

FEDERAL ELECTION COMMISSION

Conciliation Documents

Commissioner's comments

note - portion of GC ~~report~~ report re: conciliation deleted

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

- | | | | |
|-------------------------------------|---|--------------------------|--|
| <input type="checkbox"/> | (1) Classified Information | <input type="checkbox"/> | (6) Personal privacy |
| <input checked="" type="checkbox"/> | (2) Internal rules and practices <i>routing</i> | <input type="checkbox"/> | (7) Investigatory files |
| <input type="checkbox"/> | (3) Exempted by other statute | <input type="checkbox"/> | (8) Banking Information |
| <input type="checkbox"/> | (4) Trade secrets and commercial or financial information | <input type="checkbox"/> | (9) Well Information (geographic or geophysical) |
| <input type="checkbox"/> | (5) Internal Documents | | |

Signed Dwight D Kramer

date 10/6/81

81040302368



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 1, 1981

Mr. Edward P. Wendel, Esquire
United Food and Commerical Workers
International Union, AFL-CIO and
CLC
1775 K Street, N.W.
Washington, D.C. 20006

RE: MUR 1035

Dear Mr. Wendel:

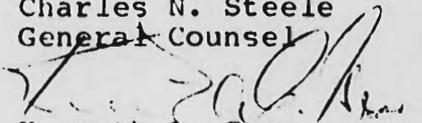
On September 30, 1981, the Commission accepted the conciliation agreement signed by Mr. William J. Olwell in settlement of a violation of 2 U.S.C. § 441b(a) and § 441b(b)(4)(A)(ii), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days.

2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files. Please send your check for the civil penalty made payable to the U.S. Treasurer.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation Agreement

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RECEIVED
GOC #5477

BEFORE THE FEDERAL ELECTION COMMISSION

81 SEP 21 AIO: 37

In the Matter of)	
)	
Active Ballot Club, A Department)	MUR 1035
of United Food and Commercial)	
Workers International Union)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities, and after probable cause to believe having been found that the Active Ballot Club, A Department of United Food and Commercial Workers International Union ("Respondent" or "ABC") violated 2 U.S.C. § 441b(a) and 2 U.S.C. § 441b(b) (4) (A) (ii).

NOW, THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a) (4) (A) (i) do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding.
- 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 in this matter are as follows:
 - A. On April 17, 1972, the Active Ballot Club, A Department of Retail Clerks International Association registered with the Clerk of the U.S. House of Repre-

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sentatives as a political committee, listing a labor organization, Retail Clerks International Association (RCIA), as its "connected organization."

- B. On June 7, 1979, the Retail Clerks International Union and the Amalgamated Meatcutters and Butcher Workmen of North America merged and became the United Food and Commercial Workers International Union.
- C. On June 7, 1979, the Active Ballot Club, A Department of Retail Clerks International Association filed with the Commission an amendment to its statement of organization revealing that the political committee had changed its name to the Active Ballot Club, A Department of United Food and Commercial Workers International Union (ABC). As its "connected organization," the political committee listed a labor organization, the United Food and Commercial Workers International Union.
- D. Between January 1, 1977 and January 31, 1979, ABC solicited contributions to its political fund from retirees. Pursuant to RCIA's constitution, retirees are classified as "Associate Members" or "Paid-Up Life Members." Such retirees are not entitled to hold office nor to a voice or vote in the affairs of the union, all of which are rights that RCIA members in good standing enjoy.
- E. 2 U.S.C. § 441b(b) (4) (A) (ii) prohibits a labor organization from soliciting contributions to its

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political fund from persons other than its members and their families.

- F. 11 C.F.R. § 114.1(c) defines "member" as one who currently satisfies the requirements for membership in a local, national or international labor organization.
- G. The Commission has determined that retirees of RCIA, who are not entitled to hold office nor to a voice or vote in the affairs of the union, do not satisfy the requirements for membership within the meaning of the Federal Election Campaign Act of 1971, as amended.
- H. On May 25, 1973, the Retail Clerks International Association Active Ballot Club Education Fund purchased a \$20,000 savings certificate from the Jefferson Federal Savings and Loan Association with monies derived from the Education Fund (containing union dues and assessments). The savings certificate was purchased with terms of 5 3/4% annual interest paid quarterly, one year maturity containing an automatic renewal, and a ninety-day interest penalty if cashed prior to the anniversary date.
- I. On December 30, 1976, the Active Ballot Club Education Fund of the Retail Clerks International Association sold the \$20,000 savings certificate at its face value to ABC. The interest earned on the savings certificate prior to that date was paid to the RCIA Active Ballot Club Education Fund.

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The interest earned after that date was paid to the RCIA Active Ballot Club Education Fund, however the dividend checks were endorsed over to and deposited in the political fund of the ABC i.e., the Active Ballot Club - General Fund. The assets of neither account were increased as a result of the exchange.

- J. On June 2, 1978, the Jefferson Federal Savings and Loan Association issued a check for \$20,199.04 (face value of the saving certificate and accrued interest) to the RCIA Active Ballot Club Education Fund. The RCIA Active Ballot Club Education Fund then endorsed the check over to ABC, and ABC deposited the proceeds into its political fund.
- K. 2 U.S.C. § 441b(a) prohibits a labor organization from making contributions or expenditures in connection with federal elections except from voluntary funds kept separate and segregated.

Wherefore Respondent Agrees:

- A. That the ABC violated 2 U.S.C. § 441b(b)(4)(A)(ii) by soliciting contributions to its political fund from retirees of RCIA, who did not enjoy all of the rights and privileges of membership within the meaning of the Federal Election Campaign Act of 1971, as amended.

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- B. That the ABC violated 2 U.S.C. § 441b(a) by commingling voluntary and union treasury funds in its separate segregated fund upon depositing checks representing proceeds from a savings certificate purchased with treasury funds of RCIA's Active Ballot Club Education Fund.
- C. Respondent will cease its solicitation of contributions from retirees who do not enjoy all the rights and privileges of membership within the meaning of the Federal Election Campaign Act of 1971, as amended.
- D. Respondent will refund all money collected as a result of soliciting contributions to its political fund from retirees who did not enjoy all the rights and privileges of membership, within the meaning of the Federal Election Campaign Act of 1971, as amended.
- E. Respondent will pay a civil penalty in the amount of \$2,000.
- F. Respondent will now, and in the future, comply in all respects with the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, et seq.

V. General Conditions

- A. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1), concerning the matter at issue herein, or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof have been violated, it may

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institute a civil action for relief in the United States District Court for the District of Columbia.

B. It is mutually agreed that this agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

C. It is agreed that the Respondent shall have no more than thirty (30) days from the date of this agreement to implement and comply with the requirements contained herein, or so notify the Commission.

Oct 1, 1981
Date

Charles N. Steele
Charles N. Steele
General Counsel

September 16, 1981
Date

Active Ballot Club, A Department
of United Food and Commercial
Workers International Union

BY: W. Alenee

ITS: Director of U-P

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 1, 1981

Mr. Claude L. Fernandez, Treasurer
United Food and Commercial Workers
Union Local 428 Active Ballot Club
240 S. Market Street
San Jose, CA 95113

Re: MUR 1035
(formerly MUR 903)

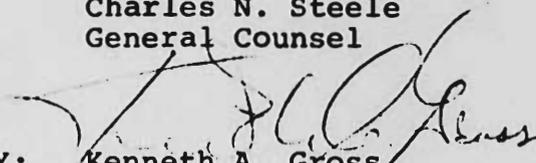
Dear Mr. Fernandez:

This is to advise you that the entire file in this matter has now been closed and will become a part of the public record within thirty days.

Should you have any questions, contact Beverly Kramer, the staff member assigned to this matter, at (202) 523-4060.

Sincerely,

Charles N. Steele
General Counsel

BY: 
Kenneth A. Gross
Associate General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1035
Active Ballot Club, A Department)
of United Food and Commercial)
Workers International Union)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 30, 1981, the Commission decided by a vote of 5-0 to take the following actions regarding MUR 1035:

1. Accept the conciliation agreement, as attached to the General Counsel's September 25, 1981 memorandum, for respondent Active Ballot Club, A Department of United Food and Commercial Workers Union.
2. Close the file in MUR 1035.
3. Approve and send the letter, as submitted with the General Counsel's memorandum dated September 25, 1981, to Mr. Edward P. Wendel, Assistant General Counsel for the Active Ballot Club, A Department of United Food and Commercial Workers International Union.

(Continued)

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CERTIFICATION
MUR 1035
Memorandum to the Commission
Dated September 25, 1981

Page 2

4. Approve and send the letter, as attached to the General Counsel's memorandum dated September 25, 1981, to Mr. Claude L. Fernandez, Treasurer of United Food and Commercial Workers Union Local 428 Active Ballot Club.

Commissioners Aikens, McGarry, Reiche, Thomson and Tiernan voted affirmatively in this matter; Commissioner Harris did not cast a vote.

Attest:

9/30/81
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in Office of the Commission Secretary:
Circulated on 48 hour vote basis:

9-25-81, 3:29
9-28-81, 11:00

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151689 RECEIVED
UFCW 37

ACC# 5477
Legal Department
(202) 466-1520 / 1523

September 18, 1981

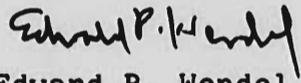
SEP 21 AM 11:47

Ms. Beverly B. Kramer
Office of the General Counsel
Federal Election Commission
1325 K Street, N. W., 7th Floor
Washington, D. C. 20463

Dear Ms. Kramer:

Enclosed is the Conciliation Agreement signed by William J. Olwell, Director of the Public Affairs and Communications Department. Please return a signed copy to me and we will have a check drawn up to the U.S. Treasury.

Sincerely yours,



Edward P. Wendel
Assistant General Counsel

Enclosure

EPW:k1

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FROM

**UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION**

1775 K STREET, N.W.
WASHINGTON, D.C. 20006

RETURN POSTAGE GUARANTEED

FOR

Ms. Beverly B. Kramer
Office of the General Counsel
Federal Election Commission
1325 K Street, N. W., 7th Floor
Washington, D. C. 20463

21

FIRST CLASS MAIL

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7MUC1035-Kramer

Form 3811, Jan. 1970

SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered.....
 Show to whom, date and address of delivery.....
 RESTRICTED DELIVERY
 Show to whom and date delivered.....
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.....
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Claude L. Fernandez

3. ARTICLE DESCRIPTION:
 REGISTERED NO. CERTIFIED NO. INSURED NO.
 943024
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Address Authorized agent
 B. A. M.

4. DATE OF DELIVERY
 7-30-81

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

RECEIVED
 JUL 30 1981
 WASHINGTON DC
 PM

☆GPO : 1979-000-488



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 23, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Claude L. Fernandez, Treasurer
United Food and Commercial Workers
Union Local 428 Active Ballot Club
240 South Market Street
San Jose, CA 95113

RE: MUR 1035
(formerly MUR 903)

Dear Mr. Fernandez:

On April 26 and July 9, 1979, the Commission found reason to believe that the former Retail Store Employees Union Local 428 and its Active Ballot Club violated 2 U.S.C. §§ 434(b)(1) and (14), 435(b), 441b(a) and 441b(b)(4)(A)(ii), provisions of the Federal Election Campaign Act of 1971, as amended, and section 103.2 of Title 11 Code of Federal Regulations. However, after considering all of the circumstances enumerated in responses received from former President, Mr. James P. McLoughlin, the Commission has determined to take no further action and close the file.

The file will be made part of the public record within thirty days after this matter has been closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

If you have any questions, please direct them to Beverly Kramer at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

Kenneth A. Gross
BY: Kenneth A. Gross
Associate General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
United Food and Commercial)
Workers Union Local 428)
and its Active Ballot)
Club)

MUR 1035

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 21, 1981, the Commission decided by a vote of 5-0 to take the following actions regarding MUR 1035:

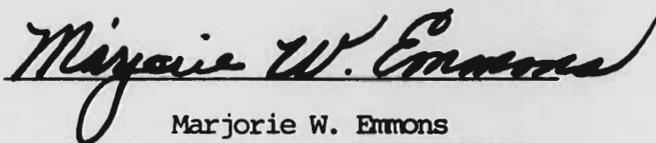
1. Take no further action against the United Food and Commercial Workers Union Local 428 and its Active Ballot Club.
2. Close the file with respect to matters involving the United Food and Commercial Workers Union Local 428 and its Active Ballot Club.
3. Approve the letter, as submitted with the General Counsel's July 9, 1981 report, to Mr. Claude Fernandez, Treasurer of the United Food and Commercial Workers Union Local 428 Active Ballot Club.

Commissioners Harris, McGarry, Reiche, Thomson, and Tiernan voted affirmatively for the decision; Commissioner Aikens did not vote.

Attest:

7-21-81

Date



Marjorie W. Emmons
Secretary of the Commission

Received in Office of the Commission Secretary: 7-10-81, 10:42
circulated on 48 hour vote basis: 7-10-81, 2:00
Objection filed. Placed on July 21, 1981 agenda.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *MWE*
FROM: MARJORIE W. EMMONS/JODY CUSTER *JF*
DATE: JULY 13, 1981
SUBJECT: MUR 1035 - General Counsel's Report dated
7-9-81

The above-named document was circulated on a 48
hour vote basis at 2:00 p.m. on July 10, 1981.

Commissioner Thomson submitted an objection at 3:49 p.m.
on July 13, 1981, for discussion in MUR 1035.

This matter will be placed on the Executive Session
Agenda for July 21, 1981.

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July 10, 1981

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1035

Please have the attached General Counsel's Report distributed to the Commission on a 48 hour tally basis. Thank you.

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In the Matter of)	
)	
United Food and Commercial)	MUR 1035
Workers Union Local 428)	
and its Active Ballot)	
Club <u>1/</u>)	

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 CLM: [unclear]
 [unclear]

GENERAL COUNSEL'S REPORT

I. Background

The United Food and Commercial Workers Union Local 428 and its Active Ballot Club were formerly respondents in MUR 903, a matter referred by the Reports Analysis Division on December 21, 1978, and subsequently merged with MUR 1035 pursuant to the Commission's determination on October 24, 1979. 2/

Prior to merging MUR 903 with MUR 1035, the Commission had found reason to believe that the United Food and Commercial Workers Union Local 428 and its Active Ballot Club violated

1/ On March 24, 1980, the Retail Store Employees Union Local 428 Active Ballot Club filed an amendment to its statement of organization indicating that its name had been changed to United Food and Commercial Workers Union Local 428 Active Ballot Club.

2/ On September 25, 1979, the Commission determined to open MUR 1035, a matter initiated by the Audit Division based on findings made during the audit of the Active Ballot Club, A Department of United Food and Commercial Workers International Union and the audit of records maintained by Local Unions #324, #428, #1540 and #1550. Since the Active Ballot Club of Local Union #428, was an affiliated committee of the international union's Active Ballot Club, and since its records had been audited and findings made in connection with the audit conducted of the international union's political fund, the Commission determined to merge MUR 903 with MUR 1035.

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the following provisions of the Federal Election Campaign Act of 1971, as amended (Pub. L. No. 94-283) and Title 11 Code of Federal Regulations prior to the 1979-80 amendments:

- a) 2 U.S.C. § 434(b)(1) and (14) by failing to adequately explain the discrepancy between cash on hand at the end of 1975 (\$208.37) and at the beginning of 1976 (\$9,787.64);
- b) 2 U.S.C. § 435(b) by failing to include on solicitation material the notice required by this section of the Act;
- c) 2 U.S.C. § 441b(a) by commingling voluntary and union treasury funds in an account maintained for political purposes when, on June 22, 1978, the Local union closed its treasury account and transferred the balance of \$633.91 to its separate segregated account;
- d) 2 U.S.C. § 441b(b)(4)(A)(ii) by soliciting contributions to its political fund from retirees who did not enjoy all the rights and privileges of membership in its union (i.e., were not entitled to hold office nor to a voice or vote in the affairs of the union); and
- e) 11 C.F.R. § 103.2 by designating a credit union as its campaign depository.

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When MUR 903 was merged with MUR 1035, the Commission pursued its investigation of a violation of 2 U.S.C. § 441b (b)(4)(A)(ii) based on additional information ascertained in the course of an audit and through a finding of reason to believe that the Active Ballot Club, A Department of United Food and Commercial Workers Union ("ABC") also violated this provision of the Act. Additionally, the Commission found that audit information revealing a \$3,000 transfer from the Education (non-federal) Fund of ABC to the Active Ballot Club (federal) account of Local 428 in October of 1978, gave it reason to believe ABC violated 2 U.S.C. §441b(a). No action was taken against the Active Ballot Club of Local Union 428 at that time.

After an investigation was conducted, the Commission concluded on March 25, 1981, that there was probable cause to believe ABC violated 2 U.S.C. § 441b(b)(4)(A)(ii) and entered into formal conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i). No further action was taken against ABC for its involvement in the \$3,000 transaction between the Education Fund of ABC and the Active Ballot Club account of Local #428 in view of information which revealed that ABC intended the \$3,000 check (comprised of dues and assessments) to be deposited in the Education (non-federal) Fund of Local 428.

Based on the following factual and legal analysis, the Office of General Counsel is prepared to recommend that the

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Commission take no further action against the United Food and Commercial Workers Union Local 428 and its Active Ballot Club (herein "respondent" or "Committee") for its involvement in this matter.

II. Factual and Legal Analysis

A. Cash on Hand Discrepancy

On April 26, 1979, the Office of General Counsel notified the respondent that the Commission had found reason to believe the United Food and Commercial Workers Union Local 428 and its Active Ballot Club violated 2 U.S.C. § 434(b)(1) and (14) by failing to adequately explain the discrepancy between cash on hand at the end of 1975 (\$208.37) and at the beginning of 1976 (\$9,787.64).

On May 14, 1979, the Committee responded to the Commission's notification of findings. The response revealed that the discrepancy in cash on hand resulted from a bookkeeping error. The person completing the Committee's April 10 Quarterly 1976 report interpreted the Act as requiring disclosure of all activities, including state and local activities, of the Active Ballot Club. Hence, while the monies in the federal and non-federal accounts remained separate and segregated, the balance in both accounts was incorrectly reflected in the Committee's disclosure of cash on hand.

Based on the above response, which was verified in the review of bank statements submitted by the respondent, the Office of General Counsel recommends that the Commission take no further action in this matter.

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B. Commingling

On July 9, 1979, the Commission found reason to believe that the United Food and Commercial Workers Union Local 428 and its Active Ballot Club violated 2 U.S.C. § 441b(a) when, on June 22, 1978, the Local union closed its treasury account and transferred the balance of \$633.91 to its separate segregated account. In response to the Commission's notification of this finding, the Committee stated that while treasury funds totalling \$633.91 had been transferred to its Active Ballot Club (separate segregated) account, the Committee had been careful to spend such funds on state and local candidates and not on federal candidates.

Subsequent to the receipt of this response, an audit was conducted of records maintained by the Active Ballot Club of Local 428. The audit revealed that there were no endemic problems in this area of compliance and that other than transfers made to ABC, the Local did not engage in federal activities.

In view of the minimal amount of funds received in violation of 2 U.S.C. § 441b(a), and the fact that such funds were not expended in connection with federal elections, the Office of General Counsel recommends that the Commission take no further action in this matter.

C. 2 U.S.C. § 434(b) Violation

On April 18, 1979, the Commission found reason to believe that the United Food and Commercial Workers Union Local 428

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and its Active Ballot Club violated 2 U.S.C. § 435(b) by failing to include on its solicitation material a notice required by this section of the Act. In response to the Commission's notification of this finding, the respondent indicated that it would comply with this provision in the future.

Since section 435(b) was stricken from the Act by the 1979 amendment to the Federal Election Campaign Act of 1971, as amended (Pub. L. No. 96-187, January 8, 1980), the Office of General Counsel recommends that the Commission take no further action in this matter.

D. Designated Depository

On July 9, 1979, the Commission found reason to believe that the United Food and Commercial Workers Union Local 428 and its Active Ballot Club violated 11 C.F.R. § 103.2 by maintaining its campaign depository at a credit union which was neither a national or state bank.

By letter dated May 10, 1979, the Committee responded to the Commission's notification of this finding. Therein, the Committee stated that its credit union was a state chartered body supervised by the State of California Department of Corporations and federally insured by the National Credit Union Administration. In view of this response, the Office of General Counsel recommends that the Commission take no further action in this matter.

E. Solicitation of Non-Members

On July 9, 1979, the Commission found reason to believe that the United Food and Commercial Workers Union Local 428

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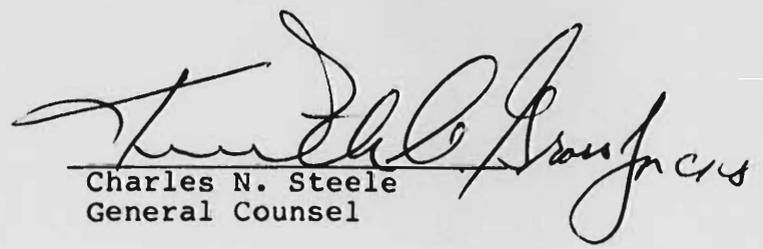
and its Active Ballot Club violated 2 U.S.C. § 441b(b)(4)(A)(ii) by soliciting contributions to its political fund from retirees who did not enjoy all the rights and privileges of membership in its union. Upon merging MUR 903 with MUR 1035, the Commission pursued its investigation of this finding and on March 25, 1981 concluded that there was probable cause to believe ABC violated 2 U.S.C. § 441b(b)(4)(A)(ii). On this date, the Commission also entered into formal conciliation with ABC.

In view of the fact that under the provisions of the proposed agreement ABC will be required to refund all contributions received as a result of soliciting contributions to its political fund from persons other than its members, the Office of General Counsel recommends that the Commission take no further action in this matter.

Recommendations

1. Take no further action against the United Food and Commercial Workers Union Local 428 and its Active Ballot Club.
2. Close the file with respect to matters involving the United Food and Commercial Workers Union Local 428 and its Active Ballot Club.
3. Approve the attached letter to Mr. Claude Fernandez, Treasurer of the United Food and Commercial Workers Union Local 428 Active Ballot Club.

7/9/81
Date


Charles N. Steele
General Counsel

Attachment
Letter to Mr. Claude Fernandez

81040302392



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Claude L. Fernandez, Treasurer
United Food and Commercial Workers
Union Local 428 Active Ballot Club
240 South Market Street
San Jose, CA 95113

RE: MUR 1035
(formerly MUR 903)

Dear Mr. Fernandez:

On April 26 and July 9, 1979, the Commission found reason to believe that the former Retail Store Employees Union Local 428 and its Active Ballot Club violated 2 U.S.C. §§ 434(b)(1) and (14), 435(b), 441b(a) and 441b(b)(4)(A)(ii), provisions of the Federal Election Campaign Act of 1971, as amended, and section 103.2 of Title 11 Code of Federal Regulations. However, after considering all of the circumstances enumerated in responses received from former President, Mr. James P. McLoughlin, the Commission has determined to take no further action and close the file.

The file will be made part of the public record within thirty days after this matter has been closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within 10 days. The Commission reminds you, however, that the confidentiality provisions of 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

If you have any questions, please direct them to Beverly Kramer at (202) 523-4529.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 30, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward P. Wendel, Esquire
United Food and Commercial
Workers International Union
1775 K Street, N.W. Room 900
Washington, D.C. 20006

RE: MUR 1035

Dear Mr. Wendel:

On March 25, 1981, the Commission determined there is probable cause to believe that the Active Ballot Club, A Department of the United Food and Commercial Workers Union committed a violation of the Federal Election Campaign Act of 1971, as amended, section 441b(a) and 441b(b)(4)(A)(ii) of the United States Code, in connection with its solicitation of contributions from persons outside its membership and its commingling of union treasury funds with individual voluntary contributions.

The Commission has a duty to attempt to correct such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in the United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. The Office of General Counsel will then recommend that the Commission approve the agreement. Please make your check for the civil penalty payable to the U.S. Treasury.

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Letter to Edward J. Wendel
Page Two
MUR 1035

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Beverly Brown, the staff member assigned to this matter at (202) 523-4529.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

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1. ADDRESSEE'S NAME	
Edward P. Wendel, Esq.	
2. ARTICLE DESCRIPTION	
REGISTERED MAIL	009646
3. DATE OF DELIVERY	
9/2/81	POSTMARK
4. ADDRESS (Complete only if required)	
UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION AFL-CIO, CIO 2700 STREET, N.W. WASHINGTON, D. C. 20006	
MUR 1035 OGC B. Brown	

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Active Ballot Club, A Department) MUR 1035 (79)
of United Food and Commercial)
Workers International Union)

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on March 25, 1981, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 1035:

1. Take no further action against the Active Ballot Club, a Department of United Food and Commercial Workers International Union, regarding a violation of 11 C.F.R. §103.3
2. Find probable cause to believe that the Active Ballot Club, a Department of United Food and Commercial Workers International Union, violated 2 U.S.C. §441b(b)(4)(A)(ii) by soliciting contributions to its political fund from persons other than its members and their families.
3. Find probable cause to believe that the Active Ballot Club, a Department of United Food and Commercial Workers International Union violated 2 U.S.C. §441b(a) by commingling individual voluntary contributions with union treasury funds.
4. Approve the conciliation agreement and notification letter to the Active Ballot Club, a Department of United Food and Commercial Workers International Union, as attached to the General Counsel's March 12, 1981 report in this matter.

Attest:

3/27/81
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Active Ballot Club, A Department) MUR 1035 (79)
of United Food and Commercial)
Workers International Union 1/)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On 12 December 1979, the Commission found reason to believe that the Active Ballot Club, A Department of United Food and Commercial Workers International Union ("ABC") violated 2 U.S.C. § 441b(a) by commingling voluntary and union treasury funds in its separate segregated account (Federal account) and 2 U.S.C. § 441b(b)(4)(A)(ii) by soliciting contributions from persons other than its members and their families. In addition, the Commission found reason to believe that ABC violated 11 C.F.R. § 103.3 by failing to deposit voluntary contributions into authorized accounts within 10 days of receipt.

These determinations were based upon findings made during the audit of ABC and records maintained by four

1/ On June 7, 1979, the Retail Clerks International Union and the Amalgamated Meatcutters and Butcher Workmen of North America merged to become the United Food and Commercial Workers International Union. On this same date, the Active Ballot Club, A Department of the Retail Clerks International Union (the separate segregated fund of the Retail Clerks International Union since April 17, 1972) filed an amendment to its statement of organization and changed its name to the Active Ballot Club, A Department of the United Food and Commercial Workers International Union.

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of its local unions, Locals #428 ^{2/}, #324, #1540 and #1550. ^{3/}
 The audit covered the period from January 1, 1977 through
 January 31, 1979, and was conducted pursuant to former
 2 U.S.C. § 438(a)(8) which, at the time of the audit,
 directed the Commission to make from time to time audits
 and field investigations with respect to reports and state-
 ments filed under the provisions of the Federal Election
 Campaign Act of 1971, as amended (the "Act").

On November 21, 1980, the Office of General Counsel
 notified ABC of its recommendation to the Commission to
 find probable cause to believe that ABC violated 2 U.S.C.
 §§ 441b(a) and 441b(b)(4)(A)(ii). With this notification,
 the Office of General Counsel included a brief stating the
 position of the general counsel on the factual and legal
 issues of the case. See Brief of OGC. On 10 December
 1980, ABC responded to the General Counsel's brief. See
 Brief of ABC.

This report only addresses the issues raised in ABC's
 responsive brief. For an analysis of the matters at issue

2/ Local #428 was a respondent in MUR 903 which was merged
 with this matter pursuant to the Commission's direction
 on October 24, 1979.

3/ For the period covered by the audit, ABC and Local
 #428 were registered with the Federal Election Commission
 as the separate segregated funds of the former Retail
 Clerks International Union. Locals #324, #1540 and #1550
 collected voluntary contributions at the local level
 and transmitted these funds to ABC, thus acting as
 fundraising agents for ABC.

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in addition to the matters not addressed in the responsive brief of ABC, see the brief of the General Counsel.

II. LEGAL ANALYSIS

A. Solicitation of Contributions From Retirees

2 U.S.C. § 441b(a) provides that "[i]t is unlawful... for any corporation...or any labor organization, to make a contribution or expenditure in connection with any... [federal election]." The terms "contribution or expenditure" are defined broadly to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value..." 2 U.S.C. § 441b(b)(2).

The general prohibition, however, is subject to limited exceptions. One such exception allows corporations, labor organizations, cooperatives, and corporations without capital stock to establish, administer, and solicit contributions to "separate segregated funds to be utilized for political purposes." 2 U.S.C. § 441b(b)(2)(C). These organizations may not contribute their own money to a fund to be spent for political purposes,^{4/} nor may they solicit contributions to these funds from the general public. They may solicit contributions only from limited classes connected with the soliciting organizations.

In the case of a labor organization, 2 U.S.C. § 441b(b)(4) allows solicitation of members and their families.

^{4/} See Pipefitters Local Union No. 562 v. United States, 407 U.S. 385, 428-32 (1972).

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Commission regulations at 11 C.F.R. § 114.1(e) define "member," in the case of a labor organization, as "one who currently satisfies the requirements for membership in a local, national or international labor organization."

It is with this exception that controversy arises between ABC and the general counsel. ABC admittedly solicited contributions to its political fund from retired members of the Retail Clerks International Union (the "Union"). The general counsel takes the position that retirees of the Union are not "members" within the meaning of the Act or the Commission's regulations and, that by soliciting contributions to its political fund from persons other than its members and their families, ABC has violated 2 U.S.C. § 441b(b)(4)(A)(ii). This provision states that "[i]t shall be unlawful for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families."

The general counsel's contention that retirees of the Union are not "members" is based upon an examination of the Union's Constitution. See Brief of OGC at Attachment #2. While the general counsel recognizes the existence of membership classifications which include retirees within the classifications of "Associate" or "Paid-Up Life" members, the mere existence of such classifications does not, in and of itself, necessarily presume membership within the meaning

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of the Act. The Commission has stated that membership is constituted upon the "special relationship that a member has to the organization, as evidenced by the existence of rights and obligations vis-a-vis the organization." See Advisory Opinion 1977-67.

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An examination of the rights and obligations of "Associate" or "Paid-Up Life" members and the Unions's relationship with those persons results in the general counsel's contention that retirees of the former Retail Clerks International Union are not "members" within the meaning of the Act and Commission regulations. Under the Union's Constitution, individuals classified as "Active Members" ^{5/} may "enjoy all of the rights and privileges of membership, including the right to vote at all regular or special meetings and to hold office, if otherwise qualified under Local Union bylaws and this Constitution." (emphasis added) See Brief of Office of General Counsel, Attachment #2, Section 6(A) of the Union's Constitution. Individuals classified as "Associate" or "Paid-Up Life" members are not entitled to hold office nor to a voice or vote on the floor of local meetings. See Brief of Office of General Counsel, Attachment #2, Section (B) and (C)

^{5/} "Active Member" is defined in the Union's Constitution as "a member who is employed within the jurisdiction of the International Association..." See Brief of Office General Counsel, Attachment #2, Section 5(B) of the Union's Constitution.

of the Union's Constitution. The absence of the right to vote in elections, the inability to serve as officers, and the lack of the same status as "full members" were considered "significant" factors in the Commission's determination in Advisory Opinion 1977-17 that certain individuals were not "members" within the meaning of 11 C.F.R. § 114.1(e).

ABC protests the limited interpretation that the general counsel has given the term "member." It argues that "member" is one who currently satisfies the requirements within any one classification. To the extent that an individual satisfies the requirements within a membership classification, ABC would assert that a labor organization is not barred by the Act or Commission regulations from soliciting contributions to its political fund from such individuals.

During the debates of the 1976 amendments to the Federal Election Campaign Act, Congress indicated its interest in assuring that unions would "only solicit those they represent." H.R. Rep. No. 94-917, 94th Congress, 2d Session 7 (1976). Speaking on the matter, Congressman Hansen remarked:

Every organization should be allowed to take the steps necessary for its growth and survival ...If an organization, whether it be the NAM, the AMA or the AFL-CIO believes that certain candidates pose a threat to the well-being of its members or stockholders, it should be able to get its views to those members or those stockholders. As fiduciaries for those members and stockholders, the officers of these institutions have a duty to share their informed insights on all issues affecting their institution with their constituents. Both union members and stockholders have the right to expect this expert guidance. 17 Cong. Rec H 11478.

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In the Federal Election Commission v. The National Right to Work Committee, et al., CA No. 77-2175 (D.D.C. April 24, 1980), the court held that the limited exception (as provided in 2 U.S.C. § 441b(b)(4)(A)) allowing corporations without capital stock to solicit members for contributions is not unconstitutionally vague and the limits on corporate solicitation do not violate the rights to free speech and association secured by the First Amendment. Specifically, the court found that the terms "solicit," "corporation without capital stock," "membership organization" and "member" were "sufficiently precise". Remarking on the basic meaning of the term "member," Judge Parker states

At the least, it denotes a formal relationship in which a person, whether specifically described as a member or not, has specified rights and obligations vis-a-vis an organization. In addition, "membership" assumes some right to participate in the organization's direction, as well as an obligation to help support the organization through regular financial contributions. Federal Election Commission v. The National Right to Work Committee, et al., CA No. 77-2175 (D.D.C. April 24, 1980)

To the extent that retirees of the Union have no participatory rights (i.e., are not entitled to hold office nor to a voice or vote in the affairs of the Union) nor an obligation to pay dues upon retirement, the general counsel submits that retirees of the former Retail Clerks International Union do not meet the criteria for membership within the meaning of the term. ABC rejects this argument upon the belief that "the General Counsel ignores the natural continued

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community of interest that retirees would have with a labor organization which has represented worker interests in the past, continues to represent such interests and, in many cases, continues to protect their interests in their pensions." See Brief of AbC at 4.

With reference to "a labor organization" this argument may hold merit, however, with specific reference to the Retail Clerks International Union, there is no legal basis upon which AbC can claim an obligation to represent its retirees. There is nothing in the Union's constitution which confers responsibility upon the Union to represent a retiree. Moreover, the Supreme Court has determined, in the case of the National Labor Relations Act ("NLRA"), that a union is not entitled to act as a retiree's representative for collective bargaining purposes, and in fact has no statutory duty to represent retirees. Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157. 181 n.20 (1971). The Court found that retirees do not have a "mutuality of interest" with those actively employed, but rather may often have conflicting interests. Id. at 172-73. Were the Union to bargain over pension benefits, the decision to do so would be purely gratuitous. The Union could withdraw from such practices or adopt a conflicting course of action at any time. Retirees would have no recourse nor the ability to direct the course of "representation" since they have no enforceable rights in the Union in terms of a voice in the affairs of the Union or the election of representatives.

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Based upon the foregoing, the Office of General Counsel recommends that the Commission find that retirees are not members of the Retail Clerks International Union and that there is probable cause to believe that ABC has violated 2 U.S.C. § 441b(b)(4)(A)(ii) by soliciting contributions to its political fund from persons outside its membership.

B. Transfer of Funds From NonFederal to Federal Account

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On December 12, 1979, the Commission concluded that ABC's exchange of individual voluntary contributions for a negotiable \$20,000 savings certificate purchased by the education (nonfederal) fund, and the deposit of such proceeds into its separate segregated (federal) fund, gave reason to believe that ABC violated 2 U.S.C. § 441b(a). This provision of the Act, as interpreted by the Court in Pipefitters Local Union 562 v. United States, 407 U.S. 385 (1972), prohibits a union from making contributions or expenditures in connection with federal elections except from voluntary funds kept separate and segregated.

In its responsive brief to the brief of the general counsel, ABC contends that to find a violation results from the exchange of a negotiable instrument for its exact value in cash between a federal and nonfederal account would "substantially distort the intent of the law." See ABC Brief at 8.

Indeed, ABC seems to assume that its only responsibility is to assure that its union's direct contributions

and expenditures do not exceed the voluntary money obtained for use in connection with federal elections. Congress, however, has established rules which are designed to assure that all avenues of possible abuse of the statutory scheme are closed off. As the Supreme Court has noted, one of the primary purposes of the Act is to limit both the "actuality and appearance of corruption." Buckley v. Valeo, 424 U.S. 1, 26 (1976). One of the underlying aims of the Act is to ensure that all funds that individuals contribute for use in federal election campaigns can be readily accounted for by those who examine the public record. Here, however, ABC asserts that the statute permits it to transfer such funds at will from the publicly accountable contributions fund to its union's coffer.

ABC's contention, that there is no violation where there is an even exchange of voluntary for involuntary funds, avoids the difficulty that if all the unions, corporations, trade associations, corporations without capital stock and committees subject to the Act were allowed to make such transfers, such practices:

"...would place an insuperable burden on the Government; likewise, and even more perniciously contrary to the avowed objectives of the Act, it would also place a premium on poor bookkeeping by discouraging unions from maintaining complete records of revenue. The resulting difficulty in tracing the sources of union contributions would make § 610 (U.S.C. Sec. 441b) virtually useless." United States v. Boyle, 157 U.S. App. D.C. 166, 482 F.2d 761-762 (1973).

The Act is designed to make readily available to the public the details of the use of all funds for federal

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election campaigns. Here, it was only after an audit that the Commission could determine the use of funds transferred from the political fund to the union treasury, as this transaction did not appear upon record.

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The Office of General Counsel submits that to adopt ABC's position would allow commingled corporate and union treasury funds to enter into the electoral process and would thwart the public disclosure requirements in contravention of the Act's purposes. Moreover, such a determination would be inconsistent with the Commission's position in FEC v. AFL-CIO, CA No. 77-2147 (D.D.C. June 16, 1978). As in the instant case, the Commission in FEC v. AFL-CIO challenged the union's practice of advancing individual voluntary contributions from its political (federal) fund to its education (nonfederal) fund for a return of those portions at a later time. The Commission argued that the AFL-CIO's commingling of its treasury funds with voluntary contributions made by individuals to its separate segregated fund and making of expenditures and contributions for federal elections with those funds violated 2 U.S.C. § 441b. The court upheld this construction with respect to 2 U.S.C. § 441b. See FEC v. AFL-CIO, CA No. 77-2147 (D.D.C. June 16, 1978) (order granting FEC's motion for summary judgment).

Based on the foregoing, the Office of General Counsel recommends that the Commission find probable cause to believe that ABC violated 2 U.S.C. § 441b(a).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATION

1. Take no further action against the Active Ballot Club, A Department of United Food and Commerical Workers International Union, regarding a violation of 11 C.F.R. § 103.3.

6/ The audit of ABC revealed that as a result of soliciting contributions from retirees during the period covered by the audit, ABC received approximately \$2,500. The exact amount of contributions received from retirees could not be determined since records maintained by local field operatives did not identify contributors whose \$2.00 contribution for silver card membership were solicited annually.

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2. Find probable cause to believe that the Active Ballot Club, A Department of United Food and Commercial Workers International Union, violated 2 U.S.C. § 441b(b) (4)(A)(ii) by soliciting contributions to its political fund from persons other than its members and their families.

3. Find probable cause to believe that the Active Ballot Club, A Department of United Food and Commercial Workers International Union violated 2 U.S.C. § 441b(a) by commingling individual voluntary contributions with union treasury funds.

4. Approve the attached conciliation agreement and notification letter to the Active Ballot Club, A Department of United Food and Commercial Workers International Union.

12 March 1961
Date


Charles N. Steele
General Counsel

Attachments

Conciliation Agreement
Letter to the Active Ballot Club, A Department
of the United Food and Commercial Workers
International Union

(NOTE: Incorporated by reference to this report are the)
(Briefs of the General Counsel and the Active)
(Ballot Club, copies of which have previously)
(been circulated to the Commission. Due to their)
(volume, these documents have not been attached)
(to this report.)

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

If you have any questions or suggestions for changes
in the conciliation agreement, please contact
the staff member assigned to this matter

Sincerely,

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward P. Wendel, Esquire
United Food and Commercial
Workers International Union
1775 K Street, N.W. Room 900
Washington, D.C. 20006

Charles H. Steels
General Counsel

RE: MUR 1035

Dear Mr. Wendel:

On , 1981, the Commission determined there is
probable cause to believe that the Active Ballot Club, A
Department of the United Food and Commercial Workers Union
committed a violation of the Federal Election Campaign Act
of 1971, as amended, section 441b(a) and 441b(b)(4)(A)(ii)
of the United States Code, in connection with its sollicita-
tion of contributions from persons outside its membership
and its commingling of union treasury funds with individual
voluntary contributions.

The Commission has a duty to attempt to correct such
violations for a period of thirty to ninety days by informal
methods of conference, conciliation and persuasion, and by
entering into a conciliation agreement. If we are unable
to reach an agreement during that period, the Commission
may institute civil suit in the United States District
Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that this office
is prepared to recommend to the Commission in settlement
of this matter. If you agree with the provisions of the
enclosed agreement, please sign and return it, along with
the civil penalty, to the Commission within ten days. The
Office of General Counsel will then recommend that the
Commission approve the agreement. Please make your check
for the civil penalty payable to the U.S. Treasury.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS/MARGARET CHANEY
DATE: JANUARY 7, 1981
SUBJECT: MUR 1035 - Interim Investigative Report #3,
dated 12-16-80, Signed 12-19-80; Received
in OCS 12-22-80, 11:00

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 4:00, December 22, 1980.

