

Approved Minutes
Special Pacifica National Board Open Session
Teleconference Meeting
Thursday, January 30, 2020 8:30 pm ET
Approved on February 6, 2020
(meeting notice appended at the end of these Minutes)

Directors:

Grace Aaron, KPFK, Listener	Ron Pinchback, WPFW, Staff
Robin Collier, KCEI, Affiliate	Ralph Poynter, WBAI, Listener
Chris Cory, KPFA, Listener	Lawrence Reyes, KPFK, Listener
Bill Crosier, KPFT, Listener	Shawn Rhodes, WBAI, Staff
Donald Goldmacher, KPFA, Listener <i>absent/excused</i>	Eileen Rosin, WPFW, Listener
Jan Goodman, KPFK, Listener	Mansoor Sabbagh, KPFK, Staff <i>absent/excused</i>
Heather Gray, Affiliate	James Sagurton, WBAI, Listener
Sabrina Jacobs, KPFA, Staff	Nancy Sorden, WPFW, Listener
Wally James, KPFT, Staff	Alex Steinberg, WBAI, Listener
DeWayne Lark, KPFT, Listener	Tom Voorhees, KPFA, Listener
Martha Peterson, WPFW, Listener	

Others:

Lydia Brazon, Interim Executive Director
John Tatum, Parliamentarian
Otis Maclay

Item # Description

Chair Pro Tem Alex Steinberg calls the meeting to order at 9:00 pm.	Time
1. Preliminary items	10 min.
A. Call to Order	
B. Roll Call 9:01 pm	
C. Election of Chair Pro Tem - Alex Steinberg is re-elected without objection.	
D. Election of Vice Chair Pro Tem	
Jan Goodman and Dewayne Lark are nominated for the Pro Tem Vice Chair position.	
Dewayne Lark is re-elected by a vote of 13 for Dewayne, 6 for Jan. 9:11 pm	
F. Election of Secretary Pro Tem Grace Aaron is re-elected without objection.	
G. Excused Absences (for both of tonight's meetings) Donald Goldmacher and Mansoor Sabbagh's absences are excused without objection.	
H. Identify Timekeepers (for both of tonight's meetings) Martha Peterson volunteers to keep time for people, Eileen Rosin for people.	
2. The Chair Pro Tem explains to the public that at the time certain of 10:15 the Board will be moving into closed session to consider an extremely urgent legal and financial matter.	2 min.

With the Chair's permission, Nancy Sorden asks Directors to respond to a 'doodle' poll to give preferences for a date for the next Mediation session.

Lawrence Reyes requests that the NES be asked to attend the next PNB meeting to give an update on the Bylaws Amendments Election. The Chair agrees and this will be added to the next meeting agenda.

3. Agenda Approval 9:40 pm 5 min.

4. Minutes Approval - Approve Jan. 9, 2020 Open Session Minutes 9:40 pm 3 min.

**5. Approval of the Bylaws Amendment Election Proposal from Rene Penaloza, NES
– by iED (see Appendix) 7 min.**

Crosier amendment to "NES Contract - Penaloza - 01-30-20"

I move to strike the paragraph that starts with "Counsel has taken the position", in the section labelled Communications, on page 7 of the contract sent to the PNB by the Secretary at 6:23pm ET, and replace that section with the text "communications with listeners, staff, and communications from Pacifica and all stations shall be fair and reasonable for both sides of the Bylaws issue".

Summary of reasons for this amendment: The referenced paragraph as provided to us will lead to an unfair and discriminatory election and is likely to lead us back to court.

Amendment fails: Yes: 2, No: 10, Abstain: 6

Yes: Crosier, James

No: Aaron, Lark, Pinchback, Poynter, Reyes, Rhodes, Sagurton, Sorden, Steinberg, Voorhees

Abstain: Collier, Goodman, Gray, Jacobs, Peterson, Rosin

NES Bylaws Amendment Election Proposal passes: Yes: 12, No: 1, Abstain: 5

Yes: Aaron, Gray, Peterson, Pinchback, Poynter, Reyes, Rosin, Rhodes, Sagurton, Sorden, Steinberg, Voorhees

No: Crosier

Abstain: Collier, Goodman, Jacobs, James, Lark 10:17 pm

6. MOTION: Union Contract Review – by the Management Team 7 min.

Whereas, all Union Contracts not only obligate individual stations and/or units but also encumber the entire Pacifica Foundation, and,

Whereas, it is the fiduciary duty of the Pacifica Board of Directors to ensure that Union Contracts are fiscally prudent and are as consistent and similar to each other as possible at all of our stations, especially as regards pension matters,

Therefore, be it resolved that all proposed Union Contracts and extensions of existing contracts must be submitted to the Pacifica National Board of Directors for confidential review and input prior to being signed by the Foundation's Executive Director.

