FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

JUL 26 1976

Mr. Joseph Brennan
President
Bituminous Coal Operators' Association, Inc.
918 Sixtennth St. N.W., Suite 303
Washington, D.C. 20006

Re: MUR 184 (76)

Dear Mr. Brennan:

I am forwarding the enclosed complaint pursuant to Section 437g(a)(2) of the Federal Election Campaign Act for your information. As shown by the attached copy of my letter to complainant, the Commission believes that on the basis of the information in the complaint, there is no reason to believe that a violation of any statute within its jurisdiction has been committed.

As the legislative history indicates, 2 U.S.C. Section 441b(b)(5) merely lifts any legal prohibition upon a corporation making available to a labor union any method of solicitation which corporations may lawfully use, thereby allowing bargaining over such methods, but paragraph (5) imposes no duty upon a corporation to make such methods available. It is the resulting contract which may convey any substantive rights resulting from paragraph (5) and it is that contract and not the Commission to which the labor organization must look for resolution of any disagreement as to the rights of the parties.

The following paragraph (6) does impose certain duties on corporations, enforceable by this Commission to make a particular method of solicitation available to a union which represents its employees after the corporation (or any of its divisions, branches etc) has itself utilized that method of solicitation. Since the statements in the complaint allege only a violation of paragraph (5), upon my recommendation, the Commission has closed its file in this matter.

Enclosure

Sincerely yours,

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

John G. Murphy, Jr.
General Counsel

D. Weinberg: amh: 7/23/76

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

JUL 26 1976

Mr. Thomas Geohegan
Mr. Joseph Jurczak
United Mine Workers of America
900 Fifteenth Street, N.W.
Washington, D.C. 20005

Re: MUR 184 (76)

Dear Sirs:

This acknowledges receipt of your complaint dated June 24, 1976, alleging certain violations of the Federal Election Campaign Act of 1971, as amended, by the Bituminous Coal Operators' Association, Inc. I have reviewed your allegations and have concluded on the basis of the information in your complaint that there is no reason to believe that a violation of any statute within the jurisdiction of the Federal Election Commission has been committed.

As the legislative history indicates, 2 U.S.C. Section 441b(b)(5) merely lifts any legal prohibition upon a corporation making available to a labor union any method of solicitation which corporations may lawfully use, thereby allowing bargaining over such methods, but paragraph (5) imposes no duty upon a corporation to make such methods available. It is the resulting contract which may convey any substantive rights resulting from paragraph (5) and it is that contract and not the Commission to which the labor organization must look for resolution of any disagreement as to the rights of the parties.

The following paragraph (6) does impose certain duties on corporations, enforceable by this Commission to make a particular method of solicitation available to a union which represents its employees after the corporation (or any of its divisions, branches etc.) has itself utilized that method of solicitation. Since the statements in your complaint allege only a violation of paragraph (5), upon my recommendation, the Commission has closed its file in this matter.

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Should additional information come to your attention which you believe establishes a violation of the Federal Election Campaign Laws, please contact me. The attorney assigned to this matter was Charles N. Steele (telephone no. 202/382-4055). The file reference number was MUR 184 (76).

Sincerely yours,

John G. Murphy, Jr.
General Counsel

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 184 (76)
Bituminous Coal Operators'	)	
Association, Inc. (BCOA)	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on July 22, 1976, the Commission determined by a vote of 6-0 that there was no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended, had been committed in the above-captioned matter. Accordingly, the file in this matter has now been closed.

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

DATE AND TIME OF TRANSMITTAL: July 9, 1977

NO. MUR 184 (76)

REC'D: 6/29/76

FEDERAL ELECTION COMMISSION
Washington, D. C.

Complainant's Name: Thomas Geohegan and Joseph Jurczak, in a sworn complaint on behalf of the United Mine Workers of America (UMW)

Respondent's Name: Bituminous Coal Operators' Association, Inc. (BCOA)

Relevant Statute: 2 U.S.C. Section 441b(b)(5)-(6).

