be posted on the Co-op's web site and the bulletin board outside the office downstairs. A copy of what is posted will also be left with the member services booth for members to pick up, or for the clerk to use in answering questions from members who call in.

The Bylaws

For such a large-scale financial undertaking as this decision, of course legality is essential. It therefore behooves us to compare what has gone on so far with the bylaws governing such situations.

The fundamental part of the bylaws is thus article 3.1, which states that "The supreme power of the Society is vested in the members, in regular or special meetings or in duly called elections." The first part of this means that the board can't make such an important decision on its own, and it did pledge at the November 26th meeting to abide by the results of the poll.

And, in case you were wondering, the town hall meeting does not constitue a "regular or special meeting... or ... duly called election" either. Article 3.4 of the bylaws states that any meeting of members at which business is conducted requires that "written notice of a regular or special meeting of the members shall be provided to all members and shall state the time, place, and purpose of the meeting." A news article in the Hyde Park Herald and some signs posted around the store clearly do not fulfill this requirement. The bylaws further specifically require that "Notice shall be provided by mail at least thirty days in advance of the meeting to all members at his or her last known address."

The board has certainly not tried to claim that the town hall meeting was a 'regular or special meeting' of the Co-op, at which one could conduct business. In fact, at the November 26th board meeting, board president James Poueymirou stated explicitly that the "vote of 2/3 of the board of directors for Option A" that the university and the Hyde Park Herald have publicized was a completely informal canvassing taken at the town hall meeting, and he explicitly invoked the fact that the town hall meeting was not a meeting at which one could conduct business.

One important consequence of this is that the poll by mail now being conducted probably doesn't qualify as a legitimate vote, either. Article 3.6 of the bylaws is the only place where a vote on business by mail is mentioned, and it says that "When a matter to be considered at an annual meeting has been submitted for a mail vote before the meeting, all ballots received within the number of days specified on the meeting notice shall be counted together with ballots cast at the meeting. At the request of one-fourth of the members present at a meeting, voting may be conducted by written mail ballot after the meeting." Thus, the only way Co-op business can be put to a binding vote by mail is if one-fourth of the members at a 'duly called' meeting (of which there have been none) request it, or at the annual meeting.

What are the legal ramifications of this? Those will be played out in the real world and are far beyond the scope of this article. But I wanted to make sure that all members make as informed a decision as possible on whatever they decide to do.

The Immediate Future

Besides the information above, it is also crucial for members to know the timeline for what is going to happen. The ballots are supposed to all be mailed to Project LEAP for counting by December 12th. The counting is expected to take at least a couple of days, so let's say that's done on December 15th and the board makes the decision immediately. If the members accept Option A, Bruce Brandfon has said that the Co-op is legally required to give the employees 60 days' notice, which would put the closure of the store no earlier than mid-February.

If the members choose Option B and the financing is already in place, then the store would just keep operating as normal, and no disruption would take place. If the members choose Option B and the financing for Chapter 11 falls through, then the university could take legal action against the store at any time (actually, they could do so at any time regardless, unless we paid off the back rent with the Option B financing). How long would it take from the time they started this action to the time that the store is shuttered? I don't know, and the question hasn't come up at meetings so far, so there is no discussion of this elsewhere in this newspaper.

Further Information

In this article, I've tried to only present the information that I consider "hard facts." However, many of the other implications and descriptions of the situation are still... under discussion. I have included two large discussions with the board in this newspaper: a report from the town hall meeting on November 18th, and the discussion at the November 26th board meeting.

I have also solicited statements by each of the Co-op personnel who gave presentations at the town hall meeting, promising them each half of a full page of this paper to make whatever points they wished to make. Of those people, board member James Withrow, general manager Bruce Brandfon, and union representative Amelia Tucker responded with statements that are printed in full in this issue. Three others did not: board president James Poueymirou said a few times that he was going to send me a statement but never did, and board member Robert Stanek did not respond to my communications.

I also solicited a similar statement, with an identical promise of space, to University of Chicago Vice President for Community Relations Hank Webber. However, Mr. Webber did not respond either.

Certainly, a lot more could be said on all the issues raised here, but I feel quite confident that a lot of them will get said in the next few weeks even if I'm not the one to say them. Finally, I would like to close with a selection from the comic strip *The Boondocks*: There's one where the little boy with the big 'fro says "I got a *right* to be hostile! My people's been persecuted!" And his grandfather responds "And I suppose you'll find justice in making yourself miserable." The little boy reflects on this silently for one panel, and then concludes "I hate wisdom."

We have a difficult task before us, in sorting through the information, deciding which course to choose for the Co-op, and simply dealing with the interim situation itself, with all the accompanying uncertainty. It is all the more important that, like Huey, we find a way to pursue our own answer without hostility, and (if at all possible) without even making ourselves miserable.

Peace.