Further, a written report shall be sent to the ED, the CFO, the Pacifica Counsel and the PNB summarizing any ongoing Union Contract negotiations by all Pacifica General Managers and attorneys engaged in such negotiations. After that initial report, weekly short summaries of ongoing negotiations shall be submitted to the above parties on a weekly basis. Such reports will be treated as confidential communications.

Motion passes without objection 10:21 pm

7. Report by Arthur Schwartz, Pacifica Counsel, on Bylaws Amendment

Court Decision of Jan. 23, 2020 & Q & A (Time Certain 10 pm)

15 min.

8. Adjourn to Closed Session to address an urgent legal and financial matter – 10:24 pm.

The following items were not gotten to and will be added to the next open session agenda:

iED Report & Q & A

**MOTION: Percentage of Windfall Income to be used for Loan Repayment
- by the Management Team**

Whereas, the \$3.1 million loan that is collateralized by Pacifica owned buildings is due in about 13 months, and,

Whereas, thus far no agreed upon plan has been put forward to pay the principal owed, and,

Whereas, there is no guarantee that the lender will be willing to extend the term of the loan,

Therefore, be it Resolved that at least 50% of any windfall income to 'Pacifica' that is not restricted in nature be used to pay the principal on the loan, and, ¶

Further, that 30% of any windfall income to any of our stations or units that is not restricted also be used to pay the principal on the loan.

'Windfall income' shall be defined as income of \$50,000 or more and would include large donations, bequests, etc.

All such income after this date, January 30, 2020, is subject to this policy

APPENDIX

Bylaws Amendment Election Proposal from Rene Penaloza, NES

THIS AGREEMENT dated JANUARY 30, 2020 BETWEEN
THE PACIFICA FOUNDATION (the “Client”) AND Renee Asteria Penaloza (the “Contractor”)

BACKGROUND: The Client is of the opinion that the Contractor has the necessary qualifications, experience and abilities to provide services to the Client. The Contractor is agreeable to providing such services to the Client as per the terms and conditions set out in this Agreement.

IN CONSIDERATION OF THE matters described above and of the mutual benefits and obligations set forth in this Agreement, the Client and the Contractor agree as follows:

1. The Client hereby agrees to engage the Contractor to provide the services as defined in the work plan **Appendix A: Work Plan** .

2. The duration of this Agreement shall be through March 29th, 2020 as per the agreed work plan unless otherwise extended based on mutual consent of the Client and Contractor.

3. All monetary amounts referred to in this Agreement are in USD (US Dollars).

4. The Contractor shall invoice the Client for Services as per

Appendix B: Fee Schedule and the Client shall pay the invoices within the timeframe as defined. The Client will send invoices from ballot house vendors (Honest Ballot and Simply Voting) directly to the Contractor.

5. In the event this Agreement is terminated by the Client prior to completion of the Services but where the Services have been partially performed, the Contractor will be entitled to pro-rate payment of the Compensation to the date of termination provided that there has been no breach of contract on the part of the Contractor.

6. The Contractor shall be reimbursed for all reasonable and necessary expenses incurred by the Contractor in connection with providing the Services.

7. The Contractor agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any confidential information which the Contractor has obtained except as authorized by the Client or as required by law.

8. In providing the Services under this Agreement it is expressly agreed that the Contractor is acting as an Independent contractor. The Contractor and the Client acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service.

9. Pacifica Foundation, the PNB, all its affiliated stations’ LSBs and staff members will provide Contractor with all information and documents requested and/or needed in a timely manner, in order to properly carry out the NES duties assigned.

10. All notices, requests, demands or other communication required or permitted by the terms of the Agreement will be given in writing to the parties at the following emails:

a. Lydia Brazon – ed@pacificafoundation.org

b. Renee Asteria Penaloza – reneeasteria@gmail.com

11. Any amendment or modification of this Agreement or additional obligations assumed by either Party in connection with this Agreement will only be binding if evident in writing, signed by each party or an authorized representative of each Party.