There were no objections to the Interim Investigative Report at the time of the deadline.

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December 22, 1980

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1035

Please have the attached Interim Invest Report
distributed to the Commission. Thank you.

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BEFORE THE FEDERAL ELECTION COMMISSION
DECEMBER 16, 1980

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In the Matter of)
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Active Ballot Club, A Department)
of United Food and Commercial)
Workers International Union)

MUR 1035 (79)

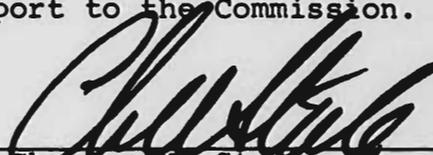
INTERIM INVESTIGATIVE REPORT #3

On November 28, 1980 the Office of General Counsel notified the Active Ballot Club that the General Counsel was prepared to recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. § 441b(b)(4)(A)(ii) and § 441b(a) had occurred with respect to two findings of the audit conducted in 1979, i.e., the solicitation of contributions from retirees of the International Union and the transfer of a \$20,000 savings certificate from the nonfederal (Education Fund) to the federal account in exchange for \$20,000 transferred from the federal to the nonfederal account.

On December 10, 1980, Mr. Edward P. Wendel, Assistant General Counsel to the United Food and Commercial Workers International Union, submitted a brief stating the position of his client on the legal and factual issues of the case, and replying to the brief of the General Counsel for the Federal Election Commission.

Upon completion of our review of this response, the Office of General Counsel will prepare a report to the Commission.

19 December 1980
Date


Charles N. Steele
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Active Ballot Club, A
Department of United Food
and Commercial Workers
International Union

MUR 1035

BRIEF FOR THE UNION

I. STATEMENT OF THE CASE

By letter dated December 13, 1979, the Active Ballot Club Department of the United Food and Commercial Workers International Union was notified that the Federal Election Commission had found reason to believe that the Active Ballot Club may have violated specified sections of the Federal Election Campaign Act and the regulations of the Commission. The Active Ballot Club responded to those allegations in a letter dated January 10, 1980. On November 28, 1980, the General Counsel of the Federal Election Commission notified the Active Ballot Club that the General Counsel was prepared to recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. § 441b(b)(A)(ii) and § 441(b)(a) had occurred with respect to two findings of the audit, i.e., the solicitation of contributions from retirees of the International Union and the transfer of a \$20,000 certificate from

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GENERAL COUNSEL

the nonfederal to the federal account in exchange for \$20,000 being transferred from the federal to the nonfederal account.

II. RESPONSE TO FINDINGS OF GENERAL COUNSEL

A. Solicitation of Contributions from Retirees.

The General Counsel takes the position that the solicitation of retirees of the Union for contributions to its political fund is a violation of 2 U.S.C. § 441b(b)(4)(a)(ii). That section prohibits a labor organization or its separate segregated fund from soliciting contributions from persons other than its members and their families. The General Counsel recognizes that, for purposes of the Federal Election Campaign Act, the Commission's own regulations define "member" as one who currently satisfies the requirements for membership in the local, national or international organization. See Section 114.1(e) of the Federal Election Commission Regulations. Moreover, the General Counsel recognizes that retirees are included in the classification of "associate" or "paid-up life" members under the International Union's Constitution (G.C. Brief, p. 8). In spite of this determination the General Counsel would find that retirees are not members because they do not have all of the same rights and obligations as active members. In support of this position, the General Counsel cites Advisory Opinion 1977-67 (G.C. Brief, p. 9). However, nowhere in that Opinion is there any indication that the FEC takes the position that there cannot be a distinction between types of members. In

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fact, an examination of that Advisory Opinion would lead to the opposite conclusion from that reached by the General Counsel. Thus the Advisory Opinion states that while the Commission found a certain group of persons to be members, it was not passing upon the question of whether any other class of persons were also members. Such a determination, it said, would rest upon a finding with regard to the rights and obligations of that class. The Commission clearly did not say that there cannot be members with different rights and obligations. In fact, the concurring opinion of Chairman Joan Aikers makes clear that the opposite is true. Chairman Aikers, in analyzing the meaning of "member," stated that Regulation § 114.1(e), which defines "member," makes it clear that one is a member if he or she is "currently satisfying the requirements for membership in a membership organization." According to Chairman Aikers, there is no ambiguity about the fact that it is the membership organization which establishes the "requirements" of membership and it is the individual who is free to seek or spurn membership on the terms offered.

With regard to Advisory Opinion 1977-17, also cited by the General Counsel, the Commission concluded that commodity representatives of the commodity exchange could not be solicited by the organization's political action committee. In that case the exchange itself admitted that the commodity representatives were not members of the exchange. The exchange then tried, but failed, to establish that these individuals had the same status as enjoyed by members.

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The General Counsel also refers to the Labor Management Reporting and Disclosure Act of 1979 for support of his position. He cites for support the provision that every member of a labor organization shall have equal rights and privileges to vote in elections or referendums and to participate in the deliberations and voting subject to reasonable rules and regulations in such organization's constitution. The fact that LMRDA may have such requirements with regard to active members does not mean that a labor union cannot have other classifications of members, such as the "associate" or "life member" classifications found in the International Constitution. The existence of such classification has never been challenged, nor have they ever been found to be in violation of LMRDA. In addition, there is no basis for applying the LMRDA definition of membership to the Federal Election Campaign Act. Finally, the General Counsel ignores the natural continued community of interest that retirees would have with a labor organization which has represented worker interests in the past, continues to represent such interests and, in many cases, continues to protect their interests in their pensions.

Thus, the position of the General Counsel with regard to the solicitation of retirees is not only contrary to the regulations of the FEC, which specifically states that a "member" is one who satisfies the union's requirements for that classification, but is contrary to the limited interpretation the Commission has given that regulation.

B. Transfer of Funds from Nonfederal to Federal Accounts.

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The General Counsel takes the position that the Active Ballot Club has violated 2 U.S.C. § 441b(a) as a result of its negotiating a savings certificate purchased by the education (nonfederal) fund and depositing its proceeds into its separate segregated (federal) fund. Section 441b(a) of the statute prohibits using treasury funds in connection with federal elections. The facts in this situation are as follows. A \$20,000 savings certificate was purchased by the nonfederal education account on May 25, 1973. The certificate contained a condition that there would be a 90-day interest penalty if cashed at a time other than the anniversary date. In December, 1976, the nonfederal account did not have enough money on deposit in its passbook account to meet its obligations and, rather than be penalized for cashing the certificate at a time other than the anniversary date, the certificate was sold to the federal account for the \$20,000 face value. In return, a check of \$20,000 was drawn at that time by the federal account to the nonfederal account. Prior to the December 30, 1976 date of the transaction, all interest earned on the certificate was paid to the nonfederal account and after that date the interest was paid to the federal account. On the basis of these facts, the General Counsel would conclude that once the certificate is negotiated by the federal account, there has been an unlawful commingling of "involuntary" or treasury funds in the account of the separate segregated fund.

It is difficult to believe that the designers of the law ever intended the reading suggested by the General Counsel. The intent of the law was clearly to prevent commingling of funds and the resulting use of treasury money in federal elections. To say that the exchange of a negotiable instrument for its exact value in cash between a federal and nonfederal account has somehow resulted in the use of treasury money for election purposes is not only going beyond the statute, but has nothing to do with the purpose of the law. Not a cent more than the \$20,000 already in the federal account was added to that account as a result of this exchange. It is again important to note that the interest on the certificate went to the nonfederal account prior to the exchange and to the federal account after the exchange, clearly showing that the certificate was not retained by the nonfederal account.

One of the cases cited by the General Counsel shows the type of acts which the designers of the law in fact intended to make unlawful. Thus, U.S. v. Boyle, 482 F.2d 755 (C.A.D.C., 1973), cert. denied, 414 U.S. 1076 (1973), involved the transfer of money from the union treasury to the political fund of the union, which then made contributions to federal campaigns. The court found that these contributions were illegal as they were made from treasury money, which was composed predominately of dues, assessments and other involuntary funds, and that the union had made no effort to segregate these funds from funds that might legally be contributed to political campaigns.

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Also, there was no evidence that the funds used for political purposes came from any source other than the general treasury. U.S. v. Boyle, supra, 482 F.2d at 759, n. 5. At footnote 12 of his brief the General Counsel quotes from U.S. v. Boyle, supra, to support his argument. However, that quote is incomplete and distorts the meaning of the court. The full quote of the court is as follows:

If "voluntary" and "involuntary" funds are commingled and then a portion is expended for political purposes, it is impossible to tell whether the "voluntary" or the "involuntary" money is being expended. One can only assume that a proportionate share of each is being spent. Thus Congress in prohibiting expenditures from a union general treasury simply acted on the principle that expenditures from commingled funds will be presumed to consist of proportionate shares of the different types of money. For this reason it was irrelevant that the Government was unable to show the source of a small portion of the money in the League treasury. A substantial, or huge, portion of the money in the League treasury was "involuntary" at the time of the contribution. This "involuntary" portion may be presumed to be a part of each expenditure from the commingled funds.

U.S. v. Boyle, supra, 482 F.2d at 761, n. 16. The underlined portions of the quote were omitted in the brief of the General Counsel. A reading of the full footnote makes clear that what the court was rightfully concerned about was the commingling of treasury (involuntary) and nontreasury (voluntary) money so that a portion of the treasury money is actually being spent by the contribution. The present case is not similar to that situation. It is difficult to see how it can be argued in the present case that treasury money has been expended by a contribution when there are actually two separate accounts and the

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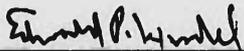
amount of money in either account was not changed one cent by the sale of the certificate.

The General Counsel also cites Pipefitters Local Union 562 v. United States, 407 U.S. 385, 92 S.Ct. 2247 (1972), to support his position. What was involved in that case was the mixing of voluntary and involuntary money and the actual expenditure of both types of money for political purposes. There is nothing in that case that deals with a situation that is analogous to the instant one, where treasury money is transferred to a segregated account and an amount exactly equal in dollars and cents is transferred from the segregated account to the treasury account. It is submitted that to find that the transaction in this case amounted to an expenditure from the general union treasury for political purposes would substantially distort the intent of the law.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Commission should not find probable cause to believe that the Active Ballot Club violated either 2 U.S.C. § 441b(b)(4)(a)(ii) or 2 U.S.C. § 441b(a).

Respectfully submitted,



Edward P. Wendel
Assistant General Counsel
United Food and Commercial
Workers International Union
1775 K Street, N. W., Room 900
Washington, D. C. 20006

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FROM

**UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION**

1775 K STREET, N.W.
WASHINGTON, D.C. 20006

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FOR

Charles N. Steele, General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 21, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward P. Wendel, Assistant General Counsel
Active Ballot Club,
A Department of United Food and
Commercial Workers International Union
1775 K Street, N.W.
Washington, D.C. 20006

RE: MUR 1035

Dear Mr. Wendel:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 12, 1979, found reason to believe that the Active Ballot Club, A Department of United Food and Commercial Workers International Union may have violated 11 C.F.R. § 103.3 and sections 441b(a) and 441b(b)(4)(A)(ii) of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. § 441b(b)(A)(ii) and § 441b(a) has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

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Letter to Edward E. Wendel
Page Two
MUR 1035

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement. This does not preclude settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions, please contact Beverly Brown at 202/523-4529.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
Brief

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Complete items 1, 2, and 3.
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*Edward F. Wendel
Assistant General Counsel
Active Ballot Club*

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1775 K STREET, N. W.
WASHINGTON, D. C. 20006**

INITIALS: _____

MUR 1035 OGC B. BROWN



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
COMMUNICATIONS SECTION

80 NOV 21 P 1: 39

November 21, 1980

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel *CS*

SUBJECT: MUR 1035

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe was mailed on November 21, 1980. Following receipt of the Respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments

Brief
Letter to Respondent

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November 21, 1980

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1035

Please have the attached Memo and Brief distributed to
the Commission for their information. Thank you.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Active Ballot Club, A) MUR 1035
Department of United Food)
and Commercial Workers)
International Union 1/)

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

On December 12, 1979, the Commission found reason to believe that the Active Ballot Club, A Department of United Food and Commercial Workers International Union ("ABC") violated 2 U.S.C. § 441b(a) by commingling voluntary and union treasury funds in its separate segregated account (Federal account) and 2 U.S.C. § 441b (b)(4)(A) (ii) by soliciting contributions from persons other than its members and their families. In addition, the Commission found reason to believe that the ABC violated 11 C.F.R. § 103.3 by failing to deposit voluntary contributions into authorized accounts within ten (10) days of receipt.

These determinations were based upon findings made during the audit of the ABC and records maintained by four of its local

1/ On June 7, 1979, the Retail Clerks International Union and the Amalgamated Meatcutters and Butcher Workmen of North America merged to become the United Food and Commercial Workers International Union. On this same date, the Active Ballot Club, A Department of Retail Clerks International Union (the separate segregated fund of the Retail Clerks International Union since April 17, 1972) filed an amendment to its statement of organization and changed its name to the Active Ballot Club, A Department of United Food and Commercial Workers International Union.

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unions, Locals #428, ^{2/} #324, #1540 and #1550. ^{3/} The audit covered the period from January 1, 1977 through January 31, 1979 (the final coverage date of the most recent report filed by the ABC at the time of the audit) and was conducted pursuant to Section 438(a)(8) of Title 2 of the United States Code which, at the time of the audit, directed the Commission to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the Federal Election Campaign Act of 1971, as amended (the "Act").

II. Factual Basis and Legal Analysis

Receipt of Funds Transmitted by Union Accounts

2 U.S.C. § 441b(a) prohibits contributions or expenditures by labor organizations in connection with federal elections. However, pursuant to 2 U.S.C. § 441b(b)(2)(C), a political committee established and maintained by a labor organization may solicit voluntary contributions from individual members of the union and deposit them in a "separate segregated fund to be utilized for political purposes by" the union.

11 C.F.R. § 103.3 makes mandatory the deposit of voluntary contributions into the separate segregated account of a political committee within ten (10) days of the treasurer's receipt thereof.

^{2/} Local #428 was a respondent in MUR #903 which was merged with this matter pursuant to the Commission's determination on October 24, 1979.

^{3/} For the period covered by the audit, the ABC and Local #428 were registered with the Federal Election Commission as the separate segregated funds of the former Retail Clerks International Union. Locals #324, #1540 and #1550 collected voluntary contributions at the local level and transmitted these funds to the ABC, thus acting as fundraising agents for the ABC.

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An audit of ABC's records for the period January 1, 1977 through January 31, 1979 revealed that ABC locals #428, #1540, #324^{4/} and #1550 regularly deposited voluntary contributions directly to their local operating accounts (containing union dues and fees) before transmitting these contributions to ABC's authorized campaign depository. Voluntary contributions were held in the locals' operating accounts approximately 6 to 210 days before being transferred to the ABC to be deposited into its authorized campaign depository. Based upon these findings the Commission determined, on December 12, 1979, that the ABC violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 103.3.

On January 10, 1980, Mr. Edward P. Wendel, Assistant General Counsel for the United Food and Commercial Workers, responded to the Commission's notification of reason to believe that ABC had violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 103.3 (See Attachment #1). In response to these charges, Mr. Wendel offered the following explanation:

"The practice has always been to advise local unions that political contributions should be placed in accounts designated for political contributions only and separate from their operating accounts (Attachment A p.2; B). The only instance in which it has been suggested to me that this might not be done immediately is where members are on payroll deduction with their employer for both union dues and political contributions, in which case the amount designated as a political contribution would then have to be transferred from the operating to the separate political account." Attachment #1 at 1.

4/ Local #324 deposited contributions into its operating account (containing union dues and fees) and later transmitted these funds to its Active Ballot Club Account (maintained for contributions to the ABC). Generally, upon receipt into Local #324's Active Ballot Club account, the value of the voluntary contributions were forwarded via check drawn on that account to the ABC.

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The above response reveals that the deposit of funds into union treasuries (operating accounts) was made for purposes of negotiating employers checks for combined dues and voluntary contributions collected through a check-off plan. In view of this response, the Office of General Counsel submits the following legal analysis.

In Advisory Opinions 1978-42 and 1978-98 (issued on September 19, 1978 and January 16, 1979 respectively) the Commission addressed the issue of how to negotiate checks for combined dues and voluntary contributions collected through check-off plans. Therein, the Commission determined that since it is necessary to accomplish the required separation and segregation of federal (voluntary) funds and non-federal funds (involuntary), clearing accounts or non-federal accounts (corporate or union) may be used for the deposit and negotiation of checks from employers for combined dues and voluntary contributions. However, in issuing these opinions, the Commission conditioned its approval on the assumption that voluntary funds would be deposited into a separate segregated account within ten (10) days of receipt by the treasurer or agent thereof (See attached Advisory Opinions 1978-42 and 1978-98). The justification for this ten day deposit requirement appears to have followed the same justification given to Section 103.3 of the Commission's regulations which were promulgated on April 13, 1977.^{5/}

5/ "The 10 day deposit requirement was designed to encourage the prompt disposition of contributions rather than permit 'stale' checks to be kept lying around or lost. In addition, some large campaigns have used the date of deposit as the date for receipt for reporting purposes. The 10-day requirement would mean reported receipt dates would be close to the actual receipt." (Explanation and Justification of Regulations Prescribed by the Federal Election Commission April 13, 1977; July 1978)

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Subsequent to the issuance of these opinions, the Commission prescribed regulations which would permit contributions collected through check-off plans to be deposited into non-federal accounts (See Section 102.6 of the Commission's Regulations promulgated April, 1980). In addition, the Commission prescribed regulations which would impose the duty on every person receiving contributions for authorized political committees to forward contributions to the treasurer of the political committee within ten (10) days if in excess of \$50 or thirty (30) days if in the amount of \$50 or less. (See Section 102.8 of the Commission's Regulations promulgated April, 1980).

In light of the fact that the Commission's Regulations as revised in April of 1980 were not in effect during the period covered by the audit (January 1, 1977 - January 31, 1979), and that neither the Act as amended in 1976 (Pub. L. No. 96-283) nor the Commission's Regulations (promulgated April 1977) specifically addressed the issue of negotiating checks for combined dues and voluntary contributions collected through a check-off plan, the Office of General Counsel recommends that the Commission take no further action regarding violations of 2 U.S.C. § 441b(a) and 11 C.F.R. § 103.3 in this matter. Since the Commission later acknowledged the necessity and practicality of methods similarly used by the ABC locals to negotiate checks for combined dues and voluntary contributions collected through check-off plans, it appears that the Locals of ABC acted in good faith to comply with the Act as amended in 1976.

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Solicitation of Non-Members

2 U.S.C. § 441b(b)(4)(A)(ii) prohibits a labor organization or its separate segregated fund from soliciting contributions from persons other than its members and their families. Section 114.1(e) of the Commission's Regulations defines "member", in the case of a labor organization, as one who "currently satisfies the requirements for membership in the local, national or international organization."

An audit of ABC's Century Club records ^{6/} disclosed the receipt of \$6,700 in contributions from 35 individuals who did not appear to be members of the union. These non-members consisted of the following:

- a) Self-employed attorneys on retainer by locals:
- b) Individuals not directly associated with the union, such as insurance agents, certified public accountants, and others who had business with the ABC;
- c) Staff personnel, such as salaried attorneys and salaried executives; and
- d) Retirees, who according to the union's constitution may attain Associated or Paid-up Life membership, but have no voice or vote concerning union matters.

Additionally, it was revealed through discussion with local officials that contributions to ABC were received through the sale of ABC Silver Cards ^{7/} to retirees and the general public. ^{8/}

^{6/} A contribution of \$100 to the ABC admits the contributor to ABC's Century Club.

^{7/} Contributions of \$2.00 each are received through the sale of Silver Cards.

^{8/} The total amount collected as a result of sales of this nature could not be determined since the records maintained by the locals did not contain this information.

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On December 12, 1980, the Commission found reason to believe that the ABC violated 2 U.S.C. § 441b(b)(4)(A)(ii) by soliciting contributions to its political fund from persons other than its members and their families. In reply to the Commission's notification of this determination, Mr. Wendel states the following:

"[A]s to the solicitation of contributions to the ABC, it has been the policy of the Active Ballot Club to accept contributions from non-members, but to make solicitations only to members and their families. Union retirees have always been considered to be members of the Union, even if they are no longer active members." Attachment #1 at 2.

Based upon the information provided in this response, it will be necessary to submit separate analyses with respect to the solicitation of retirees and the acceptance of contributions from non-members.

a) Acceptance of Contributions from Non-Members

In Advisory Opinion 1979-50 (attached) the Commission stated that a separate segregated fund of a labor organization is not barred by the Act or Regulations from accepting unsolicited contributions from non-members. Mr. Wendel maintains that the ABC has an established policy with regard to solicitations which is consistent with the Commission's statement on this matter. In the absence of evidence to sustain a finding that the ABC did not act in accordance with its established policy, but solicited contributions from non-members, the Office of General Counsel recommends that the Commission take no further action in this matter.

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b) Solicitation of Contributions from Retirees

ABC admits to having solicited retirees as well as actively employed members of the former Retail Clerks International Association (RCIA) for contributions to its political fund. In determining whether or not the ABC has violated 2 U.S.C. § 441b(b)(4)(A)(ii), it must first be determined whether or not retirees are members of its union for purposes of the Act.

Section 114.1(e) of the Commission's Regulations defines "member", in the case of a labor organization, as one who "currently satisfies the requirements for membership in the local, national, or international organization." The Constitution of the Retail Clerks International Association ("the constitution") (See Attachment #2) includes within its membership classifications, retirees who are referred to as "Associate Members" or "Paid-Up Life Members". By definition, "Associate Members" are "active members who have become permanently disabled or completely retired from employment within the jurisdiction of the Retail Clerks International Association, who are not otherwise gainfully employed, and who have been members in good standing ^{9/} in the Local Union for a period of not less than five years immediately prior to such retirement or permanent disability." Section 5(C) at 3. "Paid-Up Life Members" are "members who have maintained 15 years' more continuous membership in good standing in the International

9/ "Members in good standing" refers to members who are not more than two calendar months in arrears for dues and not under sentence of suspension or expulsion under the provisions of the constitution. Section 6 at 4.

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Association and who shall not be working within the jurisdiction of the International Association." Section 5(D) at 3.

The Commission has stated that the solicitation of political contributions from members is based on the special relationship a member has to the organization, as evidenced "by the rights and obligations vis a vis the [organization]." Advisory Opinion 1977-67 at 5 (attached). In reviewing the rights and obligations of former RCIA members as provided in the constitution, it appears that retirees are not entitled to all such rights and obligations. Whereas it is set forth in Section 6(A) of the constitution that active members may "enjoy all of the rights and privileges of membership, including the right to vote at all regular or special meetings and to hold office, if otherwise qualified under Local Union bylaws and this Constitution," retirees are not entitled to hold office nor to a voice or vote on the floor of local meetings. Section 6(B) and (C). Further, Section 41 of the constitution states that "no retired officer or employee of the International Association or its Local Unions shall perform any service for the Union or represent them in any capacity upon temporary assignment after due authorization and in a capacity not involving duties of a continuing nature." Also under this section, retirees may not have a voice or vote in the affairs of the International Association or its local unions.

The Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §401 et seq. provides that "[e]very member of a labor organization shall have equal rights and privileges...to vote in elections or referendums of the labor organization...and to participate in the deliberations and voting...subject to reasonable rules

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and regulations in such organization's constitution and bylaws." 29 U.S.C. § 411(a)(1). Under such a standard the rights and privileges of RCIA retirees are unequal to the rights and privileges of its active members. Therefore, it follows that RCIA retirees do not have real membership status in the organization.

In Advisory Opinion 1977-17 (attached), the Commission determined that representatives of a commodity exchange could not be solicited by that organization's political action committee since the representatives in question "[did] not have the same status within the Exchange as is enjoyed by full members." This determination was based upon some of the same factors being considered in the matter before us. Representatives of the commodity exchange did not have the right to vote nor the capacity to serve as officers. Similarly, retirees of the RCIA are not entitled to hold office nor to a voice or vote in the affairs of the International Association or its Local Unions.

In light of the foregoing facts, the Office of General Counsel recommends the Commission find that retirees are not members of the RCIA and that there is probable cause to believe that the ABC violated 2 U.S.C. § 441b(b)(4)(A)(ii) by soliciting contributions from persons outside its membership.

Transfer of Fund From Non-Federal to Federal Accounts

2 U.S.C. § 441b(a) prohibits a labor organization from making "a contribution...in connection with any" federal election. For purposes of this section, the term "contribution" includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any... political party or organization in connection with any election"

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to federal office. Specifically excepted, however, are the costs incurred for the establishment, administration and solicitation of contributions to a separate segregated fund utilized for political purposes by a labor organization. 2 U.S.C. § 441b(b) (2)(C). Voluntary funds received required to be kept separate and segregated from monies secured by dues, fees or other monies required as a condition of membership in a labor organization. Therefore, it is impermissible to deposit or transfer any union treasury funds to a separate segregated account. ^{10/}

An audit of ABC's records revealed the following with respect to a violation of 2 U.S.C. § 441b(a):

- a) a \$20,000 savings certificate was purchased by a non-federal account on May 25, 1973, with terms of 5 3/4% annual interest paid quarterly, one year maturity containing an automatic renewal, and a ninety day interest penalty if cashed at a time other than the anniversary date. The certificate was sold by the non-federal account at the \$20,000 face value on December 30, 1976, cashed on June 2, 1978, with the proceeds deposited into the federal account.

With reference to the above transaction, Mr. Wendel states that in December, 1976, the non-federal account did not have enough money on deposit in its passbook to meet its obligations. Rather than be penalized for cashing the certificate prior to its anniversary date, ^{11/} the certificate was sold to the federal account at the \$20,000 face value. According to Mr. Wendel, prior to December 30, 1976, all interest earned on the certificate was paid to the non-federal account and after that date the interest was paid to the federal account. Attachment #1 at 2.

^{10/} See Pipefitters Local Union 562 v. United States, 407 U.S. 385, 92 S.Ct. 2247(1972).

^{11/} The auditors determined that interest forfeiture for early withdrawal would have been approximately \$287.50.

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The clear intent of 2 U.S.C. § 441b(a) as evidenced in the legislative history and interpreted by the Supreme Court, is to permit expenditures from separate segregated funds if the contributions to it were, in truth, voluntary, and to prohibit expenditures from a union's general treasury. If able to prove that the source of the funds directed to a political contribution is the general treasury, derived in part from dues and assessments, this is all that need be established on the question of voluntary and involuntary contributions.^{12/}

The question in this case is whether the transfer of the certificate from the labor organization to the separate segregated fund was a transfer of "involuntary" funds commingled with "voluntary" funds in violation of 2 U.S.C. § 441b(a). To derive any conclusion in this matter, we must first determine the nature of a savings certificate (i.e., certificate of deposit).

A certificate of deposit (i.e., savings certificate) is "an acknowledgment by a bank of the receipt of money with an engagement to repay it." UCC § 3-104(2)(C) (1976 ed.). "The obligation assumed by a bank which issues a negotiable certificate of deposit is to pay the fund represented by the instrument to the lawful holder of the certificate, whoever he may happen to be, and not necessarily to repay the amount deposited to the depositor." 10 AM.JUR. 2d Banks § 459 (1963).

^{12/} "If 'voluntary' funds and 'involuntary' funds are commingled and then a portion is expended for political purposes, it will be presumed that expenditures from commingled funds consisted of proportionate shares of the different types of money..." U.S. v. Boyle, 432 F. 2d 755, 155 U.S. App. D.C. 166, cert. denied 414 U.S. 1076 (1973).

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In this case the source of funds directed to the savings certificate was the union's education fund (containing dues and assessments). The conversion of these funds into a negotiable savings certificate for investment purposes does not change the source of funds which have been directed to it since, for purpose of the Act, the term "contribution" includes a payment of "money" and the term "money" includes "currency of the United States or any foreign nation, checks, money orders, or any negotiable instrument payable on demand." 11 C.F.R. § 100.7(a)(1)(ii) (emphasis added). Thus, the savings certificate represents funds from the non-federal account of the labor organization, and once the certificate is negotiated by the separate segregated fund, there has been an unlawful commingling of "involuntary" or treasury funds in the account of the separate segregated fund.

In light of the fact that the ABC negotiated the savings certificate (purchased by the education fund) and deposited its proceeds into its separate segregated fund (utilized for political purposes), it appears that the ABC has violated 2 U.S.C. § 441b(a) by accepting "involuntary" or treasury funds for use in connection with federal elections. While as a practical matter we recognize that the ABC exchanged voluntary funds for treasury funds in the purchase of the savings certificate at its face value, thereby benefiting the union only to the extent that a loss of interest was saved, the act of negotiating the certificate and commingling union treasury funds with voluntary funds in the separate segregated fund of ABC violated 2 U.S.C. § 441b(a) and thus we recommend that the Commission find probable cause to believe the ABC has violated this provision of the Act.

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In addition to the above-referenced transaction, an audit of ABC's records revealed that a \$3,000 transfer was made from Local #428 Active Ballot Club Federal Account (separate segregated account) to the International's Federal Account (separate segregated account). On approximately the same date, an identical amount was transferred from the International's Education fund (containing dues and fees) to Local #428 Active Ballot Club Federal Account.

With respect to this transaction, Mr. Wendel states "In accord with past practice, this amount was intended for expenditure by the Local 428 non-federal account. The January 27, 1976, letter from the International to the Local Unions pointed out that "[s]uch funds (soft money) cannot be contributed directly or indirectly in any federal election..." (Attachment A)." Attachment #1 at 2.

In light of evidence which indicates that the ABC made efforts to advise local unions against commingling involuntary funds with voluntary funds (maintained in a separate segregated account), in violation of 2 U.S.C. § 441b(a), the Office of General Counsel recommends that the Commission take no further action in this matter.

Recommendations

1. Take no further action regarding violations of 2 U.S.C. § 441b(a) and 11 C.F.R. § 103.3 in the matter concerning the delayed transmittal of funds from local operating accounts (containing dues and fees) to the separate segregated account of the ABC subsequent to the negotiation of checks for combined dues and contributions collected through a check-off plan.

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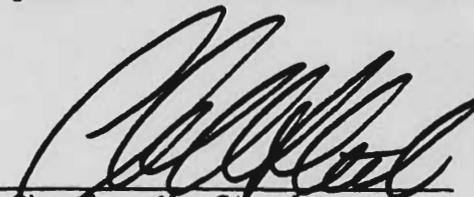
2. Take no further action in the matter concerning the ABC's acceptance of unsolicited contributions from persons other than union members and their families.

3. Find probable cause to believe that the ABC violated 2 U.S.C. § 441b(b)(4)(A)(ii) in the act of soliciting contributions from retired members of the union who, for purposes of the Act, are not considered "members" of the union.

4. Find probable cause to believe that the ABC violated 2 U.S.C. § 441b(a) in the act of negotiating a savings certificate and commingling union treasury funds with voluntary funds maintained in the separate segregated fund of the ABC.

5. Take no further action regarding a violation of 2 U.S.C. § 441b(a) in the matter concerning the transmittal of union treasury funds to the separate segregated fund of Local #428 Active Ballot Club.

20 November 1980
Date


Charles N. Steele
General Counsel

Enclosures

- Attachment #1
- Attachment #2
- Advisory Opinion 78-42
- Advisory Opinion 78-98
- Advisory Opinion 79-50
- Advisory Opinion 77-67
- Advisory Opinion 77-17

81040302441

UFCW
United Food & Commercial Workers
International Union, AFL-CIO & CLC
1775 K Street, N.W.
Washington, D.C. 20006
(202) 223-3111

January 10, 1980

ATTACHMENT #1

Miriam Aguiar, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 1035

Dear Ms. Aguiar:

8 1 0 4 0 3 0 2 4 4 2
The following is prepared in response to the letter of December 13, 1979, from General Counsel Charles Steele regarding possible violation of the Federal Election Campaign Act by the Active Ballot Club, a department of the United Food and Commercial Workers International Union. This response is based on my understanding, as concluded from that letter, of what is alleged as potential violations and from my discussions with various persons in our Accounting and Active Ballot Club Departments in this regard. Upon your review of this letter, I would be happy to meet with you or anyone else from the Commission to provide more specific or additional information which might settle this matter.

First, let me respond to the statements that "it appears ABC locals first deposit voluntary contributions to operating accounts before transferring these funds to ABC's separate segregated account, thereby commingling voluntary contributions with union treasury funds" and "it appears that voluntary contributions were held in local operating accounts more than 10 days before being transferred to ABC to be deposited in its authorized campaign depository" The practice has always been to advise Local Unions that political contributions should be placed in accounts designated for political contributions only and separate from their operating accounts (Attachments A, p.2; B). The only instance in which it has been suggested to me that this might not be done immediately is where members are on payroll deduction with their employer for both union dues and political contributions,

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William H. Wynn
International
President

Sam Talarico
International
Secretary-Treasurer

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
JAN 10 1980

Miriam Aguiar, Esquire

January 10, 1980

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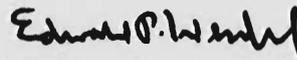
in which case the amount designated as a political contribution would then have to be transferred from the operating to the separate political account.-

As to the \$20,000 savings certificate, as noted in Mr. Steele's letter, this was purchased by the non-federal account (i.e., the ABC Education Fund) on May 25, 1973, with a condition that there would be a 90-day interest penalty if cashed at a time other than the anniversary date. In December, 1976, the non-federal account did not have enough money on deposit in its passbook account to meet its obligations, and rather than be penalized for cashing the certificate at a time other than the anniversary date, the certificate was sold to the federal account at the \$20,000 face value. At that time, a check of \$20,000 was drawn by the federal account to the non-federal account. Prior to December 30, 1976, all interest earned on the certificate was paid to the non-federal account and after that date the interest was paid to the federal account.

With regard to the transfer involving Local 428, \$3,000 was transferred from the Local 428 Active Ballot Club federal account to the International Active Ballot Club federal account. At approximately the same time, \$3,000 was transferred from the International non-federal (i.e., Education Fund) account to Local 428 (Attachment C). In accord with past practice, this amount was intended for expenditure by the Local 428 non-federal account. The January 27, 1976, letter from the International to the Local Unions pointed out that "[s]uch funds (soft money) cannot be contributed directly or indirectly in any federal election" (Attachment A).

Finally, as to the solicitation of contributions to ABC, it has been the policy of the Active Ballot Club to accept contributions from non-members, but to make solicitations only to members and their families. Union retirees have always been considered to be members of the Union, even if they are no longer active members.

Sincerely,



Edward P. Wendel
Assistant General Counsel

Attachments

EPW:kl

81040302443

Retail
Clerks
International
Association

E 9p21

January 27, 1976

To: All Local Unions, District Councils and
International Representatives

Re: Accounting Procedures for Active Ballot Club Funds

For your personal protection, we are reiterating a few procedures relative to Active Ballot Club funds. We cannot overstate the importance of these points to you personally, for violation of the Federal Election Campaign Laws can cause very unpleasant consequences.

A key to the proper handling of ABC funds is an acute awareness of the differences between ABC General Funds ("hard" money; individual, volunteer contributions; Silver Card money) and ABC Educational Funds (treasury money; "soft" money; funds made up of dues, fees and other union revenue).

The Active Ballot Club funds have two primary sources of revenue: (1) Revenue for the Educational Fund is derived from enrollment fees of \$1.00 per each Local Union member per year paid out of the Local Union treasury. Such funds (soft money) cannot be contributed directly or indirectly in any federal elections, but may be contributed in most State elections. It may be used for nonpartisan registration, get-out-the-vote and political education programs and, further, it may be used to finance partisan activities directed at union members. (2) The General Fund is derived from enrollment fees of \$2.00 per person voluntarily contributed on an individual basis. These funds (hard money) may be contributed to federal candidates and to non-federal candidates (but soft money should be used for non-federal candidates where permitted by State law).

Because of the legal restrictions pertaining to the use of a labor organization's funds for political purposes, the following accounting procedures are to be followed by Local Active Ballot Clubs.

James T. Houswright
International
President

Peter L. Hall
International
Secy.-Treas.

Affiliated with
AFL-CIO & CLC

Sulridge Building
1775 K Street, N.W.
Washington, D.C. 20006
Phone (202) 273-6111

ATTACHMENT A

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(1) SEPARATE ACCOUNTING: Separate accounting of receipts and disbursements must be maintained with respect to the "Education Fund" and the "General Fund." This separate accounting applies not only to the enrollment fees and expenditures of these separate funds, but to any interest, dividends, or other investment returns of such funds. These funds shall not be commingled.

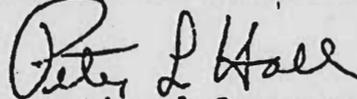
(2) SEPARATE CHECKING/SAVINGS ACCOUNTS: For your further protection, you should use separate checking accounts and checks for disbursing these funds. We strongly advise that the formats of the two sets of checks be different in design and color and, of course, they should clearly identify each fund—Education or General.

The rules we have outlined are demanding. We have restated them, perhaps repetitiously, for your legal protection, as well as ours. There are some who hope that these requirements will be so burdensome that they will cause us to drop out of politics altogether. Their next goal would be to have us drop out, period. We do not intend to grant their wishes.

If you should have any question relative to the above procedure, please contact us.

With sincere and kind personal regards, I remain

Sincerely and fraternally,



International Secretary-Treasurer

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Retail
Clerks
International
Association

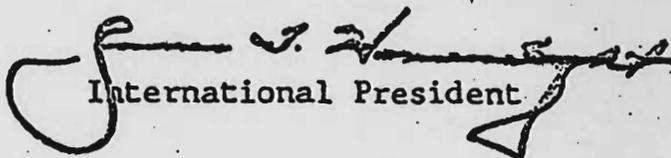
August 24, 1973

To All International Directors and
Local Union Chief Executive Officers

Enclosed is a memorandum from the Legal Department emphasizing the continued importance of maintaining strict segregation of "hard" money (Silver Card and Century Club enrollments) from all other union funds.

As the memorandum indicates, the conviction of W. A. (Tony) Boyle of the UMW is a compelling reminder that the failure to maintain a strict segregation of funds used in federal elections is a criminal offense for which the responsible officers bear a personal liability.

Sincerely and fraternally,


International President

Enclosure

81040302446

James T. Howenight
International
President

William W. Moore
International
Secretary

Affiliated with
AFL-CIO & CLC

Suffridge Building
1775 K Street, N.W.
Washington, D.C. 20008
Phone: (202) 331-2111

ATTACHMENT B

M E M O R A N D U M

TO: President James T. Housewright
 FROM: Carl L. Taylor, General Counsel *CLT*
 DATE: August 16, 1973
 SUBJECT: Federal Election Campaign Act - Segregation of Hard Money

The criminal conviction of W. A. Boyle, recently affirmed on appeal, for using Mine Workers' general treasury funds in federal campaigns, is a compelling reminder of the need to maintain a strict segregation of "hard" money (Silver Card and Century Club enrollments) from all other union funds.

Boyle argued on appeal that political expenditures from general treasury accounts were permissible so long as there were sufficient funds in the general treasury from non-dues sources to cover the contributions. The Court of Appeals categorically rejected that argument, holding that the clear intent of federal law was to "prohibit expenditures from a union's general treasury" from whatever source derived.

The court warned that voluntary funds lose their status if comingled in any way with other union money. There must be "strict segregation" of hard money, including separate accounts and separate record keeping.

The citation of the Court of Appeals' decision is United States v. Boyle, ___ F.2d ___ (D.C.Cir. No. 72-1749, July 16, 1973). The full text of the decision may be found in Bureau of National Affairs, Daily Labor Report No. 137, July 17, 1973, at p. E-1.

CLT:kl
 cc: President's File

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*Acct. ABC
51602*

ACTIVE BALLOT CLUB
EDUCATION FUND

5047

15-7
511

1775 K Street, N.W., Washington, D. C. October 2, 1978

Pay to the order of R.C.I.U. Local No. 428 Active Ballot Club \$ 9,000.00

~~ACTIVE~~ 3000

THE NATIONAL BANK OF WASHINGTON
WASHINGTON, D. C.

By _____

By _____

[Signature]
PRESIDENT
[Signature]
SECRETARY-TREASURER

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RCIU Local 428 Active Ballot clb.
Deposit account #51602

RETAIL EMPLOYEES LOCAL 428
CREDIT UNION
240 SO. MARKET STREET
SAN JOSE, CALIFORNIA 95113

RECEIVED
FINANCIAL PLUFF
OCT 30 1977
FIRST NATIONAL BANK
SAN JOSE, CALIFORNIA
95-77

50456 2000

810302449

Retail Clerks International Association

James T. Housewright
International President
William H. Wynn
International Secretary-Treasurer

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...page are in
...for the Constitution
...

Constitution

As amended and revised
at the 26th Convention
held at Honolulu, Hawaii,
July 24-28 inclusive, 1972,
including
changes adopted by the
International Executive Board
pursuant to authority
delegated by such convention.

