



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
BASF Corporation, *et al.* ) MUR 6206

**STATEMENT OF REASONS OF  
Chairman MATTHEW S. PETERSEN and  
Commissioners CAROLINE C. HUNTER and DONALD F. McGAHN**

The complaint in this matter, filed by United Steelworkers (“USW” or “Complainant”), alleged that BASF Corporation (“BASF” or “Respondent”) failed to make available a payroll deduction program for contributions by bargaining unit employees to the USW’s separate segregated fund (“SSF”), in violation of 2 U.S.C. § 441 b(b)(6) and 11 C.F.R. § 114.5(k). As explained below, there is no reason to believe that BASF violated the law.

According to the Complainant, during collective bargaining negotiations between BASF and USW, conducted from June through November 2007, USW made a request that BASF provide a payroll deduction program to facilitate the collection of voluntary contributions from USW bargaining unit employees to the USW’s SSF. Neither the Complainant nor the Respondent presented any facts about what happened between July 2007 and June 2009. However, both stated that by June 2009, the parties had agreed that the USW, in accordance with the Act and regulations, would reimburse BASF for its costs incurred in providing the payroll deduction program, and that BASF was working with its third-party payroll administrator to develop an accurate cost estimate. An initial cost estimate was provided to USW on June 29, 2009.<sup>1</sup> Three days later, USW filed the complaint in this matter, alleging that BASF “had not made available to the USW a payroll deduction program.” However, the complaint did not (1) mention that BASF had already provided a cost estimate to USW, (2) cite any specific acts of delay or refusal by BASF to fulfill its obligation, or (3) quantify any purported delay by BASF in fulfilling its obligation.

We agreed with the Office of the General Counsel (“OGC”), that “the Respondent acknowledge[d] its obligation to provide the payroll deduction program and had begun to

<sup>1</sup> In addition, on August 26, 2009, BASF provided a revised cost estimate, noted that USW had never responded to the initial estimate, and specifically requested that USW advise BASF whether the USW intended to move forward with implementing the program. The following day, USW requested additional information about the cost estimate from BASF.

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implement the system [at the time the complaint was filed].”<sup>2</sup> BASF recognized its obligation to provide the program, and once the parties agreed that USW would pay the costs of the program, BASF provided USW with a cost estimate. Because the record supports a finding that BASF complied with its obligation under 2 U.S.C. § 441b(b)(6) and 11 C.F.R. § 114.5(k), there is no reason to believe that BASF violated the Act.

Some of our colleagues point to the period between June 2007 and June 2009 and argue that the alleged delay by BASF in making available its payroll deduction system provides a sufficient basis for finding reason to believe that BASF violated the Act. As a factual matter, this claim is too speculative to justify a reason to believe finding. As noted above, neither the Complainant nor the Respondent discussed what happened between June 2007 and June 2009 with respect to implementing a payroll deduction program. In fact, there is uncontroverted evidence that by June 2009, BASF had recognized its obligation to provide a payroll deduction program, was exercising due diligence to develop an accurate cost estimate,<sup>3</sup> and had informed USW that it was working with its third-party payroll administrator to provide this information. BASF then provided USW with a cost estimate and, later, a revised cost estimate, and by August 2009, was awaiting USW’s decision as to whether it would pay the costs of the program.

In any event, as we have done in several other matters,<sup>4</sup> we declined to engage in rulemaking *via* MUR here. Neither the Act nor Commission regulations set forth a period of time after a written request is made that a payroll deduction program must be implemented. We refused to adopt a new rule that would equate the passage of time with a refusal or failure to act – especially where, as here, there is evidence that prior to the complaint being filed (1) BASF was working with its third-party payroll administrator and the USW to implement the program, and (2) almost two months after the complaint was filed, USW had not yet agreed to pay the costs of the program. In other words, to find reason to believe that BASF violated the law and authorize an investigation, including the use of compulsory process, on the basis of nothing more than the passage of time (as our colleagues supported doing<sup>5</sup>), would have required us to rely on mere

<sup>2</sup> MUR 6206 (BASF Corporation, *et al.*), First General Counsel’s Report at 1-2.

<sup>3</sup> The provision of inaccurate cost information could itself result in a violation of the Act, because as the Commission has previously cautioned, “the payment by a corporation of costs incident to maintaining a payroll deduction system for facilitating the making of voluntary contributions by employee-union members to a union’s separate segregated fund would be prohibited by 441b.” Advisory Opinion 1979-21 (Communications Workers of America COPE PCC).

