



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FACSIMILE & FIRST CLASS MAIL

Rebecca L. Covert, Esq.
Takahashi and Covert
345 Queen Street, #506
Honolulu, HI 96813
(808-531-9894)

JUL -9 2012

Michael B. Trister, Esq.
Trister, Ross, Schadler & Gold, PLLC
1666 Connecticut Avenue, NW, 5th Floor
Washington, DC 20009
(202-328-9162)

RE: MUR 6344
United Public Workers, AFSCME
Local 646, AFL-CIO

Dear Ms. Covert and Mr. Trister:

On June 29, 2012, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 434(g), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

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Rebecca L. Covert, Esq.
Michael B. Trister, Esq.
MUR 6344
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Enclosed you will find a copy of the fully executed conciliation agreement for your files. Also, as we previously notified you following the Commission's reason to believe finding in April 2011, one or more Statement(s) of Reasons providing the basis for the Commission's decision will be forthcoming. Finally, please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,



Phillip A. Olaya
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
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United Public Workers, AFSCME) MUR 6344
Local 646, AFL-CIO)

CONCILIATION AGREEMENT

This matter was initiated by an externally-generated complaint. The Federal Election Commission ("Commlssion") found reason to believe that United Public Workers, AFSCME Local 646, AFL-CIO ("Respondent") violated 2 U.S.C. § 434(g) of the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing to report independent expenditures it made to expressly advocate for the election of Colleen Hanabusa in a May 22, 2010, special election for Hawaii's First Congressional District.

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts and law in this matter are as follows:

1. UPW is the exclusive bargaining representative for approximately 11,800 public sector employees in Hawaii.

1 2. On May 22, 2010, there was a special election for Hawaii's First
2 Congressional District.

3 3. Colleen Hanabusa was a candidate in the special election for Hawaii's
4 First Congressional District. Hanabusa 2010 was Colleen Hanabusa's principal campaign
5 committee.

6 4. Under the Act, a person that makes independent expenditures expressly
7 advocating the election or defeat of a federal candidate aggregating \$10,000 or more at any time
8 up to and including the 20th day before the date of an election must file a report describing the
9 expenditures within 48 hours. 2 U.S.C. § 434(g)(2)(A). *See also* 2 U.S.C. § 434(g)(2)(B)
10 (requiring the filing of additional reports within 48 hours for additional expenditures aggregating
11 \$10,000). The Act further requires that a person that makes independent expenditures expressly
12 advocating the election or defeat of a federal candidate aggregating \$1,000 or more after the 20th
13 day, but more than 24 hours before the date of an election must file a report describing the
14 expenditures within 24 hours. 2 U.S.C. § 434(g)(1)(A).

15 5. For both 24- and 48- Hour Notices of Independent Expenditures, the date
16 that a communication is publicly disseminated or distributed serves as the date a committee must
17 use to determine if the total amount of independent expenditures, in the aggregate, has reached or
18 exceeded the threshold for reporting. 11 C.F.R. §§ 104.4(f) and 104.5(g)(1)-(2).

19 6. Between March and May 2010, UPW conducted an independent
20 expenditure campaign effort expressly advocating the election of Colleen Hanabusa.

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1 7. Between March and May 2010, UPW disbursed \$14,231.37 for employee
2 campaign activities that expressly advocated the election of Colleen Hanabusa, including sign-
3 waving, working a phone bank, and canvassing.

4 8. UPW disbursed \$26,260.72 for two radio ads expressly advocating the
5 election of Colleen Hanabusa or the defeat of her opponent. One of the ads aired from April 27
6 to May 5, 2010. The second ad aired from April 29 to May 6, 2010.

7 9. UPW did not report to the Commission that it made any independent
8 expenditures expressly advocating the election of Colleen Hanabusa.

9 10. UPW contends that it did not recognize these expenditures were reportable
10 under the Act. UPW contends that its failure to report these expenditures resulted from a good
11 faith mistake and that it did not intend to violate the law.

12 11. UPW was required to report both the expenditure for the radio ad that
13 aired April 27, 2010, and the expenditures for employee campaign activities through April 27,
14 2010, in the same 48-hour notice. *See* 11 C.F.R. §§ 104.4(f), 109.10(c).

15 12. UPW was required to file an additional 48-hour notice for the second radio
16 ad that aired on April 29, 2010, at a cost of \$12,827.22, plus an additional \$2,266.33 in
17 expenditures for employee campaign activities on April 28-29, 2010. *See* 11 C.F.R. §§ 104.4(f),
18 109.10(c).

19 13. UPW was required to file a 24-hour report on May 4, 2010, to report
20 expenditures for employee campaign activities expressly advocating the election of Hanabusa
21 that exceeded the \$1,000 threshold. *See* 11 C.F.R. § 109.10(d).

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1 V. Respondent violated 2 U.S.C. § 434(g) by failing to report \$40,492.09 in
2 independent expenditures expressly advocating the election of Colleen Hanabusa.

3 VI. 1. Respondent will pay a civil penalty to the Federal Election Commission in
4 the amount of five thousand five hundred dollars (\$5,500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

5 2. Respondent agrees it will not violate 2 U.S.C. § 434(g).

6 3. Respondent will file the relevant disclosure reports to accurately reflect
7 the independent expenditures referenced at paragraphs IV.8-9.

8 VII. This conciliation agreement, unless violated, is a complete bar to any further
9 Commission action against Respondents in connection with the facts raised in the Complaint.
10 See 2 U.S.C. § 437g(a)(4).

11 VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
12 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
13 with this agreement. If the Commission believes that this agreement or any requirement thereof
14 has been violated, it may institute a civil action for relief in the United States District Court for
15 the District of Columbia.

16 IX. This agreement shall become effective as of the date that all parties hereto have
17 executed same and the Commission has approved the entire agreement.

18 X. Respondent shall have no more than 30 days from the date this agreement
19 becomes effective to comply with and implement the requirements contained in this agreement
20 and to so notify the Commission.

21 XI. This Conciliation Agreement constitutes the entire agreement between the parties
22 on the matters raised herein, and no other statement, promise, or agreement, either written or

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1 oral, made by either party or by agents of either party, that is not contained in this written
2 agreement shall be enforceable.

3 FOR THE COMMISSION:

4 Anthony Herman
5 General Counsel

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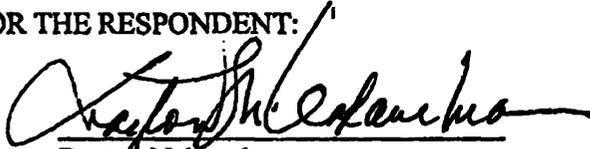
8 BY:

9 
10 Daniel A. Petalas
11 Associate General Counsel
12 for Enforcement

7/6/12
Date

13 FOR THE RESPONDENT:

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Dayton Nakanelua
State Director
United Public Workers, AFSCME Local 646, AFL-CIO

6/14/10
Date

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