Affiliated with
American Federation of Labor and
Congress of Industrial Organizations
Canadian Labour Congress
Food and Beverage Trades
Department, AFL-CIO
Union Label and Service Trades
Department, AFL-CIO
Union Label Trades Department, Canada
Maritime Trades Department, AFL-CIO
Council of AFL-CIO Unions
for Professional Employees
International Federation of Commercial,
Clerical and Technical Employees
(Offices in Geneva)

Preamble

WHEREAS: The organization of workers into trade unions has been demonstrated to be, and is, essential to the economic, social, and political freedom of society and to the successful functioning of a democracy of, for, and by the people free from dictatorship, to the end that men and women shall live and work without discrimination or exploitation; and,

WHEREAS: The history of the workers in our jurisdiction throughout the world has been but the record of constant struggle against oppression; and,

WHEREAS: These troubles have arisen almost entirely from lack of unity and confidence in each other as workers, and misunderstanding the true causes of oppression; and,

WHEREAS: Unity guided by intelligence is a source of strength that can withstand all attacks, and that, without intelligent organization, we cannot acquire the discipline which enables us to act together, concentrate our strength, and direct our efforts towards the desired end, and also acquire the patience which enables us to wait for the results; and,

WHEREAS: Under prevailing economic conditions, developed with the aid of the governmental authority for owners of property to organize in the corporate and other forms of ownership associations, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment; and,

WHEREAS: It is necessary that he have full freedom of association, self-organization, and designation of representation of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers or their agents in the designation of such representatives, or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

THEREFORE: For the purpose of promoting such unity and sentiment of action among the workers within our jurisdiction, and joining them closer together for mutual protection, we have organized the RETAIL CLERKS INTERNATIONAL ASSOCIATION; and hereby adopt the following Constitution:

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CONSTITUTION of Retail Clerks International Association*

SECTION 1

Name and Headquarters

Name and
Composi-
tion

(A) This Association shall be known as RETAIL CLERKS INTERNATIONAL ASSOCIATION and shall consist of an unlimited number of Local Unions and members, subject to its Constitution and laws and shall not be dissolved while there are three dissenting Local Unions.

Head-
quarters
Location

(B) The Headquarters of the Retail Clerks International Association shall be located in Washington, D.C., until removed by a Convention or by a referendum vote of the membership.

SECTION 2

Objects

Trade
Juris-
diction

The objects of this International Association shall be: To establish and conduct an International Union of persons engaged in the distribution of consumer products, including all of those who perform work and services in retail establishments, or who perform work and render services allied or incidental thereto, or who are otherwise under the jurisdiction of the Retail Clerks International Association; to organize, establish, and charter bodies in all States and Territories of the United States, Canada, and in other countries; to unite such persons within our jurisdiction; to cultivate friendship; to assist each other to secure employment; to reduce the hours of daily work; to secure fair pay for labor and services; to establish a weekly pay day; to furnish aid in cases of death or permanent disability; to provide through collective bargaining for comprehensive health and welfare and retirement benefits; to elevate moral, intellectual, and social conditions; to improve employment within our jurisdiction; to obtain status as exclusive bargaining representative of employees; to improve wages, hours, and working conditions through negotiated collective bargaining agreements and legislative action; to process grievances and enforce all other rights arising out of the collective bargaining relationship; to print, publish, and circulate its papers, magazines, and journals; to acquire, hold, lease, and convey any real and personal property, to invest and reinvest its funds; to exercise all rights and privileges which may be necessary and convenient for the conduct of its affairs; to encourage, promote, and defend free and democratic trade unions and institutions; to carry out the purposes of this organization as set forth in the Preamble and provisions of this Constitution; and to do all other things to promote the welfare and interest of its members, of workers within its jurisdiction, and of workers generally.

Wages,
Hours, and
Working
Conditions

Manage-
ment of
Funds and
Property

Promote
Welfare of
Workers

By achieving the objectives aforementioned, the membership of this International Association cannot help but feel a new sense of security, accomplishment, and dignity.

SECTION 3

Principles

Duty to
Organize

(A) We declare it to be the duty of all persons employed within our jurisdiction to engage in self-organization and other concerted activities for mutual aid and protection in order to improve their wages,

* Marginal references are for convenience only and do not constitute a part of this Constitution.

hours, and working conditions. To accomplish this, an International organization should exist through which all workers within our jurisdiction may be represented in order to enjoy the fruits of collective bargaining.

(B) We hereby pledge ourselves to assist one another in securing a reasonable compensation for services rendered, and to use our influence with other organized bodies to assist us in accomplishing our object.

(C) We especially denounce the conditions perpetrated upon unorganized workers which compel them to labor hours of work based upon hours of an establishment's operation, thus depriving them of the shorter work day and work week essential to health and to social, intellectual, and economic advancement.

(D) We shall endeavor, to the best of our ability, to disseminate useful information by means of lectures, pamphlets, and educational literature among our co-workers.

(E) While we are opposed to entering any political party as a body, we declare it to be our duty to encourage voter registration and to provide for nonpartisan political education and political activities in order to elect the friends of labor and to defeat its enemies. It is also our duty to use our influence to secure the enactment of laws beneficial to our interests and to those of all wage earners.

(F) We denounce the practices of employers who disregard health, safety, and other laws enacted for the welfare of workers, as likewise we denounce discriminatory and unfair practices of employers fixing wages on the basis of race, creed, color, sex, or national origin, and we demand that the laws passed for the benefit of workers be lived up to and enforced and that irrespective of race, creed, color, sex, or national origin, there be equal pay for equal work.

We urge the enactment of legislation prohibiting the use by employers of polygraph and other such testing devices which invade the privacy and offend the dignity of employees and applicants for employment. We urge the negotiation of collective bargaining contract clauses which similarly prohibit the use of such offensive devices by employers.

(G) We shall strive to secure and retain employment for our members, to protect them from oppression, and to place ourselves on a foundation sufficiently strong to resist any encroachment on our rights.

(H) We proclaim that Sunday should be a day of rest; accordingly we shall undertake to educate our members, employers, and the consuming public to recognize and accept the fact that store operations on Sunday are not necessary. Where laws exist prohibiting Sunday work, they should be rigidly enforced.

(I) It shall be the duty of members of every Local Union individually and collectively to do all in their power to advance the cause of organized labor within the American Federation of Labor and Congress of Industrial Organizations and the Canadian Labour Congress; to promote the sale of union-made merchandise and use union-made products and services whenever possible; and to encourage and promote democratic trade unionism throughout the world and to work against systems which do not provide for a free democratic labor movement.

(J) Organization of the unorganized employed within the jurisdiction of the Retail Clerks International Association is a responsibility of membership. Only through complete organization can the member protect his collective bargaining gains, assure continued progress in wages, hours, and working condi-

Reasonable
Compensa-
tion

Hours
of Work

Education

Political
and
Legisla-
tive
Activity

Discrimi-
natory and
Unfair
Labor
Practices

Polygraph
Tests

Employment
Security

Sunday
Work

Promote
Demo-
cratic
Trade
Unionism

Organization
of
Unorganized

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tions, obtain job security, and effectively oppose the breakdown of union standards from unorganized but competing establishments.

(K) We declare it our duty to abolish child labor; the school being the proper place for children.

(L) We declare it our duty to provide for health, welfare, and retirement benefits and other security for our members through the process of collective bargaining and legislative action.

(M) We recognize that the interests of all classes of labor are identical, regardless of occupation, race, creed, color, sex, or national origin; for a wrong done to one is a wrong done to all.

(N) We recommend that all Local Unions establish and maintain an employment office which will afford the employer opportunity to obtain help, and afford our members and those eligible for membership an opportunity to apply for employment.

SECTION 4

Jurisdiction

(A) The jurisdiction of the Retail Clerks International Association shall encompass but shall not be restricted to:

1. Employees and other persons performing work or services in connection with or related to the sale, distribution, or provision of goods, merchandise, or services;

2. Employees or other persons, such as professional salesmen, pharmacists and other professional personnel within our jurisdiction, commissary employees, managerial and supervisory personnel, etc.; and,

3. Anyone performing any work or services incidental or related to work within the jurisdiction of the International Association, including work performed for the International Association or its chartered bodies, or who is otherwise performing work or services ruled by the International Executive Board to be within the jurisdiction of the Retail Clerks International Association.

(B) The International Association is herein vested with the power to enact and enforce laws for its government and that of chartered Local Unions, District Councils, and members thereof; to establish and charter Local Unions and District Councils within the jurisdiction of the International Association, which shall at all times be subject to the Constitution and laws of the International Association.

SECTION 5

Membership Classifications

(A) All persons are eligible to membership in the Retail Clerks International Association who are engaged in work within its jurisdiction and who are under no restrictions specified in its Constitution and laws. Membership shall be classified as active, non-active, general, paid-up life, honorary, or associate. No member shall hold more than one classification of membership at any one time.

(B) An active member is defined as a member who is employed within the jurisdiction of the International Association, except that at the request of a Local Union, the International President may extend the active membership of any member in that Local Union during a period of temporary unemployment if the International President determines that exceptional circumstances warrant such extension.

Any active member who is otherwise entitled to

resign his membership while remaining employed within the jurisdiction of the International Association must give 60 days' notice by registered mail to the Local Union in which he is a member before his resignation may become effective.

(C) A Local Union may provide in its bylaws for the establishment of an associate membership for active members who have become permanently disabled or completely retired from employment within the jurisdiction of the Retail Clerks International Association, who are not otherwise gainfully employed, and who have been members in continuous good standing in the Local Union for a period of not less than five years immediately prior to such retirement or permanent disability.

(D) 1. Any Local Union may issue paid-up life membership in the Local Union to any of its members who have maintained 15 years' or more continuous membership in good standing in the International Association and who shall not be working within the jurisdiction of the International Association.

2. Proposals to grant paid-up life memberships shall be introduced at a regular meeting of the membership and acted upon at the next regular meeting. Between the first and second meeting referred to herein, the chief executive officer of the Local Union shall obtain verification from the International Secretary-Treasurer establishing the membership status of such member.

If paid-up life membership is approved for any member, the chief executive officer of the Local Union shall immediately notify the International Secretary-Treasurer of such action.

(E) 1. A general member is defined as a member no longer actively engaged in work within our jurisdiction or a member who is actively engaged in work in a locality over which no chartered Local Union of this International Association has jurisdiction.

Any member no longer actively engaged in work within the jurisdiction of the International Association and who desires to maintain membership in the International Association, shall on or before the first day of the month following date of issue deposit his withdrawal card in the International Headquarters and be entitled to the privileges of a general member.

2. When a charter is issued in any city where general members actively engaged in work within the jurisdiction of the International Association reside, such members must affiliate with the Local Union within 30 days after said Local Union has placed itself in good standing upon the books of the International Association.

3. General members shall pay to the International Association \$2.00 per month dues, together with such assessments as may be levied by the International Executive Board, said dues to be payable on or before the first day of the month in advance. If dues and assessments are not so paid, such general member is delinquent. Any person becoming a general member on or after August 1, 1972, shall pay dues of \$4.00 per month, as provided above.

(F) No person shall hold honorary membership in any Local Union of this International Association. However, the International Association, in recognition of distinguished public service, may confer upon any individual honorary membership in the International Association, upon recommendation of the International Executive Board and concurrence of the Convention.

(G) A nonactive member is defined as a person owning and operating an establishment having no

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Child Labor

Membership Security Benefits

Equal Opportunity

Employment Office

Associate Membership

Paid-Up Life Membership

Scope of Trade Jurisdiction

General Membership

Enact Laws and Issue Charters

General Members' Dues

Eligibility for Membership

Honorary Membership

Active Membership

Nonactive Membership

employees, or a person owning and operating a department in any organized establishment, or a person owning an interest in, but no less than 50 per cent of, an establishment in which he is performing services which, if performed by an employee, would be within the jurisdiction of this International Association.

Rejection to Membership

(H) All applications for membership in this International Association, by either new members, reinstated members, or those entering the Local Union on withdrawal cards, shall be made on forms furnished or approved by the International Association. Such applications for membership shall be referred to the Local Union Executive Board at which time copies of such applications shall be forwarded to the International Secretary-Treasurer. Applicants shall be deemed elected to membership unless the Local Union Executive Board rejects the applicant within 30 days after its receipt of the application. A rejected applicant may not again apply for membership within three months of the time of his rejection. Local Unions shall immediately advise the International Secretary-Treasurer of the rejection of any candidate. No Local Union shall accept to membership any person who is under charges within any other Local Union until such charges have been withdrawn, dismissed, or resolved.

Rejection of Membership

Membership in Appropriate Local Union

(I) No member of this International Association shall be permitted to retain membership in and pay dues to one Local Union of the International Association while working within the chartered jurisdiction of another Local Union of this International Association.

Employers

(J) Employers, except as provided under Subsection (G) of this section, are not eligible to membership in any Local Union, and any member becoming an employer must be given a withdrawal card; but such member desiring to retain membership in the International Association may do so by depositing said card with the International Headquarters on or before the first day of the month following date of issue, thereby becoming a general member by the payment of dues as provided in this section under Subsection (E).

Non-Eligibility

(K) Any person who is a member of, or subscribes to, or supports the principles of a Communist or Fascist party or similar organization, having as its purpose to overthrow the government of the United States or of Canada, by force or violence, or to deny to citizens the guarantee of the Bill of Rights, or to throttle or eliminate a free trade labor movement, shall not be eligible for admission to membership in this International Association, nor shall such person hold membership therein. Any member charged as stated above shall be tried in accordance with the procedure set forth in this International Constitution and laws and if found guilty shall be forever barred from membership in this International Association. Any individual who has obtained membership by false statements as to the above shall be expelled after proper trial in accordance with the Constitution and laws of this International Association.

SECTION 6

Membership Rights and Privileges

Active Members in Good Standing

(A) Active members shall, while they remain in good standing (i.e., not more than two calendar months in arrears for dues and not under sentence of suspension or expulsion under the provisions of this Constitution) in their respective Local Unions and in the International Association, enjoy all of the rights and privileges of membership, including the right to vote at all regular or special meetings, and

to hold any office, otherwise qualified under Local Union bylaws and this Constitution.

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(B) Associate members, as set forth in Section 5(C), may be appointed to serve on committees dealing with community services, legislative, etc., and may be privileged to report to the membership on the activities of the aforementioned committees. Associate members, however, are not entitled to hold office nor to a voice or vote on the floor of a Local Union meeting.

Associate Members

(C) Paid-up life members, as set forth in Section 5(D), may attend Local Union meetings but shall not have voice or vote.

Paid-Up Life Members

(D) Nonactive members, as set forth in Section 5(G), general, and honorary members shall not be privileged to attend meetings of the Local Union or to have voice or vote in, nor to represent the Local Union in any capacity.

Nonactive, General, and Honorary Members

SECTION 7

Withdrawal and Military Leave Courtesy Cards

(A) Members in good standing, whose current dues and other financial obligations have been paid, shall be entitled to withdrawal cards without charge therefor, as set forth herein:

Eligibility for Withdrawal Card

1. Members who become proprietors, as defined in Section 5(G), and who employ one or more employees, must be granted withdrawal cards. Stockholders are not recognized as employers.

Proprietor-Employers

2. Members who are no longer employed within the jurisdiction of the International Association must be issued withdrawal cards, except as provided in Section 5(B), Section 5(C), and Section 3(F).

Not Employed in Jurisdiction

3. Members whose occupations are not covered by a collective bargaining agreement and who are considered by the Local Union as supervisors shall be granted withdrawal cards.

Supervisors

(B) Withdrawal cards issued to eligible members shall be dated as of the first of the month following the members' eligibility to receive the same.

Issuance Date

(C) Persons holding withdrawal cards may maintain continuous membership by:

Maintenance of Continuous Membership

1. Depositing the withdrawal card no later than on or before the first day of the month following the date of issuance, along with monthly dues, with the International Association and becoming a general member as set forth in Section 5(E), or

2. If employed within the jurisdiction of another Local Union, depositing the withdrawal card with the Local Union having appropriate jurisdiction, within one calendar month from date of issuance, together with the payment of monthly dues.

(D) Any former member possessing a withdrawal card and making application for membership in a Local Union shall be accepted as a new member in the Local Union, without the payment of a fee either to the Local Union or the International Association, except the current month's dues and assessments, provided the card is deposited with the Local Union within 30 days from the date of employment within the jurisdiction of the International Association.

Reinstatement Without Fee

(E) In the event any member enters the military service of the United States or Canada, whether voluntarily or by draft, such member shall be issued a Military Leave Courtesy Card with the privilege of depositing it with any chartered Local Union within six months after honorable discharge from military

Military Leave Courtesy Card

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service provided such member's current month's dues and other financial obligations have been paid and, further provided that when such member resumes employment within the jurisdiction of this organization he makes application for reaffiliation in the required manner, presents evidence of honorable discharge, and pays his current month's dues and assessments.

Restoration of Membership Status

(F) During such military leave, the benefits as provided in this Constitution shall be inoperative; however, any such member readmitted under the above provisions shall immediately be restored to his membership status in all respects as of the time of the issuance of the Military Leave Courtesy Card.

Reinstatement

(G) Military Leave Courtesy Cards presented for membership after the aforementioned six months' period shall be honored as regular withdrawal cards as set forth in this Constitution in Section 7(D).

Consolidation

(H) Recipients of withdrawal, Military Leave Courtesy Cards or holders of paid-up life or honorary membership cards receive such cards and privileges incident thereto in recognition of past membership or service or as a conferred honor. Continued possession of such cards and privileges incident thereto presumes that the holders of these cards will continue to uphold the aims, objectives, and principles of the Retail Clerks International Association. Should any such person engage in any act inimical to the best interests of the International Association or any of its chartered bodies or behave in any manner tending to discredit the International Association or any of its chartered bodies, the International Executive Board may cancel or suspend any of the foregoing cards, memberships, or privileges.

shall be a citizen of C. a.

3. The International Executive Board shall act upon all appeals and render judgments sustaining or reversing decisions made from which appeal has been taken, subject to further appeal therefrom to the next Convention.

4. The International Executive Board shall have the power to levy such assessments as it may deem necessary, and to authorize the payment of benefits, subject, however, to the limits set out in this Constitution and laws.

5. The International Executive Board shall select annually three of their number to serve at the International Headquarters as a Board of Audit, as provided in Section 14.

6. The International Executive Board may be called in session through the International President whenever necessity demands, by a majority vote of the Board.

(B) The International Executive Board shall have power to authorize strikes in conformity with the Constitution and laws of the International Association, and when necessary to defend the organization in any locality against the attacks of employers, combinations, lockouts, or any attempt to disrupt or destroy the organization; to support such actions by levying a per capita tax assessment and by ordering a cessation of work for any employer involved, irrespective of where such work is located; to protect the property and interests of the International Association in such manner as it may deem helpful and beneficial, so long as it is not inconsistent with, and is within the meaning of this section; to make agreements with employers covering hours, wages, and conditions of employment.

Any authorization of strike action under this or any other section of the International Constitution in respect to any Local Union is contingent upon such Local Union disclosing all relevant facts relating to the proposed strike and the reasons and justifications therefor. Any authorization obtained without such full disclosure shall be considered not to have been given.

Authorization of any strike action by the International Association shall not operate to impose any liability on the International Association or its officers or to make them parties to any such action. The International Association does not assume any liability of any nature to any person or persons simply by reason of such authorization.

(C) The International Association shall pay the expense for the time and mileage of the International Executive Board for work performed by them when so authorized.

(D) Any member of the International Executive Board, or delegate to the American Federation of Labor and Congress of Industrial Organizations convention, performing work for this International Association by direction of its officers, as provided for in this Constitution and laws, shall receive compensation at the rate of not less than \$20.00 per day and traveling and hotel expenses.

(E) The International Executive Board shall have authority to grant dispensation in the payment of initiation fees, union dues, or other financial obligations relating to membership in those jurisdictions operating under laws or regulations which require that membership in good standing be a condition precedent to the filing or processing of representation petitions or the legal equivalent thereof, and where the circumstances are such that the International Executive Board deems such action to be necessary; however, such dispensation, when granted, may include any part or

SECTION 8

International Officers

Designation

The officers of this International Association shall consist of an International President, ten International Vice Presidents (except as provided in Section 9(A)2), and an International Secretary-Treasurer, all of whom shall constitute the International Executive Board. International Vice Presidents shall be numerically designated for election purposes only.

SECTION 9

International Executive Board

Enact Laws

(A) 1. The International Executive Board shall have full power during the intervals between International Conventions to make such laws as may be needed in the interest and for the benefit of the International Association, which shall be in full force and effect from date of adoption by the International Executive Board unless reversed by action of the next Convention. All laws enacted between Conventions shall be sent to the Local Unions.

Additional Vice Presidents

2. The International Executive Board, during the interim between the 26th and 27th regular Conventions of the International Association, shall be empowered from time to time to elect additional International Vice Presidents as members of the International Executive Board. In no event, however, shall the total number of International Vice Presidents exceed 23 in number. Such International Vice Presidents, when elected, shall hold office concurrently and on the same basis and tenure as incumbent International Vice Presidents; except that the total number of International Vice Presidents in the primary employment of the International Association shall not exceed 13 in number; and except further that one of the Vice Presidents not in the primary employment of the International Association

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Assessments and Benefits
Board of Audit
Meetings
Strike Authorization, Defense, and Assessments
Agreements
Inoperative Strike Authorization
Non-Liability
Expenses
Compensation
Dispensation of Financial Obligations in Certain Jurisdictions

portion of the financial obligations above referred to and shall be under such terms and conditions as the International Executive Board may stipulate.

Special
Consideration
for
Canada

(F) Recognizing that special problems may face chartered bodies in Canada which do not face other chartered bodies in the jurisdiction of the International Association, the International Executive Board shall be empowered to give special consideration to Canadian bodies, upon written request. Such special consideration shall not be inconsistent with the purposes of this Constitution.

Delegation
of Powers

(G) The International Executive Board may delegate any of its specific powers to the International President, to be exercised by him on its behalf between meetings of the International Executive Board.

Special
Conventions

(H) The International Executive Board by the vote of two-thirds of its members shall have the power to call a special Convention of the Retail Clerks International Association to consider such questions as the International Executive Board by the same vote shall certify to it. A special Convention shall be convened by such procedures as a majority of the International Executive Board shall specify.

Suspension
and Substitution
of
Legally
Invalid
Constitutional
Provisions

(I) If any provision of this Constitution shall be declared or shall otherwise become invalid or impaired by virtue of any Federal, State, or Provincial legislative enactment, or by virtue of any decision or regulation of any Federal, State, or Provincial court or administrative agency, the International Executive Board shall have the authority to suspend the operation of any such provision during the period of its invalidity or impairment and shall also have the authority to substitute a provision or provisions which, to the extent permitted by law, will meet the objections and which will be in accord with the intent and spirit of the invalid provision. The International Executive Board shall give written notice to all Local Unions and all District Councils after exercising this power. If any provision of this Constitution should be held invalid by operation of law or by any tribunal of competent jurisdiction, the remainder of this Constitution, or the application of such section to persons or circumstances other than those as to which it has been held invalid, shall not be affected thereby.

SECTION 10

International President

Chief
Executive
Officer

(A) The International President shall be the chief executive officer of the International Association and shall exercise supervision over the affairs of the International Association.

Convention
Authority
Sign
Official
Documents

(B) It shall be the duty of the International President to preside at all Conventions, appoint all committees, unless otherwise ordered by the Convention, and sign all charters and other official documents of the International Association.

Executive
Board
Meetings

(C) The International President shall be authorized to convene International Executive Board meetings whenever he deems it advisable. In connection therewith, he shall fix the time and place of such meetings. He shall preside over all International Executive Board meetings and may vote in case of a tie vote.

Edn
Advocate

(D) The International President shall manage, conduct, and edit the *Retail Clerks Advocate*.

Invest-
ments

(E) He shall have the power to invest the surplus funds of the International Association where he deems it advisable, subject to the approval of the Board of Trustees.

(F) All expenditures or bills approved by the International President shall be paid by the International Secretary-Treasurer by check co-signed by the International President and International Secretary-Treasurer.

(G) The International President shall have authority to interpret the Constitution and laws of the International Association and to decide all questions of law thereunder; to regulate any controversy or difficulty that may arise between Local Unions, members of a Local Union, or a Local Union and its District Council, or a Local Union and the International Association, or any controversy involving any other chartered body of the International Association; to regulate any dispute or grievance for which a remedy is not otherwise provided in the Constitution or which cannot be adequately resolved by the Local Union bylaws; to preside at and conduct trials involving Local Unions, District Councils, and other bodies, and the International Association; to render judgment sustaining or dismissing charges, and render judgment accordingly; subject to an appeal to the International Executive Board, whose decision shall be final unless and until reversed by the next regular Convention.

(H) 1. He shall commission active members in good standing, who are currently working within the jurisdiction of the International Association, for assignments as International Representatives on a voluntary basis.

2. Such International Representatives shall carry out their responsibilities and duties under the direction and supervision of the International President. They shall render such assistance to the International President and carry out such assignments as he may require.

3. Compensation and other conditions of service shall be fixed by the International President. Members commissioned as International Representatives shall in all respects be regarded as working within the jurisdiction of the International Association.

4. When the commission of an International Representative is terminated, the International Association will, as a matter of policy, endeavor to obtain the reinstatement of such representative to his former job or a substantially equivalent position within its jurisdiction. Local Unions are urged to implement this policy in the negotiation of collective bargaining agreements.

5. Any commissioned International Representative, feeling himself aggrieved, may exercise his prerogative as a member as set forth in Section 37(A) of the International Constitution.

(I) He shall employ and fix the compensation and other terms of employment of assistants, professional and other personnel that he deems advisable for the purpose of carrying out the duties of his office and to effectively administer the affairs of the International Association. Such personnel shall work under the supervision of the International President. He shall have the authority to terminate the employment of any such personnel in the best interest of the International Association.

(J) The International President may assign representatives to assist Local Unions.

(K) The bond of the International President shall be in such amount as the International Executive Board shall deem sufficient to fully protect the International Association and shall be furnished by a surety company approved by the International Executive Board, the premium thereof to be paid by the International Association.

Approve
Expend-
itures
By Sign
Checks

Interpret
Constitution

Resolve
Disputes

Conduct
Trials

Appeal

Commission
Internat-
ional
Representa-
tives

Direct
Internat-
ional
Representa-
tives

International
Representa-
tives
Compensation
and Conditions
of Employment

Policy Upon
Termination
of Internat-
ional
Representa-
tives
Commission

Internat-
ional
Representa-
tive
Grievances

Employment
of Other
International
Personnel,
Compensation,
Direc-
tion, and
Termination

Assignment
of Internat-
ional Repre-
sentatives

Bond

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Expenditure of Funds

(L) He is specifically authorized between meetings of the International Executive Board to direct the expenditure of such funds as may be necessary for the purpose of carrying on organizing programs, serving the presently organized membership, aiding Local Unions, and for such other activities designed to promote the welfare or to effectuate the purposes of the International Association.

Official Delegates

(M) The International President, or his designated representative, is hereby authorized by virtue of his office, to attend as an official delegate of the International Association all meetings, conferences, or conventions that may be held where the International Association is entitled to representation or where the best interest of the International Association may be served by his presence, and he is further authorized to appoint such additional delegates as the International Association may be entitled to send to such meetings, conferences, or conventions.

Suspension of International Officers

(N) In case of charges against any International Association officer, he shall have power to suspend the officer pending an investigation by the other members of the International Executive Board, in accordance with trial procedures set forth in Section 36(B) of this Constitution and laws. If the findings of the International Executive Board be that of guilty as charged, the International President shall make the suspension permanent, unless otherwise provided by the decision of the International Executive Board.

Approval of Purchases

(O) The purchase of equipment, supplies, other materials, and service arrangements by the International Association shall require the prior approval of the International President.

Trusteeships and Appointment of Trustees

(P) 1. Whenever in the judgment of the International President a Local Union or other chartered body, or the members or officers thereof, are working against the best interests of the International Association, or are acting in violation of the Constitution and laws of the International Association, or are engaging in any activity or course of conduct contrary or detrimental to the welfare or best interests of the International Association or a chartered body, so that in his judgment an emergency is created which requires the taking of immediate action, the International President shall have the power to place such chartered body in temporary trusteeship by the appointment of a trustee, who shall act under the direction of the International President.

Power of Trustee

2. The trustee shall have power to take immediate charge of the affairs of such chartered body and shall have the right, upon demand, to all of the funds, properties, books, and assets of such body for the period that he is in charge, such properties to be held in trust for the benefit of such body and to be expended only to the extent necessary for the proper conduct of the affairs of such body during the period of the trusteeship. The trustee shall be required to give bond in sufficient amount to safeguard the funds and assets on hand as may be determined by the International President.

Appointment of Temporary Officers

3. Immediately upon the appointment of such trustee, the functions of officers of the chartered body shall terminate and such functions shall pass to the trustee. The trustee may thereupon appoint temporary officers in their place or reappoint incumbent officers to carry on their functions, all of whom shall act under him during the term of such trusteeship.

Disciplinary Proceedings under Trusteeship

4. The trustee shall have authority to bring disciplinary proceedings, including the filing of charges, against any member or officer of the chartered body who he has reasonable grounds to believe has contributed to the conditions leading to the establishment

of the trusteeship. In any such disciplinary proceedings, the accused shall be given due notice of the charges and an opportunity to be heard before a representative appointed by the International President for the purpose of conducting such hearing. Such representative shall make recommendations with respect to the disposition of the charges to the International President, accompanied by an oral or written report summarizing the hearings, and the International President is thereupon authorized to take such disciplinary measures as the circumstances warrant, including fine, suspension, or expulsion. Appeals from the decision of the International President may be taken to the International Executive Board and thence to the Convention. Procedure on appeal shall be governed by Section 37.

5. a) Within 60 days following the appointment of such trustee, the International President shall make provisions for holding an inquiry to determine whether such trusteeship shall continue.

b) The holding of such inquiry shall take place as soon thereafter as practicable and as conditions permit.

c) The inquiry shall be concerned with a review of the investigation and findings of the temporary trusteeship and the inquiry shall afford members of the chartered body an opportunity to be heard.

d) The inquiry shall be conducted under rules formulated by the International President.

e) Due notice of such inquiry shall be given to the chartered body involved, fixing the time and place.

f) Such inquiry shall be conducted by the International President; provided, however, that he shall have power to appoint a representative to act for him in the holding of such inquiry.

g) Such representative, as soon as practicable after conducting such inquiry, shall make recommendations with respect to the continuation of the trusteeship to the International President, either orally or in writing, but the decision in the case shall be made by the International President himself.

h) Appeals from any decision of the International President may be taken to the International Executive Board and thence to the Convention.

i) Procedure on appeals shall be governed by the provisions of Section 37.

6. The trustee shall act under the supervision of the International President who may remove such trustee at any time and appoint a successor. The trustee shall make periodic reports to the International President on the progress of the trusteeship. He shall also make reports to the membership of the chartered body on the affairs and transactions of said body.

7. The trusteeship shall continue for such period as in the judgment of the International President such trusteeship is necessary for the reorganization or stabilization of the affairs of the chartered body to achieve the purposes of the trusteeship; provided, however, that the body in trusteeship shall have the right to petition for removal of the trusteeship at intervals of not less than six months following the establishment of such trusteeship. Any such petition must first be duly voted by a majority of the members of the chartered body and then filed with the International President. Upon receipt of such petition the International President shall then hold another inquiry as provided hereinabove.

8. Whenever the International President determines that the trusteeship shall be terminated, the trustee shall return all books, funds, and other properties to

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Trusteeship Inquiry

Time of Inquiry

Subject of Inquiry

Inquiry Rules

Notice of Inquiry

Representative for Inquiry

Representative's Recommendation

Appeal

Appeal Procedures

Supervision and Reports of Trustee

Duration of Trusteeship

Termination of Trusteeship

International Secretary-Treasurer

the chartered body and make an accounting of his trusteeship. The trustee shall conduct elections of officers of the chartered body except for such elected officers whose terms have not expired and are otherwise members in good standing.

Respectability of International

9. No obligation or liability of a chartered body which may exist or which may have been previously incurred at the time trusteeship is instituted by the International President, shall be assumed by or become an obligation of the International Association. No obligation or liability of a chartered body which has been placed in trusteeship, including obligations under existing collective bargaining agreements incurred subsequent to the institution of such trusteeship, shall become an obligation of the Retail Clerks International Association, unless specifically authorized or assumed by the International Executive Board.

Original Jurisdiction

(Q) Whenever the activities of any member or officer of a chartered body involve, in the judgment of the International President, a situation imminently dangerous to the welfare or best interests of the International Association or a chartered body, the International President is authorized to assume original jurisdiction in such matter, even though charges may have been filed with another body and are pending. Under such circumstances, the International President may immediately suspend the person from membership or office, but he shall be required to accord such member or officer a hearing, upon notice of the charges against him, as soon as practicable after such suspension. The International President shall have authority to appoint a temporary successor to any officer thus suspended, to serve until the charges are disposed of. Such hearing may be conducted by a representative appointed by the International President. Following such hearing the International President is authorized to take such disciplinary action as the circumstances warrant, including fine, suspension, expulsion, or removal from office. Appeal from the decision of the International President may be taken to the International Executive Board and thence to the Convention. Procedure on appeals shall be governed by the provisions of Section 37.

Suspension of Membership or Office

Appoint Temporary Successor

Hearing and Disciplinary Action

Appeal

Disband Chartered Bodies

(R) Whenever, in the judgment of the International President, chartered bodies or the members thereof are working against the best interests of the International Association or are not in harmony with the Constitution and laws of the International Association, the International President shall have the power to order said body or the members thereof to disband under penalty of suspension, subject to the approval of the International Executive Board.

Salary and Expenses

(S) The International President shall receive in monthly installments an annual salary to be determined by the International Executive Board, which shall not be less than the annual salary in effect in January 1968. He shall also receive an allowance for expenses incident to the conduct of his office. Salary determinations by the International Executive Board once made shall constitute the new minimum.

SECTION 11

International Vice Presidents

Assistance to International President

It shall be the duty of the International Vice Presidents to render such assistance to the International President as he may require and to perform such other work under his direction as he may request and to render regular reports on the progress of organizational work assigned to them and with respect to any other duties or functions which they have been directed to perform.

(A) The International Secretary-Treasurer shall have custody of all books, papers, funds, assets, property, and effects of the International Association. He shall conduct all correspondence pertaining to his office. He shall keep accurate account between the Local Unions and the International Association, and shall prepare monthly reports, which shall be furnished the chief executive officer of each Local Union, showing from what source the finances have been received, and for what purpose disbursed.

Custody of Property
Financial Reports

(B) The International Secretary-Treasurer shall furnish, at the expense of the International Association, all report forms, application forms, and material for the transaction of business between the International Association and the Local Unions. No chartered body shall use any forms for the transaction of such business except those furnished or approved by the International Secretary-Treasurer. The International Association shall pay all duties on supplies shipped outside the borders of the United States.

Furnish Business Forms

(C) He shall collect all moneys due the International Association and shall deposit all funds in a responsible bank in the name of the Retail Clerks International Association. The book of deposit shall be balanced the first of each calendar month, and he shall furnish a statement of such balance, together with an itemized account of all receipts and disbursements of the International Association for the previous month, to the International President and to each member of the International Executive Board. Only expenditures and bills approved by the International President shall be paid from the funds of the International Association and shall be paid by check, co-signed by the International President and International Secretary-Treasurer.

Collect and Deposit Funds
Financial Statement
Co-Sign Checks

(D) Negotiable bonds and other securities shall be placed in safekeeping with a responsible depository in the name of the Retail Clerks International Association. Access to such safe deposit box shall be obtained only on the signature of the International President or the International Secretary-Treasurer.

Safe Deposit Box

(E) The International Secretary-Treasurer shall promptly notify the International Executive Board of the results of the votes cast on all propositions submitted to them.

Notice of Votes

(F) He shall have the power to issue charters, but no charter shall be issued except upon the approval of the International President. He shall, upon the application for and approval of a charter for a new Local Union, accompanied by the fees as prescribed in Section 24(A), issue the same as speedily as possible, duly sealed and signed by the International President and International Secretary-Treasurer.

Charters

(G) The International Secretary-Treasurer shall have the International Association name, emblem, and Store Card registered in each state.

State Registration

(H) He shall submit a complete report of his work to each regular Convention and close all accounts on the first day of May preceding each regular Convention. He shall make out a report of the number of members for each month and forward same with per capita tax, to bodies with which the International Association is affiliated.

Convention and Membership Reports

(I) He shall be furnished with a seal, which seal shall be fixed to all official and important documents, and shall deliver to his successor in office all property and funds, assets and effects in his possession belonging to the International Association.

Seal and Property

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(J) The bond of the International Secretary-Treasurer shall be of such amount as the International Executive Board shall deem safe to fully protect the International Association and shall be furnished by a surety company approved by the International Executive Board, the premium thereof to be paid by the International Association.

(G) The Board of Trustees shall make a report to each regular Convention of all business transacted in connection with the Headquarters and property of the International Association.

(D) The Board of Trustees shall authorize the International President to pay all legitimate expenses in connection with the Headquarters and property, subject to examination and approval of the Board when in session.

(E) Should a vacancy occur in the Board of Trustees, either by death, resignation, removal, or otherwise, then such vacancy shall be filled as provided in the Constitution of the International Association. The person thus chosen to fill such vacancy shall succeed to all rights of the member he is chosen to succeed.

(F) The title to the Headquarters and property now held by this International Association, or which may be hereafter acquired, shall be vested by proper conveyance in the Board of Trustees and their successors in office, to be held by the Board of Trustees in trust for the sole use and benefit of this International Association.

(G) The Board of Trustees shall have the management and control of all property, and may sell, rent, lease, encumber, and improve the same in such manner as the majority of the Board of Trustees shall direct, but shall have no right to sell, convey, or encumber the Headquarters real estate in Washington, D.C., or any successor building and property occupied as the Headquarters building, without submitting the proposition to sell, convey, or encumber to the International Executive Board for approval.

(H) All legitimate expenditures in connection with the Headquarters and property shall be paid by the International President out of the funds of this International Association.

(I) All income received from interest, rents, lease, or sale of any property of the International Association or any part thereof, shall be received by the International Secretary-Treasurer as provided for in the Constitution and laws of this International Association, and shall become a part of the general fund of the International Association. An accounting of all such receipts and expenses shall be published in the regular monthly financial statement submitted by the International Secretary-Treasurer to the Local Unions.

(J) No member of the Board of Trustees, as herein constituted, shall receive any compensation for his services in connection with the management of the Headquarters and property, other than such compensation as is already provided for in the Constitution and laws of this International Association.

(K) Constitutions and annual membership identification cards shall be furnished Local Unions by the International Secretary-Treasurer at the expense of the International Association in such number as may be required, and it shall be the duty of the Local Union chief executive officer to issue such membership identification card to each member of the Local Union.

All members of the Local Union shall be issued such card at the commencement of each calendar year and new and reinstated members shall be issued such card at time of affiliation.

(L) The International Secretary-Treasurer shall provide for the bonding of such Local Union and District Council officers, representatives, and employees, as the International Secretary-Treasurer deems advisable, with a surety company approved by the International Executive Board. Each such officer, representative, or employee shall be bonded in said company in an amount adequate to protect the Local Union from loss, the amount of such bond, however, to be not less than \$2,500.00 or the amount required by applicable law. Such bond shall run to the International Association. The cost of such bond shall be borne by the chartered body involved. Any Local Union or District Council failing to comply with this section within 30 days shall be subject to discipline.

(M) The International Secretary-Treasurer shall have the authority, without notice, to obtain or make a routine audit, inspection, or examination of all books and records of Local Unions or other chartered bodies. He shall exercise the foregoing authority through the appointment of authorized representatives or through the employment of necessary personnel, with the approval of the International President.

(N) The International Secretary-Treasurer shall receive in monthly installments an annual salary to be determined by the International Executive Board, which shall not be less than the annual salary in effect in January 1968. He shall also receive an allowance for expenses incident to the conduct of his office. Salary determinations by the International Executive Board once made shall constitute the new minimum.

(O) The International Secretary-Treasurer shall conduct his office under the general supervision of the International President and shall perform such other duties and responsibilities in aid of the International President as may be delegated to him by the International President.

SECTION 13

SECTION 14

International Board of Trustees

International Board of Audit

(A) The International President, International Secretary-Treasurer, and an International Vice President to be elected annually by the International Executive Board shall, by virtue of their offices, constitute a Board of Trustees for the management and control of the Headquarters and all property of the International Association, real, personal, or mixed, and wherever situated.

Three International Vice Presidents elected annually by the International Executive Board, who are not on the Board of Trustees, shall constitute a Board of Audit. The Board of Audit shall meet at the office of the International Secretary-Treasurer during the month of May of each year, for the purpose of auditing the books of the International Secretary-Treasurer. The International Executive Board shall select a certified public accountant, to be approved by the surety company furnishing the bond of the International President and International Secretary-Treasurer, who shall assist the Board of Audit. The report of this Board shall be certified and sworn to, a copy furnished each

(B) It shall be the duty of the Board of Trustees to organize and elect a chairman and secretary from among its members and it shall keep a record of its meetings in a book to be kept for that purpose.