<sup>4</sup> See MURs 6113 (Kirby Hollingsworth, *et al.*), Statement of Reasons of Vice Chairman Matthew Petersen and Commissioners Caroline Hunter and Donald McGahn; 5937 (Romney for President, Inc.), Statement of Reasons of Vice Chairman Matthew Petersen and Commissioners Caroline Hunter and Donald McGahn; 5835 (Quest Global Research Group, Inc. / DCCC), Statement of Reasons of Vice Chairman Matthew Petersen and Commissioners Caroline Hunter and Donald McGahn; 5541 (The November Fund), Statement of Reasons of Vice Chairman Matthew Petersen and Commissioners Caroline Hunter and Donald McGahn. See also MURs 5878 (Pederson 2006), 5642 (George Soros), 5712 and 5799 (Senator John McCain), and Reports of the Audit Division of Missouri Democratic State Committee, *Agenda Document 08-36* (Dec. 4, 2008), and Friends of Weiner, *Agenda Document 09-26* (May 14, 2009).


<sup>5</sup> MUR 6206 (BASF Corporation, *et al.*), Certification dated Dec. 15, 2009 (Chairman Steven Walther and Commissioners Cynthia Bauerly and Ellen Weintraub voted affirmatively).

speculative inferences and to craft a new rule that goes beyond the plain language of the Act and Commission regulations.<sup>6</sup> This we refused to do.

There is no reason to believe that BASF violated the Act in this matter. In the alternative, we also supported OGC's recommendation to dismiss this matter as an exercise of prosecutorial discretion,<sup>7</sup> since that result is essentially the same.<sup>8</sup>

  
MATTHEW S. PETERSEN  
Chairman

1/13/09  
Date

  
CAROLINE C. HUNTER  
Commissioner

1/13/10  
Date

  
DONALD F. MCGAHN II  
Commissioner

1/13/10  
Date

<sup>6</sup> This matter is distinguishable from MUR 5932 (Freightliner LLC), where the subsidiary of a corporation asserted that it was not obligated to grant the request of a union to provide a payroll deduction program, and on that basis, refused to do so. As stated above, BASF acknowledged its legal obligation to make available the payroll deduction program to USW's SSF.

<sup>7</sup> MUR 6206 (BASF Corporation, *et al.*), First General Counsel's Report. And for the purposes of 2 U.S.C. § 437g(a)(8), we also attach the First General Counsel's Report setting forth the recommendation to dismiss this matter and the reasoning therefore. *See* Attach. 1.

<sup>8</sup> *See* MUR 5996 (Tim Bee for Congress), Statement of Reasons of Vice Chairman Matthew Petersen and Commissioners Caroline Hunter and Donald McGahn at 2.

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**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MUR: 6206  
DATE RECEIVED: July 10, 2009  
DATE ACTIVATED: September 29, 2009  
EXPIRATION OF SOL: July 10, 2012

COMPLAINANT: United Steelworkers  
RESPONDENTS: BASF Corporation  
BASF Corporation Employees PAC  
RELEVANT STATUTES: 2 U.S.C. § 441b(b)(6)  
INTERNAL REPORTS CHECKED: None  
FEDERAL AGENCIES CHECKED: None

1 **I. INTRODUCTION**

2 United Steelworkers ("USW") alleges that BASF Corporation ("BASF" or  
3 "Respondent") violated the Federal Election Campaign Act of 1971, as amended, ("the  
4 Act") by failing to make available a payroll deduction program for contributions to the  
5 USW Political Action Fund for workers at a BASF facility in Geismar, Louisiana. *See*  
6 *Complaint* (alleging violations of 2 U.S.C. § 441b(b)(6) and 11 C.F.R. § 114.5(k)).  
7 BASF acknowledges it has an obligation under the Act to provide a payroll deduction  
8 program and states that it provided cost estimates for the program three days before USW  
9 filed the *Complaint* and again in August 2009. *See Response* at 2.

10 The Commission should dismiss the *Complaint* because the available information  
11 indicates that Respondent acknowledges its obligation to provide the payroll deduction

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1 program and has begun to implement the system. There is no need for any action by the  
2 Commission.

3 **II. FACTS**

4 USW is a labor organization that represents production and maintenance  
5 employees at the BASF facility in Geismar, Louisiana. USW seeks to establish a payroll  
6 deduction program for the USW Political Action Fund, the union's separate segregated  
7 fund ("SSF"). BASF already uses payroll deductions to collect contributions from  
8 executive and administrative personnel to the BASF Corporation Employees Political  
9 Action Committee. Complaint at 1.

