

February 21, 2008

To: Liza Hendricks
From: Presbytery Negotiation Team –
Elders Rod Keen (Covenant), Kermit Lind (Forest Hill), Don Sinko (Parma-South)
Re: Bay Dismissal Negotiation

The Bay Presbyterian Church negotiating team informed us at our last meeting that they have made their “last and best offer” to us and, as a result of our turning it down, plan to end negotiations and terminate the negotiation’s confidentiality agreement. They also told us they plan to discuss the negotiations with the Bay session and bring a motion to the March 31st Presbytery meeting, asking the Presbytery to approve their last offer. Given these actions, the Presbytery Negotiation Team wants you to be aware of the process and issues to-date.

We have met with the Bay negotiation team five times. The first meeting was used for introductions and understanding the theology and rationale of both parties, as well as defining the issues that needed to be negotiated. It was clear at the beginning that our approach and understanding of both facts and church doctrine were distinctly different.

The differences in theology and rationale can be briefly described as follows:

- There are three principal issues behind the Bay decision to leave, which Bay describes as “theological.” 1) Christology, that is, the role of Jesus as the unique, divine and exclusive savior of all humankind: Bay’s session follows the New Wineskins statement that characterizes the position of the Presbyterian Church (U.S.A.) as “doubtful” on Christology. They quote miscellaneous writers, confusing such discussions with the official position of the Presbyterian Church (U.S.A.) that Jesus Christ is the divine savior of all humankind. 2) The inerrant nature of scripture: The difference is largely terminology; what phrase to use to describe the primacy of the scriptures. Again, the position of individuals is confused with officially adopted language of Presbyterian Church (U.S.A.) doctrine, Constitution and policy statements. Bay argues that ordained people who teach and preach doctrines contrary to the official doctrines of the Presbyterian Church should be disciplined, saying that to do otherwise is to agree with them. 3) The PUP Report; which Bay believes is a way to allow liberal Presbyteries and their congregations to ordain practicing homosexuals. They describe the issue as one of church governance, arguing that the PUP Report, in effect, amends the Book of Order without following the prescribed process for amendment.
- The Bay negotiating team takes the position that the trust clause in the Book of Order (8.0200) applies only in the case of a schism within a congregation. (In effect, they contend that a 92% vote of 63% of their congregation (58%) indicates the absence of a schism in their church). Presbyterian doctrine has always been that the congregation holds all property in trust for the benefit of the whole denomination. This represents a hierarchical point of view, with congregations being subject to higher bodies. In a 1979 decision (Jones v. Wolf), the U.S. Supreme Court said that if churches hold that all property is held

in trust for the entire church, their governing documents needed to express that reality. In order to codify the practice of the Presbyterian Church in place since the early 19th century, the Constitution of the Presbyterian Church, currently Chapter 8 of the “Book of Order,” was amended in 1981. The Presbytery negotiating team believes that the “Book of Order” is quite clear. The property of all congregations of the PCUSA, including Bay’s, is held in trust for the denomination. By both the plain language and legislative history of the Constitution of the PCUSA, the rule always applies, not just in cases of a congregational schism.

- The trust rule reflects an ecclesiastical doctrine relating to the unity of the Presbyterian Church. The Presbyterian Church is one unified body with many members. The unity is inclusive of material and spiritual matters. Dismemberment of the body is a significant material and spiritual trauma. Without an attachment to the Presbytery that is substantial—of material significance—congregations will not behave as Presbyterians united as one body, but will be free to dismember the body with no recognition of the gravity of the issue. There must be some recognition that something serious has happened. The Bay negotiating team has taken the position that their church has not changed, and will not change—that they should be able to freely go their own way. The Presbytery team takes the position that something very serious has happened, and that event must be recognized by something material, in this case a settlement amount for termination of the trust and the loss, both material and spiritual, resulting from the dismissal sought unilaterally by Bay Presbyterian Church.
- Church judicial precedent holds that Presbyteries may dismiss congregations only to ecclesiastical bodies of denominations whose organization is conformed to the doctrines and order of the Presbyterian Church U.S.A. The Evangelical Presbyterian Church (EPC) is within this description. However, Bay is committed to a provisional presbytery of the EPC the “transitional New Wineskins Presbytery,” for 5 years only, rather than joining the EPC as a regular member of the denomination. In light of this lack of certainty about Bay’s future affiliation and the possibility that the congregation may not end up in a qualified denomination, the Presbytery negotiating team has proposed a deed restriction requiring a return of the Bay property to the Presbytery in the event the Bay congregation is not, for a specified period of time, part of a Reformed denomination recognized by the Presbyterian Church (USA).

The purported theological differences between the two parties aside, the following issues remained to be resolved through the negotiation process:

- The dollar amount of the “mission settlement,” to compensate for the diminishment of PCUSA mission in the area
- Deed restrictions to support appropriate future use of church property and compliance with the settlement terms.
- Changing the name of the church subsequent to dismissal in order to remove confusion concerning denominational affiliation.
- Adequately providing for any of their ministers who choose to stay with PCUSA.