Constitutions and Membership Identification Cards

Issuance of Membership Identification Cards

Bonding

Audit of Chartered Bodies

Salary and Expenses

Supervision by International President

Composition and Duties

Chairman, Secretary, and Records

Substantive Programs of Expenses

Vacancy

Title to Property

Management and Control of Property

Headquarters Expenses

Receipt of Income

Compensation Prescribed

Election

Time of Audit

Certified Public Accountant Assistance

Local Union, and be published in the Advocate. The members of this Board shall receive for their services the sum of not less than \$20.00 per day and traveling and hotel expenses.

SECTION 15

Regular International Conventions

Frequency, Purpose, and Arrangements

(A) The Retail Clerks International Association shall meet in regular Convention every five years, not later than August of the convention year, to elect the officers of the International Association and to transact such other business as may come before the Convention. The date and place of the regular Convention shall be determined by the International Executive Board and the Executive Board shall make the necessary arrangements for holding such Convention.

Call

(B) The International President shall instruct the International Secretary-Treasurer to issue a Convention call to each Local Union not less than six months prior to the month of each regular Convention. Such call shall state the time, date, and place of the Convention.

SECTION 16

Regular International Convention Delegates

Credentials

(A) At the time the Convention call is issued, the International Secretary-Treasurer shall inform each Local Union of the number of delegates to which it is entitled and shall furnish each Local Union Secretary-Treasurer with credential forms in duplicate, for delegates and alternates. The Local Union's Secretary-Treasurer shall mail the completed original credentials to the International Secretary-Treasurer immediately after the Local Union elects its delegates and alternates. Credentials must be received by the International Secretary-Treasurer 30 days prior to the convening of the Convention. The completed duplicate credentials shall be retained by the delegates and alternates and presented to the Credentials Committee immediately prior to the convening of the Convention. Each credential must be signed by the Local Union President and Secretary-Treasurer.

Apportionment of Delegates

(B) Local Unions shall be apportioned Convention delegates and votes in accordance with the following formula:

No. of Members in Local Union	No. of Delegates and Votes
1- 250	1
251- 500	2
501- 750	3
751- 1,000	4
1,001- 1,500	5
1,501- 2,000	6
2,001- 2,500	7
2,501- 3,000	8
3,001- 4,000	9
4,001- 5,000	10
5,001- 6,000	11
6,001- 7,000	12
7,001- 9,000	13
9,001-11,000	14
11,001-13,000	15
13,001-15,000	16
15,001-18,000	17
18,001-21,000	18
21,001-24,000	19
24,001 up	20

(C) The number of delegates apportioned to a Local Union shall be determined by the International Secretary-Treasurer upon the basis of its average monthly membership for the 12 calendar months ending with the second month preceding the month in which the Convention call is issued. Each Local Union may elect a number of alternates up to the number of delegates to which it is entitled, in accordance with the procedures for the election of delegates.

(D) Each Local Union chief executive officer shall be a delegate to the Convention by virtue of election to office. When a Local Union is entitled to more than one delegate, the remaining delegates shall be elected by secret ballot.

(E) The nomination of delegates to the Convention shall be conducted during the second or third calendar month following the month in which the Convention call is issued. The election of delegates to the Convention shall be conducted by secret ballot during the third calendar month following the month in which the Convention call is issued. Not less than 15 days prior to the nomination of delegates, notice shall be mailed by the Local Union to each member at his last known home address, setting forth the times, places, and manner for conducting the nomination and election of delegates to the Convention.

(F) Any active member of the Retail Clerks International Association in good standing, as defined in Section 5(B) and 6(A) of this Constitution, shall be eligible to vote for Local Union delegates to the Convention.

(G) 1. Any active member of the Retail Clerks International Association in good standing, as defined in Sections 5(B) and 6(A) of this Constitution, who has been a member of the Retail Clerks International Association in continuous good standing for at least one year immediately preceding January 1 of the year in which the Convention is scheduled shall be eligible to be a delegate to the Convention.

2. Nothing herein contained shall be so construed as to disqualify any member who accepts a salaried position with the American Federation of Labor and Congress of Industrial Organizations, the Canadian Labour Congress, the International Association, or any of its chartered bodies or to disqualify the delegate or delegates of a Local Union reorganized within a period of less than one year. A Local Union not in possession of a charter from the Retail Clerks International Association 60 days prior to the election of delegates shall not be entitled to representation in the Convention of the International Association.

(H) 1. The nomination and election of delegates shall be conducted at such times and places as will afford all active members in good standing a reasonable opportunity to nominate and vote. Nomination and election of delegates may be conducted at a single membership meeting where a Local Union's geographical jurisdiction does not extend beyond a normal commuting area.

2. Where the geographical jurisdiction of a Local Union is such as to make commuting to a single location unreasonably difficult for its members, the nomination and election of delegates shall be conducted separately and membership meetings for nominations and separate membership meetings for elections shall be held at such locations as may be determined by the Local Union.

(I) Each Local Union Executive Board shall elect a general chairman to supervise the conduct of the nomination and election of Local Union delegates and not less than three members to act as election

Apportionment of Delegates

Method of Electing Alternates

Chief Executive Officer Automatically Delegate

Secret Ballot Required

Time of Delegate Nominations

Time of Delegate Elections Notice

Eligibility to Vote

Eligibility to be Delegate

Disqualification

Voting Location

Multiple Voting Locations

Election Supervision

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judges to assist the general chairman. The general chairmen and election judges shall not be candidates for the position of Local Union delegates or for International office. They shall maintain custody of all ballots and election registers during the conduct of the election. Where multiple polls are used, at least one election judge shall supervise the election at each polling place.

Voting Procedure

(J) Each eligible member desiring to vote for Local Union delegates shall sign an election register prepared by the Local Union. The voter shall be given a ballot prepared by the Local Union and shall be provided an opportunity to vote his ballot in secrecy. Ballots shall bear no number or marks which might identify the voter. After marking his ballot, the voter shall fold and place it in a secured ballot receptacle provided by the Local Union. Adequate safeguards to ensure a fair election shall be provided by the Local Union officers and election officials.

Tally of Votes—Single Meeting

(K) 1. Where the election is conducted at a single membership meeting, the results shall be tallied and recorded by the general chairman of the election and the election judges at the close of the voting.

Tally of Votes—Multiple Polls

2. Where the election is conducted at multiple times or polls, the general chairman of the election and an election judge from each polling place shall meet at the offices of the Local Union no later than 2:00 p.m. of the second day following the last day on which the election of Local Union delegates was held. They shall there tally and record the results of the election.

Election Results

3. A copy of the results of the election of delegates shall be immediately mailed to the International Secretary-Treasurer.

Impermissible Voting

(L) Write-in candidates, absentee ballots, and proxy voting shall not be permitted in the nomination or election of delegates.

Election by Acclamation

(M) Where the number of nominees does not exceed the number of delegates to be elected, the Local Union President may entertain a motion to dispense with a secret ballot election and declare the nominees duly elected by acclamation.

Delegate Election Challenges and Appeals

(N) 1. Not more than 15 days subsequent to the election of delegates in a Local Union, all challenges to the election of such delegates shall be submitted to the chief executive officer of the Local Union. Not more than 15 days subsequent to the decision of a Local Union respecting such challenge, a challenging party may submit an appeal to the International President. Where a Local Union fails to rule on such challenge within 30 days of the Local Union election of delegates, a challenging party may submit an appeal to the International President not later than 15 days thereafter. The International President shall refer such appeals to the Credentials Committee which shall consist of not less than five noncontested delegates, who shall be appointed by him not less than 20 days prior to the convening of the Convention.

Credentials Committee

2. Any challenge or appeal which could have been presented to the Local Union or International President in compliance with these filing requirements, but was not, shall be deemed to have been waived.

Challenges Waived

3. This committee shall meet at a time specified prior to the convening of the Convention to consider and resolve all appeals. This committee shall also independently review the credentials of all delegates and shall resolve all questions of irregularity. The committee shall report its rulings on appeals and irregularities to the Convention on the first day thereof. The rulings of the committee shall be in force pending review by the Convention.

Credentials Committee Meeting and Report

(O) A Local Union may elect fewer than its quota of delegates. The number of votes to which a Local Union is entitled at Convention shall be divided equally among the seated delegates on all recorded votes.

(P) A Local Union shall not instruct its delegates in regard to the nomination and election of International officers, or in regard to any other matter coming before the Convention.

(Q) If a delegate is unable to be seated for any reason or is absent for good cause, the alternate elected by the greatest number of votes, or in the case of a tie the alternate chosen by a vote of the seated delegates, shall succeed to the vacancy for the period of such delegate's absence from the Convention. An alternate succeeding to a vacancy shall have neither voice nor vote until recognized by the Credentials Committee.

(R) In the case of a Local Union entitled to two or more delegates, they shall choose a chairman and alternate chairman of the delegation.

(S) The ballots and all other records pertaining to the nomination and election of delegates, including the membership mailing lists which were used to send the notices of the nomination and election of delegates, shall be preserved for not less than one year by the Local Union Secretary-Treasurer.

(T) Local Unions shall pay to their delegates transportation and other authorized expenses connected with attendance at the Convention.

(U) Delegates of Local Unions not in good standing shall not be seated at the Convention.

(V) The officers of the International Association shall be delegates to the Convention and shall attend at the expense of the International Association.

SECTION 17

Regular International Convention Procedure

(A) The proceedings of the regular Convention shall be governed by this Constitution and the rules adopted at each Convention. The rules adopted at the preceding regular Convention shall be in full force from the opening of any such Convention until new rules are adopted. Each Convention may adopt rules for the conduct of its business not in conflict with the provisions of this Constitution. The Convention shall be conducted in accordance with Robert's Rules of Order, unless otherwise provided by this Constitution or by the Convention rules.

(B) 1. It shall be the duty of the International President to preside at the Convention and conduct it in accordance with this Constitution and Convention rules. He shall submit to the regular Convention a report of his work as International President.

2. The International President shall appoint all Convention committees and they shall meet at his call. Each committee shall consist of not less than five Local Union delegates. The International Association may pay transportation and other expenses connected with service on committees which meet prior to the Convention.

(C) The International Secretary-Treasurer shall act as Secretary of the Convention. He shall keep a record of the proceedings of the Convention and shall submit a report to each regular Convention, including a showing of total receipts and expenses for the period since the last regular Convention. He shall publish full proceedings of each Convention in convenient form and furnish one copy to each delegate to the Convention

Page 20

International Delegates

Seating of Alternates

Delegation Chairman

Preservation of All Election Records

Delegate Expenses

Nonseating of Delegates

International Delegates

Rules

Chairman

President's Report

Committee Appointments and Expenses

Secretary

Secretary-Treasurer's Report

Proceedings

and one copy to each chartered Local Union and to members of the International Executive Board.

Executive Board Report

(D) The International Executive Board shall make a report to the regular Convention, and its members shall perform such duties for the International President during Convention as he may require.

Constitutional Amendments

(E) 1. Not less than 60 days prior to the convening of the Convention, all amendments to the International Constitution proposed by Local Unions shall be submitted to the International President, and he shall refer such proposed amendments to a Constitution Committee of not less than five noncontested delegates, who shall be appointed by him not less than 20 days prior to the convening of the Convention.

Constitution Committee Meetings and Report

2. This committee shall meet at a time specified prior to the convening of the Convention, to consider all such proposed amendments and report their recommendations to the Convention.

Convention Aides

(F) Immediately after the opening of each Convention, on the first day, the International President shall appoint the required number of Reading Clerks, Sergeants-at-Arms, and Messengers.

Quorum

(G) An International Convention quorum shall consist of not less than 25 per cent of the delegates officially seated by the Convention.

Roll Call List

(H) The International Secretary-Treasurer shall prepare, for the use of the Convention, a list containing the number of votes to which each Local Union is entitled. When a roll call vote is conducted, the International Secretary-Treasurer shall, in calling the roll of the Local Unions, call out the Local Union's number and the number of votes to which it is entitled.

Voting

(I) Voting shall be by a voice or standing vote of the delegates. Roll call votes shall be conducted in accordance with the provisions of Section 18(H) and (I) of this Constitution.

SECTION 18

Election of International Officers

Eligibility

(A) 1. Any active member of the Retail Clerks International Association in good standing, who has been an active member of the Retail Clerks International Association in continuous good standing for at least three years immediately preceding January 1 of the year in which the election is held and who is a citizen of a country in which the Retail Clerks International Association has a chartered Local Union, shall be eligible to hold any office of the International Association, except as provided in Section 9(A)2.

Eligibility

2. This section shall not be construed to debar any member who holds a salaried position with the Retail Clerks International Association, or any of its chartered bodies or any organization approved by the International Executive Board with which the Retail Clerks International Association is affiliated, and who is otherwise qualified as hereinbefore set forth.

Disqualification

3. Any International, Local Union, or District Council officer or employee accepting any State, Provincial, County, Municipal, or Federal political office, or any other employment which in the judgment of the International Executive Board is inconsistent with the welfare of the Union, or which interferes with the proper carrying out of duties or responsibilities as a Union officer or employee, shall resign his office or position with the Union immediately, unless a leave of absence is granted with the approval of the International Executive Board. Upon failure to resign as required herein, the International Executive Board shall declare such office vacant and a suc-

cessor shall be elected in accordance with the provisions of this Constitution.

4. Any member of the International Association accepting a position inconsistent with Section 18(A)3 of this Constitution shall not be eligible to serve as a Local Union, District Council, or International officer, or represent any Local Union in a District or International Convention, or in a City Central or State Body Convention, but accepting a salaried position with the American Federation of Labor and Congress of Industrial Organizations, Canadian Labour Congress, Retail Clerks International Association, or any of its chartered organizations shall not be construed as making a member ineligible to serve as officer or delegate.

Eligibility

(B) The term of office for all International officers shall be five years and shall begin November 1 following their election, except in the case of a special election to fill a vacancy, in which case the term of office shall commence upon election by the International Executive Board, and shall continue for the balance of the predecessor's original term.

Term of Office

(C) The election of International officers shall be conducted at the regular Convention. Nominations shall be held on the second day of the Convention. The election of officers shall take place as the next order of Convention business.

Time of Nominations and Elections

(D) Nomination to International office shall be from the floor of the Convention. It shall require at least 15 Local Unions to place a name in nomination. In making nominations, Local Union action shall be determined by a majority vote of the delegates of the Local Union and shall be announced by the chairman of the delegation or such other spokesman as may be designated by a majority of the delegates. Any delegate may request the presiding officer to conduct a roll call of the delegates of the Local Union which he represents to verify the Local Union action. The presiding officer may also order a roll call if he is in doubt that a majority of the delegates support the Local Union action. No Local Union may nominate more than one candidate for each office.

Nomination Procedure

(E) Following the nominations, the nominees shall be required to indicate their acceptance of the nomination. No member shall be eligible for nomination to more than one International office, and no member who declines to accept nomination for an office shall be eligible for election to that office.

Acceptance of Nominations

(F) There shall be a Committee on Elections which shall be composed of the International Secretary-Treasurer and not less than five Local Union delegates appointed by the International President. The Committee on Elections shall report on the eligibility of the nominees to the Convention prior to the election.

Election Committee

(G) Where there is only one nominee for an office, the presiding officer may entertain a motion to declare the unopposed candidate elected by acclamation.

Unopposed Nominees

(H) Election of International officers shall be by standing vote of the delegates, except that a roll call vote of the Local Unions shall be conducted upon a motion of a delegate concurred in by 30 per cent of the seated delegates or by the presiding officer if he is in doubt as to the vote. When a roll call vote is conducted, the chairman of each Local Union delegation shall announce the votes of the delegates of that Local Union. Any delegate may request the presiding officer to conduct a roll call of the delegates of the Local Union which he represents. The presiding officer may also order a roll call if he is in doubt as to the Local Union vote. Proxy voting shall not be permitted.

Voting Procedure

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International Revenue

(A) The operating revenue of the International Association shall be derived as follows:

1. From a fee of \$2.50 on each applicant for membership or reinstatement.
2. From assessments levied by the International Executive Board.
3. From the sale of supplies.
4. From subscriptions to the *Retail Clerks Advocate*, and the sale of advertisements therein.
5. From investments.
6. From a monthly per capita tax on each member, based upon the membership on the last day of each month, to be remitted to the International Secretary-Treasurer on or before the tenth day of the following month, of \$1.60 during the calendar year 1972; \$1.85 during the calendar year 1973; \$2.10 during the calendar year 1974; \$2.35 during the calendar year 1975; and \$2.60 thereafter.
7. From all other lawful sources.

(B) In instances where Local Unions incorporate "Agency Shop" or service fee provisions in collective bargaining agreements, wherein employees are obligated to pay service fees to the Local Union, the Local Union, in recognition of services performed by the International Association and in discharge of its obligation under the Constitution as a Local Union, shall pay to the International Association monthly service fees equivalent to the per capita tax payments and all provisions thereof shall be applicable. Where initial service fees are collected by the Local Union, the \$2.50 fee set forth in Section 19(A) shall be remitted to the International Association.

(C) The membership and reinstatement fees and the monthly per capita tax set forth in Section 19(A) shall be paid by each Local Union to the office of the International Secretary-Treasurer no later than the tenth day of the month following that for which they are due. If such fees and tax are not received by the tenth day of the second month following that for which they are due, the International Secretary-Treasurer shall send a notice of delinquency by registered mail to the Local Union President and Secretary-Treasurer. If such fees and tax are not received by the tenth day of the third month following that for which they are due, the Local Union shall be subject to such remedial or corrective action as the International President or International Executive Board may deem just and proper.

SECTION 20

Retail Clerks Advocate and Other Publications

(A) The International Association shall publish such publications as its International Executive Board may determine necessary or advisable to promote the education and welfare of its members. The number of issues annually or otherwise of such publications and the name or designation thereof shall be as determined by the International Executive Board, provided, however, that there shall be published an official journal known as the *Retail Clerks Advocate* which shall be nonsectarian. The *Advocate* may recommend such participation in governmental affairs as may be deemed by the International Executive Board to be for the best interests of the International Association,

(I) The presiding officer shall appoint not less than two judges to assist the International Secretary-Treasurer in the conduct and count of roll call votes. Each candidate may be present or be represented by a delegate to observe the count.

(J) In the event a roll call vote becomes necessary during the election of the International Secretary-Treasurer, the roll call shall be conducted by a delegate appointed by the presiding officer. The International Secretary-Treasurer shall not participate in such roll call.

(K) A majority of the votes cast for any office shall be required to elect. If no candidate receives a majority, a run-off election shall be conducted. Such run-off election shall present to the delegates only the names of the two nominees receiving the greatest number of votes.

(L) No funds of the International Association or any of its chartered bodies shall be used to promote the candidacy of any person for any elective office or position within the International Association or any chartered body.

(M) No publications sponsored by or supported by the International Association or any chartered body shall be used to promote the candidacy of any person for elective office or position within the International Association or any chartered body.

(N) All Convention minutes and other records pertaining to the election of International officers, including membership lists used to determine the number of delegates to which a Local Union is entitled and the original completed credentials of the delegates, shall be preserved by the International Secretary-Treasurer for at least one year following the election.

(O) Any member desiring to protest the conduct of the election shall lodge his detailed protest in writing within 30 days of the election with the International Executive Board.

(P) The International Secretary-Treasurer shall submit a full report of the election of International officers to the Editor of the *Advocate* for publication.

(Q) In the event of a vacancy in any office on the International Executive Board, other than that of the International President, by reason of death, resignation, or other cause, the President shall immediately make such vacancy known to the International Executive Board and shall call for nominations from the International Executive Board. The names of all nominees shall be submitted to the International Executive Board, and it shall require a majority vote of the International Executive Board to elect. Upon each unsuccessful balloting, the name of the candidate receiving the fewest number of votes shall be eliminated.

(R) In case of a vacancy in the office of International President by death, by resignation, or other cause, the International Secretary-Treasurer shall perform the duties of the International President until his successor is selected. It shall be the duty of the International Secretary-Treasurer to immediately make known such vacancy to the International Executive Board and to call for nominations from the International Executive Board. The names of all nominees shall be submitted to the International Executive Board and it shall require a majority vote of the International Executive Board to elect. Upon each unsuccessful balloting the name of the candidate receiving the fewest number of votes shall be eliminated.

Fees

Assessments

Investments

Per Capita Tax

Agency Shop Fees

Per Capita Tax and Fees Due Date

Local Union Delinquency

Remedial Action

Publications

Election Judge

Roll Call Vote for Secretary-Treasurer

Majority Vote

Union Funds

Union Publications

Preservation of Records

Election Protest

Election Report

Executive Board Vacancy

Presidential Vacancy

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its Local Unions, and members.

Retail Clerks
ADVOCATE

Advertising
Policy

Editor

Circulation

Disser-
tions

(B) The columns of the *Advocate* shall be open to Local Unions for reports of their work and progress and such articles as relate to our calling or any other matter likely to be of interest to our members, provided personalities be not indulged in. The *Advocate* Editor, with the approval of the International Executive Board, may accept advertisements consistent with the aims and objectives of the International Association. The advertising rates are to be regulated by the Editor.

(C) The International President shall be Editor and Manager of the *Advocate*. All members of the International Association shall receive the *Advocate* by virtue of their membership without subscription cost. For those not members the subscription shall be \$5.00 per year payable in advance, provided, however, that the subscription rate for nonmembers may be decreased or increased by the International Executive Board as circumstances may require. Complimentary issues may be mailed to nonmembers for organizing and public relations purposes.

(D) Members feeling themselves aggrieved by a refusal of the Editor to publish their communications shall have the right to appeal to the International Executive Board, whose decision shall be final unless reversed by the Convention.

SECTION 21

Union Store Card

Official
Store
Card

(A) The article known to this organization as the Union Store Card, and generally referred to as the Store Card, which may also take the form of a decalcomania, is, and always shall remain the property of the International Association, and the Store Card adopted at the 11th Convention and regularly changed and modified in the 20th Convention of the International Association shall be the only Store Card recognized as legal by the International Association.



Store
Card
Distribu-
tion

It shall be distributed to Local Unions for use in their jurisdiction in accordance with the price list of the International Association. All Local Union Secretary-Treasurers must keep an accurate record of the serial numbers and the name and address of each establishment to which Store Cards are issued.

Store
Card
Display

(B) Any establishment recognized as union by the laws and principles of the International Association shall be entitled to display the Store Card, provided the proprietor or persons duly authorized to conduct such establishment shall have signed a collective bargaining agreement approved by the International Association.

Issuance
to Small
Establish-
ments

Local Unions may issue the Store Card to small dealers who have no employees provided they have made application for nonactive membership as required under Section 5(G) and provided such non-

active members execute the Local Union's collective bargaining agreement.

(C) No Local Union shall sell, rent, lease, or charge any fee for the Store Cards.

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Page
Prescribed

SECTION 22

International Badge

(A) The badge adopted by this International Association is:

Official
Badge



and shall be the only official badge recognized by the members of the International Association. All Local Unions shall request the public, and especially the members of other labor organizations, to trade exclusively with members of the International Association.

(B) The title of the International Association badge shall be retained by the Retail Clerks International Association and the right to the use of the badges shall be leased to Local Unions, not sold, by the International Secretary-Treasurer, who is duly empowered to make a demand for badges that fall into the hands of nonunion people, and he shall be empowered to recover the same in the instance of a refusal to deliver the same to him or the Local Union Secretary-Treasurer.

Title to
Badge

(C) Any member who shall be in arrears for dues, fines, or assessments shall, upon demand from the Local Union, forfeit the badge, and the amount deposited shall be credited to his arrearage.

Forfeiture
of Badge

(D) All badges shall be obtained direct from the International Secretary-Treasurer, who shall purchase the same in such quantities as to furnish them to the Local Unions at the lowest possible price.

Purchasing
of Badge

SECTION 23

District Councils

(A) District Councils, which shall be subject to the Constitution and laws of the International Association, may be established by the International Executive Board with such jurisdiction as the International Executive Board may determine. All Local Unions situated within the jurisdiction of a District Council shall affiliate with it, unless otherwise directed by the International Executive Board.

Establish-
ment and
Jurisdic-
tion

(B) 1. District Councils may adopt or amend bylaws for their government as they deem appropriate, provided they conform to the Constitution and laws of the International Association and are approved by the International President. Such bylaws shall provide for the collection of a per capita tax from the Local Unions affiliated with the District Council; for the holding of an annual Council Convention; for the establishment of an Executive Board, which shall meet at least annually, comprised of not less than one representative from each affiliated Local Union; for the election of a President, who shall be the chief executive officer, a Secretary-Treasurer, at least two Vice Presidents, a Recorder, and such other officers as the District Council may deem appropriate. Unless otherwise provided in a District Council's bylaws, the term of all offices shall be four years. In the event applicable law allows a term longer than four years, the District Council may amend its bylaws to provide for such longer term. Bylaw amendments establishing terms of office shall be effective for the next election after their adoption.

Bylaws

8 1 0 4 0 3 0 2 4 6 3

Chief Executive Officer

2. In any District Council in which the Secretary-Treasurer is the chief executive officer, he shall automatically become the President, and the President shall automatically become the Secretary-Treasurer. This change is effective immediately. However, the formal exchange of titles may be accomplished at the convenience of the District Council on or before January 31, 1973.

Duties and Responsibilities

(C) The duties and responsibilities of District Councils and of their elected and appointed representatives under the Constitution and laws of the International Association shall be the same as those of Local Unions and of their elected and appointed representatives, and all procedures applicable to Local Unions and their representatives shall be applicable to District Councils and their representatives, except where the International Executive Board determines that such duties, responsibilities, and procedures are incompatible with the purposes of District Councils.

SECTION 24

Local Union Charters and Suspensions

Application for Charter

(A) Seven or more persons in one city or town who are eligible to membership in this International Association, as specified in this Constitution, may obtain a charter by making application to the International Secretary-Treasurer, such application to be accompanied by \$2.50 of the initiation fee on each applicant. All necessary supplies for the conduct of the local organization must be purchased from the International Secretary-Treasurer according to the price list furnished.

Multiple Local Union City

(B) More than one Local Union may be chartered in the same city provided no reasonable objections are offered by the Local Union in such locality. The decision of the International President shall be final, subject only to appeal to the International Executive Board.

Withdrawal Procedure

(C) No Local Union shall entertain a resolution to withdraw from the International Association or to dissolve unless notice that such resolution is to be entertained is given in writing to each member of the Local Union at least 60 days prior to the meeting at which such resolution is to be acted upon. Such resolution shall be read at the regular business meeting prior to the meeting at which such resolution shall be entertained. At least 60 days prior to the meeting at which such resolution is to be entertained, notification by registered mail that such resolution has been proposed shall be given to the International President by the chief executive officer of the Local Union.

Withdrawal Conditions

(D) A Local Union cannot withdraw from the International Association or dissolve, so long as seven members in good standing object thereto, but shall consolidate with another Local Union on order of the International President, with the sanction of the International Executive Board, or by a majority vote of each Local Union so consolidating, at a special called meeting, after paying up all indebtedness to date of consolidation.

Property of Defunct Local Unions

(E) If at any time a Local Union should withdraw, lapse, dissolve, be suspended, or expelled, all property, books, charter, records, papers, and funds held by or in the name of, or on behalf of, such Local Union must be forwarded immediately to the International Secretary-Treasurer to be held in safekeeping for the International Association as trustee for a period of one year, or until the Local Union shall be reorganized, if reorganized during such period; if not reorganized within said period of one year, the property,

records, papers, books, charter, and funds shall without further proceeding become the property of the International Association.

(F) The officers and members of such Local Union shall be held responsible for compliance with this section within 30 days after such dissolution, suspension, or withdrawal, under penalty of being prosecuted by law, or forfeiture of membership and benefit in this International Association, or both.

(G) Members of lapsed, suspended, dissolved, or expelled Local Unions who are in good standing may be transferred either to general membership or to such Local Union as may be directed by the International President. Such transfer shall become effective immediately.

SECTION 25

Local Union Duties and Powers

(A) Local Unions shall have the power to make bylaws and rules for their government and the members of the International Association working in their jurisdiction, which shall in no way conflict with the Constitution and laws of the International Association and must be filed with and approved by the International President before becoming law; likewise all future amendments must be submitted to and approved by the International President before they become effective.

(B) Local Unions shall have power to regulate and make payment of sick benefits only by an established bylaw of the Local Union.

(C) No Local Union chartered by the Retail Clerks International Association, or any of its members, shall issue an appeal for financial aid from a Local Union of this International Association, or request contributions for any purpose outside of the jurisdiction of the Local Union; or solicit advertising for any purpose whatsoever, unless first securing the approval and consent of the International Executive Board. Any Local Union or member found guilty of violating this section shall be subject to discipline by the International Executive Board.

(D) All business at meetings of Local Unions shall be recorded in the language predominantly used in the territory covered by the charter of the Local Union, and it shall be the duty of the International President to revoke the charter of any Local Union that fails to comply with this section.

(E) All Local Unions shall be required to abide by and conform with all of the provisions of the Constitution and laws of the International Association, and shall pay to the International Association promptly, when due, all dues, per capita tax, bills payable, and assessments, which shall from time to time become due and payable under the provisions of the Constitution and laws.

(F) All Local Unions are expressly prohibited from contracting or incurring any indebtedness chargeable to the International Association without the written consent and authority of the International President, with the approval of the International Executive Board.

(G) Local Unions may employ legal counsel; provided, however, 1) the International Association shall in no way be liable for any fees, costs, or expenses incurred by such employment, unless assumed in writing by the International President; 2) the employment of such legal counsel is reported in writing forthwith to the International President; 3) such legal counsel

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is duly licensed to practice law in the courts of the state or jurisdiction in which the Local Union is situated, and whose employment, in the judgment of the International President, is not contrary to or liable to jeopardize the best interests of the Local Union and the International Association.

The International President may employ or assign counsel for the purpose of association and assistance where needed.

Amotions (H) When State and Local Central Bodies or appropriate Departments of the American Federation of Labor and Congress of Industrial Organizations, and Provincial Federations of Labor and Labor Councils of the Canadian Labour Congress, exist, Local Unions should affiliate with such appropriate bodies.

SECTION 26

Local Union Membership Meetings

Regular Monthly Business Meetings (A) All Local Unions, in order to provide a democratic forum in which their members may express opinions and vote on issues affecting their welfare, shall hold at least one regular business meeting of the membership per month; provided, however, that a Local Union may elect, through its bylaws, to hold not less than one regular business meeting of the membership every third month. Such regular meetings shall consist of a single meeting for all members; provided, however, that a Local Union may elect, through its bylaws, to hold a series of meetings for all of its members on an area basis. Regular business meetings of the membership, whether held as a single meeting or as a series of meetings, must be held within the time and in the manner provided in this section and in any applicable provisions of the Local Union's bylaws, except upon the approval of the International President.

Special Business Meetings (B) A Local Union shall call a special business meeting of its membership whenever requested in writing by 100 members or five per cent of its membership, whichever is less, or when directed by its Executive Board or chief executive officer. Special business meetings shall be held in the same manner as the Local Union holds its regular business meetings.

Other Meetings (C) Local Unions may hold summons, trade, or division meetings of a portion of the membership on an occasional or periodic basis as may be determined by the Local Union. Such meetings of the Local Union membership may pass upon recommendations to be referred to the regular business meeting or to a special meeting of the membership for its action thereon.

Meeting Notice (D) Adequate notice shall be given of the time and place of all meetings not held on a periodic basis at a set time and place, so that all members involved have an opportunity to attend. Adequate notice shall also be given of the purpose of all special business meetings.

Quorum (E) Not less than seven members shall constitute a quorum to transact any Local Union business.

SECTION 27

Local Union Officers

Constitutional Officers (A) The constitutional officers of Local Unions shall be President, Secretary-Treasurer, Recorder, and not less than three Vice Presidents, all of whom shall constitute the Executive Board of the Local Union. The President of the Local Union may appoint **Sergeants-at-Arms** Sergeants-at-Arms to assist in properly conducting the Local Union meetings.

(B) 1. The chief executive officer of the Local Union shall be responsible for enforcing the Constitution and laws of the International Association and the bylaws and rules of the Local Union. He shall preside at all meetings of the Local Union and shall decide all questions of order, subject to an appeal to the Local Union. The chief executive officer, by virtue of office, shall be a delegate or representative to any convention or meeting to which the Local Union is entitled to and elects to send delegates or representatives. He shall have general supervision over the affairs of the Local Union. He shall appoint all committees as may be necessary, unless otherwise ordered, and shall perform such other duties as are required by his office. Where voting is conducted other than by secret ballot, he shall vote only in case of a tie.

2. In any Local Union in which the Secretary-Treasurer is the chief executive officer, he shall automatically become the President and chief executive officer, and the President shall automatically become the Secretary-Treasurer. This change shall be effective January 1 after the next election of officers in the Local Union, unless earlier provided in the Local Union's bylaws.

3. The chief executive officer shall authorize the disbursement of funds with the consent of the Local Union Executive Board. Disbursements shall be made in accordance with Section 29(E).

4. The Local Union chief executive officer may employ or retain such professional or other assistants and office personnel as may be necessary to conduct the affairs of the Local Union. He may terminate the employment of such personnel in the best interest of the Local Union.

5. The Local Union chief executive officer may employ special representatives, members of the Local Union, for the purpose of organizing unorganized workers within the Local Union's jurisdiction, unless such employment is disapproved by the Local Union Executive Board. The Local Union chief executive officer may also employ temporary representatives, members of the Local Union, for temporary projects, unless such employment is disapproved by the Local Union Executive Board. He may terminate such special and temporary representatives at the end of an assignment or in the best interest of the Local Union, unless such termination is rejected by the Local Union Executive Board.

6. The Local Union chief executive officer may employ Business Representatives, members of the Local Union, as may be necessary for the purpose of carrying out the duties and responsibilities of the Local Union, unless such employment is disapproved by the Local Union Executive Board or set aside by the membership at the next regular or special business meeting of the Local Union; provided, however, that a Local Union may determine, by the future adoption of a bylaw provision, to elect its Business Representatives in the same manner as it elects its officers or in the manner provided in Section 28(M) of this Constitution. Where a Local Union determines to elect its Business Representatives, the number of such positions shall be determined by the membership.

7. The Local Union chief executive officer may terminate the employment of Business Representatives for cause or necessary reduction in force unless such termination is disapproved by the Local Union Executive Board. Such action shall stand unless set aside by the membership at the next regular or special business meeting of the Local Union.

8. The Local Union chief executive officer shall

Chief Executive Officer
President

Chief Executive Officer
Transition

Fund Disbursement

Local Union Personnel

Special Representatives

Employment of Business Representatives

Business Representative Election Options

Business Representative Termination

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Employee Compensation

determine the compensation of special and temporary representatives, office personnel and such professional or other assistants employed by the Local Union, subject to the approval of the Local Union Executive Board.

Membership Identification Cards

9. The Local Union chief executive officer shall be held responsible for all annual membership identification cards furnished him by the International Secretary-Treasurer, and he shall give an accurate account of the same to the trustees of the Local Union.

Union Store Cards

10. The Local Union chief executive officer shall be the custodian of the Union Store Cards adopted by the International Association.

Membership Reports

11. The Local Union chief executive officer shall forward a monthly membership report on forms provided or approved by the International Association, giving an accurate record and summary of the membership as of the end of the month for which the report is submitted. The report must list each newly initiated and reinstated member during the month in which the Local Union first collects all or any part of the initiation or reinstatement fee or monthly dues from the member. A completed membership application for each such member listed must be forwarded to the International Secretary-Treasurer no later than the next monthly report following the report in which the member is listed. The report shall indicate whether reinstated members are reinstating following a suspension or upon withdrawal or Military Leave Courtesy Card. The report shall also list the names of all outgoing members of the Local Union during the month, indicating whether by suspension, withdrawal, military leave, or death of the member. The monthly membership report, accompanied by the full payment of per capita tax, fees, and all items for which the Local Union has been billed, must be forwarded to the International Secretary-Treasurer no later than the tenth day following the end of the month for which the report is made, unless an extension for forwarding has been requested by the Local Union and granted by the International Secretary-Treasurer.

Per Capita Tax Payment

Members Address Report

12. The Local Union chief executive officer shall ensure that the home address and social security number or social insurance number of each and every member is sent in to the International Headquarters at the time of reporting affiliation, as well as all changes of address when same occur. New Local Unions, when organized, shall furnish the addresses and social security numbers or social insurance numbers of all members upon the first report. A copy of this report shall be kept on file by the Local Union.

Receipt of Money

13. The Local Union chief executive officer shall receive and properly receipt all money collected.

Financial Statement

14. The Local Union chief executive officer shall make an itemized statement at each regular business meeting of the Local Union of all moneys received and paid out by him, the accuracy of which shall be certified by the trustees of the Local Union, and shall submit his books for inspection to the trustees at the end of each month.

Vice Presidents Duties

(C) The Vice Presidents shall assist the President in the discharge of his official duties. They shall be numerically designated for election purposes only.

Secretary-Treasurer Duties

(D) The Secretary-Treasurer of the Local Union (or the President if the Secretary-Treasurer is the chief executive officer) shall assist the chief executive officer in the carrying out of his duties and responsibilities and shall conduct his office under the general supervision of the chief executive officer. He shall preside at Local Union meetings in the absence of the chief executive officer and shall perform such other

duties as the Local Union may require.

(E) The Recorder of the Local Union shall report the minutes of each Local Union meeting, keeping an accurate and permanently bound account of all transactions, including all receipts and expenditures, and an accurate record of all proceedings. It shall be the duty of the Local Union Recorder to report all matters of interest in the Local Union to the Editor of the *Advocate*.

(F) 1. The Executive Board of the Local Union shall have full and complete charge of all business of the Local Union pending submission of its actions to the membership for approval. It shall meet not less often than once a month or in additional meetings upon the call of the chief executive officer or a majority of its members.

2. The Local Union Executive Board shall annually select from among its members a Board of Audit, consisting of three members, who shall not be members of the Board of Trustees. The Board of Audit shall annually examine the trustees' and certified public accountant's reports and shall report their findings to the next regular business meeting of the Local Union.

(G) 1. All Local Union officers who are entrusted with any books or records of a Local Union shall maintain and keep such books or records in good order and shall at all times have them available for authorized audit, examination, or inspection.

2. The system of bookkeeping used by the Local Union shall be in accordance with practices approved by the International Secretary-Treasurer's office.

(H) Salaries and expenses of officers and Business Representatives shall be determined by the membership of the Local Union.

SECTION 28

Local Union Elections

The constitutional officers of the Local Union, and Local Union Business Representatives (where the Local Union bylaws so provide in accordance with Section 27(B)6), shall be elected in the following manner, except to the extent that such procedures are modified by the future adoption in the Local Union bylaws of the alternative method of election for Business Representatives provided for in Section 28(M) of this Constitution:

(A) Nominations shall be conducted during the third or fourth quarter of the election year, and elections shall be conducted during the fourth quarter of the election year, as provided in the Local Union bylaws. Not less than 15 days prior to nominations and elections, notice shall be mailed by the Local Union to each member at his last known home address, setting forth the times, places, and manner for conducting the nominations and elections.

(B) Unless otherwise provided in a Local Union's bylaws, the term of all offices shall be three years. In the event applicable law allows a term longer than three years, the Local Union may amend its bylaws to provide for such longer term. Bylaw amendments establishing terms of office shall be effective for the next election after their adoption. Terms of office shall expire on December 31.

(C) The term of service of elected Business Representatives shall be for one year. However, a longer term not to exceed that provided for Local Union officers may be provided for in the Local Union bylaws. Such terms shall expire on December 31, except as provided in Section 28(M)2.

