

WHOSE ORCHESTRA IS IT, ANYWAY?

by
John Sedgwick

Board members of the Atlanta Symphony Orchestra thought it was theirs. A group of local music fans disagreed, sparking a cacophonous dispute that is threatening the orchestra both sides love.

FOR MOST nonprofit boards, the annual meeting is a sleepy affair. Various committees present their reports, board members are unanimously elected, and everyone adjourns to the cheese cubes and Chablis. Such genteel somnolence may stem from broad acceptance of the current direction of the board, or from a lack of interest in the proceedings. But either one can change in a hurry. A board might stake out a bold position that engenders fierce resistance, or it might innocently stumble over a political trip wire. The board of the Atlanta Symphony Orchestra did both, and ever since, its annual meetings have been electrifying indeed.

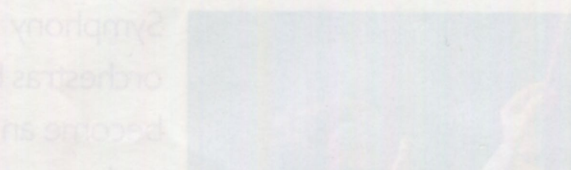
The trouble began in early 1996, when the ASO's executive board tried to deny tenure to six musicians in a cost-cutting effort, and the entire orchestra walked out on strike. The board's move roused the ire of a faction of local music lovers called the Community Supporters of the Atlanta Symphony Orchestra, or CSASO. The ensuing dispute, full of tantrums and lawsuits, raged on throughout a bitter, ten-week ASO strike, and culminated in the stunning announcement last



Pickers showed their support for candidates attempting to unseat symphony trustees.

spring that the much-loved music director, Yoel Levi, would not be renewing his contract after the 1999-2000 season. In some ways, the conflict is unique to a fast-rising company town like Atlanta, where the corporate powers are unused to dealing with entrenched opposition. But it has significance for trustees everywhere, raising questions about the authority of any board to set a policy that is violently opposed by other stakeholders. Most of all, the tale shows how quickly a worm can turn.

The war's first big battle occurred in the fall of 1996, when, to the board's surprise, the CSASO packed the annual meeting



of the ASO League—the symphony's general membership, which elects the ASO board—with about 100 supporters, over twice the number of the ASO's own loyalists. The CSASO leaders then shocked the ASO chairperson, a lawyer and real estate magnate named John Glover, first by insisting that the proceedings follow Roberts Rules of Order rather than the courtly tradition Glover termed “custom,” and then by producing their own professional parliamentarian to implement the new rules. More astonishing, the parliamentarian promptly called for the meeting to be adjourned, a motion that takes precedence under Roberts Rules, to give the CSASO more time to gather the signatures necessary to propose its own slate of board members for election. “It was a trap,” says one annoyed board member. “They just wanted to use Roberts Rules to manipulate the meeting.” A stunned Glover called for a voice vote on the matter. When he declared that the outmanned ASO had won it, the infuriated CSASO supporters stamped their feet and yelled for much of the rest of the session.

A YEAR LATER, THE CSASO DID MANAGE to propose its own candidates, the first time in its 52-year history that the ASO has ever faced such opposition, and the ASO board prepared for the fall showdown as if it were Desert Storm. In his day job as president and CEO of Egleston Children's Hospital, Alan Gayer, the ASO's new board chairman, was facing a possibly brutal merger, but, by his count, he spent 60 percent of his time preparing for the ASO annual meeting in the two weeks preceding it. “I knew what it would be like when I got into this,” he says wearily. “It didn't make me think twice, but I'll admit it did make me think.” Most of the board's effort was directed toward trying to boost the turnout of its backers and to reduce that of its opponents by challenging the credentials of the CSASO's people.

The CSASO, meanwhile, was playing up the conflict for all it was worth. In the summer of 1996, it had taken out a full-page ad in the *Atlanta Journal and Constitution* featuring an open letter to Glover and Gayer, advising them on how to conduct the negotiations with the symphony players in their contract dispute. The board responded by circulating a memo that questioned certain CSASO members' financial commitments to the symphony. Next, the CSASO invited Jimmy Carter to supervise the balloting, as if the Atlanta Symphony Orchestra League were one more struggling democracy. When the former president declined, the CSASO secured the local director of the Atlanta League of Women Voters, plus the services of a court reporter to record the proceedings.

