

## 2006-01-27 PNB Meeting Minutes

PNB Minutes 1-27-06 through 1-29-06

Approved 4-24-06

January 27 - 29, 2006 -- Washington, DC

Friday, 1/27/06 : Executive Session

9:00am - 1:00pm FCC and Fiduciary Responsibilities (Attorney John Crigler)

Discussion of Recent Process with KPFA GM

1:00pm - 2:00pm Lunch

2:00pm - 3:00pm Pacifica Mission & Board/Staff Introductions (Ambrose L.)

3:00pm - 4:00pm Relationship of National and Local Units (Ambrose L. & Dave A.)

4:00pm - 5:00pm Uniting Governance & Management (Greg G.)

5:00pm - 6:00pm Dinner  
Friday 1/27/06 : Public Session

6:40pm PNB Convenes.

Present:

AB, AL, RR, ZS, MB, RMP, Sarv, LW, LD, PH, RLF, BL, DA, Lydia, AM, DW, TA, KF, Deb, SP.

Absent:

SW.

Present as officers of the Foundation:

Greg Guma, ED. Lonnie Hicks, CFO.

Present by invitation:

LSB chairs Carol Wolfe (WPFW), Vajra Kilgara (WBAI), Grace Aaron (KPFK), Richard Phelps (KPFA), Susan Young (KPFT).

BL announced that Marty Durlin has resigned for health reasons.

Selection of Chair Pro-Tem and Secretary Pro-Tem:

Chair Pro-Tem: DA, 12-7.

Secretary Pro-Tem: MB, by acclamation.

6:47pm: DA takes Chair.

MOTION by Sarv to accept agenda.

MOTION by TA to add Technology Committee and Affiliates Task Force to Election of Committee Members 1/28.

MOTION by PH to add 3-5" for new ED.

MOTION by PH to add Directors Inspection Report (15") in 1/28 Ex Session after New Attorney item.

MOTION by BL to add Affiliates Task Force to Committee Reports , 1/28.

MOTION by BL to add LSB chair reports to GM Reports , 1/28.

MOTION by BL to add Pacifica Priorities discussion before New Business 1/29.

MOTION by Sarv to add Mission discussion ahead of Public Comment 1/29.

After discussion, VOTE to add 20" on 1/29 for discussion of Pacifica priorities plus Mission. 9 yes, 5 no.

MOTION to add 10" on 1/29 for scheduling of subsequent PNB meetings. 14 yes, 3 no.

MOTION by PH to add 10" on 1/29 for new business. Passed without objection.

MOTION by RLF to approve agenda as amended. Passed without objection.

6:55pm: Minutes of teleconference meeting 1/20/06 APPROVED without objection.

7:00pm: Introductions by PNB Members (approx. 2 minutes each).

7:55pm: Public Comment.

Adjourn

Saturday 1/28/06 : Public Session

9:15am: Meeting convened.

All PNB members present.

MOTION by Deb to add ½ hour for committee reports, taking the time from election of officers and election of committee members. PASSED without objection.

KF volunteers to be timekeeper.

MOTION by BL to allow up to two 2" comments from listeners on each issue prior to vote; subtract the time from public comment.

AMENDMENT by KF to reduce time to 1". PASSED without objection.

VOTE ON MOTION AS AMENDED: 11 yes, 2 no. PASSED.

9:23am: Committee Reports (10 minutes each except Audit).

Finance Committee. DA read the report, including all motions.

[Note: Report not available electronically]. MOTION

1: Concerning payment to persons for making fundraising appeals.

Whereas, the Pacifica Foundation is one of the last bastions of free speech and that the first purpose of the Pacifica Foundation is stated in the bylaws as follows:

To establish a Foundation organized and operated exclusively for educational purposes no part of the net earnings of which inures to the benefit of any member of the Foundation.

Resolved, that all appeals to the community and listeners for funds by individuals or groups shall be voluntary and/or part of normal Pacifica job responsibilities whether paid or unpaid staff, volunteers or board members. The Pacifica Foundation shall practice what is written on the bylaws and shall not allow members to benefit or inure from the Foundation and that the practice of paying to pitch or exchanging cash or other assets that may include airtime, premiums or equipment is a violation of the bylaws of the Foundation (approved by PNB FinCom 11/17/05 without objection).

Sarv requested background information.

LW:\$1500 was put into KPFA s budget to pay someone to fundraise, or pitch, on air.

BL spoke against the motion.

DW spoke in favor.

LH: Thinks it s overkill. Doesn t come up that often.

SP spoke against it.

LW requested a roll-call vote. VOTE: 8 yes, 2 no. PASSED.