Executive Board

Executive Board Authority and Meetings

Local Union Board of Audit

Certified Public Accountant Reports

Books and Records

Book-keeping System

Salaries and Expenses

Elected Officers

Time of Nomination and Elections

Election Notice

Term of Office

Elected Business Representatives Terms of Service

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Limit to One Office Salaried Representatives on Executive Board	(D) No member may be nominated to more than one office in any election and no member may hold more than one elected office at any one time. Beginning with the next election of officers in the Local Union, the salaried representatives of the Local Union shall not constitute more than 50 per cent of the membership of the Local Union Executive Board.	ship mailing lists which were used to send the notices of the nominations and elections, shall be preserved for not less than one year by the Local Union chief executive officer.	Election Results
Eligibility to Vote	(E) Any active member in good standing in the Local Union, as defined in Sections 5(B) and 6(A) of this Constitution, shall be eligible to vote in the Local Union's elections.	(L) Formal installation of the newly elected officers may be either before or after the start of their term of office to suit the convenience of the Local Union, but in any event either during the months of December, January, or February; provided, however, that no officer shall be deemed to be in office unless bonded where required by the Constitution and laws of the International Association.	Installation of Officers
Opportunity to Vote	(F) 1. The nominations and elections shall be conducted at such times and places as will afford all active members in good standing a reasonable opportunity to nominate and vote.	(M) The following alternative method of electing Business Representatives may be adopted by a Local Union in its bylaws:	Business Representative Election Option
Supervision of Election	2. The Local Union chief executive officer shall select a general chairman to supervise the conduct of the nominations and elections and not less than three members to act as election judges to assist the general chairman. The general chairmen and election judges shall not be candidates for Local Union office. They shall maintain custody of all ballots and election registers during the conduct of the elections. Where multiple polls are used, at least one election judge shall supervise the election at each polling place.	1. The chief executive officer shall nominate one or more members for each such position. The Executive Board, upon receiving nominations from the chief executive officer, may elect or reject such nominees as Business Representatives. Said Executive Board action shall stand unless set aside by the membership in the next regular or special business meeting of the Local Union. Should the chief executive officer decline to offer a nomination at election time, then nominations may be made by any member of the Executive Board.	Nomination by Chief Executive Officer
Voting Procedure	3. Each eligible member desiring to vote shall sign an election register prepared by the Local Union. The voter shall be given a ballot prepared by the Local Union and shall be provided an opportunity to vote his ballot in secrecy. Ballots shall bear no number or marks which might identify the voter. After marking his ballot, the voter shall fold and place it in a secured ballot receptacle provided by the Local Union. Alternative procedures for voting by machine, adequate to ensure the secrecy of the ballot, may be provided. Adequate safeguards to ensure a fair election shall be provided by the Local Union officers and election officials.	2. The term of service for Business Representatives elected under the alternative method shall commence on February 1 and expire on the thirty-first day of January in the year in which the term ends. Nominations and elections shall take place at the first meeting of the Executive Board in January.	Term of Service
Single Meeting—Vote Tally	4. Where the election is conducted at a single membership meeting, the results shall be tallied and recorded by the general chairman of the election and the election judges at the close of the voting.	(N) Elected Business Representative positions shall be designated by number so that separate nominations and elections shall take place for each position.	Numerical Designation
Multiple Polls—Vote Tally	5. Where the election is conducted at multiple times or polls, the general chairman of the election and an election judge from each polling place shall meet at the offices of the Local Union not later than 2:00 p.m. of the second day following the last day on which the election was held. They shall there tally and record the results of the election.	(O) 1. Not more than 15 days subsequent to the elections, all challenges to the elections shall be submitted to the chief executive officer of the Local Union. Not more than 15 days subsequent to the decision of the Local Union respecting such challenge, a challenging party may appeal the Local Union's decision to the International President. Where a Local Union fails to rule on such challenge within 30 days of the Local Union election, the challenging party may appeal to the International President not later than 15 days thereafter.	Election Challenge
Mail Referendum Election	6. The Local Union, in its approved bylaws, may provide procedures for election by a mail referendum in all or certain areas in lieu of the election procedures specified in Section 28(F).	2. The decision of the International President may be appealed to the International Executive Board not later than 30 days after such decision has been rendered.	Appeal to International President
Impermissible Voting	(G) Write-in candidates and proxy voting shall not be permitted.	3. Any challenge or appeal which could have been presented in compliance with these filing requirements, but was not, shall be deemed to have been waived.	Appeal to International Executive Board
Majority to Elect	(H) A majority of votes cast shall be required for election. Where no nominee receives a majority of the votes cast, a run-off election between the two nominees with the higher number of votes shall be conducted.	(P) 1. If any officer shall fail to discharge the duties of his office for three successive meetings, without satisfactory excuse, the office shall be declared vacant by the Local Union Executive Board.	Election Challenge Waived
Unopposed Nominees	(I) When nominations have been completed and there are unopposed candidates, the Local Union chief executive officer shall entertain a motion to dispense with a secret ballot election and declare the nominees duly elected by acclamation.	2. Where vacancies occur in any of the elected offices or positions of a Local Union the Local Union Executive Board at its next regular meeting shall fill the vacancy for the balance of the term. However, a vacancy in the office of Local Union chief executive officer shall be filled no earlier than 60 days nor later than 90 days after the office is declared vacant.	Declaration of Vacancy
Preservation of Election Records	(J) The ballots and all other records pertaining to the nominations and elections, including the member-	3. In the case of a vacancy in the office of Local	Vacancies Filled

Article
Duties
Union chief executive officer, the Secretary-Treasurer of the Local Union (or the President if the Secretary-Treasurer is the chief executive officer) shall perform the chief executive officer's duties until his successor is selected.

SECTION 29

Local Union Board of Trustees

Composition

(A) The Local Union President, Secretary-Treasurer, and a Vice President to be elected annually by the Local Union Executive Board shall, by virtue of their offices, constitute the Local Union Board of Trustees.

Responsibilities

(B) The trustees shall be responsible for ensuring that the funds and property of the Local Union are:

1. Properly received and managed for the sole use and benefit of the Local Union;
2. Properly accounted for monthly; and
3. Expended, used, and invested only upon proper authorization.

Finances

(C) The trustees shall be responsible for ensuring that all finances of the Local Union are in accordance with the Constitution and laws of the International Association and the approved bylaws of the Local Union.

Deposits

(D) The trustees shall be responsible for ensuring that all moneys received by the Local Union are promptly deposited in such banks as the Local Union may designate.

Check Co-Signatures

(E) The signatures of two of the three trustees shall be required on all checks and all other financial documents, and the trustees shall be responsible for ensuring that all banks and other financial institutions holding funds or property of the Local Union are so instructed.

Financial Examination and Report

(F) The trustees shall examine monthly all books and accounts of the Local Union, shall report their findings to the Local Union Executive Board and the Local Union membership at the next regular business meeting, and shall make recommendations relative to all financial matters presented to the Local Union membership.

Certified Public Accountant and Annual Audit

(G) The trustees shall employ a certified public accountant to assist them in the performance of their duties and to perform a complete audit of the Local Union not less often than once a year.

Monthly Financial Reports

(H) The trustees shall make a monthly financial report to the International Secretary-Treasurer on forms supplied or approved by the International Association, to be accompanied by copies of all certified public accountant's audits or reports.

Bonds

(I) The trustees shall ensure that Local Union officers, representatives, and employees are bonded as directed by the International Secretary-Treasurer and in accordance with Section 12(L).

Invest Funds

(J) The trustees shall invest and reinvest the surplus funds of the Local Union, upon the approval of the Local Union membership, according to standards applicable to fiduciaries. The title to a headquarters building or other real property held by the Local Union shall be vested by proper conveyance in its own name; in the name of the Board of Trustees and their successors in office, in trust for the sole use and benefit of the Local Union; or in a separate building corporation whose charter and other corporate documents have been approved by the International President.

Title to Headquarters

Local Union Funds

(A) 1. The general funds or property of a Local Union shall be used only for such purposes as are specified in the Constitution and laws of the International Association and as may be required to transact and properly conduct its business.

2. All moneys paid out of the funds of a Local Union must be authorized by the membership of the Local Union, or authorized by the Local Union Executive Board and approved by the membership, except for moneys required to be paid out of the funds of a Local Union by the Constitution or laws of the International Association or the approved bylaws of the Local Union.

3. All moneys authorized to be paid out of the funds of a Local Union by its Executive Board prior to approval at a regular or special business meeting of the Local Union must be approved by the membership not later than the date of the next regular business meeting of the Local Union in order for payment to continue beyond such date.

4. The Local Union may include in its bylaws provisions for establishing and maintaining special funds such as strike benefit funds, scholarship funds, or building funds, by specific allocation out of monthly dues.

5. The Local Union shall, under no circumstances, use any of its funds for loans or donations to members except in the event of a community disaster.

(B) All officers at the expiration of their respective terms of office, or when removed or when their offices are declared vacant, shall deliver to their duly elected and qualified successors, and if there is no such successor then to the duly elected trustees of the Local Union, all books, papers, moneys, and other property in their possession belonging to the Local Union or International Association, and they shall not be relieved from their bonds or obligations until they have complied with this requirement.

(C) All official supplies and forms required under this Constitution and laws to be used by Local Unions shall be obtained from or approved by the International Secretary-Treasurer, and not otherwise.

SECTION 31

Local Union Revenue

(A) 1. Local Unions shall fix reasonable initiation and reinstatement fees and dues, subject to the approval of the International President. Effective December 1, 1972, no Local Union may provide for dues for any member which are less than \$6.00 per month, unless otherwise approved by the International Executive Board. An applicant for membership shall pay an initiation or reinstatement fee plus the current month's dues and assessments.

2. In order to ensure the financial health of the International Association and its Local Unions, the dues in effect in each Local Union on July 1, 1972, shall be increased in the amount of \$1.00 per month for each member as follows: an initial increase of 50 cents shall be required as of January 1, 1973, except that a Local Union may elect to defer all or part of this increase to a date not later than January 1, 1974, provided it first determines that its dues structure in relation to its obligations will permit such deferral; an additional increase of 50 cents shall be required

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as of January 1, 1974, except that a Local Union may elect to defer all or part of this increase to a date not later than January 1, 1975, provided it first determines that its dues structure in relation to its obligations will permit such deferral.

Dues Adjustment Procedure

3. An increase in dues required to comply with the \$6.00 minimum specified in Section 31(A)1 shall be deducted from the increase required by Section 31(A)2. If the increase required by Section 31(A)1 is \$1.00 or greater, Section 31(A)2 shall not apply. If the increase required by Section 31(A)1 is less than \$1.00, the first 50 cents of the remainder shall be required as the initial increase under Section 31(A)2 and the balance of the remainder shall be required as the additional increase under Section 31(A)2.

Reduction in Dues Adjustment

4. Any increase in dues voted by a Local Union to take effect after July 1, 1972, shall be deducted from the increases otherwise required by Section 31(A).

Revenue Increase Procedure

(B) Dues, initiation and reinstatement fees, and general or special assessments shall be increased or levied by Local Unions by majority vote by secret ballot of the members at a regular or special meeting. Not less than 15 days' written notice of such proposed increase or levy shall be provided the membership prior to voting.

Revenue Records

(C) Each Local Union shall maintain an accurate record of the monthly dues and other moneys collected from each member. All moneys collected by the Local Union for initiation fees, reinstatement fees, dues, assessments, etc., shall be the property of the Local Union, with the exception of the monthly per capita tax and fees, as set forth in Section 19, and assessments imposed by the International Association or International Executive Board upon the Local Union or individual members in accordance with the Constitution and laws of the International Association.

Conversion to Dues

(D) Assessments levied by the International Executive Board and assessments or fines levied by the Local Unions shall be paid within two calendar months and at the expiration of this time, if not paid, shall be charged as dues.

Responsibility for Revenue

(E) Each Local Union shall be responsible for the money of all members paid to the Local Union and not turned in to the International Secretary-Treasurer in accordance with the Constitution. Every Local Union shall be responsible for any and all benefits due members or their heirs where a member is not in benefit standing in the Retail Clerks International Association through the neglect or fault of a Local Union or any of its officers to remit per capita taxes or assessments, or to perform any other duties incumbent upon them, within the time limit fixed by this Constitution.

Dues Payment by Local Union

(F) Any Local Union may include in its bylaws a provision for payment by the Local Union of the dues of such of its members who are temporarily incapacitated due to illness, under a physical disability, unemployed due to an authorized strike or a lockout, or officers or stewards not in the primary employment of the International Association or any of its chartered bodies.

Dues Payment Date

(G) 1. Dues shall be due and payable on or before the first day of the month for which same are due.

Delinquency and Suspension

2. Any member two calendar months in arrears for dues or other financial obligations to the Local Union shall stand suspended if same are not paid on or before the first day of the third month. The responsibility for maintaining membership in good standing rests with the member; suspension, therefore, when it occurs, is the voluntary act of the member

involved.

3. After the expiration of such period, no Local Union or officer shall accept and receipt for dues without a reinstatement application and fee, or credit any member, except as specified in Sections 5(D) and 31(F).

Reinstatement Fee Required

(H) A suspended member working within the jurisdiction of the International Association may upon application be reinstated in the Local Union within whose jurisdiction he is working, upon the payment to the Local Union of the regular reinstatement fee, dues, or assessments of the Local Union, and in addition pays to the Local Union from which suspended any fines, assessments, or moneys due at the time of suspension. Any suspended member failing to comply with the foregoing shall not be entitled to reinstatement.

Conditions of Reinstatement

Eligibility

(I) The provisions of this Constitution relating to the payment of dues, assessments, fines, penalties, etc., shall not be construed as incorporating into any union-security contract those requirements for good standing membership which may be in violation of applicable law, nor shall they be construed as requiring any employer to violate any applicable law. However, all financial obligations imposed by or under this Constitution and Local Union bylaws (and in conformity therewith) shall be legal obligations of the members upon whom imposed and enforceable in a court of law.

Legal Obligations

SECTION 32

Funeral Benefits

(A) The benefits hereinafter provided are not charged for nor are dues increased, nor does any premium have to be paid by any member of the International Association in order to receive the same, but they are merely a gratuity on the part of the International Association for the purpose of encouraging the prompt payment of dues.

Gratuitous Benefits

(B) Payment will be made only for such reason and subject to all of the following provisions and conditions:

1. Funeral benefits, as set forth in this section, shall apply only to members who were affiliated with the International Association on December 31, 1955.

Affiliation Requirements

2. Such members to remain in benefit standing in addition to the subsequent provisions and conditions, must maintain continuous membership to be eligible for funeral benefits as provided herein.

Eligibility

3. On death of a member entitled to funeral benefit protection under the provision of this Constitution and laws, subject to the restrictions set forth, this International Association will pay to the designated beneficiary of such member, or if such beneficiary be deceased or there be no beneficiary named, then to the surviving spouse of such deceased member, and if there be none, then to the deceased member's heirs, and if there be none, to his executor in event such member left a will, or if there be none, then to the Local Union for funeral purposes, a funeral benefit, the amount of which shall be determined from a schedule set out in this section, when death occurs under the following conditions.

Payment

4. When death results from any cause incurred subsequent to the time the member's application for membership in this International Association was duly approved, excluding, however, and for which benefits shall not be paid, death resulting from any of the following causes:

Limitations

The use of narcotics, drugs, or intoxicating liquor, not taken on a doctor's prescription;

From immoral conduct;

Accident or disease incurred previous to joining the International Association;

From exposing himself to risks, which employees within the jurisdiction of the International Association as herein defined are not usually subjected to;

From accident or disease incurred while engaged in employment which is more hazardous than that of members employed within the jurisdiction of the International Association;

From participation in the commission of a crime;

From a catastrophe.

Amount

(C) 1. The funeral benefits payable under this section for members joining the International Association on or before December 31, 1955, and prior to reaching the age of 50 years, shall be \$500.00.

2. The funeral benefits payable under this section for members joining the International Association on or before December 31, 1955, and after reaching the age of 50 years, shall be \$250.00.

Eligibility

(D) To obtain funeral benefit protection, a member must have been in good standing on December 31, 1955, and shall have maintained such membership continuously until date of death. Good standing as defined herein, means that a member is not more than two calendar months in arrears for dues and is not under sentence of suspension or expulsion under the provisions of this Constitution.

Reinstated Members

(E) All reinstated members shall be considered on the same basis as new members, their membership to be taken from date of reinstatement.

Presentation of Proof of Death and Eligibility

(F) When any death occurs, the person entitled to receive the funeral benefits shall present to the Local Union of which the deceased was a member at the time of death, or to the International Association if a general member, a copy of the death certificate from the attending physician, coroner, or health officer. If a claim submitted to a Local Union is approved by it, a copy of the death certificate, together with the membership records for a period of five years prior to the date of death and a certificate under seal from the Local Union that the requirements of Section 32(D) have been satisfied and that the claim is otherwise correct shall be forwarded to the International Secretary-Treasurer within 60 days from the date of death. In any case where the information presented raises a question whether the requirements of Section 32(D) have been satisfied or whether the claim is correct in all other respects, the International Secretary-Treasurer may require such additional information as he may deem necessary to make a determination upon the claim.

Time Limit

(G) Failure to file such claim with the International Secretary-Treasurer within 60 days from date of proof of death, as provided in Subsection (F) of this section, shall invalidate the claim.

Payment

(H) If upon examination of the records the International Secretary-Treasurer finds the claim a just one, he shall at once forward to the Local Union, or to the beneficiary if a general member, a check for the funeral benefit payable to the person entitled to receive it, as designated on the beneficiary certificate furnished by the International Association, or as provided by this Constitution.

Appeal

(I) If the claim is disapproved by the International Secretary-Treasurer, the party or parties shall have the right to appeal to the International Executive Board any time within 90 days from the date of disapproval and, if still dissatisfied, shall have the right to appeal

any time within six months from the date of decision by the International Executive Board to the next Convention of the International Association by filing a written notice of intention to appeal with the International Executive Board.

(J) If a member in benefit standing dies without heirs or any will, the Local Union may have him properly buried or cremated, the expense of which shall not exceed the funeral benefit and in such case the Retail Clerks International Association shall not be held liable for any further benefits in the name of the deceased.

(K) A Local Union shall not be entitled to the funeral benefit of a deceased member unless it has paid the funeral expense, and the Local Union shall only receive the exact amount expended by it. A certificate signed by the President and the Secretary-Treasurer of the Local Union shall accompany the claim, furnishing an itemized statement of the exact amount expended.

(L) No Local Union or individual member shall be permitted to negotiate with or purchase from any member of the Retail Clerks International Association the transfer of any funeral benefits prior to the death of the person entitled to receive the same.

(M) The International Secretary-Treasurer shall be empowered to investigate any funeral benefit claim he may feel is illegal.

(N) The Executive Board of the International Association shall have and is hereby vested with full power to decide and rule upon all death claims where a controversy exists relative to payment thereon.

Member Official Status or Title

Local Union's Expense

Noneligibility

Right to Investigate

Executive Board Authority

SECTION 33

Collective Bargaining Contracts

(A) The terms of proposed collective bargaining contracts shall be submitted to the office of the International President for approval upon request prior to membership action thereon. Such approval shall be for the purpose of determining whether the aforementioned terms conform to the applicable established policies, practices, and objectives of the International Association relating to wages, hours, and other working conditions, either in the locality involved, or nationally, and so that no unwarranted prejudice will occur to other Local Unions.

(B) The International Association, in approving the terms of a proposed collective bargaining contract as above set forth, shall not thereby become a party to the contract, or assume any liability with respect thereto, unless the International Association, following specific authorization of its International Executive Board, becomes a party to and signs such contract.

(C) Local Unions shall, without delay, file executed copies of all collective bargaining contracts, including all letters of understanding concerning such contracts, with the International Association.

(D) 1. Proposals by a Local Union for a collective bargaining contract, or modifications thereof, shall be submitted to a meeting of the affected membership for approval.

2. A majority vote of members present and voting shall be necessary for the adoption of the proposal, a copy of which proposal as adopted, and all subsequent modifications thereof, shall be submitted to the office of the International President for approval immediately upon request. This will enable the International Association to discharge its obligations in the event such proposal is found to be inimical to

Contract Proposals

International Nonparty

Filing of Agreements

Membership Approval of Proposals

Submission of Membership-Approved Proposals

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the best interests of the International Association and the Local Unions in the area. It will also facilitate the disposition of requests for strike or defense benefits in the event such become necessary.

Negotiations

3. Following the adoption of such proposal the officers of the Local Union, or a committee which may be elected or appointed from the Local Union, shall meet with the employer and endeavor to arrive at an agreement. The current status of such meetings with the employer shall be reported not later than the next regular business meeting of the Local Union.

Membership Approval of Contract

4. The proposal judged by the Executive Board or negotiating committee to be the employer's final proposal shall be submitted to the affected membership for its consideration. A majority vote of those present and voting shall be necessary to accept or reject the proposal.

Rejection

5. In the event of rejection of the employer's proposal, the chief executive officer of the Local Union shall, upon request, report all pertinent facts to the International President.

Affected Membership Approval of Economic Action

6. No strike or other economic action shall be taken by any Local Union in connection with a contract proposal, unless the affected membership, at a meeting thereof, has approved the same through a two-thirds majority vote of members voting. In the event the affected membership constitutes a trade division or separate contract unit whose numerical membership is less than that of the Local Union, the Local Union must also approve such strike or other economic action. Between Local Union meetings the Local Union Executive Board may approve strike or other economic action by a division or trade group of the Local Union.

Notice to Members

7. Advance notice in writing of all meetings required by Section 33(D) shall be given to the affected membership. Any member so notified, who fails to be present and vote, unless prevented from doing so by sickness or unavoidable circumstances, shall be subject to discipline.

Alternative Ratification Procedures

8. Whenever in the judgment of the International President it may not be possible for a chartered body of this International to conduct an orderly vote in compliance with Section 33(D) at a membership meeting, because of exceptional circumstances, the International President may order the vote conducted by mail referendum or at individual polling places depending upon the circumstances, either by the chartered body, the International Association, or under the supervision of a balloting committee, and in accordance with such conditions as he may prescribe.

Assistance of International Representative

9. A representative assigned by the International President to assist a Local Union in preparing for or arriving at a satisfactory collective bargaining contract, or in adjusting a dispute arising under a collective bargaining contract, shall perform such duties in conjunction with the Local Union as will assist the Local Union.

Presidential Approval of Economic Action

(E) 1. Upon approval of a strike or other economic action by the Local Union, the chief executive officer of the Local Union, in requesting authorization from the International President to strike or take other economic measures, shall advise him of the action taken by the affected membership and the Local Union, together with other pertinent facts, including the number of full-time and part-time employees directly affected, and, upon request, an outline of the issues involved. No Local Union shall engage in a strike or other economic measures without first receiving the authorization of the International President and otherwise complying with the applicable pro-

visions of this section.

2. In the event of a dispute concerning the interpretation, application, or enforcement of a collective bargaining contract, efforts shall be made by the Local Union to amicably adjust the dispute, pursuant to the provisions of the collective bargaining contract. No strike or other economic action respecting the foregoing shall take place without the approval of the Local Union and the authorization of the International President, to whom a request for such approval must be directed, accompanied by a statement setting forth all pertinent facts with respect to the dispute, including the number of full-time and part-time employees directly affected, and, upon request, an outline of the issues involved.

Presidential Approval of Economic Action

3. The strike action, or any other economic action authorized by the International President, shall not constitute the International Association a party or a participant in any such dispute. Such authorization is solely for the purpose of assuring compliance with the provisions of this Constitution and recognition that amicable means of adjustment have been exhausted and that the best interests of the membership have been protected. Such authorization is also a necessary step to obtain consideration for strike or defense benefits.

International Nonparty

(F) 1. Disbursements for strike, lockout, or defense purposes shall be made from the general funds of the International Association, when authorized by the International Executive Board. Disbursements, when made, shall be subject to such qualifications as may be deemed necessary.

Strike Benefits

2. No Local Union shall receive strike or defense benefits, unless strike authorization or approval for other economic action has been obtained from the International President.

Presidential Approval Required

3. The financial aid allowed shall not be payable for the first week of the strike or lockout and shall apply only to those members who have been on strike or locked out for two full weeks in succession. Only those members who are on authorized strike or who are locked out shall be entitled to receive such benefits.

Eligibility for Benefits

4. Each member receiving strike or lockout benefits must sign his name on the required forms. These forms, when so signed, must be countersigned by a Local Union trustee.

Forms

5. An itemized list of all disbursements for strike or defense purposes shall be forwarded to the International Secretary-Treasurer by the Local Union chief executive officer at the close of each week on forms furnished by the International Association, listing and identifying the source and amount of all donations, contributions, and payments received.

Reports

6. With each such weekly report, the Local Union chief executive officer shall also furnish the International Headquarters with receipts signed by all individuals to whom money has been paid for expenses necessitated by the strike or lockout, other than the strike or lockout benefits paid to members.

Receipts

7. Delinquent Local Unions shall not be eligible to receive strike, lockout, or defense benefits, which shall be available only to Local Unions in good standing, whose per capita tax and financial obligations to the International Association have been paid in full and whose membership reports have been rendered up to the time of the strike or lockout.

Ineligible Local Unions

8. The payment of strike, lockout, or defense benefits under this section by the International Association constitutes simply the performance of an obligation under circumstances when its members are

International Nonparty

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involved in economic disputes and shall in no sense make the International Association a party to, or a participant in, such economic action.

SECTION 34

Pension and Health and Welfare Trusts

(A) Local Unions shall without delay file with the office of the International President executed copies of all Pension and Health and Welfare Trust documents including all amendments and other pertinent descriptive and operational documents necessary to clearly set forth benefits and administrative details in effect in such trusts.

(B) Local Union officers or employees, when serving as trustees of welfare and pension funds, shall do so as representatives of the union and shall not receive any remuneration for services performed for such welfare and pension funds except for reasonable expenses incurred. Such union representatives shall report regularly to the Local Union respecting the status of the trust fund and all matters pertaining thereto.

SECTION 35

Duties and Obligations

(A) Every member of this International Association, by virtue of such membership, agrees that in consideration of the rights and benefits conferred upon him pursuant to the terms of this Constitution, he shall be subject to disciplinary action for any conduct which constitutes a violation of his duties and obligations as stated in this section. Every member, by virtue of his membership, agrees that termination of membership does not terminate his liability for discipline for acts occurring during the period of his membership.

(B) Any member may be disciplined for committing any one or more of the following offenses:

1. Violating any provisions of the Constitution or laws of the International Association, any collective bargaining agreement, the approved bylaws or established rules of the member's Local Union, or, in the case of an officer or representative of the International Association or a Local Union, the Ethical Practices Codes duly adopted by the International Association;

2. Obtaining membership through fraudulent means or by misrepresentation;

3. Instituting action outside the Union against the International Association, Local Union, or any of their officers or representatives without first exhausting all remedies provided by Local Union bylaws and rules and the Constitution and laws of the International Association;

4. Advocating or attempting to bring about the withdrawal from the International Association of any Local Union or any member or group of members;

5. Maliciously publishing or circulating among the membership false reports or misrepresentations;

6. Working in the interest of or accepting membership in any organization dual to the International Association;

7. Maliciously slandering or willfully wronging a member;

8. Disturbing the peace or harmony of any meeting in or around any office or meeting place of the International Association or its Local Unions;

9. Embezzling, misappropriating, fraudulently receiving, wrongfully holding, failing to account for, or encouraging the diversion of the funds of the International Association or a Local Union;

10. Using the name of any Local Union or the International Association for soliciting funds, advertising, or like activities of any kind except as provided in Section 25(C);

11. Furnishing a complete or partial list of the membership of the International Association or of any Local Union to any person other than those whose governmental position or International or Local Union office entitles them to have a list, without specific authorization in writing from the International President;

12. Deliberately interfering with any officer or representative of the International Association in the discharge of his duties;

13. Deliberately engaging in conduct in violation of the responsibility of members toward the Union as an institution;

14. Violating the approved membership obligation or performing any acts of insubordination against the authority of the International Association;

15. Deliberately interfering with the performance of the legal or contractual rights or obligations of the International Association or any of its Local Unions;

16. In the case of any officer or representative of the International Association or of any Local Union, failing to faithfully perform the duties of his office or position or accepting dual compensation or expenses for the performance of duties related to his office or position.

(C) Any member convicted of any one or more of the above offenses may be censured, fined, suspended, and/or expelled.

(D) If any elected or appointed representative of the International Association or any Local Union is convicted of any one or more of the above-named offenses, he may be penalized as described above, and removed from office or position.

(E) Elected and appointed representatives of the International Association and its Local Unions serve in a position of trust and responsibility and obtain information and confidences and develop abilities which should not be employed in a manner inimical to the best interests of the International Association or its Local Unions; therefore, all such representatives, in the event of termination for any reason whatsoever, assume the obligation not to seek or obtain employment or position or work with, or in, any dual or other organization antagonistic to or in conflict with the objectives, activities, policies, or jurisdiction of the International Association or any of its Local Unions. This obligation shall continue for a period of five years from termination and extends to such geographical areas as may be necessary to protect the International Association or any of its Local Unions. This provision shall in no respect be applied in derogation or limitation of Sections 38 and 39.

SECTION 36

Disciplinary Proceedings

(A) 1. A member or Local Union officer, except as otherwise provided in this Constitution, shall be charged and tried by the Local Union of which he is a member.

2. Charges may only be preferred by a member

Interference with Funds
Unauthorized Financial
Unauthorized Furnishing of Membership Lists
Interference with Int'l. Reps.
Membership Responsibility
Membership Obligation
Interfering with Legal Obligations
Fiduciary Performance of Duties and Dual Compensation
Penalties
Removal from Office or Position
Continuing Responsibility of Representatives
Trial by Associate's Local Union
Preferential of Charges

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Filing Trust Documents

Trustee Expenses and Reports

Acceptance of Duties and Obligations

Discipline

Violate Union Governing Documents

Fraudulent Applications

Exhaust Internal Remedies

Advocate Withdrawal

Malicious Misrepresentation

Dual Unionism

Malicious Slander

Disturbing Meetings

of the Local Union, or by a representative of the International Association.

Time Limit

3. Such charges shall be filed with the Local Union Executive Board, within 90 days after the basis for the alleged violation has been discovered or should reasonably have been discovered.

Specification of Charges

4. Such charges shall set forth a short and plain statement of the violations alleged in such a manner as to fairly inform the accused of the specific acts which are alleged to constitute violations of the Constitution or laws of the International Association or the bylaws of the Local Union. Charges failing to comply with this requirement shall be dismissed by the Local Union Executive Board, without prejudice to the refile of charges within ten days which do comply with this requirement. Dismissal of refiled charges shall constitute final action, subject to appeal as provided in Section 37.

Dismissal

Service

5. A true and correct copy of the charges shall, without delay, be served upon the accused party by registered mail or in person. The accused shall be afforded a reasonable opportunity to reply in writing to the charges, if he so desires.

Answer

Dismissal

6. On motion of the accused before answer to the charges, or upon its own motion, the Local Union Executive Board may dismiss without trial any charges which fail to allege actions which would constitute violations of the Constitution or laws of the International Association or the bylaws of the Local Union. Such dismissal shall be subject to appeal as provided in Section 37.

Trial Date

7. The trial on the charges shall be held as soon as practicable, but no later than 30 days following the date on which the charges are filed unless, for good cause shown, an adjournment to a later date is granted by the Local Union Executive Board.

Trial Board

8. The trial shall take place before the Local Union Executive Board, which shall constitute the Trial Board. The President of the Local Union shall be the chairman of the Trial Board. Where the chairman is the charging party or accused, the remaining members of the Local Union Trial Board shall thereupon designate one of their number to act as the chairman of the Trial Board. No charging or accused member may serve on the Trial Board.

Due Process

9. The accused shall have a fair and impartial trial and shall have the right to present witnesses and other evidence in his behalf, and to cross examine any witness against him. The charging party shall be entitled to the same prerogatives. A charging or accused member may be assisted, advised, or represented by another member of the Local Union. The Local Union chief executive officer or, if he is a charging or accused party, the chairman of the Trial Board shall be responsible for advising the accused and charging party of all rights under this Constitution and the bylaws of the Local Union. In the event the accused fails to appear the trial shall nevertheless proceed.

Written Record

10. A written record of the trial proceedings shall be made and preserved and shall constitute the trial record. In all cases where a monetary penalty or loss of membership rights may be imposed, the record of the trial proceedings shall consist of a verbatim transcript.

Decision

11. Upon the completion of the trial proceedings, the Trial Board shall, without undue delay, determine the innocence or guilt of the accused, based on the record before it. If the decision is that of guilty, the Trial Board shall affix appropriate penalties in accordance with the provisions of the Constitution

or direct the dismissal of the charges in the event the charges have not been sustained by a two-thirds majority vote of the Trial Board.

Membership Constitution

12. The decision of the Trial Board shall be presented at the next membership meeting. Advance notice shall be given to the charging party and the accused. The chairman of the Trial Board shall give a full report of the trial proceedings. The decision of the Trial Board shall be regarded as affirmed unless set aside at such meeting by a majority vote of the membership present and voting.

Stay of Decision

13. The decision of the Trial Board shall become immediately operative following the close of such membership meeting, unless set aside by the membership as hereinabove provided, or unless a stay is directed by the International President following an appeal as set forth in Section 37.

Appointment of Special Impartial Trial Board

14. Where it appears to the International President that a fair and impartial trial cannot be had before the Local Union Executive Board as hereinabove set forth, the International President is authorized to assert original jurisdiction over the matter and appoint a Trial Board of not less than three members from outside the Local Union. The Trial Board so selected shall hear the matter and render judgment thereon as soon as practicable.

Appeal from Special Impartial Trial Board

15. Appeals may then be taken to the International President, then to the International Executive Board, and then to the Convention, as set forth in Section 37.

Charges Against International Officers

(B) 1. All charges against International officers shall be filed with and tried by the International Executive Board in accordance with the procedures set forth in Section 36(A).

Decision

2. The decision of the International Trial Board shall be immediately effective. It shall become final and binding, unless reversed at the next Convention, pursuant to an appeal, which shall be filed with the International Association within 30 days following the decision of the International Trial Board.

Appeal

SECTION 37

Appeals

General Right of Appeal

(A) A member or officer of any Local Union who has been convicted of any offense as herein set forth, or the accuser when the accused has been acquitted, or any member who has a grievance or believes that an injury has been done in any way, or any Local Union having any grievances may appeal to the International President for redress, subject to a further appeal to the International Executive Board and a final appeal to the Convention.

Service of Appeal

(B) 1. Any member or officer of a Local Union desiring to take an appeal shall have such an appeal made in triplicate. One copy shall be forwarded to the International President, a second copy served on the Local Union Executive Board, and the third copy served on the charging party, or the accused, as the case may be. The appeal to the International President shall be filed no later than 15 days from the date of the adverse ruling from which the appeal is taken; however, the International President, for good cause shown, may extend the time within which the appeal may be filed.

Trial Record

2. When an appeal is taken, the Local Union involved shall transmit to the International President, as well as to the appellant in the case, within 15 days from the date of notification of appeal, a full and complete copy of the trial record and charges, together with all other pertinent documents.

Briefs

3. Any party to the proceedings may file a brief

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within 45 days from the date of notification of appeal.

Additional Information

4. The International President shall have authority to obtain any additional information in such form as he may prescribe from all parties concerned, in the event he believes such additional information is necessary in order to give full consideration to the appeal.

Failure to Comply with Procedures

5. Upon failure of any party to comply with the foregoing requirements, the International President shall have the power to decide the appeal on the papers before him, and the party failing to discharge its obligations as set forth above shall forfeit all further right of appeal from the action of the International President.

Appeal from President's Decision

(C) 1. Either party may appeal from the decision of the International President to the International Executive Board by filing with the International Executive Board, within 30 days after the decision has been rendered, a written notice of such appeal, stating wherein such decision is erroneous.

Transfer to Executive Board

2. The International President shall immediately acknowledge receipt of such notice of appeal and submit the charges, together with the trial record and all other pertinent documents in his possession relative to the appeal, to the International Executive Board for review.

Brief to Executive Board

3. The appellant may file a brief within 30 days after filing such appeal, setting out wherein said decision is erroneous and the appellee shall, within 30 days after the brief has been filed by the appellant, file its answer brief; the appellant shall thereupon have ten days in which to file a reply to the answer brief of the appellee. It shall be the duty of the International President to send a copy of the briefs so filed to the adverse party immediately after the same have been filed in his office.

Appeal Decision

4. After the cause has been briefed, as aforesaid, the International Executive Board shall proceed to consider such appeal and either affirm or reverse such decision, giving their reason therefor in writing, a copy of which shall be delivered to each party.

Appeal to Convention

(D) Either party may appeal from the decision of the International Executive Board to the next regular Convention of the International Association, the action of which shall be final and binding upon all parties. An appeal to the Convention shall be filed with the International President within 30 days of the action of the International Executive Board. The action of the International Executive Board shall be final unless and until reversed by the Convention.

Time Limit

SECTION 38

Retirement Plan

General Statement

(A) 1. A Retirement Plan covering eligible officers and employees of the International Association and its chartered bodies first became effective as of January 2, 1949, and has been amended from time to time thereafter. The most recent provisions of said Plan, hereinafter referred to as the "Prior Plan," appeared in the version of the Retail Clerks International Association Constitution as published in the *Retail Clerks ADVOCATE* in December, 1971. The purpose of this Section 38 is to set forth the provisions of a revised Retirement Plan as adopted by the 1972 Convention and as it may be amended from time to time thereafter. This is a transitional change which constitutes an amendment to, and not a discontinuance of, the Prior Plan.

Name

2. This Plan shall be known as the "Retail Clerks International Association Retirement Plan for Employees," hereinafter referred to as the "Plan."

Effective Date

3. The Plan shall become effective July 28, 1972, hereinafter referred to as the "Effective Date."

4. a) "Actual Retirement Date" shall mean the first day of the month next following the date on which a Participant actually retires from active service.

"Actual Retirement Date"

b) "Actuary" shall mean the actuary appointed in accordance with the provisions of Subsection (J)15.

"Actuary"

c) "Average Annual Salary" shall mean one-fifth of the highest sum of the Gross Salaries paid to a Participant for any five calendar years while he was an Employee.

"Average Annual Salary"

d) "Corporate Trustee" shall mean any bank or trust company designated by the Pension Board to participate in the administration of the Plan.

"Corporate Trustee"

e) "Credited Service" shall mean the number of years, to complete months, for which a Participant receives continuous service credits under Subsection (C).

"Credited Service"

f) "Employee" shall mean any regular salaried officer or employee of the International Association or any of its chartered bodies, as determined by the Pension Board on a uniform basis applicable to all persons similarly situated. "Employee" shall also mean a Participant who continues as such under the provisions of Subsection (C)2.e).

"Employee"

g) "Fund" shall mean the total amounts, invested or uninvested, held for the Plan by the Pension Board in its capacity as trustees under Subsection (I)1., the Corporate Trustee, and/or the Insurance Company.

"Fund"

h) "Gross Salary" shall mean the total salary paid to an Employee during any period of reference, as reported for federal income taxes.

"Gross Salary"

i) "Insurance Company" shall mean any life insurance company designated by the Pension Board to participate in the administration of the Plan.

"Insurance Company"

j) "Normal Retirement Date" shall mean:

"Normal Retirement Date"

i. In the case of a Participant who completes 20 years of Credited Service prior to his 65th birthday, the first day of the month next following the later of (a) his 55th birthday or (b) the date on which he completes 20 years of Credited Service.

ii. In the case of any other Participant, the first day of the month next following the later of (a) his 65th birthday or (b) the date on which he completes ten years of Credited Service.

k) "Participant" shall mean any Employee who participates in the Plan as provided in Subsection (B), and shall also mean any person who was being paid a pension under the terms of the Prior Plan, or who was entitled to a deferred vested pension thereunder, immediately prior to the Effective Date. The term Participant shall also include any person who retires under this Plan or becomes entitled to a deferred vested pension hereunder on or after the Effective Date, such Participants being sometimes referred to herein as "retired Participants" and "terminated Participants."

"Participant"

l) "Pension Board" shall mean the persons designated to direct the general administration of the Plan in accordance with Subsection (J)1.

"Pension Board"

m) "Prior Plan" shall mean the plan set forth in Section 46 of the Retail Clerks International Association Constitution as published in the *Retail Clerks ADVOCATE* in December, 1971.

"Prior Plan"

(B) 1. a) Each Employee who shall have reached age 25 as of the Effective Date, may, by filing proper election and payroll deduction authorization with the Pension Board, become a Participant as of the Effective Date.

Election to Participate

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Automatic Participant

b) Each person had been participating in the Prior Plan immediately prior to the Effective Date shall automatically become a Participant as of the Effective Date.

Prior Participation

2. Each Employee who does not become a Participant as of the Effective Date may become a Participant as of the first day of any month following the Effective Date by filing proper election and payroll deduction authorization with the Pension Board, provided that he shall have reached age 25 prior to the date he first becomes a Participant.

Payroll Deduction

3. The payroll deduction authorization of a Participant shall remain in effect unless such Participant (a) ceases to be an Employee, (b) elects to withdraw from the Plan, or (c) has made all of the contributions required by the Plan.

Prior Participation

(C) 1. Each Participant becoming eligible under Subsection (B)1. b) above shall receive credit hereunder for continuous service prior to the Effective Date under the rules set forth by the Prior Plan. Credit for continuous service under the Prior Plan shall also be granted for the period of time during which any Participant made voluntary contributions after his 25th birthday and prior to age 35 under the Prior Plan, to the extent such contributions remain in the Fund. Voluntary contributions made prior to age 25 and before the Effective Date shall be matched by an equal amount from the Retirement Fund to provide increased retirement benefits on an equivalent basis in accordance with the provisions of the Prior Plan.

Service Credit

2. A Participant shall receive credit for continuous service for the years and complete months during which he is both a Participant and an Employee; provided, however:

Break in Service

a) That no termination of employment shall be deemed to have occurred if a Participant who ceases to be an Employee shall again become an Employee within two years after the termination of his employment, provided that he does not withdraw his contributions.

Temporary Interruptions

b) That temporary interruptions of employment for sickness or accidental injury or any other temporary inability to attend to the duties of the Employee shall not be deemed a termination of employment.

Military Service

c) That interruptions of employment occasioned as a result of the voluntary or involuntary service of any such Participant in any of the armed forces of the United States or Canada shall not be deemed a termination of employment; but the International Association or its duly chartered body by which such Employee is then employed must consent to any voluntary enlistment for active service; and the Participant shall receive credit for continuous service during the period of such service in the armed forces of the United States or Canada.