For the meeting, more than 400 people turned out at the

galleria outside the symphony hall in the Woodruff Arts Center. I obtained my seat by enrolling as a member of the League for the minimum price of \$200. Most of the better-dressed people seated around me were wearing stick-on buttons that said Support the Board, as if this were a political convention. (As a rule, the less-well-dressed did not wear the button.) It was a little hard to hear Gayer's opening remarks because of some noisy altercation at the check-in table. But after a string quartet of symphony musicians played a calming movement from Aleksandr Borodin's *Nocturne*, the event felt less like an incipient riot.

Still, it was a meeting in name only. Both sides were more interested in speechifying than in listening. When the CSASO leaders spoke, chairman Gayer could not have looked more bored. And there was a wide social gulf between the two groups. The ASO board's speakers, most of them with corporate connections, exuded an ease before the microphone that the CSASO, for all its media savvy, could never match. One of the CSASO's speakers was a trembly voiced grandmother who had, she explained, grown up on a farm without electricity or plumbing.

The outcome of the vote was probably determined a few days earlier when the ASO banned 94 League members whose \$200 contributions had been paid by Jeffrey L. Levine, a CSASO leader, in violation of League rules. Without them, the CSASO's insurrection fell well short. Some changes to the bylaws that the CSASO opposed were voted in 274-145, and the ASO's slate of candidates was approved by an even wider margin. But if the ASO won inside the hall, it may have lost outside. The next morning, the *Atlanta Journal and Constitution* ran a photograph above the fold on the front page, showing picketers calling the ASO board “the Last Southern Plantation.”

WHY ALL THE FURY? One reason is that, nationally, symphony orchestras have become an endangered species—thus raising the stakes in the dispute, and allowing each side to portray itself as the sole savior of the local musicians. In the last decade, eight symphony orchestras have closed down, and the financial picture for the remainder is dim. A prominent report in 1992 showed that deficits for all orchestras had increased almost tenfold in 20 years, and operating expenses had risen from \$87.5 million to \$207 million during the same period. Since 1960, classical music has dropped from 15 percent of all record sales to barely 3 percent. Classical is now heard on only four out of every 1,000 radio stations across the country. And it hasn't managed to attract much of a following among the young.

But passions can run deep over any institution that operates in that strange borderland between public and private, as all nonprofits do. The CSASO and the ASO have wrangled endlessly over issues like fair salaries for the players, but the real question is, Whose symphony is it? Does it belong to the existing board of directors to do with as it sees fit? Or are the citizens who regularly turn out to listen to its music entitled to have a say in its operation?

These are difficult questions, and they are also peculiarly American ones. The rancor between the ASO and the CSASO evokes the very issues that led to the first significant U.S. court case establishing a board's authority over a nonprofit institution, free from outside interference. In 1816, the state of New Hampshire tried to take over Dartmouth College by replacing its board with one selected by the governor. Not surprisingly, the college's original board of trustees resisted and sued to recover its property. Daniel Webster, himself a Dartmouth graduate, argued for his alma mater before the Supreme Court with the famous tearjerker, "It is, sir, as I have said, a small college—and yet there are those who love it." Chief Justice John Marshall noted that, as a practical matter, if the state took over Dartmouth, donors would be reluctant to support other nonprofits that might likewise fall victim to an acquisitive legislature. His decision allowed for a third kind of institution, one that was neither public as part of the government, nor purely private like a profit-minded corporation, but which combined features of both.

Under Marshall's doctrine, the state continues to have some influence over the conduct of nonprofit boards, as the New York State Board of Regents' recent firing of 18 of 19 trustees at private Adelphi University attests. But, as in Marshall's decision, the courts have generally been reluctant to interfere with the operation of nonprofits except when obvious malfeasance is involved. It was not surprising, then, that the CSASO's own lawsuit challenging the validity of the board's refusal to postpone the 1996 annual meeting went nowhere.

Strip away the rhetorical flourishes and the legal maneuvering, and the crux of the dispute is that the two groups sharply disagree on what constitutes a genuine commitment to the Atlanta Symphony Orchestra. This rivalry showed up somewhat charmingly in the capsule biographies of the opposing candidates, as each side seemed to be trying to demonstrate that its slate possessed more degrees in music, included more professional musicians, and had attended more ASO concerts than the other's.

But commitment can also be measured in dollars, of



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course. To the CSASO's way of thinking, if the ASO board really cared about its orchestra, it would never have considered eliminating six musicians. Nor, after that was shot down, would it consider cutting the symphony players' paid vacation time by four weeks as it did in a proposal before the strike.