Internal Reports Checked: None

Federal Agencies Checked: None

SUMMARY OF ALLEGATION

Alleges that the BCOA have refused to deduct contributions to the Coal Miners Political Action Committee (COMPAC) from mine workers paychecks; UMW alleges that such deductions are required by the terms of its contract with the BCOA and by 2 U.S.C. Section 441b(b)(5).

PRELIMINARY LEGAL ANALYSIS

As the legislative history indicates, 2 U.S.C. Section 441b(b)(5) merely lifts any legal prohibition upon a corporation making available to a labor union any method of political fundraising which coporations may lawfully use, but paragraph (5) imposes no duty upon a corporation to make such methods available.[1/] Rather, it is the following paragraph (6), which imposes duties upon a corporation. Paragraph (6) however, only

RECOMMENDATION

Close file; send attached letters.

FEDERAL ELECTION COMMISSION
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te of Next Commission Review:

requires a corporation to make a particular method of fundraising available to a union which represents its employees after the corporation (or any of its divisions, branches etc.) has itself utilized that method of fundraising. See Regs Section 114.5(j) (June 18, draft). Since the complaint neither alleges, nor gives any indication that BCOA has refused to make available a method of fundraising which BCOA has itself used, but rather, merely alleges the violation of an agreement between BCOA and UMW regarding the availability of methods of fundraising, the complaint fails to present reason to believe that a violation of the Act has occurred.

1/ H.R. Rep. No. 94-1057, 94th Cong. 2nd Sess. 64 (1976).

FEDERAL ELECTION COMMISSION
CERTIFIED COPY
OFFICE OF GENERAL COUNSEL

MUR 184

76 JUN 25 A 9:35

BEFORE THE FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D. C. 20463

C# 264

In The Matter of:

76-757

UNITED MINE WORKERS OF AMERICA,
900 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 638-0530

and

BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.,
918 Sixteenth Street, N.W., Suite 303
Washington, D.C. 20006
(202) 783-3195

COMPLAINT

1. This is a complaint filed by the United Mine Workers of America ("UMWA"), arising under Section 321(b)(5) of the Federal Election Campaign Act of 1971 as amended May 10, 1976 ("the Act"). The UMWA is an international labor organization headquartered in Washington, D.C., which represents the great majority of this nation's coal miners for collective bargaining and other purposes. The Bituminous Coal Operators' Association ("BCOA"), which is likewise headquartered in Washington, D.C., is a trade association which represents coal mine operators for collective bargaining and other purposes. Its member companies produce over 65 per cent of this nation's bituminous coal.

2. On December 6, 1974, the UMWA entered into a collective bargaining agreement with BCOA. Under Article XV of that Agreement, BCOA and its member companies agreed that "voluntary deductions . . . as authorized and approved by the [UMWA] shall be checked off the wages of the Employees by the Employers covered by this contract." (Exhibit A) That Agreement, which thus contains what is perhaps the broadest checkoff clause of any existing collective bargaining agreement, remains in effect until at least December 6, 1977.

3. In mid-1975, in anticipation of the 1976 election year, the Coal Miners Political Action Committee ("COMPAC") urged the UMWA to allow its members to check off voluntary deductions from their wages to COMPAC's segregated fund.[1/] On October 1, 1975, UMWA President Arnold Miller invoked Article XV and requested that BCOA member companies begin checking off such contributions. (Exhibit B) On October 10, 1975, BCOA President Joseph Brennan replied that BCOA member-companies would not check off voluntary COMPAC contributions because of an allegedly "serious question as to the legality of such a checkoff under Section 302 of the Labor Management Relations Act, as amended," 29 U.S.C. § 186. (Exhibit C) A second exchange of correspondence between Miller and Brennan followed. (Exhibits D and E) In his second letter, dated October 30, 1975, Mr. Brennan again alleged that voluntary deductions to COMPAC were prohibited under § 302. (Exhibit E) The October 30 letter further alleged, without any explanation, that the checkoff would present a "question of potential violation of Section 602 [sic] of the Federal Corrupt Practices Act."