Authorized Leave

d) At the discretion of the International Executive Board a Participant may be granted an authorized leave of absence (which shall not be regarded as a termination of employment) in order to accept employment with any governmental agency, or any bona fide labor organization considered by the International Executive Board as not antagonistic to the Retail Clerks International Association. The Participant may return to the Plan, without impairing his status under the Plan, provided:

- i. He has not exercised his right to withdraw any contributions to the Fund;
- ii. He again becomes an Employee within six months after the expiration of the authorized leave;

iii. He otherwise conforms and complies to all conditions relative to such authorized leaves; and

iv. No such Employee shall receive any credit for continuous service for the period of time of such authorized leave of absence, except as provided in (e) below.

e) A Participant who has been granted an authorized leave of absence by the International Executive Board in order to accept employment with the American Federation of Labor and Congress of Industrial Organizations, the Canadian Labour Congress or any of their chartered bodies, or with any other national or international labor organization with which the RCIA is affiliated or associated, may continue to participate in the Plan under uniform rules adopted by the Pension Board and applicable to all persons similarly situated.

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Participation During Authorized Leave

Buy Back

3. a) In addition to his continuous service credit, if any, under Subsection (C)1., a Participant becoming eligible and electing, if necessary, to participate under Subsection (B)1. may, by filing with the Pension Board prior to January 1, 1973, proper election and agreement to contribute the amount set forth in (b) below, become entitled to receive credit for all or part of his continuous service, if any, as an Employee after his 25th birthday, but before he became a Participant under either the Prior Plan or this Plan; provided, however, that if he shall elect to receive credit for only part of such service, the most recent part must be elected, and further provided that any such Participant who incurred a break in service under the Prior Plan, but who would not have incurred a break if Subsection (C)2.a) had been in effect at the time of such break, shall become entitled to receive credit hereunder for continuous service prior to the break. A Participant shall be credited with such service under receipt by the Pension Board of full payment of said amount under the conditions set forth in (c) below.

Buy Back Costs

b) In order to receive the additional continuous service credit set forth in (a) above, the Participant shall be required to contribute the amounts set forth below on the basis of his Gross Salary from the first day of the month next following the date on which he reached age 25 or a later date if he elects to receive credit for only part of his service as an Employee after such conditions had been met, but not before January 1, 1953, and not after the date on which he became a Participant under the Prior Plan, together with interest to January 1, 1973, at the rate or rates determined by the Pension Board and applicable to all Participants who elect to make such contributions: two per cent of his Gross Salary from January 1, 1953, through June 30, 1955; four per cent of his Gross Salary from July 1, 1955, through July 31, 1963; and five per cent of his Gross Salary from August 1, 1963, through December 31, 1972.

Buy Back Payments

c) The total amount determined on the basis of (b) above, and the interest rate or rates used in the computation of such total amount, shall be set forth in the agreement filed by the Participant with the Pension Board. The Participant shall further agree to make such payment either in a lump sum on January 1, 1973, or by a series of equal monthly installments, commencing January 1, 1973, over a period specified by the Participant which is not longer than four years. Such equal monthly installments shall be determined on the basis of an interest rate of 6½ per cent compounded annually. If payment in equal monthly installments is elected by a Participant, full payment shall be deemed to have been received by the Pension Board when the last installment is deducted from his pay:

if the Participant ceases to be an Employee before such last installment is deducted from his pay, he or his surviving spouse may elect to continue to make the required remaining payments or to pay a lump sum equal to the commuted value of such remaining payments determined as of the first day of the month next following the date the Participant ceased to be an Employee. If payment of the remaining balance by the Participant or his surviving spouse is not made, no benefits shall be paid in his behalf on the basis of the additional service credits specified by (a) above, and the installments previously deducted, without interest, shall be refunded forthwith to the Participant or his beneficiary.

Normal Retirement

(D) 1. A Participant may retire on his Normal Retirement Date and shall be entitled to receive a Normal Retirement Benefit determined in accordance with Subsection (E)1.

Early Retirement

2. A Participant who has at least 15 years of Credited Service may retire on the first day of any month after he has reached age 50, and he shall be entitled to receive an Early Retirement Benefit determined in accordance with Subsection (E)2, provided that he may elect to defer receipt of such Early Retirement Benefit, but not later than the date that would have been his Normal Retirement Date had he remained an active Participant.

Late Retirement

3. A Participant may remain an Employee after his Normal Retirement Date only with the consent of the International Association or the Local Union or other chartered body by which he is then employed, but no retirement benefits shall be paid to him under the Plan until his Actual Retirement Date, upon which date he shall be entitled to receive a Late Retirement Benefit determined in accordance with Subsection (E)3.

Disability Retirement

4. a) A Participant who has at least five years of Credited Service and who becomes totally and permanently disabled after the Effective Date while an Employee shall be entitled to receive a Disability Retirement Benefit determined in accordance with Subsection (E)4.

Total and Permanent Disability

b) A Participant shall be deemed to be totally and permanently disabled if, on the basis of medical evidence satisfactory to the Pension Board, he is found to be totally and permanently unable, as a result of bodily injury, or sickness, to perform the duties of the job held at the time of such disability or a job of comparable responsibility; provided, however, that in lieu of such medical evidence the Pension Board shall accept notification in writing that the Participant is entitled to receive disability income benefits under the federal social security law or to receive the Prolonged Disability Benefit under the Canada Pension Plan.

Disability Retirement Date

c) The Disability Retirement Date of a Participant shall be the first day of the month next following the date the evidence of disability required under (b) above is received by the Pension Board.

Prior Plan Retiree

5. A Participant who retired before the Effective Date under the Prior Plan shall be entitled to receive, commencing as of August 1, 1972, an increased retirement benefit determined in accordance with Subsection (E)5.

Normal Retirement Benefit

(E) 1. The monthly Normal Retirement Benefit of a Participant becoming eligible therefor under Subsection (D)1. shall be one-twelfth of the amount computed by multiplying:

a) 2½ per cent of the Participant's Average Annual Salary, determined as of his Normal Retirement Date, by

b) The Participant's Credited Service, subject to a maximum of 20 years.

2. The monthly Early Retirement Benefit of a Participant becoming eligible therefor under Subsection (D)2, shall be one-twelfth of the amount computed by multiplying:

a) 2½ per cent of the Participant's Average Annual Salary, determined as of his Actual Retirement Date, by

b) The Participant's Credited Service, subject to a maximum which shall be determined by subtracting from 20 the number of years (to complete months) by which the date his benefit commences precedes the date which would have been his Normal Retirement Date had he remained an active Participant.

3. The monthly Late Retirement Benefit of a Participant becoming eligible therefor under Subsection (D)3, shall be one-twelfth of the amount computed by multiplying:

a) 2½ per cent of the Participant's Average Annual Salary, determined as of his Actual Retirement Date, by

b) The Participant's Credited Service, subject to a maximum of 20 years.

4. The Disability Retirement Benefit of a Participant becoming eligible therefor under Subsection (D)4, shall be computed as in Subsection (E)1. on the basis of his Average Annual Salary and Credited Service determined as of his Disability Retirement Date, subject to a minimum annual benefit of \$1,500.

5. In order to bring the benefits for Participants who retired under the Prior Plan into line with those payable to Participants retiring under this Plan, such Prior Plan retired Participants shall be entitled to receive, commencing August 1, 1972, a redetermined retirement benefit computed as follows:

a) From the monthly pension paid to the retired Participant as of July 1, 1972, there shall be deducted the monthly "cost of living" adjustment, if any, which he received effective January 1, 1969, under Subsection (J)6. of the Prior Plan.

b) The amount determined under (a) above shall be multiplied by:

- i. 1.5 per cent if the Participant retired before June 28, 1963, or
- ii. 1.25 per cent if the Participant retired on or after June 28, 1963,

provided that after such multiplication the amount arrived at shall not exceed 50 per cent of the average monthly salary determined in accordance with the Prior Plan on which the retired Participant's pension was based.

c) To the amount determined under (b) above there shall be added the "cost of living" adjustment referred to in (a) above, if any; and the resulting total shall be the increased retirement benefit payable under this Plan commencing August 1, 1972.

(F) 1. All retirement benefits provided for in Subsection (E)1., (E)2., (E)3., and (E)5. shall, subject to Subsection (I)4., be payable in monthly installments commencing at a Participant's Actual Retirement Date or August 1, 1972, if later, with subsequent installments payable as of the first day of each calendar month thereafter during the Participant's remaining lifetime, ceasing with the last monthly payment payable in respect of the month of his death; provided, however, that if a retired Participant again becomes an Employee such retirement benefits shall thereupon

Early Retirement Benefit

Late Retirement Benefit

Disability Retirement Benefit

Prior Plan Retiree Benefit Adjustment

Benefit Payments

Resumption of Employment

cease, and he shall automatically become an active Participant. His Credited Service up to his Actual Retirement Date shall be restored, and he shall accrue additional Credited Service based upon his participation after he again becomes an Employee. Such benefits shall be payable regardless of whether or not the retired Participant shall have accepted other employment or self-employment (except as an Employee).

Disability
Benefit
Payments

2. a) The Disability Retirement Benefit provided for in Subsection (E)4. shall, subject to Subsection (I)4. be payable in monthly installments as of the first day of each calendar month and shall cease with the last monthly payment payable in respect of the month of the Participant's death, his recovery from disability, or his Normal Retirement Date, whichever is the earliest to occur.

b) If such disability continues to his Normal Retirement Date, the Participant shall be considered as retiring on his Normal Retirement Date, and he shall thereupon be entitled to a monthly Normal Retirement Benefit payable in accordance with Subsection (F)1. equal to the monthly Disability Retirement Benefit to which he was previously entitled as above provided.

Resumption
of
Employment

c) If upon recovery from disability a Participant again becomes an Employee, he shall automatically become an active Participant. His Credited Service up to his Disability Retirement Date shall be restored, and he shall accrue additional Credited Service based upon his participation after he again becomes an Employee.

Continuation
of
Disability

d) A disabled Participant may be required to submit evidence of his continued disability but not more often than semi-annually, to determine whether he is eligible for continuance of the Disability Retirement Benefit. If he engages in gainful employment in a job with responsibility comparable to the one which he held immediately prior to becoming disabled, his Disability Retirement Benefit will cease.

Withdrawal

(G) 1. Whenever any Participant shall elect to withdraw from this Plan and terminate his contributions hereunder while remaining as an Employee, there shall be refunded to such withdrawing Participant an amount equal to the total contributions made by such Participant, up to the time of such withdrawal, without interest. Participants voluntarily withdrawing from the Plan as aforementioned may reenter the Plan, if otherwise eligible, on executing written election, but participation shall date from the first of the month following the date on which such election is executed.

Cessation
of Partici-
pation

2. If a Participant ceases to be an Employee for any reason other than death or retirement under the Plan, his continuing participation shall cease and he shall have the following rights:

a) If at the time of such cessation the Participant has qualified for Normal, Early or Late Retirement under the applicable provisions of Subsection (D), he shall be deemed to have retired as of the first day of the month next following such cessation and shall be entitled to receive the retirement benefit determined in accordance with the applicable provisions of Subsection (E).

Ten
Year
Vesting

b) If at the time of such cessation the Participant has completed at least ten years of Credited Service but has not qualified for Normal, Early or Late Retirement, he will receive, beginning at the date which would have been his first possible Early Retirement Date under Subsection (D)2. had he remained an active Participant, a deferred vested retirement benefit computed as in Subsection (E)2. based on his Average

Annual Salary and Credited Service as of the date on which he ceases to be an Employee; provided, however, that if the terminated Participant elects to withdraw his contributions at any time prior to the date on which his first retirement benefit payment is due, he will forfeit all rights to benefits under this Plan.

c) If at the time of such cessation the Participant has not completed ten full years of Credited Service, he shall thereupon cease to be considered a Participant under the Plan, his contributions, without interest, shall be refunded to him upon his request, and he shall forfeit all further rights to benefits hereunder with respect to his period of participation then terminating.

d) Proper application for deferred retirement benefits shall be filed with the Pension Board by the Participant entitled to such benefits under (b) above not earlier than 90 days prior to the date his first retirement benefit payment is due.

Designation
of Benefi-
ciaries

3. a) Each Participant shall designate, on a form provided by the Pension Board, the beneficiary or beneficiaries entitled to receive any benefits upon his death. Any beneficiary designation made by a Participant in accordance with this subsection may be changed at any time by filing with the Pension Board notice of such change on a form provided by the Pension Board. In the absence of an effective designation of beneficiary at a Participant's death, any death benefits payable other than to a surviving spouse shall be paid to the Participant's estate, provided, however, that in the absence of the appointment of an executor or administrator of the decedent's estate the Pension Board may, in its discretion, make such payment to any person or persons whom the Pension Board shall determine to be equitably entitled thereto and any such payment so made shall be a complete discharge of any liability of the International Association or other chartered body and the Plan therefor.

Death of
Participant

b) Upon the death before his actual Retirement Date of a Participant in whose behalf a surviving spouse's benefit is not payable on the basis of (c) below, there shall be paid to his beneficiary or beneficiaries an amount equal to the total contributions of such Participant to this Plan up to the time of his death, without interest, less any benefits which may have been paid to him.

Surviving
Spouse's
Benefit

c) In the event of the death of a married Participant subsequent to the date he becomes eligible for a deferred vested pension or for Normal, Early, or Late Retirement, whether or not such Participant is terminated or retired, or is receiving a Disability Retirement Benefit, there shall be paid to his surviving spouse a pension equal to 50 per cent of the retirement benefit which such Participant was receiving (if retired) or (if not retired) which he would have been eligible to receive as of the first possible date following his death, provided that his surviving spouse was married to him for at least one year prior to his death. Such pension shall commence on the first day of the month next following the death of an active or retired Participant or the earliest date on which a terminated Participant would have been eligible to receive his first retirement benefit payment, and shall be payable monthly thereafter during the surviving spouse's lifetime.

Death of
Surviving
Spouse

d) After the death of a surviving spouse receiving a pension under (c) above, an amount equal to the excess, if any, of the Participant's contributions, without interest, over the sum of the benefits received by both the Participant and the surviving spouse, shall be paid to the Participant's designated beneficiary.

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(H) 1. Except as specifically provided in Subsection (L)4., any rights forfeited by a Participant under this Plan shall not be applied to increase the benefits any other Employee would otherwise receive under the Plan.

2. Notwithstanding any other provision of the Plan, if any monthly benefit payable to a Participant or other payee shall be less than \$10.00 per month, payments by the Corporate Trustee and/or Insurance Company may be made quarterly or annually in advance at the discretion of the Pension Board.

3. If the Pension Board shall find that any person to whom a benefit is payable from the Fund is unable to care for his affairs because of illness or accident, any payment due (unless a prior claim therefor shall have been made by a duly appointed guardian, committee, or other legal representative) may be paid to the spouse, a child, a parent, or a brother or sister, or to any person deemed by the Pension Board to have incurred expense for such person otherwise entitled to payment. Any such payment shall be a complete discharge of any liability under the Plan therefor.

(I) 1. The Pension Board shall act as trustees for the Plan with full power and authority to:

a) Hold, accumulate, invest, and generally administer the Fund; provided, however, that all moneys and funds contributed hereunder by the International Association or its members or any Participant hereunder shall be held separate and apart from all other funds of the International Association or any of its chartered bodies or organizations; subject, however, to the terms and conditions of this Plan, and/or

b) Arrange for the transfer or payment of all or any part of such Fund and the contributions thereto to a Corporate Trustee to be held and administered by such Corporate Trustee, in trust for the purposes of this Plan, with such powers in such Corporate Trustee as to investment, reinvestment, administration, and disbursement of such Fund as the Pension Board shall approve and as are not inconsistent with this Plan, and/or

c) To negotiate and contract with any Insurance Company selected by the Pension Board to administer and invest all or any part of such Fund and the contributions thereto under a group annuity, deposit administration, immediate participation guarantee, or investment type of contract or under individual annuity or insurance contracts, on such terms and conditions as the Pension Board may deem advisable and proper and as are not inconsistent with this Plan.

2. a) Each Participant shall make the contributions required under this Plan and the Prior Plan for a maximum period of 20 years. No contributions shall be made after a Participant's Actual Retirement Date. Contributions made after an active Participant's Normal Retirement Date under the Prior Plan shall be refunded to him without interest, as soon after the Effective Date as the Pension Board shall deem practicable.

b) On and after the Effective Date, a Participant who has not made the contributions required by the Prior Plan for at least 20 years, including for this purpose any additional contributions which he shall have agreed to make under the special provision of Subsection (C)3. of this Plan and any contributions made after his 25th birthday prior to age 35 under Subsection (H)3. of the Prior Plan, and not withdrawn, shall contribute five per cent of the Gross Salary paid to him in each month while a Participant until the sum of the months for which the required contributions

were made under the Prior Plan and this Plan shall equal 240.

c) In the case of Participants employed by the International Association, the contributions of each such Participant shall be deducted by the International Association from each remittance for services rendered, in the amount of five per cent thereof; and the amounts so withheld by the International Association shall be remitted to the Fund as of the end of each calendar month.

d) In the case of Participants employed by any chartered body of the International Association, such chartered body by which such Participant is employed shall deduct the contributions of each such Employee from each remittance for services rendered by him, in the amount of five per cent thereof; and the amounts so withheld by such chartered body shall be remitted to the International Association on or before the tenth day of the following month; and the International Association shall remit the same within 30 days to the Fund.

3. The cost of administering this Retirement Plan, and the benefits provided hereunder, shall be financed by the contributions of Participants, hereinbefore provided, and by allocation of 50 cents of the per capita tax provided for in Section 19 of this Constitution. The International Executive Board is herewith given specific authority, in its discretion, to allocate an additional amount of per capita tax to the Fund. The International Association shall, upon receipt of said per capita tax, make the allocation and remit the same to the Fund within 30 days. It is the intention of the International Association to make such per capita tax allocations on a basis which shall be determined after considering the Actuary's recommendation, based on actuarial valuations which he shall make from time to time, as to the annual contribution level required under accepted actuarial principles to maintain the Plan in a sound condition.

4. The International Association and its chartered bodies shall have no right, title, or interest in the contributions made by per capita tax allocation, and no part of the Fund shall revert to the International Association and its chartered bodies except that after the satisfaction of all liabilities of the Plan as set forth in Subsection (K)2., any remaining assets of the Fund may revert to the general funds of the International Association. The pension benefits of the Plan shall be only such as can be provided by the assets of the Fund, and, except as provided under Subsection 3. above, there shall be no liability or obligation on the part of the International Association and its chartered bodies to make any further contributions to the Fund either during the continuance of or at termination of the Plan. No liabilities for the payment of pension benefits under the Plan shall be imposed on the International Association, its chartered bodies, or their officers or members.

(J) 1. The Board of Trustees as provided for in Section 13 of this Constitution shall constitute a Pension Board for the general administration of the Plan.

2. The Pension Board shall be charged with and shall have vested in it the sole power, duty, and authority to interpret and construe the provisions of this Plan and determine the meaning and intent thereof and the application thereof to the facts of any individual case, and to decide any disputes which may arise with respect to the rights of Participants hereunder, or with respect to the eligibility of any Employee hereunder, and generally to direct the administration of this Plan in accordance with the Plan herein created and established.

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Inter-
Group
Employer
Contribu-
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Deductions

Contribution
Deduction
for Em-
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Chartered
Bodies

Financing
of Costs

Funds
Assets

Pension
Board

Plan
Interpre-
tation

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Rules for Administration

3. The Pension Board may make rules and regulations for the administration of this Plan, and may from time to time modify, alter, amend, or revoke such rules and regulations; provided, however, that such rules and regulations are not inconsistent with the terms of this Plan.

Chairman and Secretary

4. The Pension Board shall have a Chairman and a Secretary.

Pension Board Procedure

5. A majority of the Pension Board shall constitute a quorum and any action by a majority vote at a meeting of the Pension Board, or in writing without a meeting, shall constitute the action of the Pension Board.

Minutes

6. Minutes shall be kept of the proceedings and actions and decisions of the Pension Board, together with such other records as may be pertinent to the matters coming before the Pension Board from time to time.

Abolition When Personality Involved

7. No member of the Pension Board shall, however, take any part in any action relating to his individual participation in the Plan herein created and established. Should any member of the Pension Board appear before said Pension Board on his own behalf an International Vice President of the Retail Clerks International Association as designated by the International Executive Board shall replace said Pension Board member as an alternate, with full voting rights on the specific case at hand.

Decisions

8. All the decisions of the Pension Board in matters properly coming before it as authorized or directed in this Plan, and all actions taken by the Pension Board in the exercise of its administrative powers, duties, and responsibilities, shall be final and binding upon any Participant, and upon each and every person who may be or become interested in this Plan or claim any rights or benefits hereunder except as otherwise specifically set forth hereunder.

Bond

9. The Pension Board shall be required to give such bond or other security for the faithful performance of its duties as may be required from time to time by the Executive Board of the International Association.

Records and Reports

10. The Pension Board shall keep full and complete records of its administration of this Plan, and as soon as practicable after each anniversary date of this Plan, and at such other times as may be necessary, shall prepare and deliver to the International Association and its chartered bodies an account of its administration of this Plan.

Financial Condition of Plan

11. The Pension Board shall, periodically, but not less frequently than every four years in any event, ascertain and establish the financial condition of this Plan, and shall determine the amounts required to be held in the Pension Fund at all times in order to assure the maintenance of this Plan on a sound basis and the payment of the benefits provided for; and the Pension Board shall be and is hereby authorized to consult with and employ such attorneys and/or actuaries as the Pension Board may deem desirable to make such computations and determinations as may be necessary to provide the Pension Board with information concerning the soundness of this Plan.

Personal Liability

12. No member of the Pension Board shall incur any personal liability to any Participant, any death beneficiary, or any other person by reason of any act or failure to act on the part of the Pension Board or any member thereof, nor for anything done or omitted in the exercise of good faith and reasonable prudence; and members of the Pension Board shall be liable only for their own individual fraud or mal-

feasance.

13. Members of the Pension Board shall receive no compensation for their services as such; and any and all expenses, including but without limiting the generality of the foregoing compensation to its clerical employees, agents, and counsel, reasonably incurred by the Pension Board and its members in carrying out the powers and duties herein conferred upon it or them, shall be paid from moneys in the Fund.

14. Within the limits of the fiduciary responsibility of the Pension Board set forth by this Plan, the Pension Board shall have the authority to make improvements in the Plan's benefits and to set forth the conditions under which Employees of chartered bodies of the International Association or other bodies which have merged, been chartered, or which shall be merged or chartered or which shall affiliate, may receive past service credit under the Plan for the period in which they were salaried officers or employees of such bodies. Such improvements and acceptance of new groups for participation shall be made after the Pension Board has obtained for such purposes such professional advice as it shall determine is necessary, including, but not limited to, the advice of the Actuary. The Pension Board shall also have the authority to make such changes which shall be required to qualify the Plan under the Internal Revenue Code.

15. The Pension Board may appoint an Actuary who shall be independent of the Pension Board and qualified through Fellowship in the Society of Actuaries and/or membership in the American Academy of Actuaries, to perform all necessary actuarial services in connection with the operation of the Plan, or a firm of actuaries which has on its staff such an Actuary.

(K) 1. It is the expressed intention and expectation of the International Association and its duly chartered bodies that they will continue the Retirement Plan herein created and established for the benefit of their respective present and future Employees, but the continuation of this Plan is not assumed as a perpetual contract obligation of the International Association which reserves the right to reduce, suspend, or discontinue the contributions provided for in this Plan, and otherwise to alter, amend, or terminate this Plan. Any such reduction, suspension, or discontinuance of International Association contributions hereunder or other alteration, amendment, or termination of the Plan shall be effective only when approved in accordance with the voting procedure set forth in Section 43 of this Constitution. Amendments to improve benefits, to provide for the participation of new groups, or to qualify the Plan under the Internal Revenue Code, may be made by the Pension Board subject to the limitations set forth in Subsection (J)14; such amendments which are not within these limitations shall be effective only when approved in accordance with the voting procedure set forth in Section 43 of this Constitution.

2. a) In the event of the complete discontinuance of International Association contributions or the complete termination of this Plan by appropriate action as hereinbefore set out, this Plan shall become inoperative; and the Pension Board shall pay, transfer, and distribute, or arrange for the payment, transfer, or distribution of, the entire Fund (remaining after the payment of all expenses and costs of administering this Plan) to the following persons and in the following proportions:

i. There shall first be set aside for each non-retired Participant an amount equal to the total contributions made by such Participant under

Compensation and Expenses
Benefit Improvements
Past Service Credit for Employees of Merged or Chartered Bodies
Internal Revenue Code Required Changes
Actuary
Plan Continuation
Modification of Plan
Discontinuance
Distribution of Assets

this Plan and the Prior Plan not already applied to provide benefits for himself and/or his surviving spouse, and for each retired Participant the excess, if any, of such contributions over the applicable benefit payments previously made to him under this Plan and the Prior Plan.

ii. (a) There shall next be purchased out of the Fund, for each retired Participant then receiving pension benefits hereunder, and for each surviving spouse to whom benefits are being paid such insurance or annuity contracts as may be necessary to assure to all such retired Participants (or such surviving spouses) full payment of the benefits to which they have become entitled, less any benefits which can be purchased by the amount determined under i. above.

(b) If the amount remaining in the Fund is insufficient to purchase such pension benefits for all such retired Participants and surviving spouses, then the Fund shall be applied pro rata in the proportion that the cost of such benefits for each retired Participant or surviving spouse bears to the aggregate cost for all such persons.

iii. (a) There shall next be purchased out of the Fund, for each Participant then eligible for Early, Normal, Late or Disability Retirement, but who has not actually retired, such insurance or annuity contracts as may be necessary to assure to all such Participants full payment of the benefits to which they may be entitled, less any benefits which can be purchased by the amount determined under i. above.

(b) If the amount remaining in the Fund is insufficient to purchase such pension benefits for all such Participants, then the Fund shall be applied pro rata in the proportion that the cost of the pension benefit for each such Participant bears to the aggregate cost of such pension benefits for all such Participants.

iv. (a) There shall next be purchased out of the Fund for each Participant then eligible for a deferred vested pension, whether or not termination of his employment shall have then taken place, such insurance or annuity contracts as may be necessary to assure to all such Participants full payment of the benefits to which they may become entitled, less any benefits which can be purchased by the amount determined under i. above.

(b) If the amount remaining in the Fund is insufficient to purchase such pension benefits for all such Participants, then the Fund shall be applied pro rata in the proportion that the cost of the pension benefit for each such Participant bears to the aggregate cost of such pension benefits for all such Participants.

v. (a) There shall next be purchased out of the Fund with respect to each spouse who could, in accordance with Subsection (G)3.c) become eligible for a pension upon the death of a Participant as of the date the Plan became inoperative, an annuity becoming payable upon the Participant's death, less any such annuity which can be purchased by any remaining portion of the amount determined under i. above after full purchase of the benefits provided under ii., iii., and iv. above.

(b) If the amount remaining in the Fund is insufficient to provide the said annuity for all

such potential surviving spouses then the Fund shall be applied pro rata for said purposes in the proportion that the cost of such annuity for each such potential surviving spouse bears to the aggregate cost of such annuities for all such potential surviving spouses.

(c) The purchases provided for above may be effected either by separate purchases of special annuity contracts or by inclusion in applicable insurance or annuity contracts purchased under the provisions of ii., iii., and iv. above.

vi. All amounts remaining in the Pension Fund after the payments hereinabove provided for shall be paid, transferred, and distributed to the other Participants pro rata in proportion to the years of Credited Service of each such Participant under the Plan, but not beyond the value of their pension interests as determined on the basis of their Credited Service and Average Annual Salaries as of the date of complete termination of this Plan.

vii. The purchases of insurance or annuity contracts referred to in ii., iii., iv., and v. above may be effected by purchasing individual contracts or one or more group contracts as may be decided by the Pension Board.

viii. Any amounts remaining in the Fund after the satisfaction of the allocations as set forth in i. through vii. above in this Subsection (K)2. shall then revert to the general funds of the International Association.

(L) 1. The Pension Board, Corporate Trustee, and/or Insurance Company except as otherwise provided hereunder, shall pay all amounts only into the hands of those persons designated under the procedures set up by the Pension Board and not unto any other person, persons, corporation, or corporations whatsoever, whether claiming by his authority or otherwise, and so that said payments may not be liable for the debts, contracts, or engagements of any such designated person or persons, or taken in execution by attachment or garnishment, or by other legal or equitable proceedings while in the hands of the Pension Board, Corporate Trustee, and/or Insurance Company nor can said payments be anticipated.

2. Nothing herein contained shall be deemed to give any Participant the right to be retained in the service of the International Association or its chartered bodies or to interfere with their right to discharge such Participant at any time, nor shall it be deemed to give them the right to require the Participant to remain in their service, nor shall it interfere with the Participant's right to terminate his service at any time.

3. The Pension Board shall prepare, or cause to be prepared, individual annual pension reports to Employees who are Participants under the Plan.

4. The provisions of this Subsection (L)4. shall apply to any one of the 25 highest paid Employees of the International Association and its chartered bodies on any "commencement date" whose anticipated retirement benefit provided under the Plan at Normal Retirement Date exceeds \$1,500 per annum, including any such highly paid Employees who are not Participants at that time but who may later become Participants. "Commencement date" for the purposes of this Subsection (L)4. shall mean the Effective Date of the Plan or the effective date of any amendment to the Plan which increases the benefits. In the event that the Plan is terminated during the first ten years following a "commencement date," the retirement benefit provided under the Plan for any Participant

DA 5069

Payment to Designated Persons Only

Employment Rights

Annual Pension Reports

Limits on Benefits in Event of Plan Termination

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included in the 25 highest paid Employees shall not be greater than the benefit that can be provided by the largest of the following amounts:

a) The per capita tax contributions (or funds attributable thereto) which would have been applied to provide the retirement benefit if the Plan as in effect on the day preceding such "commencement date" had been continued without change:

b) \$20,000; or

c) The sum of the per capita tax contributions (or funds attributable thereto) which would have been applied to provide benefits for the Participant if the Plan had been terminated on the day before such "commencement date," plus an amount computed by multiplying the smaller of \$10,000 or 20 per cent of the Average Gross Annual Salary of such Participant during the last five years of service, by the number of years since such "commencement date."

In the event that at any time during the first ten years following a "commencement date" the full current costs under the Plan have not been met, then, until such costs have been met, the amount of retirement benefit which shall be payable to any such highest paid Participant shall not exceed the amount thereof that would have been payable had the Plan been terminated when such costs were not met, except to the extent that the aggregate of all such excess payments made to such highest paid Participants in any one year does not exceed the aggregate amount of all contributions in respect of normal retirement allowances made by the International Association and its chartered bodies to the Plan during such year. The full current costs of the Plan shall be deemed to have been met as long as the unfunded costs of the Plan do not exceed the amount of such costs on such "commencement date." Any excess reserves arising by application of the foregoing provisions shall be used and applied as provided in the Plan for the benefit of the other Participants who are or may become entitled to benefits hereunder.

In the event that it should subsequently be determined by statute, court decision acquiesced in by the Commissioner of Internal Revenue, or ruling by the Commissioner of Internal Revenue that the provisions of this Subsection (L)4. are no longer necessary to qualify the Plan under the Internal Revenue Code, this Subsection (L)4. shall be ineffective without the necessity of further amendment of the Plan.

SECTION 39

Health and Welfare Benefits for Retired Employees

Eligibility (A) 1. All participants in the plan who are eligible to receive retirement benefits under Section 38 and who have actually retired shall, subject to the conditions hereinafter set forth, receive such health and welfare benefits as are provided under the Retail Clerks International Association Health and Welfare Plan for Retired Employees herewith established.

Eligibility Condition 2. Salaried officers and employees of a chartered body shall be eligible to receive health and welfare benefits upon their actual retirement, provided that such chartered body has elected to participate in the Retail Clerks International Association Health and Welfare Plan for Employees by January 1, 1960, and maintains continuous participation therein according to the regulations governing such participation, and provided that such officer or employee of a chartered body has been continuously covered by the International Association's health and welfare plan, up to the time that such officer or employee actually retires.

Bodies herein chartered, or not now employing participants in the pension program, who subsequently employ participants shall, as a condition of health and welfare coverage for its participating employees in the pension program, elect to come under this health and welfare program at the time of said earliest employee's participation in the pension program.

(B) The cost of providing health and welfare benefits to eligible and actually retired employees shall be borne exclusively by an allocation of per capita tax as determined by the International Executive Board. Such per capita tax moneys allocated for this purpose shall be segregated and maintained in a separate fund and shall be accounted for on separate books and records of account. Periodic reports with the pertinent information shall be furnished to participating chartered bodies.

(C) The administration of the Retail Clerks International Association Health and Welfare Plan for Retired Employees shall be entrusted to the International Executive Board, which shall use the moneys so allocated exclusively for the purpose of providing health and welfare benefits for retired employees who are eligible for such benefits.

(D) Salaried officers and employees of the International Association and of its chartered bodies, who have actually retired and who are eligible for health and welfare benefits, shall remain eligible for benefits under the International Association's Health and Welfare Plan for Retired Employees so long as they are eligible to continue to receive pension benefits under the retirement plan.

Participants in the plan who are permitted to continue their participation during an authorized leave of absence in the manner provided by Section 38 may be eligible to receive health and welfare benefits upon their actual retirement subject to conditions set forth in such rules and regulations as may be promulgated from time to time by the International Executive Board.

(E) Surviving spouses and dependents (as may be defined by regulations of the International Executive Board) of actually retired officers and employees shall also be entitled to health and welfare benefits provided according to the terms and conditions of the International Association's Health and Welfare Plan for Retired Employees.

(F) The International Executive Board, in connection with administering the Health and Welfare Plan for Retired Employees, is empowered to obtain appropriate health and welfare benefits and make such changes and modifications therein as are consistent with the purpose of this section; to issue regulations governing the operation of such plan; to administer such plan either separately or as integrated in an appropriate way with the existing plan, and with doing all other things which are reasonably necessary to accomplish the purposes of this section.

SECTION 40

Retirement of Officers and Employees

(A) It is the purpose of this section to establish uniform requirements for the retirement of all officers and employees of the International Association and its chartered bodies, at the same time allowing a transitional period considered essential to avoid both organizational dislocation and individual hardship.

(B) Accordingly, the following requirements are established to govern the International Association and its chartered bodies:

Pensioning

Executive Board Authority

Continuation of Coverage

Surviving Spouses Coverage

Executive Board Authority

Purpose

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Effective Date
1. This section shall become effective on January 2, 1974.

Retirement Date of Officers
2. Except as provided in paragraphs 4 and 5 below, no person may hold an elected office in the International Association or any of its chartered bodies beyond the first day of the month next following January 1974 or his 65th birthday, whichever occurs later.

Retirement Date of Employees
3. Except as provided in paragraphs 4 and 5 below, the International Association and its chartered bodies shall not commence or continue the employment of any person beyond the first day of the month next following January 1974 or his 65th birthday, whichever occurs later.

Completion of Term of Office
4. Any officer elected prior to January 2, 1974, may complete the term of office to which he was elected prior to that date.

Period of Grace
5. Any salaried officer or employee who, upon reaching age 65, needs three years or less of additional service in order to complete ten years of credited service in the Retail Clerks International Association Retirement Plan for Employees, under Section 38(G)2.b) of this Constitution, shall not be barred by this section from completing ten years of credited service.

Casual Employment
(C) This section shall not bar the employment of any person on a casual or per diem basis, or as an independent contractor.

SECTION 41

Honorary Officers, Other Retired Officers, and Retired Employees

International President Emeritus
(A) In recognition of the contribution of International Presidents to the growth and progress of the International Association, International Presidents who retire or have retired while serving in that capacity shall be honored with the title of International President Emeritus. They shall constitute the honorary officers of the International Association.

Local Union Honorary Officers
(B) In a similar spirit of recognition, a Local Union may express appreciation to its chief executive officer who retires or has retired while serving in that capacity by conferring a similar honor, as may be authorized by and in accordance with the Local Union's bylaws. Those upon whom this honor is conferred shall constitute the honorary officers of their Local Unions.

Services of Retirees
(C) No retired officer or employee of the International Association or its Local Unions shall perform any services for the International Association or its Local Unions or represent them in any capacity except upon temporary assignment after due authorization

and in a capacity not involving duties of a continuing nature.

(D) No retired officer or employee of the International Association or its Local Unions shall receive any remuneration for services performed except for reasonable expenses incurred after due authorization.

(E) No retired officer or employee of the International Association or its Local Unions shall have a voice or vote in the affairs of the International Association or its Local Unions.

SECTION 42

Parliamentary Rules

The Conventions of the International Association, meetings of the International Executive Board, and meetings of all chartered bodies shall be conducted under Robert's Rules of Order, unless otherwise provided.

SECTION 43

Constitutional Amendments

(A) This Constitution can be amended only at a duly constituted Convention of the International Association and by a two-thirds vote of all delegates present and voting or by a two-thirds vote in a referendum of the membership voting, at the request of not less than 25 Local Unions in good standing from not less than 15 states and/or provinces where there are Local Unions of the International Association; or upon recommendation of the International Executive Board subject to the provisions of this Constitution.

(B) All amendments to this Constitution adopted by the 26th International Convention, held in the city of Honolulu, Hawaii, on the 24th, 25th, 26th, 27th, and 28th days of July 1972, shall be effective immediately upon adoption, unless otherwise specified in such amendments.

SECTION 44

Repeal

All laws or parts of laws previously enacted by this International Association and standing decisions of the International President, International Secretary-Treasurer, and International Executive Board in conflict herewith, are hereby repealed.

Amendment
in
Articles
No Change
or Use
Rates of
Order
Convention
Amendments
Referendum
Amendments
Effective
Date
Prior Con-
flicting Laws
Repealed



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

September 19, 1978

AO 1978-42

John M. Power, Esq.
FOLEY, HICKEY, GILBERT AND POWER
70 Pine Street
New York, New York 10005

Dear Mr. Power:

This responds to your letter of June 29, 1978, in which you request an Advisory Opinion on behalf of the Empire Dental Political Action Committee ("EDPAC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act").

Specifically, you asked two questions:

1. May the Dental Society of the State of New York and its district dental societies solicit voluntary contributions to the Empire Dental Political Action Committee by the inclusion of a suggested political contribution on the membership dues statements of the societies?
2. May the Dental Society of the State of New York and its district dental societies deposit into their corporate bank accounts checks from their members in payment of the dues statements; portions of these checks may represent contributions to EDPAC, and such portion would then be transferred to EDPAC by separate check?

Regarding your first question, the solicitation of contributions to EDPAC by the Dental Society of the State of New York, a nonprofit corporation, and its district dental societies is permitted by 2 U.S.C. §441b(b)(4)(C). The solicitation may be conducted in conjunction with the

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mailing of dues statements to members of the Dental Society. See 11 CFR 114.7(f).

As to your second question, 2 U.S.C. §441b(a) prohibits any corporation from contributing to a candidate for Federal office or to a political committee established for the purpose of making contributions to candidates for Federal office. However, a separate segregated fund may be established under §441b(b)(2) and may accept voluntary contributions from individual members of the Society or any district dental society; that fund, in turn, may make contributions to candidates for Federal office and political committees subject, of course, to the contribution limits and other requirements of the Act and Commission regulations. EDPAC is regarded as the separate segregated fund of the Dental Society whose members may be solicited and make contributions to EDPAC. Such contributions may be included with the annual membership dues of the member and transmitted by a single check payable to the district dental society.^{1/} This check may be deposited in a bank account of the State or district dental society. The dental societies may then remit the political contribution portion to EDPAC by separate check drawn on that same society bank account.

In concluding that the described procedure may be used, the Commission makes several assumptions on which it conditions its approval. First, the checks representing a combined dues and political contribution from a Society member are regarded as contributions received by the treasurer of EDPAC and his/her agent at the time the checks are received by any employee or representative of the State Society, or the district society in cases where it mails dues statements and receives combined dues and contribution checks directly. Thus, the political contribution portion of each member's check must be deposited into a checking account of a duly

^{1/}The Commission understands, and assumes for purposes of this Opinion, that combined dues and political contributions will be made by Society members as individuals on individual checks drawn on personal bank accounts, not corporate accounts including professional corporation accounts. Combined dues and political contributions drawn on a corporate account which is a non-repayable drawing account of an individual Society member are not considered prohibited corporate contributions. (See the Commission's recent Notice on this subject, copy enclosed.)

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designated bank depository of EDPAC within 10 days after the check is received by the State or district society. See §103.3(a) of the Commission's regulations which implement 2 U.S.C. §437b(a).

Secondly, all records of society bank accounts in which combined dues and contributions are deposited must be made available upon Commission request pursuant to its audit authority and other general powers. 2 U.S.C. §§437d, 438(a)(8). Finally, the State and district societies must maintain and make available on Commission request usual and customary accounting records of members' dues payments and other appropriate records indicating those members who make political contributions in combination with dues payments. These records must be maintained for at least 3 years from the end of the year in which EDPAC reported a contribution from a member to whom the records relate. See 11 CFR 104.12(b).

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

Joan Aikens

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosure

81049303485



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

January 16, 1979

AO 1978-98

Mr. Thomas E. Seus
Kelly, Moran & Harrington
Lewis Tower Building, Suite 512
Fifteenth and Locust Streets
Philadelphia, Pennsylvania 19102

Dear Mr. Seus:

This is in response to your letter of November 16, 1978, requesting an advisory opinion on behalf of Plumbers Union Local 690 Political Action and Social Fund ("the Fund") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the use of a clearing or transmittal account by the Fund.

