

On Mon, May 24, 2021 at 11:31 AM Jan Goodman <jangoodman.kpfk@gmail.com> wrote:

Dear Renee, Craig and Anthony,

This email is an attachment to the complaint which I filed about 9:50 a.m. this morning. If any or all of you would like me to insert all of the following into the complaint form, I will be happy to do so. Please confirm that you have received and will consider this as part of that complaint or ask me to insert this into the form, which will probably make it fairly difficult to read. Please let me know. Jan

Pacifica management has decided to sanction a “staff veto” of the New Day bylaws, even if the bylaws are approved by a majority of the overall membership. This decision by Pacifica’s Executive Director and General Counsel is codified in their Referendum Work Plan signed March 4 2021 and reflects their clear and public Vote No position. The decision to override the decision by the majority of the membership is fundamentally unfair and undemocratic, and contrary to both the Pacifica bylaws and California non-profit law.

Referendum Work Plan. The Pacifica Referendum Work Plan is included in Renee Penaloza’s 6-page employment contract and gives 5 pages of detailed directions for her work running the referendum. In this Work Plan, Pacifica management directs Penaloza to both count the staff and listener votes separately and to reject an approval of the referendum by the overall membership if the staff reject it in a staff-separate vote (referred to here as the “staff veto”). Pacifica management’s Work Plan quotes selectively from the Pacifica bylaws and California non-profit law to buttress their unfounded claim that the New Day bylaws changes are such that a staff veto is authorized and can override the majority approval of the bylaws by the overall membership. Based on this work plan directive, which Penazola is contractually obligated to carry out, Pacifica Management have carried out a campaign of intimidation of staff with the false narrative that WBAI and/or WPFW will be shut down and all staff their will lose their jobs/shows, and in addition the further false narrative that all staff will be disenfranchised in various ways, and therefor should vote no.

Bylaws: The Referendum Work Plan selectively cherry picks the Pacifica bylaws to back up their staff veto plan to reject the New Day Pacifica proposals even if the membership approve the bylaws by majority vote. The Pacifica bylaws do allow for a staff veto, but only “if such action would materially and adversely affect the rights of that class as to voting or transfer in a manner different than such action affects another class” (Article 17B, section 3). None of section 3 is included in the Referendum Work Plan.

Instead, the Work Plan only quotes the follow-up section, section 4 which does not specifically include the words included in section 3: “materially and adversely impact” and “voting and transfer” rights, but they are clearly inferred based on the prior section. If this inferred language was also included in section 4, it would read: (the inferred language from section 3 is included here in brackets []): “If the proposed amendment would [materially and adversely] impact one class of members differently from another class [as to voting or transfer], the members shall vote in classes and the majority vote of the members of each class shall be required to approved the amendment.”

California non-profit code section 7813: Pacifica management’s Work Plan totally overlooks Section 7813 of California non-profit law that underlies the very narrowly defined circumstances where a minority of members (a defined “class”) can veto a

bylaws amendment approved by the majority of the membership, on which the Pacifica bylaws 17B sections 3 and 4 are based. The California non-profit code says that the proposed amendment must

“materially and adversely affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer in a manner different than such action affects another class.” (Section 7813) in order for a veto by one class of voters to be authorized.

The New Day bylaws do NOT meet the high bar authorizing a staff veto of the bylaws. The New Day bylaws do NOT “materially and adversely affect the rights of that class as to voting or transfer.” Yes, the New Day bylaws do change how the staff vote for the PNB and national officers and how many staff directors there are, but the bylaws also change how the listeners vote for the PNB and national officers and how many listener directors there are, and the changes do not “materially and adversely affect” the staff when compared to how the the listeners are affected.

In fact, the New Day bylaws give the staff MORE voting power than they have under the current bylaws not less, because for the first time the staff themselves will directly elect their directors on the PNB and the staff will participate with the listeners in directly electing the national officers. (Currently the LSBs are given the exclusive power to elect the PNB, not the staff or the listeners, and the PNB is given the exclusive power to elect the national officers, not the staff or the listeners.)

The New Day proposal allocates 2 director positions exclusively to the less than 1000 member staff of Pacifica (one for paid staff and one for volunteer staff). The New Day proposal allocates 5 director positions exclusively to the 37,000 listener-sponsor members. On the current PNB there are 5 staff directors and 15 Listener directors. The ratio of “Staff” to “Listener” Directors *at a minimum* is actually higher under the New Day proposals, 2:5 vs 2:6.

Additionally, under the New Day proposals, Staff are eligible to serve as any or all officers and at large members (New Day Bylaws, Art. 4 section 2a), so conceivably all officers and At-Large Directors could be staff [e.g. if staff comparable to Amy Goodman, Juan Gonzales, Verna Avery Brown and Ralph Nader all ran to become officers or were nominated to serve.]. Under NDP then, the PNB could be composed of 9 "Staff " Directors [4 officers, 2 staff directors and 3 at-large directors], 5 “Listener” Directors and one Affiliate Director. So the ratio of Staff to Listener Directors, under NDP could be 9:5.

Authorizing a staff veto gives anti-New Day management a clear path to override the expected approval by the majority of the membership of the New Day proposals. If Pacifica station management (specifically WBAI and WPFW) pressure their staff into voting no with an overwhelming turnout as they did last year during the prior bylaws referendum, they will be able to thwart the New Day proposals this year.

Last year the 3-person election committee verified that WBAI management pressured their staff to prove they had voted No by threatening loss of airtime and insisting they

show management their individual voting receipt which shows how each voted. A WBAI staff memo from the WBAI General Manager at the beginning of the New Day campaign shows the same anti-New Day bias and contempt for any WBAI staff that disagrees with the GM concerning the New Day bylaws. The WBAI General Manager and Program Director as well as the WPFW Program Director have openly endorsed the Vote No position this year both on the vote No website and opposed the New Day bylaws on several programs aired on WBAI and WPFW. Vote No Pacifica management continues to stress a false narrative, that New Day will close WBAI (and therefore lay off all the WBAI staff, whether paid or volunteer).

Voting statistics from last year's referendum published in the NES' Final Report show a markedly higher voter turnout of WBAI and WPFW staff when compared to the Texas and California stations, as well as a markedly higher number of requests for second ballots at WBAI and WPFW than the other three stations: these are two key indicators of a vigorous and focused get-out-the-vote effort by WBAI and WPFW management of their staff no vote. Among the 5 stations, if you look's at the staff vote station by station, last year bylaws amendments (very different than New Day's) were passed by the staff membership of the Texas and California stations, but were outnumbered by the increased turnout and % of no votes at the east coast stations.

To summarize: Because it is fundamentally unfair to allow a small percentage of members (in Pacifica's case, the staff constitute less than 3% of the overall membership) to overrule the will of the majority of members who want to amend the bylaws, the threshold for an authorized veto must be very high, as reflected in Pacifica's bylaws and California non-profit law: the proposed changes must "materially and adversely affect the rights of that class as to voting or transfer in a manner different than such action affects another class" (bylaws 17B section 3). The New Day Pacifica amendments do NOT meet that high threshold. Consequently, if a majority of members approve the New Day bylaws, the bylaws amendments should be approved.

Please note: Last year's proposals no longer allowed staff to be elected to the PNB, so arguably the staff veto was proper if the overall membership had approved the bylaws which did not happen. The New Day proposals instead continues the tradition of staff being valued members of the PNB.

Beth Kean

Jan Goodman

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