For its part, the ASO administration produced statistics showing that the symphony, having worked its way down from a negative \$1.3 million in 1992, was still \$343,000 in the red in 1996. The board was determined not to see the figure go higher. "If you have a big deficit, it creates a vicious cycle where you're going to end up fighting the unions on everything, and gradually the symphony will drift to a lower level," says Gayer. "So, no, we will not spend what we don't have." In ASO president Allison Vulgamore's terms, the administration has only three "levers" to pull to get into the black: ticket price, endowment yield, and cost. Ticket prices had already almost doubled since 1990, which is one reason, Vulgamore believes, that attendance declined almost 15 percent in the classical series over that period. A successful capital drive had pushed the endowment nearly to \$46 million, but the board felt that the symphony could safely spend only the 5.5 percent interest on this. "We'd be robbing future generations otherwise," she says. That left cost, of which musicians' salaries were the largest single item.

Ultimately, the board agreed to retain all 95 musicians for the full 52-week season, and it granted them a modest 8-percent raise spread out over the next four years. The board hoped that the four-year period of stability would give the ASO time to launch a \$40 million endowment drive to cover the increased expense. But Yoel Levi, the music director who is generally credited with creating an orchestra that could arouse such strong feelings, evidently decided he'd had ▶

enough. After the strike was settled, he announced that he would not be renewing his current contract. Inevitably, the CSASO claimed that he was pushed, and the ASO said he jumped. Levi himself has remained silent on the subject, releasing only an enigmatic letter of resignation to the board that said little except that his decision had come after "a time of reflection and soul-searching."

Having consumed the ASO, the acrimony has spilled over to the Robert W. Woodruff Arts Center, the formerly sacrosanct umbrella organization that houses and administers the ASO, the High Museum of Art, the Alliance Theater Company, and the Atlanta College of Art. Initially created as a memorial to 132 Atlanta arts patrons who died in a 1962 plane crash in France, and named for the Coca-Cola titan who donated most of the money, the Woodruff actually maintains legal control over the art groups that appear on its premises. If one is inclined toward conspiracy theories, the Woodruff makes a tempting target, and the CSASO has fired away. It has charged that the Beers Construction Corp. appeared to have received an insider's no-bid contract for a \$22 million renovation at Woodruff because Beers is headed by L. L. Gellerstedt III, whose mother, Mary, is on the board of the ASO. The president of the Woodruff, Shelton Stanfill, insisted to me that the project was indeed put out to bid, and that Beers was the lowest bidder. The CSASO has also claimed that the Woodruff has been "under investigation" by the IRS for four years. Stanfill says that it has simply been audited during that period, a common occurrence for nonprofits.

Regardless of the truth of these allegations, they have left their stain. "It's pretty clear that there is a cloud hanging over the organization," Woodruff's board chairman Joseph Prendergast told me.

LIKE ALL ORGANIZATIONS, nonprofits need power to survive and prosper, or they would never be able to settle on a course of action and see it through. Yet, unless disagreements are handled tactfully, this very power to take an organization one way can lead to disappointment on the part of those who would take it another. Over time, if the outcast group feels it never has a say, this disappointment can harden into fierce resentment, and a well-meaning rival can become a sworn enemy. That seems to be the case in Atlanta. Now, the



"It's all about power," says CSASO leader Jeffrey Levine. "They have it and we don't."

CSASO and the ASO are in the end stages of a bad marriage where each spouse sees only the worst in the other, and all communication is handled by lawyers.

"There is a communication breakdown," agrees Judy Anderson, a vice president at Georgia Power in charge of charitable giving and a former member of the Fulton County Arts Council, which tried to mediate in the conflict. "The two groups are on different wavelengths and out of touch." If there is to be any headway, Anderson suggests, the existing ASO board may have to make some accommodation to the CSASO, either by tapping one or two of its more reasonable members to be trustees, or by adopting some of its more acceptable positions. The CSASO, in short, must feel that it has a voice in the ASO's operation, or the nastiness will only get worse. "We will not go away," Levine vows. Right now, the CSASO and the ASO are locked in a death grip, and the symphony they both love may go down with them. ■

Candidates on each side tried to prove they possessed more degrees in music and had attended more concerts than their rivals.

Contributing editor **John Sedgwick** writes frequently for *Self* and *GQ*.