Your letter states that voluntary contributions to the Fund are made by union members through payroll checkoff plans administered by the members' employers. Each member is paid by each employer on a weekly basis and contributes approximately \$2 per week to the Fund. However, funds deducted from the members for other purposes--pension, health, welfare and union dues--are remitted by the employer to the union in a single check issued monthly. This monthly check is deposited by the union in a clearing account maintained by the union to receive and separate the proceeds of these checks.

You explain that since beginning collection of political contributions for the Fund via payroll deduction, employers have included in their one check to the union both the monthly total of union dues (and other union funds) and the monthly total of contributions to the Fund from all employee/members. When a check from the employer is received and deposited in this clearing account, the political contribution portion is sent to the Fund and the remaining portion is remitted to the union. You state that checks are received from employers and deposited in the clearing account almost daily. Once every ten days you propose that a check, made

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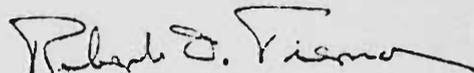
payable to the Fund, be drawn on the clearing account for all voluntary political contributions received in the clearing account during the previous ten days. You ask whether this procedure would be permitted under the Act and Commission regulations.

Under 2 U.S.C. §441b(b)(2) the Fund may accept voluntary contributions from individual members of the union and deposit them in a "separate segregated fund to be utilized for political purposes by" the union. Since it is a necessary administrative mechanism to accomplish the required separation and segregation, the clearing account may be used for the deposit and negotiation (for bank payment) of checks from employers for combined dues and political contributions.

This conclusion rests upon two assumptions on which the Commission conditions its approval. First, the checks representing combined union dues and political contributions from union members are regarded as contributions received by the treasurer of the Fund, or his/her agent, at the time the checks are received by an employee or representative of the union. 2 U.S.C. §432 and 11 CFR 102.9. Secondly, since the proceeds representing political contributions are deemed to be received when the union representative receives the employer's check, on that date the 10 day deposit period begins to run. Accordingly, by the 10th day after receipt of the employer's check, a separate check must be drawn on the clearing account and deposited into a separate checking account maintained by the Fund at a bank depository designated by the Fund. 2 U.S.C. §§433(b)(9), 437b(a); see also 11 CFR 103.3(a) and Advisory Opinion 1978-42, copy enclosed.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,



Robert O. Tiernan
Vice Chairman for the
Federal Election Commission

Enclosure

81040302487



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1979-50

Mr. James M. Peirce
President
National Federation of Federal Employees
1016 16th Street, N.W.
Washington, D.C. 20036

Your reference: PAC-JC-06

Dear Mr. Peirce:

This responds to your letters of August 29, 1979, requesting advisory opinions concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to contribution solicitations by the Public Affairs Council ("PAC") which is a separate segregated fund of the National Federation of Federal Employees ("NFFE"), a labor organization.

Your letters state that NFFE has approximately 100 employees throughout the United States who are not all members of NFFE although some are members of other labor organizations. These nonmember employees are aware of the PAC and may read of its activities in the NFFE newspaper, The Federal Employee. You state that many employees at national NFFE headquarters have special awareness of the PAC since they are registered lobbyists. In the past some of these nonmember employees have made unsolicited contributions to the PAC. You ask whether they may be solicited for PAC contributions.

Secondly, you ask whether The Federal Employee may include contribution solicitations for the PAC and articles about PAC activities. This newspaper is published monthly and distributed to NFFE members. In addition, you state that the newspaper is distributed to approximately 8,000 (15% of circulation) persons who are not NFFE members. These people are Members of Congress,

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senior officials of certain Federal agencies, news media representatives, and "potential members." Your proposal to solicit contributions to the PAC through the newspaper indicates that:

Accompanying each advertised solicitation and article which could reasonably be read as a solicitation will be a caveat stating, "Federal law prohibits PAC from receiving*/ donations from other than members of NFFE and their immediate families. All donations from other than members of NFFE and their immediate families will be returned forthwith." This caveat will be included in a rectangle and printed in type which contrasts with the print type of the solicitation. In addition, all donations which we believe were solicited inadvertently from persons other than those legally eligible to donate to PAC will be returned.

You ask whether the Commission would apply Advisory Opinion 1978-97 in your situation and permit newspaper solicitation for the PAC in view of your stated policy to make an immediate return of contributions from nonsolicitable persons and the fact that 15% of the circulation is to nonmembers.

In response to your first question regarding contribution solicitations to employees of NFFE who are not NFFE members, the Commission concludes that the Act and regulations do not permit such solicitation except under the twice yearly procedure set forth in §114.6 of Commission regulations. See 2 U.S.C. §441b(b)(4)(B). The Commission has viewed the language of §441b(b)(4)(A)(ii) as clearly limiting the class of persons who may be solicited for voluntary contributions to a separate segregated fund of a labor organization. The stated class is members of the labor organization and their families. In developing regulations to carry out §441b, the Commission considered whether employees of a labor organization should be solicitable on the same basis as its members, but rejected that approach as unsupported by the statutory language.

*/The Act prohibits contribution solicitations of nonmembers of the NFFE, rather than receipt of contributions from nonmembers. 2 U.S.C. §441b(b)(4)(A)(ii), 11 CFR 114.5(g)(2), 114.5(j).

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AO 1979-50
Page 3

See the Explanation and Justification of the Commission's regulations, House Doc. No. 95-44, 95th Cong., 1st Sess. pg. 108 (1977).

Commission regulations do allow labor organization employees, who are not members, to be solicited for contributions to the labor organization's separate segregated fund under the twice yearly solicitation provisions. 11 CFR 114.6. These solicitations may be made only twice a year and only by mail addressed to employees at their residences; all contributions received must be handled through a custodial arrangement. See 11 CFR 114.6(c) and (d). The PAC is not barred by the Act or regulations from accepting unsolicited voluntary contributions from NFFE employees who are not members. 11 CFR 114.5(j).

The second question you pose is similar to one posed in a previous advisory opinion, AO 1978-97. In that opinion, the Commission ruled that a labor organization could publish a solicitation in a publication for its membership even though three percent of the circulation (approximately 1,000 persons) went to individuals who were not members and therefore could not be solicited for contributions under the Act.

The solicitation you propose, however, would reach 15 percent of NFFE's newspaper circulation (approximately 8,000 persons).

Despite the fact that the solicitation would include a caveat, and that the PAC would return all contributions received from non-members, the Commission concludes that your proposed solicitation would be prohibited by the statute. Unlike the solicitation proposed in AO 1978-97, the percentage and number of persons receiving the newspaper solicitation would not be de minimus.

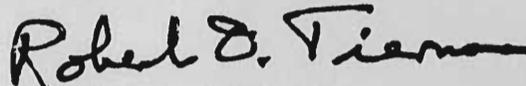
The Commission expresses no opinion as to possible application of 18 U.S.C. §§602, 603, and 607 to contributions solicited and made to the PAC since those statutes are within the purview of the United States Department of Justice rather than the Commission.

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AO 1979-50
Page 4

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,



Robert O. Tiernan
Chairman for the
Federal Election Commission

Enclosures (AO 1978-97, AO 1979-15, House Doc. No 95-44, 95th Cong., 1st Sess., pg. 108 (1977)).

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

May 27, 1977

AO 1977-17

James T. Malysiak, Esquire
Freeman, Rothe, Freeman & Salzman
Attorneys and Counsellors at Law
Suite 3200, One IBM Plaza
Chicago, Illinois 60601

Dear Mr. Malysiak:

This refers to your letter of April 4, 1977, in which you request an advisory opinion on behalf of the Commodity Futures Political Fund ("CFPF") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"). You ask whether "commodity representatives" may be regarded as "members" of the Exchange for purposes of allowing CFPF to solicit voluntary contributions from them to CFPF under 2 U.S.C. §441b(b)(4)(C) and §114.7 of the Commission's regulations.

Your letter explains that the CFPF is a political committee and separate segregated fund established by the Chicago Mercantile Exchange, a not-for-profit corporation under Illinois law and a membership organization. Exchange rules provide that members must be natural persons, not corporations or partnerships; members have the privileges of trading on the Exchange floor and voting in Exchange elections.

Your letter describes commodity representatives as:

natural persons who are not members of the Exchange but who are engaged to act as sales representatives for commodities dealt in or listed on the Exchange. . . .
(Emphasis added.)

Your letter further states that, for purposes of enforcing Exchange rules, commodity representatives are considered members of the Exchange "unless the context otherwise requires."

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You have confirmed that commodity representatives neither have trading privileges on the Exchange floor, nor the right to vote in Exchange elections or on the adoption of Exchange rules; nor do they have the capacity to serve as directors or officers of the Exchange. Thus, in several significant respects, commodity representatives do not have the same status within the Exchange as is enjoyed by full members. In this connection §114.1(e) of the Commission's regulations defines "members" to mean:

all persons who are currently satisfying the requirements for membership in a membership organization . . . or corporation without capital stock.

Under the above-stated facts, the Commission concludes that commodity representatives are not members of the Chicago Mercantile Exchange for purposes of 2 U.S.C. §441b(b)(4)(C) and §114.7 of the Commission's regulations. Consequently, the Commodity Futures Political Fund is not permitted to solicit voluntary contributions from these individuals.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

Thomas E. Harris

Thomas E. Harris
Chairman for the
Federal Election Commission

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

June 28, 1978

AO 1977-67

Thomas J. Schwarz, Esq.
Daniel J. Piliero, II, Esq.
Skadden, Arps, Slate, Meagher & Flom
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Schwarz and Mr. Piliero:

This refers to the letter of November 28, 1977, requesting an advisory opinion on behalf of the Public Service Political Action Committee ("PSPAC") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"). In that letter, PSPAC asks whether it may solicit political contributions from persons it refers to as "members" of its sponsoring corporation, Public Service Research Council ("PSRC"), pursuant to 2 U.S.C. §441b(b)(4)(C). A copy of PSRC's Articles of Incorporation was included with the advisory opinion request.

By letter dated January 23, 1978, former counsel for PSPAC was informed that the Commission needed more information before it could render an advisory opinion applicable to a specific factual situation, as required by 2 U.S.C. §437f. Consequently, we requested responses to several questions set forth in that letter. In a letter dated March 1, 1978, you attempted to answer the questions previously posed and submitted nine exhibits for Commission consideration. The exhibits included samples of PSRC's membership solicitation material, a copy of a membership survey, a resolution of the Board of Directors, and three annual reports of PSRC. After receiving this material, a Commission staff member talked to PSPAC's attorney, Daniel Piliero, II, by telephone several times to gather more information.

The information you have submitted shows that PSRC is a corporation without capital stock incorporated under the laws of Virginia. The corporation's Articles of Incorporation, as amended January 1977, state in Article Eight:

The Corporation shall have members who shall be persons who voluntarily support the purposes of the organization and are accepted as members by the Board of Directors of the Corporation under procedures established by the Board.

No members shall have any voting or property rights or have, or acquire any vested right, title, or interest in or to the property of this Corporation or any vested right in the exercise of any privileges of membership in this Corporation or any vested right in the continuation of any of its purposes, policies or activities.

Every member in good standing shall have the right to receive such privileges as may be prescribed under rules and regulations adopted from time to time by the Board of Directors.

The Board of Directors shall have the sole authority to establish the purposes and goals and direct the activities of the Corporation.

According to a resolution of PSRC's Board of Directors (Exhibit E), members of PSRC are those persons who have "been accorded membership privileges based on their substantial involvement with the organization's activities..." In your March 1, 1978, letter you explain that "PSRC membership rolls include 1,035,699 individuals." You further state that this number includes "each individual who has indicated that he or she wants to join in the work of PSRC by making a contribution or [by responding] affirmatively to a PSRC mailing." Your letter also explains that in general only members who have contributed money to PSRC during the preceding year are solicited

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letter mentions becoming a member in PSRC. The other two sets of membership solicitation material (Exhibits C and D) provide the solicitee with a membership card and specifically request that the person become a member of Americans Against Union Control of Government ("AAUCG"), a division of PSRC.^{1/} As with the first two letters, contributions are again requested. The materials in Exhibits C and D also include a card for the solicitee to send back to the organization to affirm the person's desire to become a member.

The Commission's regulation defining the term "member" for the purpose of 2 U.S.C. §441b(b)(4)(C) is found at 11 CFR §114.1(e), which states:

"Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock...

This definition, along with §441b(b)(4)(C), assumes that certain threshold requirements must be met for a corporation to have members. As a threshold matter, the quoted regulation assumes that there are, in fact, requirements for membership in the organization. Obviously, a person can only be considered a member of an organization if he or she knowingly has taken some affirmative steps to become a member of the organization. Moreover, as regards a corporation without capital stock which is created and defined by its Articles of Incorporation, the corporation's formal documents must not preclude it from having members. See Advisory Opinion 1976-79.

^{1/} In telephone conversation with a Commission's staff member, you have informed the Commission that AAUCG is an operating division of PSRC. The membership cards found in Exhibits C and D refer to membership in AAUCG. The Commission will assume for purposes of this opinion that there is no difference in membership in PSRC and AAUCG.

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These basic requirements are premised on the existence of a membership relationship between the organization and the person solicited pursuant to §441b(b)(4)(C). The solicitation of political contributions from members of an organization derive from the special relationship that the organization has to its members (see the remarks of Representative Hansen, 117 Cong. Rec. 43380) and accordingly, the membership relationship must be evidenced by the existence of rights and obligations vis-a-vis the corporation. In each instance where members do not have direct and enforceable participatory rights in the organization - such as those held by a shareholder or union member - facts must be examined before a determination can be made that a membership relationship exists.

On the facts that you initially presented it would be impossible for the Commission to state whether all 1,035,699 of the individuals you claim as members of PSRC are members of the corporation for purposes of the Act. For example, membership based solely on a response to the material found in Exhibits A and B would not seem to be sufficient to establish a membership relationship if that response was merely a contribution or a statement of support. Moreover, an oral statement of support would also not seem to provide a sufficient nexus between the organization and the person to make that person a member for purposes of the Act. For the same reason, a person not already a member of PSRC who received an unsolicited membership card and did not take affirmative action to notify the organization in some way that he or she wished to accept membership could not be considered as a member. In addition, the material you provided did not make clear whether a person once expressing a desire to become a member of PSRC is always considered as a member for purposes of political solicitations. If the membership relationship is to continue it must be subject to periodic renewal.

However, the Commission notes that while your membership policy appears flexible and somewhat ambiguous, there do appear to exist indicia of a membership relationship which may serve to establish certain persons as

members of PSRC depending on the specific facts relative to those persons. For example, you state that persons considered as members of PSRC have the right to complete membership surveys which the governing board considers in setting policy. In addition, those persons who receive the solicitation material in Exhibits C and D were expressly requested to become (or remain) members of PSRC. These persons were provided with a card to return to PSRC which could serve as an affirmative declaration of the person's desire or application for PSRC membership. Finally, you also state that, in general, the only persons solicited by PSPAC are those who contributed to PSRC during the previous year.

As the determination that any given person is a member would depend on the indicia of such a relationship that existed in relation to that person, a general statement on the status of all of the persons PSRC claims as members cannot be made. Nevertheless, since you have expressly asked the Commission to state its view on the status of certain people as members of PSRC for purposes of the Act, the Commission has asked you to be more specific in setting forth the factual situation.

In a letter dated May 19, 1978, from Mr. Piliero, it was explained that based on conversations with his client, he was authorized to represent that PSPAC wished an advisory opinion with regard to the solicitation of a certain class or portion of the persons PSRC considers as members. These persons have the following rights and obligations: they have affirmatively expressed a specific and unambiguous desire to become, or join as, a member of PSRC by either writing to the organization or returning a card or notice which evidences a specific and unambiguous desire to accept membership; they are given the right and opportunity to participate in a membership opinion survey conducted at least yearly and the results of which are taken into consideration by the governing board; they must pay dues or contributions to the organization at regular intervals (though the President of PSRC has the authority to waive the dues requirement for an individual when it is in the interest

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of the organization), and their membership status in the organization must be renewed by them at periodic intervals.

In regard to this group of persons and in light of the foregoing discussion relating to your exhibits, the Commission believes that sufficient indicia of a membership relationship exists for these people to be solicited pursuant to 2 U.S.C. §441b(b)(4)(C), if two further conditions are met: first, there is a predetermined minimum amount for dues or contributions; and second, the waiver of the dues or contributions requirement is granted on the basis of predetermined specific criteria.^{2/} Of course, this opinion is based only on the facts set forth in the original advisory opinion request, as explicated in the specific exhibits you have submitted. Moreover, in so stating, the Commission does not pass on the question of whether §441b(b)(4)(C) permits PSRC's solicitation of persons with any lesser rights or obligations vis-a-vis the corporation. As to any other class of persons, the Commission will be able to render an opinion only if the specific methods of solicitation of persons to become members and the specific rights and obligations of that class of persons are defined. The present request for an advisory opinion, without the clarification provided, did not set forth sufficient facts relative to specific persons to allow the Commission to state whether any of PSRC's claimed members, other than the group described above, are members for purposes of the Act.

This response constitutes an advisory opinion concerning the application of a general rule of law stated in the Act, or prescribed as a Commission regulation, to the specific factual situation set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

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Joan D. Aikens
Chairman for the
Federal Election Commission

^{2/}This opinion does not reach the question of membership status for persons on whose behalf the waiver authority may be exercised. A fully explained specific factual situation would need to be presented in order for the Commission to render an opinion on that issue.

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

DISSENTING OPINION OF COMMISSIONERS THOMAS E. HARRIS AND NEIL STAEBLER TO ADVISORY OPINION 1977-67

A majority of the Commission today has issued an opinion which virtually eliminates the solicitation restrictions imposed on corporations without capital stock by Section 441b of the Act. In so doing, they have ignored the intent of Congress in enacting the restrictive language of this section and have consequently created a loophole in the Act through which large amounts of corporate interest money will find its way into the political system.

The crux of the question raised by the advisory opinion request is what is the definition of the word "member" as used in the Act and the Commission's regulations? While neither the Act nor the regulations explicitly define that term, its definition may be discerned from a careful reading of the legislative history of Section 441b of the Act.

Section 441b prohibits the use of corporate or labor treasury funds in connection with federal elections. It does, however, permit corporations and unions to set up separate segregated funds for which voluntary contributions may be solicited and which, in turn, can be used to make contributions to federal candidates. The class of persons who may be solicited to make contributions into such funds is strictly limited by the language of 441b(b)(4). Labor organizations are permitted to solicit members and their families. 2 U.S.C. 441b(b)(4)(A)(ii). Corporations with capital stock may solicit shareholders and executive and administrative personnel but not employees. 2 U.S.C. 441b(b)(4)(A)(i). Corporations without capital stock which have no shareholders but which have members may solicit those members. 2 U.S.C. 441b(b)(4)(C).

The legislative history of 441b(b)(4)(A)(i) reflects a carefully drawn balance between the right of a corporation and its shareholders to participate in the political system and the danger which Congress foresaw might result in the form of corruption from unlimited corporate spending in connection with federal elections. Congress provided this narrow exception to the broad prohibitions of Section 441b because it

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recognized the existence of a fiduciary relationship^{1/} between the corporation and its shareholders. (See remarks of Representative Hansen 117 Cong. Rec. 43381; 117 Cong. Rec. H 11478). It further recognized that this relationship creates an obligation in the corporation to communicate with its shareholders and mandates that the corporation's political activities reflect the shareholders' interests.^{2/}

Section 441b(b) (4) (C) was introduced during the Senate debates on the Act's 1976 amendments. Its purpose was to cure an omission in the Senate bill which until then excluded cooperatives and like corporations from the 441b solicitation provisions because they did not have shareholders. Thus it provided corporations which did not have shareholders but did have members with solicitation rights comparable to those of corporations with capital stock.^{3/}

Since it was the intent of Congress that the solicitation rights in 441b(b) (4) (C) parallel those in (b) (4) (A), it is clear that the term "member" must be defined as embodying a substantive relationship between a corporation and an individual similar to that of a corporation and its shareholders.

^{1/} Congress similarly recognized the community of interest shared by a labor organization and its members, hence the solicitation rights in 441b(b) (4) (A) (ii).

^{2/} "...it must be remembered and emphasized that stockholders who are being solicited, can vote out the corporate management who is doing the solicitation if they do not agree with it or if they do not agree with the contributions made from the political committees.

By the same token, the union members are in a position to vote out the union management with which it disagrees." 122 Cong. Rec. S. 3860 (daily ed., March 22, 1976) (remarks of Senator Cannon).

^{3/} "...all this amendment does is cure an omission in the bill. It would allow corporations that do not have stock but have a membership organization, such as a cooperative or other corporations without capital stock and, hence, without stockholders, to set up separate segregated political funds as to which it can solicit contributions from its membership; since it does not have any stockholders to solicit, it should be allowed to solicit its members. That is all that the amendment provides. It does cover an omission in the bill that I believe all agree should be filled." 122 Cong. Rec. S 3812 (daily ed., March 18, 1976) (remarks of Senator All

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Accordingly, the "membership" relationship must be evidenced by the existence of member rights and obligations vis-a-vis the corporation. For this reason, we agree with the majority that where, as here, persons described by a corporation as "members" do not enjoy any direct and enforceable participatory rights as a matter of law or constitution, the Commission must require some further evidence of the "membership relationship" between the corporation and the "member" before the solicitation rights in 44lb(b)(4)(C) attach.

What are the rights and obligations of those persons whom PSRC proposes to solicit as "members?" The Commission majority has ruled that such persons must affirmatively indicate their intent to join the organization before being solicited by its political action committee and we agree. The majority has also required that the corporation's articles or by-laws provide that it shall have members. With this requirement, we also agree. And finally, we agree with the majority that persons described as "members" must make a financial commitment to the corporation in the form of a pre-determined dues payment and further that membership must be renewed at fixed intervals.

We have no quarrel with the majority's requirements for the indicia of "membership" as far as they go, but they do not go far enough. Those facts which the majority has viewed as sufficient to establish a membership relationship between PSRC and certain individuals describe a one-sided relationship of obligations by a so-called "member" to the corporation. We think that the Act demands more. In our opinion, a bona fide membership relationship cannot exist unless members have certain fundamental rights guaranteed vis-a-vis the corporation.

Paramount among these is the right of members to direct the policies and activities of the corporation, for this is what characterizes the corporation as a "membership" organization. Membership control can only be derived from a concomitant right in the membership to elect corporate directors or officers. It is the existence of this right, guaranteed by law to corporate shareholders^{4/} and labor union members^{5/}

^{4/} Reifsnnyder v. Pittsburgh Outdoor Advertising Co.; 405 Penn. 172; 173 A. 2d. 319, citing Fletcher Cyc. Corp. (Perm. Ed.) §5717.

^{5/} 29 U.S.C. §411

which creates the fiduciary relationship between such organizations and their shareholders or members. And it is the existence of the fiduciary relationship that the statutory scheme in Section 441b seeks to protect by providing that a corporation without capital stock may solicit its members. PSRC's "Articles of Incorporation" not only fail to provide this fundamental right they specifically deny it.^{6/} In our view, the absence of this right and the resultant lack of control by the alleged "members" over the corporation's policies and actions is fatal to the corporation's contention that it is a "membership" organization. A bona fide membership organization is one which represents its members; that is not the case here.

Finally, what is particularly egregious about the majority's opinion is not just that they have strayed so far from the legislatively intended purpose of 441b(b)(4)(C) but that in doing so they have created a mechanism by which ideological organizations, funded by corporate monies, may enlarge their solicitable class to include the public at large. This is particularly troublesome in view of the recent proliferation of incorporated special interest organizations which are engaging in widespread direct mail solicitations. If, as the majority has found, all that such organizations must do is drop a membership card in the mail, and request a contribution and the return of a portion of the card, with the result

^{6/} "EIGHTH: The Corporation shall have members who shall be persons who voluntarily support the purposes of the organization and are accepted as members by the Board of Directors of the Corporation under procedures established by the Board.

No members shall have any voting or property rights or have, or acquire any vested right, title, or interest in or to the property of this Corporation or any vested right in the exercise of any of the privileges of membership in this Corporation or any vested right in the continuation of any of its purposes, policies or activities.

Every member in good standing shall have the right to receive such privileges as may be prescribed under rules and regulations adopted from time to time by the Board of Directors.

The Board of Directors shall have the sole authority to establish the purposes and goals and direct the activities of the Corporation." Public Service Research Council, Articles of Incorporation.

81010302504

Page 5

that it is then free to solicit such persons for a contribution to its political action committee, such organization's solicitation rights are practically without limit. This was not the intent of Congress in enacting 44lb(b)(4)(C). Instead, it is clear that Congress intended just the opposite, that is, that the solicitation rights of corporations be narrowly limited in order to protect the political system from corruption by special interest money.

Thomas E. Harris

THOMAS E. HARRIS

Neil Staebler

NEIL STAEBLER

June 27, 1978

810403505



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CONCURRING OPINION
OF
CHAIRMAN JOAN D. AIKENS

TO
ADVISORY OPINION 1977-67

I have joined the majority in this Advisory Opinion for two reasons. First, I believe that guidance on the question presented is desperately needed by the public and this Opinion provides such guidance. Second, I believe that the conclusion on these particular facts is a correct one, although I am not entirely in agreement with the reasoning used to reach that conclusion. In fact, I retain substantial anxieties as to the direction in which the Commission is headed in dealing with "members" and "membership organizations."

The basic issue in this Opinion is what constitutes a membership relationship for purposes of 2 U.S.C. §441b. A membership organization under this Section is limited to those groups of individuals who have voluntarily associated in corporate form. Unincorporated associations are not subject to §441b. The significance of what constitutes a membership organization or a member of such an organization lies in the ability of the corporation to use general funds to establish and maintain a separate segregated fund for political purposes and to solicit voluntary contributions to such a fund solely from its "members." 2 U.S.C. §441b(b)(4)(C). Membership organizations which elect to conduct their activities in corporate form are subject to the general prohibitions of §441b and its narrow exceptions dealing with separate segregated funds.

My concerns begin with the inference in this Advisory Opinion that membership organizations are analogous to the other major entities subject to §441b, i.e., business corporations and labor organizations. For several reasons, I think that the Commission must be wary of such comparisons. Incorporated membership organizations were inserted into §441b in the 1976 Amendments.

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CONCURRING OPINION OF
CHAIRMAN JOAN D. AIKENS
TO ADVISORY OPINION 1977-67

Page 2

The legislative history on this insertion is slim and therefore suggests to me that the legislature was somewhat unfocused as to its intended effect. Prior to 1976, it appears that such groups were not within the ambit of §441b. Representative Hansen himself indicated during the debate on the 1971 Act that certain organizations even though incorporated would not be subject to the prohibition in §441b. 117 Cong. Rec. H11480-81 (daily ed. Nov. 30, 1971).

Shareholders, union members and members of ideological organizations defy comparison. The type of relationship that exists between a business corporation and its shareholders and between a union and its members is entirely different from that between an association such as PSRC and individuals who join this group as members. Unions and corporations have long been recognized as economic interests within our society and within the framework of the election laws. It is for that reason that Congress chose to proscribe their political activity. However, with respect to groups such as PSRC, the relationship between this incorporated membership organization and its members is ideological rather than economic. Whereas the shareholder may be interested in higher profits and therefore a higher return on investment, and whereas the union member will be interested in improved wages and working conditions as negotiated through the collective bargaining process, those who join PSRC seem to do so for ideological reasons. For this reason, the terms upon which an individual establishes or enters into a relationship with a corporation or a labor union may not be transferable to other membership relationships. "Rights and obligations" in the context of union membership may be virtually meaningless in the context of membership in a group such as PSRC. Oftentimes "rights" are a matter of statute, such as a union member's bill of rights. 29 U.S.C. §§411-413.

Let us assume, however, that union members were intended by Congress to be comparable to members of other forms of associations. What is it that makes an individual a member in the union? It could not be the mere payment of predetermined dues. Such payments would make workers who are subject to an agency shop agreement members of the union when, in fact, they are not. Payment of dues may be a consequence of joining a union,

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CONCURRING OPINION OF
CHAIRMAN JOAN D. AIKENS
TO ADVISORY OPINION 1977-67

but it is not an act which confers membership. To the contrary, it is a well settled principle that an employee's signature on a membership card constitutes membership in the union because it manifests the requisite intent and desire to be a member. NLRB v. Delaware-New Jersey Ferry Co., 128 F.2d 130, 134 (3d Cir. 1942).

By the same token, this Commission should look to whether persons considered by PSRC as members actually consider themselves to be members. Have they manifested an intent or desire to be a member? It is my opinion that a "member" is an individual who knowingly and voluntarily associates himself or herself with the organization. This criterion would preclude a bogus membership organization which exists only in computer tapes containing hundreds of thousands of names. Affirmative acts on the part of an individual are necessary to become a member. The "membership" organization may not merely unilaterally choose those who it wishes to consider as its members. The PSRC has submitted Exhibits (Exhibits C and D) which demonstrate that this organization specifically requests individuals to become members and to return a card to affirm a desire to join as members. Once an individual makes such an affirmative response to the request, the membership relationship has been created.

"Direct and enforceable participatory rights in the organization" (AO 1977-67) are not necessary ingredients in the formation of the membership relationship. This notion is not contained anywhere in §441b, nor is it consistent with the thrust of the Commission's Regulation §114.1(e), which defines "member." That definition makes it clear that one is a member if he or she is "currently satisfying the requirements for membership in a membership organization." There is no ambiguity that it is the membership organization which establishes the terms, i.e., "the requirements," of membership. It is the individual who is free to seek or spurn membership on the terms offered. The terms of membership may include "rights and obligations vis-a-vis the corporation" but it is not mandatory. For the Commission to prescribe an exclusive class of substantive rights in order to limit the type of associations which would qualify as "bona fide" membership organizations within the meaning of the

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CONCURRING OPINION OF
CHAIRMAN JOAN D. AIKENS
TO ADVISORY OPINION 1977-67

Act would inevitably and needlessly interject the govern-
ment into an essentially private concern among individuals
who are merely exercising their First Amendment right
of association.

Once it was established that PSRC members have
expressed a specific and unambiguous desire to be members,
there was no need to require rights and obligations such
as predetermined dues or periodic renewal of membership.
The opinion intimates that persons with "lesser rights
or obligations vis-a-vis the corporation" may be members.
In future cases, I hope that the Commission will focus
much less on "rights and obligations" and more on the
knowing and voluntary association of individuals.

DATED: June 27, 1978

151
JOAN D. AIKENS

81010302509



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 21, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward P. Wendel, Assistant General Counsel
Active Ballot Club,
A Department of United Food and
Commercial Workers International Union
1775 K Street, N.W.
Washington, D.C. 20006

RE: MUR 1035

Dear Mr. Wendel:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on December 12, 1979, found reason to believe that the Active Ballot Club, A Department of United Food and Commercial Workers International Union may have violated 11 C.F.R. § 103.3 and sections 441b(a) and 441b(b)(4)(A)(ii) of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. § 441b(b)(A)(ii) and § 441b(a) has occurred.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

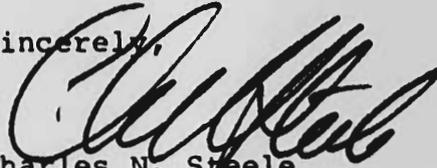
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Letter to Edward E. Wendel
Page Two
MUR 1035

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety days to settle this matter through a conciliation agreement. This does not preclude settlement of this matter through informal conciliation prior to a finding of probable cause to believe, if you so desire.

Should you have any questions, please contact Beverly Brown at 202/523-4529.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
Brief

81040302511



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS/MARGARET CHANEY *mc*
DATE: JULY 29, 1980
SUBJECT: MUR 1035 - Interim Investigative Report #2
dated 7-10-80: Received in OCS 7-11-80

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 11:00, July 28, 1980.

There were no objections to the Interim Investigative Report at the time of the deadline.

However, Commissioner Aikens submitted a question. A Copy of her vote sheet is attached.

ATTACHMENT:
Copy of Vote Sheet

81040302512

July 11, 1980

MEMORANDUM TO: Marjorie W. Emons
FROM: Elissa T. Garr
SUBJECT: MUR 1035

Please have the attached Interim Invest Report distributed to the Commission. Thank you.

81010302513

BEFORE THE FEDERAL ELECTION COMMISSION

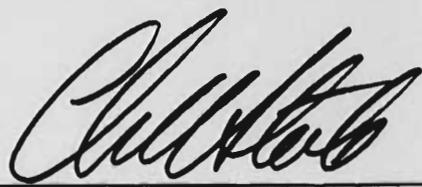
In the Matter of)	
)	
Active Ballot Club, A)	MUR 1035
Department of the United)	
Food and Commerical Workers)	
Union)	

INTERIM INVESTIGATIVE REPORT #2

On December 12, 1979, the Commission found reason to believe that the Active Ballot Club, a Department of the United Food and Commercial Workers Union, violated 2 U.S.C. §§ 441b(a), 441b(b)(4)(A)(ii) and 11 C.F.R. § 103.3. On March 31, 1980, the Office of General Counsel informed the Commission of a formal response from the respondent's attorney, Mr. Edward P. Wendel, which was undergoing review and legal analysis. Due to the complexity of legal issues presented in this matter, substantial research has been required in preparation of a response to Mr. Wendel. At this time a factual and legal analysis of the matters under review is in draft form.

81040302514

10 July 1980
Date



Charles N. Steele
General Counsel



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE *mwe*
FROM: MARJORIE W. EMMONS/MARGARET CHANEY *me*
DATE: APRIL 2, 1980
SUBJECT: MUR 1035 - Interim Investigative Report #1
dated 3-27-80; Signed 3-31-80;
Received in OCS 3-31-80, 4:12

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 11:00, April 1, 1980.

There were no objections to the Interim Investigative Report at the time of the deadline.

81040302515

March 31, 1980

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1035

Please have the attached Interim Invest Report
distributed to the Commission. Thank you.

81040302516

BEFORE THE FEDERAL ELECTION COMMISSION
March 27, 1980

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

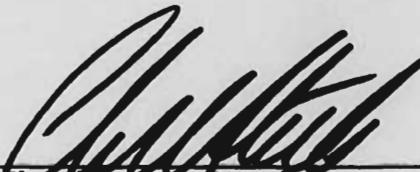
80 MAR 31 P 4: 12

In the Matter of)
)
Active Ballot Club, A) MUR 1035
Department of United Food)
and Commercial Workers)
Union)

INTERIM INVESTIGATIVE REPORT # 1

On December 12, 1979, the Commission found reason to believe that the Active Ballot Club, A Department of United Food and Commercial Workers Union, violated 2 U.S.C. §§ 441b(a), 441b(b)(4)(A)(ii) and 11 C.F.R. § 103.3. The Office of General Counsel has received a formal response from the respondent's attorney, Mr. Edward P. Wendel. A legal analysis of Mr. Wendel's submission, is presently in draft form.

31 March 1980
Date



Charles N. Steele
General Counsel

81040302517

200



United Food & Commercial Workers
International Union, AFL-CIO & CLC
1775 K Street, N.W.
Washington, D.C. 20006
(202) 223-3111

January 10, 1980

Miriam Aguiar, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 1035

Dear Ms. Aguiar:

The following is prepared in response to the letter of December 13, 1979, from General Counsel Charles Steele regarding possible violation of the Federal Election Campaign Act by the Active Ballot Club, a department of the United Food and Commercial Workers International Union. This response is based on my understanding, as concluded from that letter, of what is alleged as potential violations and from my discussions with various persons in our Accounting and Active Ballot Club Departments in this regard. Upon your review of this letter, I would be happy to meet with you or anyone else from the Commission to provide more specific or additional information which might settle this matter.

First, let me respond to the statements that "it appears ABC locals first deposit voluntary contributions to operating accounts before transferring these funds to ABC's separate segregated account, thereby commingling voluntary contributions with union treasury funds" and "it appears that voluntary contributions were held in local operating accounts more than 10 days before being transferred to ABC to be deposited in its authorized campaign depository" The practice has always been to advise Local Unions that political contributions should be placed in accounts designated for political contributions only and separate from their operating accounts (Attachments A, p.2; B). The only instance in which it has been suggested to me that this might not be done immediately is where members are on payroll deduction with their employer for both union dues and political contributions,

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William H. Wynn
International
President

Sam Talarico
International
Secretary-Treasurer

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Miriam Aguiar, Esquire

January 10, 1980

-2-

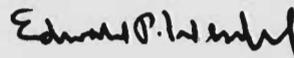
in which case the amount designated as a political contribution would then have to be transferred from the operating to the separate political account.

As to the \$20,000 savings certificate, as noted in Mr. Steele's letter, this was purchased by the non-federal account (i.e., the ABC Education Fund) on May 25, 1973, with a condition that there would be a 90-day interest penalty if cashed at a time other than the anniversary date. In December, 1976, the non-federal account did not have enough money on deposit in its passbook account to meet its obligations, and rather than be penalized for cashing the certificate at a time other than the anniversary date, the certificate was sold to the federal account at the \$20,000 face value. At that time, a check of \$20,000 was drawn by the federal account to the non-federal account. Prior to December 30, 1976, all interest earned on the certificate was paid to the non-federal account and after that date the interest was paid to the federal account.

With regard to the transfer involving Local 428, \$3,000 was transferred from the Local 428 Active Ballot Club federal account to the International Active Ballot Club federal account. At approximately the same time, \$3,000 was transferred from the International non-federal (i.e., Education Fund) account to Local 428 (Attachment C). In accord with past practice, this amount was intended for expenditure by the Local 428 non-federal account. The January 27, 1976, letter from the International to the Local Unions pointed out that "[s]uch funds (soft money) cannot be contributed directly or indirectly in any federal election" (Attachment A).

Finally, as to the solicitation of contributions to ABC, it has been the policy of the Active Ballot Club to accept contributions from non-members, but to make solicitations only to members and their families. Union retirees have always been considered to be members of the Union, even if they are no longer active members.

Sincerely,



Edward P. Wendel
Assistant General Counsel

Attachments

EPW:kl

81040302519

Retail
Clerks
International
Association

January 27, 1976

To: All Local Unions, District Councils and
International Representatives

Re: Accounting Procedures for Active Ballot Club Funds

For your personal protection, we are reiterating a few procedures relative to Active Ballot Club funds. We cannot overstress the importance of these points to you personally, for violation of the Federal Election Campaign Laws can cause very unpleasant consequences.

A key to the proper handling of ABC funds is an acute awareness of the differences between ABC General Funds ("hard" money; individual, volunteer contributions; Silver Card money) and ABC Educational Funds (treasury money; "soft" money; funds made up of dues, fees and other union revenue).

The Active Ballot Club funds have two primary sources of revenue: (1) Revenue for the Educational Fund is derived from enrollment fees of \$1.00 per each Local Union member per year paid out of the Local Union treasury. Such funds (soft money) cannot be contributed directly or indirectly in any federal elections, but may be contributed in most State elections. It may be used for nonpartisan registration, get-out-the-vote and political education programs and, further, it may be used to finance partisan activities directed at union members. (2) The General Fund is derived from enrollment fees of \$2.00 per person voluntarily contributed on an individual basis. These funds (hard money) may be contributed to federal candidates and to non-federal candidates (but soft money should be used for non-federal candidates where permitted by State law).

Because of the legal restrictions pertaining to the use of a labor organization's funds for political purposes, the following accounting procedures are to be followed by Local Active Ballot Clubs.

James T. Houswright
International
President

Peter L. Hall
International
Secy-Treas

Affiliated with
AFL-CIO & CLC

Sullridge Building
1775 K Street, N.W.
Washington, D.C. 20004
Phone (202) 393-5111

ATTACHMENT A

81010302520

(1) SEPARATE ACCOUNTING: Separate accounting of receipts and disbursements must be maintained with respect to the "Education Fund" and the "General Fund." This separate accounting applies not only to the enrollment fees and expenditures of these separate funds, but to any interest, dividends, or other investment returns of such funds. These funds shall not be commingled.

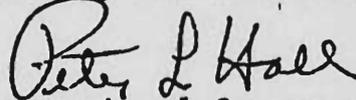
(2) SEPARATE CHECKING/SAVINGS ACCOUNTS: For your further protection, you should use separate checking accounts and checks for disbursing these funds. We strongly advise that the formats of the two sets of checks be different in design and color and, of course, they should clearly identify each fund—Education or General.

The rules we have outlined are demanding. We have restated them, perhaps repetitiously, for your legal protection, as well as ours. There are some who hope that these requirements will be so burdensome that they will cause us to drop out of politics altogether. Their next goal would be to have us drop out, period. We do not intend to grant their wishes.

If you should have any question relative to the above procedure, please contact us.

With sincere and kind personal regards, I remain

Sincerely and fraternally,



International Secretary-Treasurer

81010302521

Retail
Clerks
International
Association

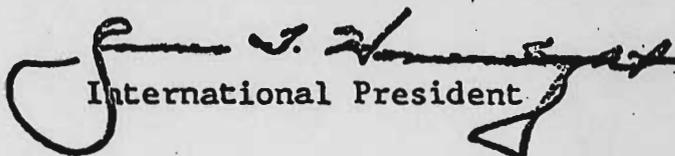
August 24, 1973

To All International Directors and
Local Union Chief Executive Officers

Enclosed is a memorandum from the Legal Department emphasizing the continued importance of maintaining strict segregation of "hard" money (Silver Card and Century Club enrollments) from all other union funds.