I hereby agree to the aforementioned terms and conditions on this 30th day of January, 2020:

Lydia Brazon (Client, iED Pacifica) Renee A Penaloza (Contractor, NES Pacifica)

APPENDIX A: Work Plan - Bylaws Amendment Vote 2020

Approved by Renee A Penaloza (NES), in consultation with General Counsel Arthur Schwartz

Please find below a timeline of rules and procedure tasks and fee for the administration of a membership vote to amend the bylaws per the court ruling issued on Jan 23rd, 2020. The date of record for the vote is January 2nd, 2020.

The vote must be conducted in accordance with California’s Corporation Code, the Bylaws of Pacifica, and the direction of Judge Frank Roesch of Superior Court Alameda County, on January 23, 2020

California Corporation Code

The California Corporations Code gives very little guidance about the rules to conduct membership

referenda, although it gives some guidance to votes to diminish voting rights of some class or classes of members, which is the situation here. The applicable statute reads, in relevant part as follows:

Section 5341

“(a) No member may be expelled or suspended, and no membership or membership rights may be terminated or suspended, except according to procedures satisfying the requirements of this section. An expulsion, termination or suspension not in accord with this section shall be void and without effect.

“(b) Any expulsion, suspension or termination must be done in good faith and in a fair and reasonable manner. Any procedure which conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the suspension, termination, or expulsion are considered.

“(c) A procedure is fair and reasonable when:

“(1) The provisions of the procedure have been set forth in the articles or bylaws, or copies of such provisions are sent annually to all the members as required by the articles or bylaws;

“(2) It provides the giving of 15 days prior notice of the expulsion, suspension or termination and the reasons therefor; and

“(3) It provides an opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension or termination by a person or body authorized to decide that the proposed expulsion, termination or suspension not take place.

“(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or registered mail sent to the last address of the member shown on the corporation's records.

“(e) Any action challenging an expulsion, suspension or termination of membership, including any claim alleging defective notice, must be commenced within one year after the date of the expulsion, suspension or termination. In the event such an action is successful the court may order any relief, including reinstatement, it finds equitable under the circumstances, but no vote of the members or of the board may be set aside solely because a person was at the time of the vote wrongfully excluded by virtue of the challenged expulsion, suspension or termination, unless the court finds further that the wrongful expulsion, suspension or termination was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

“(f) This section governs only the procedures for expulsion, suspension or termination and not the substantive grounds therefor. An expulsion, suspension or termination based upon substantive grounds which violate contractual or other rights of the member or are otherwise unlawful, is not made valid by compliance with this section.

Section 5342 provides:

“(a) An amendment of the articles or bylaws which would terminate all memberships or any class of memberships shall meet the requirements of this part and this section.

“(b) Before such an amendment is adopted the corporation shall give written notice to members not less than 45 nor more than 90 days prior to any vote by the members on the amendment. The written notice shall describe the effect of the amendment on the corporation and the members.”

In the leading decision on procedures to be followed, the California Court of Appeals held as follows:

“Plaintiffs argue section 5341 applies in requiring a good faith, fair and reasonable termination of membership rights, even though the specific due process requirements of subsection (c) are not applicable to a large scale elimination of rights as we have here. We agree. The statute clearly by its terms applies to the removal of a membership right, and the franchise is obviously a membership right.”

Ferry v. San Diego Museum of Art, 225 Cal.Rptr. 258, 264, 180 Cal.App.3d 35, 44 (Cal.App. 4 Dist.,1986)

In other words, the process must be fair and reasonable. Also, while we follow the processes outlined in the Bylaw provisions addressed to LSB elections (See Article 17 Section B(4) this is not an election for Delegates, and the Delegate election procedures, other than those set forth in Article 8 of the Bylaws, other issues will arise.

The Bylaws

Two important Bylaw provisions come into play:

Section 17(B)(4) states: To be approved, a proposed amendment must receive the approval of the Members by a majority vote, provided that a quorum must be established by written ballot. If the proposed amendment would impact one class of Members differently from another class, the Members shall vote in classes and the majority vote of the Members of each class shall be required to approve the amendment, provided that a quorum of each class must be established by written ballot.

The proposed changes have a different impact on Staff Members than on Listener Members, so approval requires a majority vote of that group, along with Listener Members.