VOTE on FinCom #1: Yes: LW, PH, DW, TA, KF. No: SP, AL, AB, RR, ZS, Sarv, RMP, RLF, BL, LD, SW. Abstain: MB, KF. FAILED

9:42: DA: we re at time.

Sarv: MOTION to postpone consideration of the remainder of the PNB FinCom motions to the end of

Committee Reports . VOTE: Yes 6, No 9. FAILED.

TA: MOTION to extend time 15 min., take 5 min. each from elections, COI and Affiliate Report. Approved without objection.

DW: MOTION to consider Motion #4 (Spanish language programming) next.

[Note: text of this motion not available electronically].

Discussion.

KF: AMENDMENT to make this motion contingent upon inclusion in next year s budget of funding for a bylaws convention. VOTE:: Yes 7, No 11. FAILED.

9:52: DW AMENDMENT to Motion #4: In the 3rd sentence beginning That other stations... , strike be authorized and replace with shall , to make it mandatory for each station to contribute some amount, however small.

Discussion whether PNB has the authority to alter the budget once passed. DA rules it does. AL appeals the Chair s ruling. VOTE to uphold the Chair: Yes 8, No 7. PASSED.

11:53: Time up. BL MOTION to extend time 5 min., to be added to the total meeting time. PASSED without objection.

GG spoke in support of Motion #4, and the spirit behind DW s amendment, as long as we re clear that stations contributions remain voluntary; to that end, is willing to put up \$4, \$1 for each station, so that the minimum is met. It s time to move on to national programming in some way; total cost probably no more than \$45,000 to launch. Noted it s not productive to use parliamentary procedure to run out the clock. Is concerned about FSRN; but \$45K not comparable to a potential \$800K.

RLF spoke in favor of Spanish-language programming.

DA: reminds that this motion is about the authority of the board whether it will take up the practice of ordering stations to do something, rather than just authorizing them.

DW: MOTION to extend time 7 min., to be taken from lunch break. VOTE: Yes 8, No 10. FAILED.

VOTE on DW amendment: Yes 4, No 12. FAILED.

VOTE on MOTION #4 re Spanish-language programming: Yes 20. PASSED unanimously.

DA: The remaining FinCom items will be the first items on the Committee Reports section of the agenda for the next meeting.

10:07: Programming Committee. [Note: Report not available electronically].

The board voted unanimously to postpone consideration of the Programming Policy, in order to solicit further input.

10:23am: PNB Governance Committee [Note: the full report is appended to these minutes].

Motion: " that Susan Young be required to resign from the LSB as long as she serves as an appointee on the Miller Theater Advisory Board. This is not a precedent."

Discussion

Ambrose moved to table; item can be brought back by a majority vote.

VOTE: 12 yes, 6 no. Passed.

10:54am: PNB Elections Committee [Note: the full report is appended to these minutes].

11:11am: Archives Task Force.

Motion to change status from a task force to a committee: 7 yes, 5 no. PASSED.

11:33am: Election of PNB Officers.

Chair: Nominees were Dave Adelson and Sarv Randhawa. Dave elected 12-9.

Vice-Chair: Nominees were Sarv Randhawa and Patty Heffley. Sarv elected 13-8.

Secretary: Nominee Teresa Allen elected by acclamation. Will start after this meeting.

12:06: Break.

12:17pm: Resume meeting. Election of PMB committee members.

Finance: Patty Heffley and Bob Lederer. Patty Heffley elected 13-7.

KPFA  
KPFK  
WBAI  
KPFT  
WPFW  
Affiliates

Finance  
LaVarn W.  
Dave A.  
Patty H.  
Sandy W.  
Ambrose L.

GovCom  
Rosalinda P

Lydia B. ©  
Bob L.  
Deb S.  
Acie B.

Audit  
Mary B.  
Don W. ©  
Lisa D.  
Ken F.  
Rob R.

Progr ing  
Sarv R.  
Alan M.  
Lisa D.  
Teresa A.  
Rob R. ©

Tech.  
Mary B.  
David A.  
Lisa D.  
Sandy W.  
Zarinah S.  
Steve P. ©

Elections  
LaVarn  
Don W.  
Patty H.  
Deb S.  
Zarinah S.

Archives  
Sarv  
Don W.  
Patty H.  
Teresa ©  
Acie B.  
Steve P.

Affiliates  
Rosalinda ©  
Alan M.  
Ray  
Teresa  
Zarinah  
Steve P.

Coordinat g  
Mary B.  
Lydia B.  
Ray

Deb S.  
Ambrose

© = committee convener

PNB Governance Committee Report

For the January 2006 PNB Meeting

Washington DC

At the June 2004 PNB meeting in Houston, the PNB referred a motion was passed asking the PNB Governance committee to develop a policy on contracts oversight. The relevant part of that motion read as follows:

" 1) That the PNB Governance Committee shall develop a policy regarding preview of and/or approval of contracts developed by and/or entered into by Pacifica Foundation or any of its stations/units, to be presented for Board consideration at the next regularly scheduled meeting of the Pacifica Foundation Board of Directors."