As the memorandum indicates, the conviction of W. A. (Tony) Boyle of the UMW is a compelling reminder that the failure to maintain a strict segregation of funds used in federal elections is a criminal offense for which the responsible officers bear a personal liability.

Sincerely and fraternally,


International President

Enclosure

81040302522

MEMORANDUM

TO: President James T. Housewright
FROM: Carl L. Taylor, General Counsel *CLT*
DATE: August 16, 1973
SUBJECT: Federal Election Campaign Act - Segregation of Hard Money

81040302533
The criminal conviction of W. A. Boyle, recently affirmed on appeal, for using Mine Workers' general treasury funds in federal campaigns, is a compelling reminder of the need to maintain a strict segregation of "hard" money (Silver Card and Century Club enrollments) from all other union funds.

Boyle argued on appeal that political expenditures from general treasury accounts were permissible so long as there were sufficient funds in the general treasury from non-dues sources to cover the contributions. The Court of Appeals categorically rejected that argument, holding that the clear intent of federal law was to "prohibit expenditures from a union's general treasury" from whatever source derived.

The court warned that voluntary funds lose their status if comingled in any way with other union money. There must be "strict segregation" of hard money, including separate accounts and separate record keeping.

The citation of the Court of Appeals' decision is United States v. Boyle, ___ F.2d ___ (D.C.Cir. No. 72-1749, July 16, 1973). The full text of the decision may be found in Bureau of National Affairs, Daily Labor Report No. 137, July 17, 1973, at p. E-1.

CLT:kl
cc: President's File



*Acct. ABC
51602*

ACTIVE BALLOT CLUB
EDUCATION FUND

5047

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811

1775 K Street, N.W., Washington, D. C. October 2, 1978

Pay to the order of R.C.I.U. Local No. 428 Active Ballot Club \$ 9,000.00

~~ACTIVE~~ 3000

THE NATIONAL BANK OF WASHINGTON
WASHINGTON, D. C.



By _____

By _____

[Handwritten signatures]
PRESIDENT
SECRETARY-TREASURER

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RCIU Local 428 Active Ballot clb.
Deposit account #51602

11215104

REINL EMPLOYEES LOCAL 428
CREDIT UNION
240 SO. MARKET STREET
SAN JOSE, CALIFORNIA 95113
PAYMENT TO ORDER OF
CREDIT UNION
SAN JOSE, CALIFORNIA
OCT 10 1978

PAY BANK PER
FINANCIAL PLCTF
OCT 07 35
FIRST NATIONAL BANK
SAN JOSE, CALIFORNIA
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FROM

**UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION**

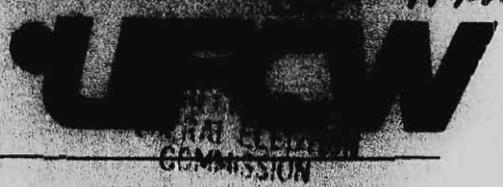
1775 K STREET, N.W.
WASHINGTON, D.C. 20006

RETURN POSTAGE GUARANTEED

FOR

Miriam Aguiar, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

11945



United Food & Commercial Workers
International Union, AFL-CIO & CLC
1775 K Street, N.W. AM 9:32
Washington, D.C. 20006
(202) 223-3111

December 21, 1979

005469

Miriam Aguian, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 1035

Dear Ms. Aguian:

On December 17, 1979, the Active Ballot Club, a department of the United Food and Commercial Workers International Union, received a letter from Mr. Charles Steele, Acting General Counsel of the Federal Election Commission, informing them that the Federal Election Commission had reason to believe that the Active Ballot Club may have violated certain sections of the Federal Election Campaign Act.

The letter stated that the Active Ballot Club should respond within ten days after receipt of the notification. We are in the process of preparing such a response at this time. However, in light of the holiday schedules of many of the staff, we would request that we be given until January 10, 1980 to furnish you with our response.

Sincerely,

Edward P. Wendel
Edward P. Wendel
Assistant General Counsel

EPW:fj

79 DEC 26 10:36

81040302527

William H. Wynn
International
President

Sam Talarico
International
Secretary-Treasurer

RECEIVED
GENERAL COUNSEL
FEDERAL ELECTION COMMISSION

UFCW

United Food & Commercial Workers
International Union, AFL-CIO & CLC
1775 K Street, N.W.
Washington, D.C. 20006



Miriam Aguian, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

REC'D
FEDERAL ELECTION
COMMISSION

UFCW

79 DEC 21 PM 12:13

United Food & Commercial Workers
International Union, AFL-CIO & CLC
1775 K Street, N.W.
Washington, D.C. 20006
(202) 223-3111

ACC#
11928

December 20, 1979

Charles N. Steele, Esquire
Acting General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

Re: MUR 1035

Dear Mr. Steele:

In connection with the matter numbered MUR 1035 by the Federal Election Commission, the United Food and Commercial Workers International Union will be represented by Edward Wendel, Assistant General Counsel of the UFCW. Mr. Wendel may be reached at the office of the International, i.e., 1775 K Street, N. W., Suite 900, Washington, D. C. 20006.

Sincerely,

Samuel J. Talarico
International Secretary-Treasurer

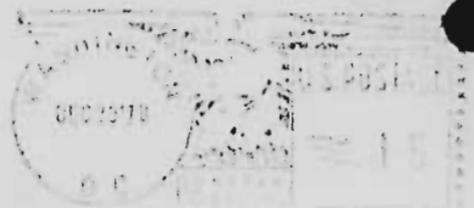
William H. Wynn
International
President

Sam Talarico
International
Secretary-Treasurer

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UFCW

United Food & Commercial Workers
International Union, AFL-CIO & CLC
1775 K Street, N.W.
Washington, D.C. 20006



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Charles N. Steele, Esquire
Acting General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

December 13, 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Samuel Talarico, Treasurer
Active Ballot Club, A Department
of the United Food and Commercial
Workers Union
1775 K Street, N. W.
Washington, D. C. 20006

Re: MUR 1035

Dear Mr. Talarico:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission has found reason to believe that your committee, the International Active Ballot Club may have violated sections 441b(a) and 441b(b)(4)(A)(ii) of the Federal Election Campaign Act of 1971, as amended ("the Act") and 11 CFR §103.3(a). 2 U.S.C. §441b(a) makes it unlawful for labor organizations to make contributions and expenditures in connection with federal elections; 2 U.S.C. §441b(b)(4)(A)(ii) makes it unlawful for labor organizations to solicit contributions from persons other than its members and their families (these contributions must be held in a separate segregated account for use in any federal election); and 11 CFR 103.3(a) makes mandatory the deposit of voluntary contributions to a federal account within 10 days of receipt by union representatives.

Specifically it appears ABC locals first deposit voluntary contributions to operating accounts before transferring these funds to ABC's separate segregated account, thereby commingling voluntary contributions with union treasury funds in possible violation of §441b(a) of the Act. It also appears that ABC exchanged

Letter to Samuel Talarico

- 2 -

funds between its non-federal and federal accounts on at least two occasions in possible violation of § 441b(a):

- (1) A \$20,000 savings certificate was purchased by a non-federal account on May 25, 1973, with terms of 5 3/4 % annual interest paid quarterly one year maturity containing an automatic renewal, and 90 day interest penalty if cashed at a time other than the anniversary date. The certificate was sold by the non-federal to the federal account at the \$20,000 face value on December 30, 1976, and held by the federal account until it was cashed on June 2, 1978, with the proceeds deposited into the federal account.
- (2) A \$3,000 transfer was made from Local # 428 Active Ballot Club federal account to the headquarters Active Ballot Club federal account. On approximately the same date, an identical amount was transferred from the headquarters Education Fund (non-federal account) to Local #428 Active Ballot Club federal account.

Further, it appears that ABC solicited at least \$6,700 contributions from 35 non-members, and also solicited contributions, through the sale of Silver Cards, from union retirees and the general public in violation of § 441b(b)(4)(A)(ii). In addition, it appears that voluntary contributions were held in local operating accounts more than 10 days before being transferred to ABC to be deposited in its authorized campaign depository in violation of section 103.3(a) of the Commission's Regulations.

We have numbered this matter MUR 1035. Please refer to this number in all future correspondence. As ABC local #428, a respondent in this matter, is a respondent in MUR 903 for possible violations of the Act, the Commission determined to merge MUR 903 into this matter on October 24, 1979.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your Committee. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Active Ballot Club, A Department)
of United Food and Commercial)
Workers Union)

MUR 1035

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on December 12, 1979, the Commission decided by a vote of 5-0 to take the following actions regarding the above-captioned matter:

1. Find REASON TO BELIEVE that the Active Ballot Club, A Department of the United Food and Commercial Workers Union, may have violated 2 U.S.C. §441b(a), §441b (b) (4) (A) (ii) and 11 CFR §103.3.
2. Approve and send the letter attached to the First General Counsel's Report dated December 7, 1979.

Voting for this determination were Commissioners Friedersdorf, Harris, McGarry, Reiche, and Tiernan.

Attest:

12/12/79

Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

Received in Office of the Commission Secretary: 12-7-79, 3:47
Circulated on 48 hour vote basis: 12-10-79, 11:00

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December 7, 1979

MEMORANDUM TO: Marjorie W. Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 1035

Please have the attached First GC REport on MUR 1035
distributed to the Commission on a 48 hour tally basis.

Thank you.

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2. Voluntary contributions were held in local operating accounts approximately 6 to 210 ~~days before being~~ transferred to ABC to be deposited in its authorized campaign depository.
3. ABC "Century Club" records^{2/} disclosed the receipt of \$6,700 in contributions from 35 non-members. Additionally, it appears ABC solicited contributions, through the sale of silver cards, from union retirees and the general public.
4. Local ABCs' exchanged and transferred monies between their union treasury accounts and their separate segregated accounts, i.e. ABC's federal account purchased a \$20,000 saving certificate from its non-federal account on December 30, 1976, and ABC local #428 transferred \$3,000 from its non-federal account to its federal segregated account.

PRELIMINARY LEGAL ANALYSIS

1. Receipt of Funds Transmitted by Union Accounts

11 CFR §103.3 makes mandatory the deposit of voluntary contributions to federal accounts within 10 days of receipt by the union representatives. Thus, failure by ABC locals to transfer contributions to ABC for deposit into its authorized campaign depository within the 10 day period appears to be a violation of the Commission's regulation.

Further, as 2 U.S.C. §441b(a) prohibits contributions or expenditures by labor organizations in connection with federal elections, ABC's practice of depositing voluntary contributions to its operating accounts before transferring such contributions to its separate segregated account, thereby commingling voluntary and union treasury funds, appears to violate §441b(a).

2. Solicitation of Non-Members

2 U.S.C. §441b(b)(4)(A)(ii) prohibits a labor organization from soliciting contributions from persons other than its members

^{2/} A contribution of \$100 to ABC admits the contributor to ABC's Century Club.

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and their families. It appears that ABC may have violated this section of the Act by its general solicitation and receipt of \$6,700 in contributions from 35 non-members and by the sale of ABC Silver Cards to retirees and the general public.

3. Transfer of funds from Non-federal to Federal Accounts

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A labor organization is prohibited from making "a contribution ... in connection with any" federal election. Specifically excepted are the costs of soliciting members for voluntary contributions for political purposes disclosed at the time of the solicitation, and the costs attributed to establishing and administering a fund of those contributed monies. 2 U.S.C. §441b(a). The voluntary funds received are required to be kept separate and segregated from monies secured by dues, fees, or other monies required as a condition of membership in a labor organization. 2 U.S.C. §§441b(b)(2)(C) and (b)(3)(A). Thus, it is impermissible to deposit or transfer any union treasury funds to or exchange treasury funds with monies held in these separate segregated accounts, for once "voluntary" and "involuntary" funds are commingled and then a portion is expended for political purposes, it is impossible to tell whether "voluntary" or "involuntary" money is expended... This involuntary portion may be presumed to be part of each expenditure from the commingled funds." United States v. Boyle, 157 U.S. App. D.C. 166, 482 F.2d 755 (1973), cert. denied, 414 U.S. 1076 (1973). As it appears that ABC exchanged non-federal funds for federal funds and deposited non-federal funds to its segregated account, ABC appears to be in violation of 2 U.S.C. §441b.

RECOMMENDATION

1. Find reason to believe that the Active Ballot Club, A Department of the United Food and Commercial Workers Union, may have violated 2 U.S.C. §441b(a), §441b(b)(4)(A)(ii) and 11 CFR §103.3.
2. Approve and send attached letter.

ATTACHMENTS

Interim Audit Report
Proposed letter to Respondent

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

INTERIM REPORT OF THE AUDIT DIVISION
ON THE
ACTIVE BALLOT CLUB, A DEPARTMENT OF THE
RETAIL CLERKS INTERNATIONAL UNION

I. Background

A. Overview

This interim report is based upon an audit of the Active Ballot Club, A Department of the Retail Clerks International Union ("Active Ballot Club") undertaken by the Audit Division in accordance with the Commission's audit policy to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(a)(8) of Title 2 of the United States Code which directs the Commission to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of the Act.

The Active Ballot Club ("ABC") registered with the Clerk of the United States House of Representatives on April 17, 1972, and maintains its headquarters in Washington, D.C. The primary function of the ABC is contributing funds to candidates seeking Federal office.

The audit covered the period from January 1, 1977 through January 31, 1979, the final coverage date of the most recent report filed by the ABC at the time of the audit. The ABC reported an opening cash balance on January 1, 1977 of \$87,936.27, total receipts for the period of \$469,827.57, total expenditures for the period of \$369,335.18, and a closing cash balance on January 31, 1979 of \$188,428.66.

This interim audit report is based upon documents and working papers which support each of the factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to Commissioners and appropriate staff for review.

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B. Key Personnel

The principal officers of the ABC during the period audited were Mr. James T. Housewright, Chairman from January 1, 1977 to September 27, 1977; Mr. William H. Wynn, Chairman from September 27, 1977 to the present; Mr. William H. Wynn, Treasurer from January 1, 1977 to September 27, 1977; and Mr. Thomas G. Whaley, Treasurer from September 27, 1977 to the present.

C. Scope

The audit included such tests as verification of total reported receipts, expenditures and individual transactions; review of required supporting documentation; analysis of Committee debts and obligations; and such other audit procedures as deemed necessary under the circumstances.

D. Interim Findings and Recommendations

(1) Receipt of Funds Transmitted by Union Accounts

Section 437b(a)(2) of Title 2 of the United States Code requires the treasurer of each political committee to designate one or more national or State banks as campaign depositories of such committee, while Section 433(b)(9) of Title 2 of the United States Code requires that a listing of all banks and respositories by the committee must be disclosed.

Section 103.3(a) of Title 11 of the Code of Federal Regulations states, in part, that all contributions received by a political committee shall be deposited in a checking account in the appropriate campaign depository by the treasurer or his agent within 10 days of the treasurer's receipt thereof.

During the course of the audit, we determined that the Active Ballot Club employs the following methods for obtaining voluntary contributions:

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(a) Contributions of \$100.00 per year generally are obtained through payroll deduction and by personal checks received from contributors. The payroll deductions are generally sent to the Active Ballot Club once a month by checks drawn on local union operating accounts, whereas the personal checks are forwarded intact with a cover letter containing the name(s) of the contributor(s). For the most part, contributors within this category are the executive level dues paying members of the Retail Clerk's International Union. 1/ This \$100.00 contribution admits a contributor into the Active Ballot Club's Century Club.

(b) Contributions of \$2.00 each are obtained from the sales of Silver Cards. The Silver Card booklets are sent to the Union locals by the Active Ballot Club based upon the membership enrollment within a given local. The local members are usually billed for the Silver Card contribution in conjunction with the quarterly dues billing. Personal checks for the combined total billing are received into the local union operating account from contributing members. The non-contributing members delete the Silver Card amount from their billing. Contributions from Silver Card sales are usually sent to the Active Ballot Club by check drawn on the local's operating account and reported by the Active Ballot Club as unitemized receipts. After receipt of the Silver Card proceeds, the Active Ballot Club returns 50% (\$1.00) to the respective local via check drawn on its Federal account. According to Active Ballot Club officials, no attempt is made to monitor the use of the money returned to the locals; however, it is intended for use in non-Federal elections.

It should be noted that the Audit staff's review of the Active Ballot Club's receipt records disclosed that, for the most part, contributions were transferred by checks drawn on the union's local operating accounts and were not received into the authorized campaign depository within 10 days following receipt of the contributions by the locals.

In order to review the entire contribution process of the Active Ballot Club, the Audit staff visited four (4) union locals. 2/ Through the review, it was determined that the individuals' voluntary contributions were received into the locals'

1/ Refer to Finding D-2.

2/ Local #324 Buena Park, California
Local #428 San Jose, California
Local #1540 Mount Prospect, Illinois
Local #1550 Chicago, Illinois

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operating accounts on a regular basis. According to the local officials, the books of account, which include the voluntary contributions ledger, are balanced during the last week of the month, and a determination made by the union local at that time of the amount of money to be forwarded to the Active Ballot Club based on the total contributions received according to the ledger. Three (3) of the locals transmitted these contributions directly from their operating accounts to the Active Ballot Club. The fourth, Local #324, transmitted from its operating account to its Local #324 Active Ballot Club account. Generally, upon receipt into the Local #324 Active Ballot Club account, the value of the voluntary contributions were forwarded via check drawn on that account to the Active Ballot Club. The normal practice of one (1) of the locals was to forward individuals' voluntary contributions from its operating account to the Active Ballot Club on a quarterly basis. The Audit staff determined that this local also forwarded contributions from its operating account to the Active Ballot Club during April, 1978 which were collected and deposited during 1976. According to an official, this situation was a result of problems with a former bookkeeper. The Audit staff further determined that, with the exception of the 1976 contributions mentioned above, approximately six (6) to 210 days elapsed between the time that voluntary contributions had been received into the local union operating accounts until they were transferred to the Active Ballot Club and deposited into an authorized campaign depository.

It appears that the practice of depositing voluntary contributions into the locals' operating accounts combined with the excessive amount of time for which the voluntary monies remained in the locals' accounts constitutes a violation of the 10 day rule set forth in Section 103.3(a) of Title 11 of the Code of Federal Regulations. Further, this practice raises a question as to the character (Prohibited vs. Permissible) of the voluntary funds intermingled with union treasury funds in the locals' operating accounts in apparent violation of Section 441b(a) of Title 2 of the United States Code which prohibits a labor organization from making a contribution or expenditure in connection with elections to Federal office.

The local officials informed us that they were not aware of the 10 day requirement with respect to transmitting the contributions from operating accounts to the Active Ballot Club's campaign depository. *

* This practice follows AO 1978-42 approved September, 1978 by the Commission.

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The Active Ballot Club officials stated that it would be impossible to comply with the 10 day requirement because of the geographical dispersion of their local offices. Therefore, they felt it would be more reasonable for the contributions to be deposited into the campaign depository on a monthly basis.

Recommendation

The Audit staff recommends that, within 30 days of receipt of Commission notification, the Active Ballot Club develop written procedures to be implemented in order to comply with the 10 day requirement or submit reasons to support their contention that it is impossible to comply with the requirement. In either case, these procedures should be submitted to the Commission for review and, upon approval, be distributed to the local labor organizations for immediate implementation.

Further, we recommend that the Active Ballot Club retain sufficient documentation to substantiate compliance with the 10-day rule and where necessary, disclose any additional campaign depositories which are established in order to carry out the procedures.

(2) Solicitation of Non-Members

Section 441b(b)(4)(A)(ii) of Title 2 of the United States Code states, in part, that it shall be unlawful for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

Section 114.1(g) of Title 11 of the Code of Federal Regulations defines "soliciting" as the manner in which the solicitation is undertaken including, but not limited to, mailings, oral requests for contributions, and hand distribution of pamphlets.

Section 114.1(e) of Title 11 of the Code of Federal Regulations defines "members" of a labor organization as persons who are satisfying the requirements for membership in a local, national, or international labor organization. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund.

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Our review of the Active Ballot Club's Century Club records disclosed 35 non-dues paying contributors who contributed a total of \$6,700.00 during the period audited (see Exhibit A). These non-members generally consisted of the following categories:

- (a) Self-employed attorneys on retainer by locals;
- (b) Individuals not directly associated with the union, such as insurance agents, certified public accountants and others who had business with the Active Ballot Club;
- (c) R.C.I.U. Headquarters staff personnel, such as salaried attorneys and salaried executives; and
- (d) Retirees, who according to the union's constitution may attain Associated or Paid-up Life membership, but have no voice or vote concerning union matters.

Additionally, during conversations with officials of the locals mentioned in Finding D-1 above, the Audit staff determined that Active Ballot Club Silver Cards were occasionally sold to retirees and the general public. However, the total amount collected as a result of sales of this nature could not be determined since the records maintained by the locals did not contain this information.

Officials of the Active Ballot Club stated that the contributors apparently were made aware of the Century Club initially through verbal communications.

The Audit staff noted that solicitation letters were mailed each subsequent year requesting that Century Club members renew their membership. It is therefore reasonable to conclude that the renewal mailing would have included solicitations directed to non-members of the union who were currently on the Century Club membership roles.

Recommendation

The Audit Division recommends that the Active Ballot Club refund the \$6,700.00 to the non-member solicitees within 30 days of receipt of notification, and provide evidence of the refunds (i.e., copies of both sides of the negotiated refund checks) to the Audit Division upon receipt from its bank. Additionally, the Audit Division recommends that the Active Ballot Club notify each local, in writing, of the requirements with respect to solicitation of members in accordance with 11 CFR 114.5 and provide copies of the notification to the Audit Division within the 30 day period.

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(3) Contribution Solicitation In Non-Compliance
with Appropriate Requirements

Section 114.5(a)(2) of Title 11 of the Code of Federal Regulations states, in part, that a guideline for contributions may be suggested by a labor organization, or its separate segregated fund, provided that the person soliciting or the solicitation informs the persons being solicited -

(i) that the guidelines are merely suggestions; and

(ii) that an individual is free to contribute more or less than the guidelines suggest and the labor organization will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.

In addition, Section 114.5(a)(3) requires that any person soliciting an employee or member for a contribution to a separate segregated fund must inform the employee or member of the political purposes of the fund at the time of the solicitation. Further, Section 114.5(a)(4) requires that any persons soliciting an employee or member for a contribution to a separate segregated fund must inform the employee or member at the time of such solicitation of his or her right to refuse to so contribute without any reprisal. Section 114.5(a)(5) further states that any written solicitation for contributions to a separate segregated fund which is addressed to an employee or member must contain statements which comply with the requirements of paragraphs (a)(3) and (4) of this section, and if a guideline is suggested, statements which comply with the requirements of paragraph (a)(2) of this section.

Our review of the solicitation materials, such as letters addressed to employees and members soliciting contributions in conjunction with Century Club membership renewals and silver card sales, disclosed that the materials were apparently not in compliance with the requirements outlined above. This is based upon the fact that: a) the solicitees were not informed, as required by Section 114.5(a)(2), that the dollar amounts specified in the solicitation materials were merely a suggestion, and that more or less than the stated amount may be given. In addition, the solicitees were not informed that the labor organization will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute at all; b) the solicitation materials did not contain statements informing the solicitees of the political purposes of the fund, as required by Section 114.5(a)(3); and (c) the solicitation materials did not contain statements informing the solicitees of the right to refuse to so contribute without any reprisal, as required by Section 114.5(a)(4).

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With respect to the dollar amounts specified in the solicitation materials, we were informed by Active Ballot Club officials that under the present system, solicitees cannot contribute less than the stated amount, but if they did not wish to contribute at all, they were under no compulsion to do so.

Recommendation

The Audit staff recommends that, within 30 days of receipt of Commission notification, the Active Ballot Club revise its solicitation materials to comply with the requirements outlined above. Copies of the revised materials should be sent to the Commission for approval within the 30 day period. Upon approval, the Active Ballot Club should furnish copies of the solicitation materials to each local for guidance in further soliciting its members and their families.

(4) Required Notice not Included
On Solicitation Materials

Section 435(b) of Title 2 of the United States Code states that each committee shall include on the face or front page of all literature and advertisements soliciting contributions the following notice:

"A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C."

During our review of the solicitation materials outlined in paragraph (3) above we determined that the required notice was not included thereon.

Recommendation

The Audit staff recommends that, within 30 days of receipt of Commission notification, the Active Ballot Club include the notice in the revised solicitation materials recommended in paragraph (3) above.

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(5) Itemization of Individual Contributions

Section 434(b)(2) of Title 2 of the United States Code requires that each report of receipts and expenditures shall disclose the full name and mailing address (occupation and the principal place of business, if any) of each person who has made one or more contributions to or for such committee within the calendar year in an aggregate amount or value in excess of \$100, together with the amount and date of such contributions.

Our review of the receipts records disclosed 45 contributions, each in an aggregate amount or value in excess of \$100, totaling \$6,912.00 not itemized by the Active Ballot Club. The majority of these contributions, according to the Active Ballot Club officials, resulted from two (2) Century Club collections made by a local during the same year representing \$100.00 membership amounts for 1978 and an early collection toward the 1979 membership. In addition, we determined, based upon conversations with Active Ballot Club officials, that it is customary for individuals who contribute \$100.00 each year in conjunction with the Century Club to also contribute \$2.00 during the same year for the purchase of Silver Cards. As a result, it is reasonable to conclude that individuals within this category made contributions, each totaling \$102.00 in the aggregate amount or value, during a calendar year, thus requiring itemization. However, no system was maintained in order to perform a cross-aggregation check between the records of Century Club members and Silver Card sales, and vice versa, to determine whether any of the contributions did, in fact, exceed \$100.00 during the year.

The Active Ballot Club officials stated that since the locals do not always provide Silver Card ticket stubs when sending the proceeds of the sales to headquarters, combined with the costs involved, it is virtually impossible to maintain an aggregation system of this nature.

Recommendation

With respect to the 45 contributions not itemized, the Audit staff recommends that the Active Ballot Club file a comprehensive amendment itemizing the contributions within 30 days of receipt of Commission notification. With respect to the contributions which

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it was concluded would normally aggregate in excess of \$100 had the cross-aggregation check been performed, the Audit staff recommends that the Commission consider the costs involved as measured against the benefits realized (itemization of \$2.00 per year for each contributor within this category) and, therefore, not require the Active Ballot Club to perform a cross-aggregation check of the contributions of this nature received in the past. However, the Audit staff recommends that the Active Ballot Club develop written procedures for the implementation of a cross-aggregation system to be used in the future in order to comply with the requirements set forth in Section 434(b)(2). It is further recommended that a copy of the procedures be presented to the Audit Division for review within the 30 day period mentioned above.

(6) Failure to Maintain Adequate Contributor Records

Section 432(c)(2) of Title 2 of the United States Code states, in part, that it shall be the duty of the treasurer of a political committee to keep a detailed and exact account of the identification of every person making a contribution in excess of \$50, and the date and amount thereof and, if a person's contributions aggregate more than \$100, the account shall include the occupation and principal place of business (if any).

According to Section 100.10, 100.11, and 100.12 of Title 11 of the Code of Federal Regulations, "identification" means, in the case of an individual, his or her full name, including the first name, middle name or initial, if available, last name, and full address of his or her principal place of residence. "Occupation" means principal job title and whether or not self-employed. "Principal place of business" means the full name under which the business is conducted and the city and state in which the person is employed or conducts business.

During the audit, we determined that the contribution records did not contain the addresses of individuals who contributed amounts in excess of \$50, and addresses and occupations of individuals who contributed aggregate amounts in excess of \$100. We noted that it was the usual practice for written communications to be addressed to individuals in care of their assigned union locals.

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Recommendation

The Audit staff recommends that the Active Ballot Club obtain the contributor information and incorporate it into their records within 30 days of receipt of Commission notification. A further recommendation is that written procedures be developed within the 30 day period to ensure that contribution records are maintained in consonance with the Section 432(c) requirements. A copy of the proposed procedures should be made available to the Commission for a determination with respect to their adequacy.

(7) Inadequate Disclosure of Reimbursements

Section 434(b)(7) of Title 2 of the United States Code requires the disclosure of each contribution, rebate, or other receipt in excess of \$100 not otherwise listed on the reports of receipts and expenditures.

Our review of the receipts activity on the 1978 year end report revealed that six (6) reimbursements totaling \$4,100.00 received from four (4) committees were disclosed as transfers. A total of \$2,800 of the amount was received from two (2) unregistered committees (\$1,300 from one and \$1,500 from the other). Had the above items been bonafide transfers in excess of \$1,000 made by each of the two (2) unregistered committees, the situation would have ordinarily required them to register and file reports of receipts and expenditures with the Commission. However, our further review revealed that expenditures had been made which benefited the four (4) committees and they reimbursed the Active Ballot Club in an amount equivalent to the expenditures.

Recommendation

The Audit staff recommends that the Active Ballot Club file a comprehensive amendment reclassifying the six (6) transfers as reimbursements within 30 days of receipt of Commission notification.

(8) Transfer of Funds from Non-Federal to Federal Accounts

Section 114.5(b) of Title 11 of the Code of Federal Regulations states, in part, that labor organizations may use general treasury monies, including dues monies or membership fees, for the establishment, administration, and solicitation of contributions to its separate segregated fund.

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A labor organization may not use the establishment, administration, and solicitation process as a means of exchanging treasury monies for voluntary contributions.

We determined that accounts, variously entitled "Education Fund" and "Soft Money", were funded through union membership dues which were used to make expenditures for purposes other than Federal elections.

During the audit we verified three (3) instances, noted below, in which transfers of funds were made from the non-Federal accounts into the Active Ballot Club's Federal account.

(a) A \$20,000 savings certificate was purchased by a non-Federal account on May 25, 1973, with terms of 5 3/4% annual interest paid quarterly, one year maturity containing an automatic renewal, and 90 day interest penalty if cashed at a time other than the anniversary date. The certificate was sold by the non-Federal to the Federal account at the \$20,000 face value on December 30, 1976, and held by the Federal account until it was cashed on June 2, 1978 with the proceeds deposited into the Federal account. The officials stated that the reason for the sale to the Federal account was because the non-Federal account was short of cash and to avoid a 90 day penalty that would have been imposed had the certificate been cashed at a time other than the anniversary date. The officials further stated that the checks bearing the interest received subsequent to December 30, 1976 were made payable to the non-Federal account, but were endorsed over to and deposited into the Federal account.

Since the certificate was sold by the non-Federal account to the Federal account at face value, it appears that the only benefit derived in the situation was the prevention of interest forfeiture in a nominal amount of approximately \$287.50.

(b) A \$3,000 transfer was made from Local #428 Active Ballot Club Federal account to the headquarters Active Ballot Club Federal account. On approximately the same date, an identical amount was transferred from the headquarters Education Fund (non-Federal account) to Local #428 Active Ballot Club Federal account. Our review of Local #428 records disclosed that the money was ultimately expended for non-Federal election purposes.

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A Local Union #428 official stated since money permissible for Federal elections is considered more usable than money not permissible for that purpose, it was decided to transfer Federally permissible money to headquarters and receive a like amount from headquarters non-Federal account.

Although it appears that the transfer from Local #428 Active Ballot Club to the headquarters Active Ballot Club is permissible under Section 441b, it is reasonable to conclude that the transfer from headquarters Education Fund (non-Federal account) to Local 428 Active Ballot Club (Federal account) is in violation of the provisions of that section.

(c) A \$1,044.00 transfer was received into the Active Ballot Club (Federal account) by check drawn on an account entitled RCIA Soft Money Account Local #725. Documentation in support of the transfer indicated that the check represented proceeds of silver card sales (voluntary contributions) deposited into a non-Federal account.

It appears to the Audit staff that the transfers outlined above are in violation of Section 441b(b)(3)(A) of Title 2 of the United States Code which prohibits a separate segregated fund from making a contribution or expenditure by utilizing money or anything of value secured by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment.

Recommendation

Finding 8(a) - It is the opinion of the Audit staff that no further action is necessary.

Finding 8(b) - It is the opinion of the Audit staff that since Local #428 Active Ballot Club did use the \$3,000.00 for non-Federal purposes, no further action is necessary.

Finding 8(c) - It is the opinion of the Audit staff that the Active Ballot Club transfer the \$1,044.00 to an account or committee which is not involved with Federal elections within 30 days of notification. Documentation of the transfer (copy of cancelled check, front and back) should be submitted to the Audit staff upon receipt from the depository.

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E. Other Matters

Presented below are other matters noted during the audit for which the Audit staff feels no action is warranted. The Committee officials have been advised of the matters and informed of the respective requirements of the Act.

(1) We noted that personal accounts were occasionally used to receive contributions and transmit them to the Active Ballot Club.

(2) The statement of organization had not been amended to disclose a Savings and Loan Association from which a \$20,000 certificate of deposit was purchased. However, the amount was included in total cash on hand. The certificate had been cashed, the amount returned to the campaign depository, and the Savings and Loan Association discontinued as a depository.

(3) Records in conjunction with a fundraising event which yielded \$7,400.00 apparently were not retained by the Active Ballot Club. The receipts were, however, disclosed in the reports.

(4) When the Active Ballot Club made contributions to candidates, the candidates' addresses were disclosed as c/o the union locals that delivered the contributions to the candidates.

(5) The report of receipts and expenditures for the period 1/1/79-1/31/79 due on February 20, 1979 was not filed until March 16, 1979.

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EXHIBIT A

Non-Member Solicitees

	<u>Years of Membership During Audit Period</u>	<u>Amount Required For Membership</u>	<u>Total Based Upon Requirement</u>
(a) <u>Self employed Attorneys</u>			
George E. Barrett	1977	100.00	100.00
Bartley, Goffstein, Bollato, and Lange	1977-1978	100.00	200.00
Thornton C. Bunch, Jr.	1977-1978	100.00	200.00
Roland C. Davis	1977-1978	100.00	200.00
Robert I. Doggett	1977-1978	100.00	200.00
Leon Ehrlich	1977-1978	100.00	200.00
Alfred Klein	1977	100.00	100.00
James R. Kniffen	1977	100.00	100.00
Marvin Menaker	1977-1978	100.00	200.00
Schwartz, Steinsapir Dohrman and Krepack	1978	100.00	100.00
Leonard Sigall	1977-1978	100.00	200.00
Stephen Vladeck	1977-1978	100.00	200.00
(b) <u>Individuals Not Directly Associated With Retail Clerks International Union</u>			
William R. Adams	1978	100.00	100.00
Walter Botos	1977-1978	100.00	200.00
Elmer Foster	1977-1978	100.00	200.00
Robert F. Harbrant	1977-1978	100.00	200.00
Donald T. Rose	1978	100.00	100.00
Sidney S. Shulman	1977-1978	100.00	200.00
Edward Panarello	1977	100.00	100.00

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EXHIBIT A

Non-Member Solicitees

	<u>Years of Membership During Audit Period</u>	<u>Amount Required For Membership</u>	<u>Total Based Upon Requirement</u>
<u>(c) Salaried Attorneys and Executives</u>			
Robert E. Funk, Jr.	1978-1979	100.00	200.00
George Murphy	1977-1979	100.00	300.00
Richard Roesel	1977-1979	100.00	300.00
Edward Wendel	1977-1979	100.00	300.00
Walter L. Davis	1977-1979	100.00	300.00
Ronald Wackett	1977-1979	100.00	300.00
<u>(d) Retirees</u>			
Charley J. Christian	1977	100.00	100.00
Mervyn L. Henderson	1977-1978	100.00	200.00
Paul H. Jones	1978	100.00	100.00
Victor J. Lazzaro	1977-1979	100.00	300.00
Rex C. Lowe	1977-1978	100.00	200.00
Joseph McComb	1977	100.00	100.00
Harry Newman	1977-1978	100.00	200.00
John M. Sperry	1977-1978	100.00	200.00
Paul M. Stricklen	1977-1979	100.00	300.00
William H. Tupper	1977-1978	100.00	200.00
Total			<u>\$6,700.00</u>

81040302555



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Samuel Talarico, Treasurer
Active Ballot Club, A Department
of the United Food and Commercial
Workers Union
1775 K Street, N. W.
Washington, D. C. 20006

Re: MUR 1035

Dear Mr. Talarico:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission has found reason to believe that your committee, the International Active Ballot Club may have violated sections 441b(a) and 441b(b)(4)(A)(ii) of the Federal Election Campaign Act of 1971, as amended ("the Act") and 11 CFR §103.3(a). 2 U.S.C. §441b(a) makes it unlawful for labor organizations to make contributions and expenditures in connection with federal elections; 2 U.S.C. §441b(b)(4)(A)(ii) makes it unlawful for labor organizations to solicit contributions from persons other than its members and their families (these contributions must be held in a separate segregated account for use in any federal election); and 11 CFR 103.3(a) makes mandatory the deposit of voluntary contributions to a federal account within 10 days of receipt by union representatives.

Specifically it appears ABC locals first deposit voluntary contributions to operating accounts before transferring these funds to ABC's separate segregated account, thereby commingling voluntary contributions with union treasury funds in possible violation of §441b(a) of the Act. It also appears that ABC exchanged

funds between its non-federal and federal accounts on at least two occasions in possible violation of § 441b(a):

- (1) A \$20,000 savings certificate was purchased by a non-federal account on May 25, 1973, with terms of 5 3/4 % annual interest paid quarterly one year maturity containing an automatic renewal, and 90 day interest penalty if cashed at a time other than the anniversary date. The certificate was sold by the non-federal to the federal account at the \$20,000 face value on December 30, 1976, and held by the federal account until it was cashed on June 2, 1978, with the proceeds deposited into the federal account.
- (2) A \$3,000 transfer was made from Local # 428 Active Ballot Club federal account to the headquarters Active Ballot Club federal account. On approximately the same date, an identical amount was transferred from the headquarters Education Fund (non-federal account) to Local #428 Active Ballot Club federal account.

Further, it appears that ABC solicited at least \$6,700 contributions from 35 non-members, and also solicited contributions, through the sale of Silver Cards, from union retirees and the general public in violation of § 441b(b)(4)(A)(ii). In addition, it appears that voluntary contributions were held in local operating accounts more than 10 days before being transferred to ABC to be deposited in its authorized campaign depository in violation of section 103.3(a) of the Commission's Regulations.

We have numbered this matter MUR 1035. Please refer to this number in all future correspondence. As ABC local #428, a respondent in this matter, is a respondent in MUR 903 for possible violations of the Act, the Commission determined to merge MUR 903 into this matter on October 24, 1979.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your Committee. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

- 3 -

The Commission is under a duty to investigate this matter expeditiously. Therefore, your response should be submitted within ten days after your receipt of this notification. If you have any questions, please contact Miriam Aguiar, the attorney assigned to this matter, at (202) 523-4060.

This matter will remain confidential in accordance with 2 U.S.C. Section 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public. If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

Sincerely,

Charles N. Steele
Acting General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)
)
Interim Audit Report and Legal Analysis -)
Active Ballot Club, A Department of)
the Retail Clerks International Union)

CERTIFICATION

I, Lena L. Stafford, Recording Secretary for the Federal Election Commission Executive Session on September 25, 1979, do hereby certify that the Commission, in a vote of 6-0, disapproved Recommendations 1, 2, and 8 as set forth in the above-captioned matter and referred those matters to the General Counsel's Office for compliance action.

Attest:

9/25/79
Date

Lena L. Stafford
Lena L. Stafford
Recording Secretary

81040302559.



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON D.C. 20463

THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC FILE OF CLOSED MUR 1035.

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1035

GCC# 5831



NOV 20 AID: 03

Legal Department
(202) 466-1520 / 1523

By Hand

November 20, 1981

Ms. Beverly B. Kramer
Office of the General Counsel
Federal Election Commission
1325 K Street, N. W., 7th Floor
Washington, D. C. 20463

Dear Ms. Kramer:

Enclosed is a check in the amount of \$2,000 payable to the U.S. Treasury which is the amount provided for in the Conciliation Agreement between the Federal Election Commission and the Active Ballot Club.

Sincerely,

Edward P. Wendel
Assistant General Counsel

Enclosure

EPW:kl

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William H. Wynn
International
President

Anthony J. Luty
International
Secretary-Treasurer

United Food & Commercial Workers
International Union, AFL-CIO & CLC
1775 K Street, N.W.
Washington, D.C. 20006
(202) 223-3111

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UFCW

**United Food & Commercial Workers
International Union, AFL-CIO & CLC**
1775 K Street, N.W.
Washington, D.C. 20006

Ms. Beverly B. Kramer
Office of the General Counsel
Federal Election Commission
1325 K Street, N. W., 7th Floor
Washington, D. C. 20463

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United Food and Commercial
Workers International Union



ACTIVE BALLOT CLUB
GENERAL FUND

00920 ¹⁵⁻⁴/₅₄₀

Nov 15/81

1775 K Street, N.W., Washington, D.C. 20006 November 19 19 81

Pay to the order of U.S. Treasurer \$ 2,000.00

EXACTLY 2000 AND NO CENTS

This contribution is given in behalf of

for the
election.

By

By

INTERNATIONAL PRESIDENT

INTERNATIONAL SECRETARY-TREASURER

1ST AMERICAN ⑈000920⑈ ⑆054000043⑆ 3 147 010⑈

1035

F



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON DC 20463

END OF ADDITIONAL MATERIAL FOR CLOSED M/R 1035.

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