Article 3 Section 1(A) defines Listener members as follows: "Listener-Sponsor Members" shall be any natural persons who within the preceding 12-month period: (1) have contributed a minimum of \$25 to any Foundation radio station, or such minimum amount as the Board of Directors may from time to time decide; or (2) have volunteered a minimum of three (3) hours of service to any Foundation radio station.

Article 3 Section 1(B) defines Staff members like this: "Staff Members" shall be: (1) any non-management full-time or part-time paid employee of a Foundation radio station; or (2) any member of a Foundation radio station "Unpaid Staff Organization" or "Unpaid Staff Collective Bargaining Unit" which has been recognized by station management, or, if the station has neither such organization or bargaining unit, then any volunteer or unpaid staff member of a Foundation radio station who has worked for said radio station at least 30 hours in the preceding 3 months, exclusive of fund-raising marathon telephone room volunteer time."

These Bylaw rules must be applied uniformly, unlike LSB elections, where Local Stations have, at times, expanded the definition. KPFA must adhere to the same definition as all other stations.

The Court Order

Although a final order is not in place, the Court verbally instructed that the Record Date would be January 2, 2020, and that the vote should proceed following Bylaws Article 17 Section (1)(B)(4), which itself refers to bylaws Article 3 Section (8) Parts A-D. Therefore we shall follow a process compliant with Article 3, Section (8) Parts A-D.

Timeline

Jan. 24th to Jan. 31st, 2020

- 1) Request updated membership lists for listener and staff members from station management to issue new membership lists for the election date of record.
 - a) Listener membership list corresponding to members who paid 25\$ minimum between 01/03/2019 and 01/02/2020 and fundroom volunteers that volunteered a minimum of 3 hours over the same timeframe
 - b) Staff membership list corresponds to paid and unpaid staff lists. Paid staff on this list corresponds to staff on payroll as of the record date. Unpaid staff corresponds to station staff who volunteered a minimum of 30 hours at the station in the 3 months preceding the record date (date) at KPFA, KPFT, WBAI, KPFA and WPFW. Staff work excludes volunteering during fund-drives.
- 2) Combine all lists into a Master list for cleaning and deduping to ensure 1 vote per member, valid email addresses and postal addresses. Two cleaned mutually exclusive lists (staff and listener) will be submitted to vendors (Simply Voting/Honest Ballot) by Feb 3rd. Quorum numbers will be determined at this point based on the required 10% amongst listeners and 25% amongst staff.
- 3) Create 3 CARTs to raise awareness about the election. CARTs will be delivered to all station staff by Jan 31st and alternates will be created as needed throughout the election. CARTs will be 60 seconds in length and focusing on key election announcements.
 - a) "opting in" to the paper ballot option (to be aired from Feb 1-Feb 17).
 - b) "looking out" for ballots (eballots, postcards or paper ballots) to be aired Feb 18-March 1st)
 - c) "Cast their vote" before March 18th (March 2nd - March 18th)
- 4) The elections website will be updated with the timeline and voting information for the bylaws.
- 5) Fair campaign provisions for the election will be updated, posted online and sent to all station management.

Feb. 1st to Feb. 17th, 2020

6) Finalized member lists, postcard design, online ballot and paper ballot contents will be submitted to vendors by Feb. 3rd for mailing by Feb. 18th. Non-disclosure agreements and final membership lists will be sent to member designated membership houses for member-generated campaign material.

7) Ballot design & contents:

a) Due to the constraints of sending old and new bylaws through the mail, which would be prohibitively expensive, voters will be required to view the proposal details on-line.

Members who request a print out of the changes will be accommodated on an individual basis by the NES. These printing and mailing costs will be paid by the NES and invoiced separately for reimbursement by Pacifica.

b) Pin codes will be generated for each voter, as required by the Pacifica bylaws. Pacifica's Article 3 requires that voters be given the opportunity to return ballots by mail. Onair CARTs and an e-mail campaign will be sent at the beginning of the election cycle allowing members to request a paper ballot using an online form or leaving a voicemail for the NES.

8) Ballot Mailing

a) On February 18 electronic ballots will be sent to all members with a valid email on file, postcards (with voter IDs and PINs beneath a scratch off) will be sent to members without a valid email on file. Paper ballots will be sent to members who requested a paper ballot in the previous election or who request a paper ballot for this election or.

b) All postcards and paper ballots will be sent out via first class mail.