The Governance Committee has been working on developing such a policy since that time, and this year, convened a working group to focus on it. Draft versions of the policy were considered by the full committee at its meetings on the following dates: 7/25/05, 12/18/05, 1/19/06

Input was solicited from the iED and the GMs via email requests all on 12/13/05 and again on 12/18/05. We received a response only from one GM, Ms. Georgia of KPFK.

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At its 1/19/06 meeting, the committee approved the following policy language on contract oversight, for presentation to the PNB for its consideration:

"The Executive Director, CFO, or relevant executive with responsibility for the contract, will inform the PNB Coordinating Committee (for contracts concerning national units or network-wide contracts) or the LSB (for contracts concerning local stations to be signed by a local station executive) of the intent to develop, establish or enter into new contracts at least 14 days before taking action on such contracts. This notification shall be provided by E-mail.

The policy shall apply to contracts for which any of the following apply:

- 1) standard employment contracts
- 2) insurance contracts
- 3) contracts addressing intellectual property and/or distribution rights of programming produced by Pacifica or using Pacifica's facilities, or to be aired or distributed by Pacifica.
- 4) standard affiliate contracts
- 5) contracts with aggregate annual amounts over \$30,000.

The Coordinating Committee (for contracts concerning national units or network-wide contracts) or the LSB (for contracts concerning local stations) shall have authority to request PNB review prior to execution of particular contracts if it feels that review or approval are to fulfill responsibilities defined in the bylaws necessary. The Coordinating Committee may refer appropriate contracts for review to other committees of the PNB for review. The Coordinating Committee shall include a list of all contract notifications received and referrals in its minutes..

Since the policy concerns oversight of the power of the ED and/or CFO to execute contracts, the ED and CFO shall recuse themselves from any vote, but not discussion, of the Coordinating Committee on whether to request review and approval by the PNB. The National Finance Committee shall be notified of all contracts for annual amounts over the specified dollar amounts prior to the signing of the contract.

The intent is that the policy shall apply for standard contracts when such contracts are created or altered, but such review is not required for each execution or renewal of the standard contract with each particular party.

This policy applies to review/approval processes for contracts. It is the intent of the governance committee, in collaboration with the administrative council, to develop further policies on the contracting process concerning issues such as competitive bidding, documenting needs or rationale for the contract, etc. This policy shall remain in effect for six months at which time potential changes to the policy may be considered.

The Governance Committee is working on specific policies to apply to review of union contracts."

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In addition to its consideration of the policy on contracts, the PNB Governance Committee also has taken up the issue of whether KPFT LSB Chair's service on the Miller Theater Advisory Board (MTAB) violates the provision in the bylaws, Article 4 Section 2 that prohibits service on boards by "any person who holds any elected or appointed public office at any level of government , federal, state, or local , or is a candidate for such office&"

The committee recognized that Ms. Young acted in good faith and sought the

advice of the elections supervisor regarding whether her service on the MTAB violated this section of the bylaws, and she was advised that it did not. However, after consideration of the details of the case, and with reference to the original written comments of the elections supervisor regarding criteria for determining whether service on particular bodies might constitute service at some level of government, the Governance Committee voted in favor of the following motion, for consideration by the PNB:

"Susan Young be required to resign from the LSB as long as she serves as an appointee on the Miller Theater Advisory Board. This is not a precedent."

The reason the committee specified that this ruling should not set precedent is that the committee is in the process of working to develop unambiguous guidelines for determining compliance with Article 4 Section 2 of the bylaws. The committee lacked the time to fully develop clear language in time for consideration by the PNB at this meeting, but will do so as early as possible.

I have included a memorandum written by Richard Phelps as an addendum to this report, as the information in this memorandum served as a helpful summary of the history of the issue and the key issues bearing on it.

Respectfully submitted,

David Adelson

Chair, PNB Governance Committee

January 26, 2006

Addendum: Memorandum from Richard Phelps re: Susan Young's service on the Miller Theater Advisory Board (rec'd 1/19/06)

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Dear People: I have been asked to provide my legal opinion on the issue regarding Susan Young being on the Miller Theater Advisory Board (MTAB) and the KPFT LSB. I do not know her and I barely know the person that asked me what I think about this while working on the NEC. My interest is purely legal in terms of proper interpretation of our Bylaws. The section in question states as follows:

SECTION 2. ELIGIBILITY; NOMINATION OF DELEGATES

A. ELIGIBILITY

Any Listener-Sponsor Member in good standing, except radio station management personnel or Foundation management personnel or staff members, may be nominated for the position of Listener-Sponsor Delegate for the Foundation radio station with which s/he is affiliated by the signatures of fifteen (15) Listener-Sponsor Members in good standing who are also affiliated with that radio station, provided, however, that no person who holds any elected or appointed public office at any level of government, federal, state, or local, or is a candidate for such office shall be eligible for election to the position of Delegate. A Delegate

shall be deemed to have resigned the position of Delegate if s/he becomes a candidate for public office or accepts a political appointment during his or her term as a Delegate. This restriction shall not apply to civil service employment by governmental agencies. (Emphasis added)

If we take the Section literally we would have to hold that Susan Young is ineligible to be on the LSB while on the MTAB as would anyone who held an elected or appointed public office at any level of government. An earlier opinion by a National Election Supervisor, Terry Bouricius, opined for a looser standard. Under his view anyone that was on a government board that was purely advisor would be OK to serve on the LSB concurrently. I have no problem with that limitation since it would allow people in purely ceremonial positions to be on the LSB. However, the PNB could hold to the strict literal interpretation if it desired to and would likely be supported by California courts. I think Terry Bouricius' analysis is reasonable and functional and at the end of the reasonable bounds of the intent of this section which appears to be designed to avoid crossed power lines between Pacifica governance and our governments. Below is Terry's original written opinion.

"INTERPRETATION of Article 4 Section 2 Disqualification for elected and appointed public office candidates and office holders.

This is how this Bylaws provision will be interpreted for the purposes of inclusion or disqualification of candidates on the ballot, but please be aware that my interpretation is not binding on future legal challenges that could occur.

Assuming the term "elected public office" is reasonably clear, I will focus on the meaning of the term "appointed public office" at the local, state and federal level.

I believe this term applies to offices that are created by municipal charters, or state or federal statutes, that exercise some decision making authority with direct impact on the public, or administer public funds. I do not believe this term applies to advisory bodies, or positions or bodies created by resolution or executive action, that do not have the authority of law.

For example, a "Tax Abatement Commission" authorized by a municipal charter that had authority to grant tax abatements WOULD be an "appointed public office," while a Sister City Commission created by municipal resolution that advised a city council on policy options would NOT be an "appointed public office."

Terry Bouricius

Pacifica National Elections Supervisor

Now we have a more liberal rule to apply to Susan Young. Thus we must look at her position on the MTAB. Below are the duties listed on the MTAB web site:

"The Miller Theatre Advisory Board (MTAB) is appointed by Mayor Bill White and confirmed by Houston's City Council.

Through Section 32 of the City of Houston's Code of Ordinances, MTAB has the following duties:

- \* Administers grants to organizations performing at Miller Outdoor Theatre.
- \* Solicits donations to support the Theatre, and manages donations received.
- \* Manages the contract for Miller Theatre's Concession operations. Proceeds from concession sales support Miller Outdoor Theatre's free season.
- \* The Miller Theatre Advisory Board manages an allocation of Hotel Occupancy Tax to support performances in the Free Season.

To apply for these funds, please download and complete a Grant Application."

After a review of the above it is clear that the MTAB is not advisory but in fact distributes tax dollars and manages donations received. It also manages contracts for concessions. There is no other possible conclusion but that a person serving on the MTAB is ineligible to be on an LSB even with this most liberal interpretation of the Bylaws a court would allow.

The fact that Susan Young was erroneously allowed to serve on the LSB doesn't allow her to continue to violate the Bylaws. She needs to immediately resign from one or the other. If she doesn't any votes that she takes will be subject to review and redoing. The fact that she told people the truth about being on the MTAB before she was elected doesn't keep her on. It does establish the the problem was not hers. However, since this has come up she should have made a choice and resigned to avoid possible revotes. As pointed out above the Section in question, if read literally, would require her to make a choice and so does Terry Bouricious' opinion which I think can barely pass muster at the end of reasonable interpretation.

All the other arguments about the good she can do being at both palces and the good she has done while on the LSB are irrelevant. The only facts that matter in this type of a review are the nature of the MTAB's duties and the Bylaws Section on this issue. Also irrelevant is the issue of how she was allowed to be on the LSB. The latter may be appropriate for a separate investigation since she obviously is not eligible under any reasonable application of Terry's opinion. That does not involve her since she did not withhold her position on the MTAB from election officials I am told.

It is an unfortunate reality that this mistake was made and yet we must not selectively enforce our Bylaws. They must be applied fairly and uniformly to all. It is my firm opinion that any California court confronted with this situation would rule that a LSB member can not also be a member of the MTAB under our Bylaws. To allow her to continue on both is asking for serious legal problems including redoing numerous elections where her vote would make a difference among other things.

Richard Phelps

Attorney/Mediator