

FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
)
Service Employees' International Union and) MUR 6124
Service Employees' International Union)
Committee on Political Education and Anna)
Burger. in her official capacity as treasurer)

STATEMENT OF REASONS

**Chairman MATTHEW S. PETERSEN, Vice Chair CYNTHIA L. BAUERLY,
Commissioners CAROLINE C. HUNTER, DONALD F. McGAHN II,
and ELLEN L. WEINTRAUB**

I. INTRODUCTION

This matter arises out of a complaint alleging that the Service Employees International Union ("SEIU") amended its constitution to include a provision that imposes financial consequences on local unions that do not meet the SEIU's annual fundraising goals for the SEIU's separate segregated fund, SEIU Committee on Political Education ("SEIU COPE"). Specifically, the complaint alleges that this provision, section 18a of Article XV, constitutes a financial reprisal or a threat thereof by SEIU in violation of 2 U.S.C. § 441b(b)(3)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Further, the complaint alleges that SEIU COPE made contributions or expenditures using funds obtained through coercion, in violation of 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a). Based on the available information, on April 27, 2010, we voted to dismiss this matter as a matter of prosecutorial discretion and close the file.¹ See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

II. FACTS

The complaint states that at the 2008 SEIU convention, SEIU amended section 18a of Article XV of the SEIU constitution, entitled "Duties of Local Unions," to impose

¹ Commissioner Walther dissented.

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1 a financial penalty on local unions that fail to meet the "annual SEIU COPE fundraising
2 obligation." The provision states:

3 Section 18a. Every U.S. Local Union shall contribute an
4 annual amount equivalent to at least \$6.00 per member per
5 year or as determined annually by the International
6 Executive Board to support the overall SEIU political
7 education and action program. This annual SEIU C.O.P.E.
8 fundraising obligation may be satisfied by voluntary
9 member contributions to SEIU C.O.P.E. or a designated
10 organization approved by the International President or a
11 combination thereof. All contributions to SEIU C.O.P.E.
12 collected by local unions shall be sent to SEIU C.O.P.E.
13 Any contributions in excess of \$6.00 per member per year
14 or such other amount as determined by the International
15 Executive Board shall be returned to the local union for its
16 political program. If a local Union fails to meet its annual
17 SEIU C.O.P.E. fundraising obligation, it shall contribute an
18 amount in local union funds equal to the deficiency plus
19 50%, or such other amount determined by the International
20 Executive Board. to support the overall SEIU political
21 education and action program.

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23 b. A goal of every local union shall be to enroll and
24 maintain at least 20 percent of its members as voluntary
25 participants in an employer check-off or regular deduction
26 program assigned to SEIU C.O.P.E. or to an organization
27 approved by the International President.

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29 *See* Text of Amended Section 18 of Article XV. Complaint at 5. The SEIU Constitution
30 and Bylaws, including the relevant provision, are available to the public through the
31 SEIU's website at <http://www.seiu.org/a/ourunion/constitution-and-bylaws.php> (last
32 accessed on February 25, 2010).

33 In response to the complaint, SEIU argues that the complaint fails to state any
34 basis for finding that the 2008 amendment to the SEIU constitution violates the Act.
35 SEIU Response at 2. As background, SEIU asserts that the provision incorporates a long-
36 standing SEIU policy from as early as 2000. *Id.* at 2. Robert Hauptmann Decl. at ¶ 3.

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1 SEIU further asserts that notwithstanding this policy, no SEIU members have filed a
2 complaint, except for the complaint in MUR 5437, where the Commission took no
3 further action after conducting an investigation, finding "a lack of evidence to
4 substantiate and quantify any potential violations of the Act." *Id.* at 2; *see* General
5 Counsel's Report #3, dated April 18, 2007 and Certification dated April 24, 2007.²

6 SEIU also argues that "there is no reason to assume" that the provision at issue
7 might lead local unions to use coercion to obtain contributions or that the provision
8 would be sufficient by itself to find a violation of the Act. SEIU Response at 2. SEIU
9 asserts that local unions can easily satisfy the SEIU COPE fundraising obligation, stating:
10 "Assuming an average annual contribution of \$48.00 per member, only 1/8th of a local's
11 members need contribute to COPE for the union to meet the \$6.00 per member goal."
12 adding that Local 150, where Ms. Glass is employed, has easily met the fundraising
13 obligation. *Id.* SEIU also asserts that the provision at issue "encourages SEIU local
14 unions to raise voluntary contributions" and that such fundraising is legal under
15 Commission regulations, noting that unions may include a suggested guideline for
16 contributions and may also encourage contributions by sponsoring fundraising events.
17 *Id.* at 2-3.