4. At that time, the UMWA replied that § 302 did not interfere with the common law right of an employee to make a voluntary "wage-assignment" or deduction to COMPAC. However, while the UMWA was preparing to seek a declaratory judgment to that effect, the UMWA was urged by Mr. Larry Gold, counsel for the AFL-CIO, to postpone its lawsuit. Mr. Gold argued that Congress would reach the same result more quickly by legislative action -- well before the 1976 elections -- and feared that Congress might hesitate to act if the matter were "in the courts."

5. Mr. Gold was correct. On May 10, 1976, the Federal Election Campaign Act Amendments of 1976 became law. Section

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1/ Members of the UMWA currently make similar voluntary deductions under Article XV to the UMWA Credit Union. See Exhibit A.

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OFFICE OF GENERAL COUNSEL

321(b)(5) of the amended Federal Election Campaign Act of 1971 plainly removes any possible statutory bar to an employer checkoff of union member contributions to a segregated political fund. Paragraph 5 of § 321(b) states in its entirety:

> "(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members."

Paragraph 6 adds that:

> "(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates."

6. The Conference Report is abundantly clear that paragraphs 5 and 6 mean exactly what they say -- that checkoff provisions for segregated union political funds are legal subjects of bargaining. Even if an employer does not use the checkoff for soliciting contributions to a fund of its own, it cannot raise statutory objections to the use of a checkoff procedure to solicit union member contributions to a union segregated fund. As the Conference Report on the 1976 Amendments declares, the House-Senate Conference Committee adopted the House amendment of Section 321 with exceptions irrelevant here, and:

> "The House amendment was intended to acknowledge the use by corporations of various methods, such as checkoff systems, to solicit voluntary contributions or to facilitate the making of such contributions to separate segregated political funds. If a corporation uses such a method, the House amendment extended the same right to labor organizations. <u>The House amendment, however, also would permit a corporation to allow a labor organization to use a method even though the corporation has chosen not to use such method</u>."

House Report No. 94-1057 (April 28, 1976) at 62.

FEDERAL ELECTION COMMISSION
Office of General Counsel

The Conference Report adds that "the House amendment also intended to authorize such methods notwithstanding any other provision of law." Id. Indeed, the Conference Report stresses that Subsection (b)(5) "eliminates any legal impediment to the use by a labor organization of any method permitted by law to a corporation with regard to the solicitation of its stockholders and executive or administrative personnel. . . ." Id. at 64.

7. On May 13, 1976, Mr. Miller wrote to Mr. Brennan, requesting that BCOA member companies begin checking off voluntary employee COMPAC contributions now that the 1976 Amendment had removed Mr. Brennan's alleged statutory bar. (Exhibit F) In a reply dated May 19, Mr. Brennan begins by indicating that BCOA might now try to dispute the COMPAC checkoff on purely contractual grounds.[2/] And the letter continues:

> "Second, and more broadly, we have just obtained a copy of the new Elections Act and its legislative history, and our counsel is studying it for any possible impact on the checkoff provision of the contract and the law relating to it. He advises me that the provisions of the new law are quite complex and that, preliminarily, it appears that there are serious legal questions as to its interpretation in this new context."

The letter closes by assuring Mr. Miller that BCOA would study the law "expeditiously," and "communicate with [him] further just as soon as we possibly can." (Exhibit G)

2/ The UMWA does not seek FEC resolution of any contractual dispute over the checkoff right. On its face, Article XV makes it clear that Employers must check off any "voluntary deduction . . . approved and authorized by the [UMWA]," and to date, BCOA has been reluctant to twist the contract meaning.

In fact, when Mr. Brennan first indicated BCOA might have contractual reservations (Exhibit E), Mr. Miller warned in the strongest terms against any attempt to "mutilate clear contractual language" (Exhibit H), and in a subsequent exchange of correspondence, Mr. Brennan restated BCOA's objections to the checkoff solely on statutory grounds while omitting any contractual "reservation." President Miller answered that he was gratified BCOA had dropped its contractual objections, and no further reply was received from BCOA. (Exhibits I and J).

While BCOA may revive its contractual "reservations", it is aware that such a gross distortion of contract language can destroy good-faith bargaining between the parties on other matters. It would far prefer to delay implementation of the checkoff with its frivolous "legal" objections.