10 In the latter half of 2007, during collective bargaining negotiations, USW made a  
11 written request for BASF to implement the payroll deduction program for contributions  
12 to its SSF. *Id.* Neither the Complaint nor the Response indicates what transpired  
13 between the date of the request in 2007 and June 2009, when BASF acknowledged it was  
14 obligated to provide the payroll deduction program. *See id.*, Exhibit B (Letter from  
15 William H. Schmelling, Associate General Counsel, United Steelworkers, to E.J.  
16 Billedeaux, Director, Labor Relations, BASF Group dated June 9, 2009, memorializing a  
17 telephone conversation between USW and BASF in early June 2009). BASF indicated,  
18 however, that for at least a portion of this time, it was waiting for its third party payroll  
19 administrator to provide a cost estimate so that USW could reimburse it for the expenses  
20 of a payroll deduction program. *Id.*

21 On June 29, 2009, BASF received the cost estimate and forwarded it to a union  
22 representative in the same office. Response at 2. USW filed the complaint three days  
23 later on July 2, 2009. In a letter dated August 26, 2009, BASF provided a new cost

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1 estimate after learning the initial fee would be higher. See Letter from E.J. Billedeaux,  
2 Employee Relations Manager, BASF Corporation, to Dexter Guidry, Chairperson, USW  
3 Local 620 dated Aug. 26, 2009, attached to Response.

4 **III. ANALYSIS**

5 The Act and the Commission's implementing regulations provide that "any  
6 corporation, including its subsidiaries, branches, divisions, and affiliates" that uses a  
7 lawful method of soliciting voluntary contributions from stockholders, executives or  
8 administrative personnel, and their families, must, upon request, make that method  
9 available to a labor organization representing the company's employees at a cost  
10 sufficient only to reimburse the corporation for expenses incurred thereby. See 2 U.S.C.  
11 § 441b(h)(6); see also 11 C.F.R. § 114.5(k). The Commission has addressed this Section  
12 of the Act in a very limited number of advisory opinions and MURs that track the  
13 statutory language and do not offer further guidance in this matter.<sup>1</sup>

14 As noted above, USW acknowledges that it must reimburse BASF. See Letter  
15 from Schmelling to Billedeaux (stating "It is understood that . . . the USW should  
16 reimburse BASF for its costs incurred in providing such payroll deduction program to the  
17 USW and its [Political Action Fund]"). There are unanswered questions regarding the  
18 reasons for the delay in addressing USW's request for a cost estimate. BASF, however,

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<sup>1</sup> The Commission has issued advisory opinions that address a corporation's obligation under 2 U.S.C. § 441b(h)(6) and 11 C.F.R. § 114.5(k). In Advisory Opinion 1979-21 (Communication Workers of America), the issue was whether the union was obligated to reimburse the corporation for the costs of maintaining a payroll deduction system. Advisory Opinion 1979-21 at 2. Similarly, in Advisory Opinion 1981-39 (Square D), the issue focused on whether the union could arrange for advance reimbursement of the corporation for its administration costs. Advisory Opinion 1981-39 at 1. In MUR 5932 (Freightliner LLC), the Commission addressed whether the respondent, a subsidiary that did not operate a PAC, was obligated to provide bargaining unit employees with a payroll deduction system because it was affiliated with another wholly-owned subsidiary that did operate an SSF and had a solicitation method in place. MUR 5932 Factual and Legal Analysis at 8-9 (Commission dismissed the complaint and admonished the respondent for refusing to provide a payroll deduction program during the period it had been affiliated with the subsidiary that had a solicitation method).

1 has already provided the relief USW seeks. While an unreasonable delay could constitute  
2 a constructive refusal, the action taken by BASF makes it unnecessary to address this  
3 issue.

4 Indeed, on June 29, 2009, BASF provided the payroll deduction cost estimate to  
5 USW. Response at 2. BASF later updated the cost information in an August 26, 2009,  
6 letter. *Id.* While we recognize that the passage of over eighteen months from the time  
7 USW initially requested the solicitation method in 2007 until BASF forwarded the cost  
8 estimates on June 29, 2009, could be construed as a constructive refusal, we lack facts  
9 that would explain the cause of the delay. BASF has remedied the alleged violation and  
10 an investigation would not be an efficient use of Commission resources. We therefore  
11 recommend the Commission exercise its prosecutorial discretion and dismiss the  
12 Complaint. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

13 **IV. RECOMMENDATIONS**

- 14 1. Dismiss the matter.
- 15 2. Approved the attached Factual and Legal Analysis.
- 16 3. Approve the appropriate letters.
- 17 4. Close the file.

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11/24/09  
Date

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