Feb. 18th to Mar. 18th 2020

9) Ballot request system using an online ballot request form and voicemail will issue new and replacement e-ballots for the duration of the voting period until the close of business East Coast on the final day of balloting (March 18th). Paper ballot requests will be accepted through March 10th, 2020.

10) Voting will close at 11:59pm Eastern Time on March 18th, 2020.

a) If quorum is reached in both elections, then the ballots will be counted and the results will be announced within 7 days of the close of voting or by March 29th, 2020.

b) If quorum is not reached in both the all-staff and all-member elections, then the ballots will be disposed of and the bylaws amendment proposal declared moot.

Communications

Article 4 Section 4 of the Bylaws, the Fair Campaign section, is not referenced in Article 17 Section B(4) and is not applicable to the Bylaws vote.

The NES will develop Fair Campaign Provisions by which station staff must abide by. These will be sent to management and all station staff. Management will be requested to post a copy of the FCP in the control rooms.

Counsel has taken the position, and had that position affirmed in the recent decision of *WBAI v Pacifica* that Local Station Boards are democratically elected entities within Pacifica, and have an existence, unless the new Bylaws are adopted, within, but independent of, the Foundation. Each LSB has taken a vote on the proposed Bylaws, and the LSBs may prepare a CART or CARTs explaining the reasons why that entity voted "No," and may, in that CART, urge a No vote. General managers may not put CARTs on the air which disagree with the station's LSB resolution.

Individual producers of shows on Pacifica stations, may have programs where the Bylaw proposal is discussed. Such discussion will be allowed so long as the host does not urge a vote one way or another (like the rules concerning endorsement of a public election electoral candidate. General managers are urged to have some programming reflecting those who support the proposals.

The Pacifica web site shall include a 1000 word statement from a proponent of each position. That statement shall not provide a link to another web site. The comparison document already on the web site may remain.

Emails

Proponents and opponents of the Bylaw proposals shall be allowed to deliver messages via a third party approved vendor in order to email or send paper mailings to members. No “side” will be allowed to send a member an email more than once per week, except on the week of February 14, when two emails may be set.

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APPENDIX B

Election NES & Vendor Fees

Total NES fees include:

- List preparation
- Ballot design
- Website management
- Coordination with secure election vendors
- Ballot replacement
- CART production
- Coordination with station management (for lists and CART airing),
- E-mail campaigns for voter reminders
- Election report (if desired)
- Fee to hire an assistant for additional help during ballot replacement phase (as needed)
- Election phone line and voicemail

NES Fee Schedule

- Jan. 31st - \$7,000 by wire transfer
- Feb 14th - \$7,000
- Mar 1st - \$7,000 (final)

Total: \$21,000

Ballot House Fees

Simply Voting manages all data and tabulates the election results. Honest Ballot manages the postcard/paper printing and mailing. We have worked 2 election cycles successfully with both of them.

Simply Voting Fee includes:

- System Fees - Single Election - 964 eligible voters - \$485.60
- System Fees - Single Election - 45,652 eligible voters - \$5,781.72
- Fully Managed Election - \$8,000.00

Total: \$14,267.32

Simply Voting Fee Schedule

1. Feb 3rd, 2020 - 50% payment required upfront - \$7,133.66 by wire transfer
2. Mar. 18th 2020 Remaining payment required prior to the release of the results - \$7,133.66

Honest Ballot includes:

- 2020 Election Election Notice Printing & Mailing
- Ballot Fulfillment
- Election Tabulation, Support and Results Delivery

Total: \$14,550.00

Honest Ballot Fee Schedule

- Feb 3rd, 2020 - A deposit of \$6,000 is required to hold the election date and postage charge of \$4,200 - \$10,200

● Mar. 18, 2020 - Balance due prior to release of results (will vary depending on printing and postage numbers) - Approximately, \$4,350

Election Cost Total Estimate:

NES: \$21,000

Vendor: ~\$30,000

Misc Expenses: ~\$4-5,000

All Times Eastern

Thursday, January 30, 2020
Pacifica National Board

8:30 PM ET
Teleconference

Committee Members

meeting to seat the new Board of Directors
Nancy Sorden
Posted: 04/10/2019 - 11:04 AM

nancy.sorden@wap.org
Updated :04/10/2019 - 11:04 AM