18 SEIU asserts that it complies fully with Commission regulations to ensure the
19 voluntariness of contributions by informing its members that they are not required to
20 contribute to SEIU COPE as a condition of membership in the union, that members may
21 contribute more or less than any suggested amount, and that contributions are for political

² MUR 5437 involved allegations that a local union had coerced its members to contribute to SEIU COPE and forced its employees to work for political campaigns. *See* Factual and Legal Analysis (SEIU/SEIU COPE) and Certification dated September 29, 2004.

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1 purposes. SEIU Response at 3. In addition, its members must affirmatively agree to
2 make a contribution (i.e., no reverse checkoff is used). *Id.* SEIU notes that the complaint
3 does not allege that SEIU has failed to comply with these voluntariness requirements,
4 which ensure that the fundraising obligation in the constitution does not result in
5 involuntary contributions. *Id.* Finally, SEIU asserts that the complaint does not identify
6 any SEIU member who has been coerced into contributing to SEIU COPE because of the
7 amendment or for other reasons, and that Ms. Glass does not allege that she has
8 contributed to, or has ever been solicited to contribute to, SEIU COPE. *Id.* at 2.

9 **III. ANALYSIS**

10 The Act prohibits any labor organization from making "a contribution or an
11 expenditure in connection with any election at which presidential . . . electors or a
12 Senator or Representative in . . . Congress are to be voted for . . ." 2 U.S.C. § 441b(a).
13 However, a labor organization, such as the SEIU, may use its general treasury funds to
14 establish, administer, and solicit contributions to a separate segregated fund ("SSF") to be
15 utilized for political purposes. 2 U.S.C. § 441b(b)(2)(C); 11 C.F.R. § 114.5(b). For any
16 union federation with which a local union is affiliated, the local union may act as a
17 "collecting agent" when it engages in collecting and transmitting contributions on behalf
18 of the federation's SSF. 11 C.F.R. § 102.6(b). A collecting agent may solicit
19 contributions to the affiliated or connected SSF from those individuals who are eligible
20 for solicitation. 11 C.F.R. § 102.6(c).

21 Solicitations for or from an SSF must meet the requirements of voluntariness set
22 out at 2 U.S.C. § 441b(b)(3) and 11 C.F.R. § 114.5(a). Specifically, a solicitation must:
23 (1) not secure contributions by physical force, job discrimination, financial reprisals, or

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1 the threat thereof; or by dues or fees required for membership in the labor union, required
2 as a condition of employment, or by funds obtained in a commercial transaction; (2)
3 inform those solicited of the political purposes of such a fund at the time of solicitation;
4 and (3) inform those solicited that refusal to contribute shall not result in any reprisals.
5 An SSF is prohibited from making a contribution or expenditure by utilizing money or
6 anything of value secured by, *inter alia*, financial reprisals or the threat thereof. 2 U.S.C.
7 § 441b(b)(3); *see also* 11 C.F.R. § 114.5(a). We do not believe that a provision in a
8 union's governing documents that imposes financial consequences on its local
9 organizations (which act as collecting agents for the union's SSF) when such
10 organizations fail to raise certain levels of contributions from their members constitutes a
11 direct solicitation of the union's members, nor does it constitute a financial reprisal or the
12 threat thereof to the members themselves. Although not dispositive to our analysis, we
13 also note that although the complainant is a member of a SEIU local union, she does not
14 allege that she was herself coerced, nor does she allege that any other union members
15 were coerced to make contributions through this constitutional provision.

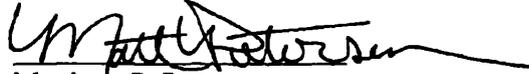
16 For these reasons, as a matter of prosecutorial discretion, we voted to dismiss the
17 allegations that SEIU improperly solicited contributions to a separate segregated fund and
18 the solicitation was coercive, in violation of 2 U.S.C. § 441b(b)(3), and that SEIU COPE
19 and Anna Burger, in her official capacity as treasurer, made contributions or expenditures
20 using funds obtained through coercion, in violation of 2 U.S.C. § 441b(b)(3). *See*
21 *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

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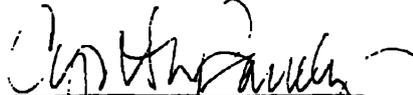
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Matthew S. Petersen
Chairman

9/6/2010
Date


Cynthia L. Bauerly
Vice Chair

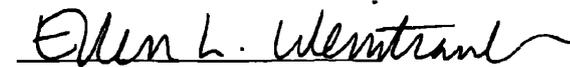
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Caroline C. Hunter
Commissioner

8/9/10
Date


Donald F. McGahn II
Commissioner

8/5/10
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Ellen L. Weintraub
Commissioner

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