For the issue relating to the ministers, both teams agreed that they should be provided for, and that the matter should be resolved via discussions between Presbytery’s Committee

On Ministry and Bay's individual ministers. It is our understanding that one of the ministers wants to stay with PCUSA and terms of that separation are being resolved apart from our negotiations.

We then had subsequent meetings where we discussed proposed settlement terms. Bay made an initial proposal:

- No dollar amount for a mission payment.
- No deed restrictions.
- No name change.

This offer was based on Bay's perception that nothing was changing as a result of the dismissal, so they should just be able to walk away. Given that we recognize there are substantial changes as a result of this dismissal, we rejected this offer.

At our next meeting, we wanted to propose a settlement to Bay that recognizes the Presbytery of the Western Reserve's (PWR) significant loss of property, other assets, future per capita and mission giving, and a church membership united with the PWR in serving God and His people. We would also have to provide for those now looking for a church home. In determining our initial proposal, we did not want to use Bay's approach and counter with a proposal at the opposite end of the range and ask for everything. We wanted to narrow the negotiation range to help speed the negotiation process, and have a settlement that Bay could financially manage and with which they could thrive after dismissal. Our initial proposal was as follows:

- A mission settlement amount of \$3,000,000, payable over 10 years. (Since we are not asking for interest on the payments, the true value of the settlement offer is \$2,208,026.) This amount represents less than 30% of the value of Bay's assets (approximately \$7.5 to \$8 million after debt). The annual payment approximates 10% of Bay's annual operating budget (equal to their 2007 mission budget). This also considers that Bay told us that a significant amount of their total mission is covered off-budget.
- In subsequent meetings, we only discussed that the settlement amount needed to be in "seven figures." (For perspective, \$100,000 a year for ten years would approximate what Bay paid in per capita and mission through 2006 (and what they currently pay in per capita and in direct mission support to Presbyterian groups and mission partners, without consideration of asset value, etc.) Bay said it was their policy to spend every dollar they take in, consequently they do not have funds available for special needs like this. Since they say they have no reserves, the full settlement would have to be paid from future income. Our offer at a substantial discount takes this into account, and allows them to stay financially healthy going forward.
- We also proposed certain deed restrictions. These restrictions only come into play if Bay were to leave the EPC or try to form an alliance with a denomination not in correspondence with the PCUSA, if they sold more than 35% of the property, or if they failed to make their annual settlement payments. Without the restrictions, Bay could join a non-Reformed denomination (which would not qualify them for dismissal), sell the property for a significant profit over the settlement amount, or they could just stop paying the annual settlement amount. We would be forced to sue them in order to recover. Since Bay said they were not planning to do any of these things, agreeing to these restrictions should be a non-issue.

- Our proposal also required Bay to change its name. Since Bay wants to leave the denomination that gave it its name, we believe that the current name should reside with the PCUSA and that Bay would want a name that reflects its change in denomination. Our proposal did not impose a new name, such as Bay Evangelical Presbyterian Church. As they wish to leave the PCUSA, it is hard to imagine that they would not wish to state publicly that they are now a part of a different denomination.

The Bay team rejected this proposal as being “punitive,” though they could not in our opinion demonstrate that it is.

At the following meeting, Bay proposed a settlement amount of \$250,000, no deed restrictions, and no name change. We rejected that offer since it did not meet the minimum seven figure settlement amount, nor did it address the other two issues.

At our last meeting, Bay made their last and final offer of \$550,000, with no deed restrictions and no name change. Again, their offer completely failed to address the issues we considered very important. Obviously, we rejected this proposal, as well. Basically, a negotiation result such as this does not address the seriousness of this change. While it is the desire of this team and the PWR to reach an agreement with which each party can be comfortable and be able to pursue the ministry of Christ as we are called to do, we informed the Bay negotiating team that if they were to take the Presbytery to court we would be prepared to pursue the matter in the interest of gaining a clear legal precedent.

At the January Presbytery meeting, Don Sinko spoke generally about the negotiation process. He noted that in situations where both parties have fundamental disagreements on philosophy, a settlement would require both parties to walk away with something, although both parties would probably be unhappy with the final terms. Our proposal started with a settlement amount at a significant discount to full value, included no-cost deed restrictions that should never come into play if Bay used the property in accord with its stated intentions, and recognized that a significant change is being made in identification and affiliation as a result of the dismissal. The Bay proposals only offered a small financial payment to give it exclusive congregational disposition of church property in a denomination not yet ready to admit it to full membership. Their proposals were clearly not acceptable in light of the requirements of the Book of Order, nor considering the loss of the Presbytery’s largest congregation.

While this is only a brief summary of our meetings, we hope this helps you gain an understanding of the negotiation process to-date. We have continued to negotiate in good faith throughout this process, wanting both parties to move forward and thrive after the dismissal. While we are disappointed with Bay’s actions, particularly the complete refusal to recognize two very important non-financial issues, we are prepared to discuss any motion Bay may propose to the Presbytery.