

BAY AREA

MEDIA LAW

Suit Says KPFA Broke Its Trust

■ A dozen radio listeners, backed by the state attorney general, accuse the Pacifica Foundation of abandoning its mission.

By Tyler Cunningham

Daily Journal Staff Writer

After winning approval last week from the state attorney general, radio listeners have sued the charitable trust that runs politically progressive Berkeley radio station KPFA-FM, claiming that board members have subverted its founding mission of promoting free speech and providing news from uncommon sources.

Attorney General Bill Lockyer's office on Thursday granted "relator" status to a dozen radio listeners across the country, giving them standing to sue Pacifica Foundation, the Washington, D.C.-based charitable trust that runs KPFA and four other stations across the country.

Together with Lockyer, the listeners promptly filed suit Friday in Alameda County Superior Court. According to the complaint, the foundation violated state law by acting contrary to its 1949 articles of incorporation. *People ex rel. Spooner v Pacifica Foundation*, 831252-3

Specifically, the lawsuit claims that a small cabal of board members changed the station's content from politically controversial issues to more commercial fare, belying the idealistic language found in the foundation's articles of incorporation. They also claim the board doesn't have a proper mechanism for electing members.

"The purpose of the foundation is to promote free speech, not achieve ... ratings or cater to corporate contributions," said plaintiffs' attorney Daniel Robert Bartley.

The lawsuit asks a court to "restore Pacifica to conformity with its purposes," to remove the entire Pacifica Foundation board and to bring its governance into compliance with the law.

Daniel Rapaport, an attorney with Oakland's Wendel, Rosen,



Associated Press/1999
PROTEST — KPFA loyalist Geoff Ruth wears a giant puppet head during a Sproul Plaza rally last July. Now the protests head for the courtroom.

Black & Dean who represents Pacifica Foundation in a related lawsuit, said he hadn't yet seen the complaint and couldn't comment on its specifics. But he said that the suit is essentially a complaint from longtime KPFA fans who don't like what they're now hearing on the radio.

"Really, these people are unhappy with programming decisions made by the governing board, so they want to get rid of the board," he said. "In essence they want to take over Pacifica."

See KPFA, Page 9

■ KPFA: AG Sanctions Suit

Continued From Page 2

Problems at the station began in the mid-1990s, according to Carol Spooner, a Santa Rosa resident and member of the KPFA local advisory board who is the suit's lead relator. The Corporation for Public Broadcasting, which determines federal funding for public radio stations, began at that time to apply more pressure on stations to expand audience share.

The Pacifica Foundation, dependent on the \$1.7 million in federal funds it receives annually, changed KPFA's programming to more commercial, less controversial shows, according to the lawsuit. In order to accomplish the change, the complaint alleges, the board passed illegal bylaws to prevent its local advisory boards from voting on Pacifica Foundation board members. They also issued gag orders to station staff, the suit claims.

"We believe Pacifica has an obligation to provide news and information not available elsewhere," Spooner said. "That's the primary deviation [from its articles of incorporation], and they've been moving at an accelerated pace away from that."

A series of personnel moves at the station, including a decision not to renew the contract of a popular station manager, led to protests last year. Pacifica hired armed security guards to protect the station, the suit alleges, at a cost of more than \$500,000. The suit seeks recovery of that money, saying it was an expenditure inconsistent with the board's purpose.

A similar suit was filed by members of the local

advisory boards in Alameda County last year. The suit asks a judge to restore the right of the local advisory boards to elect members to the Pacifica Foundation. A judge declined to grant a preliminary injunction to that effect last June in *Adelson v. Pacifica Foundation*, 814461-0.

Bartley said he has filed a notice to the court of a related case, and said the two cases will likely be coordinated. He said that the Attorney General's grant of "ex relator" status was significant, though, because it will solve problems of standing that plagued the *Adelson* case.

Such a status allows a private party or relator to join in a suit that typically would be brought by the government. In California, the attorney general's office has supervisory authority over charitable trusts.

"The buck stops with the AG, and the AG has the authority to hold charitable trusts in compliance with the law," Bartley said. "[The Attorney General's office] has given us the standing we need."

Spooner said the AG was likely influenced by a 37-page report from a legislative committee released in June. The report concluded that the foundation mismanaged the station and may have broken state laws for nonprofit corporations. According to the report, the foundation may have violated the rules of its tax exemption by barring local advisory boards from voting for national directors and by locking out employees, despite a no-lockout provision in its union contract.