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8. After considerable delay, a meeting was arranged on June 9, 1976, to discuss these so-called "serious legal questions." Present at the June 9 meeting were BCOA President Brennan, BCOA General Counsel Guy Farmer, and Messrs. Richard Bank, Thomas Geoghegan, and Joseph Jurczak of the UMWA. Until that meeting, BCOA had refused to disclose what those "questions" were. At the June 9 meeting, BCOA General Counsel Farmer initially set forth two supposed difficulties preventing the checkoff of voluntary COMPAC contributions. First, he claimed that the language of the amended Act was hard to understand and noted that it had not yet been subject to court interpretation. Second, he stated that the purpose of the Act was to limit rather than expand solicitation rights. When pressed for a more specific objection, Mr. Farmer said that certain counsel for BCOA member companies believed that § 302 of the Labor Management Relations Act could not be "repealed" by the "general language" of § 321(b)(5). The "general language" of § 321(b)(5) states, of course, that certain solicitation methods are available to segregated union political funds "[n]otwithstanding any other law."

9. Mr. Farmer then questioned whether a checkoff procedure could conform with the new anti-coercion provisions found in subparagraphs (B) and (C) of § 321(b)(3) of the amended Act, which add two particular restrictions on corporate solicitation of employees. Subparagraphs (B) and (C) require any person soliciting an employee for a segregated corporate fund "to inform such employee of the political purposes of such fund at the time of solicitation," and "to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal." But, even on their face, these restrictions apply only to an employer's solicitation of its employees.

Of course, the anti-coercion provision of the former 18 U.S.C. § 610 has long prohibited contributions solicited through "physical force, job discrimination, financial reprisals"

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or the "threat" thereof, or through "dues, fees, or other monies required as a condition of membership." See Pipefitters Local 562 v. United States, 407 U.S. 385, 414 (1972). That provision is carried over verbatim in the amended Act as is 321(b)(3)(A). It has always been clear that a union member may refuse to contribute to a segregated union fund without fear of reprisal. The UMWA believes its members fully understand their rights in this regard, and would be happy to reiterate this basic right once again when implementing the checkoff procedure, or to give any other form of notice BCOA desires. But is is absurd for BCOA to contend that the anti-coercion provisions of the Act render the checkoff procedure "inherently" illegal. In view of its plain approval of the checkoff in the Conference Report, Congress could not possibly have intended such a result.

10. Mr. Farmer stressed that the parties would have to resolve these totally frivolous "legal" objections by securing a binding declaratory judgment from a federal district court before BCOA companies would consider honoring their contractual obligation to checkoff voluntary contributions. He added that counsel representing various BCOA members planned to meet and review the Act again within a few weeks, and that BCOA claimed the right of raising additional "legal" objections at that time.

11. As BCOA is well aware, UMWA's contractual checkoff right is virtually useless if it cannot be used soon. Already the primaries are over, and the national conventions are less than a month away. Because of the particular isolation of coal mines and their distance from each other, the checkoff is almost the only practical method COMPAC has to solicit voluntary contributions in large amounts.

12. Clearly, the strategy of BCOA is to filibuster, and to prevent application of § 321(b)(5) in any other way it can. Deliberately thumbing its nose at clearly-expressed Congressional

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intent, BCOA attempts to conjure up the very same "legal" objections to the checkoff that the 1976 Amendments laid to rest, and defies the UMWA to prove that Congress meant what it said. This obstructionist conduct is in direct violation of the Act. While § 321(b)(5) may be "permissive" in that it does not require the employer to agree to any particular method of solicitation, it is a remedial statute which declares in mandatory language that the checkoff method "shall . . . be available" -- "notwithstanding any other law."[3/]

13. In closing the June 9 meeting with the UMWA, BCOA President Brennan candidly admitted that aside from its "legal" objections, policy reasons required BCOA to dispute and hinder introduction of the checkoff procedure. Because of this admission, and the spurious nature of BCOA's "legal" nonsense, the UMWA believes that BCOA is engaged in carrying out a plan of continuously violating § 321(b)(5) through the raising of bad-faith "legal objections."

14. This Commission, which has primary jurisdiction in this matter under § 310 of the amended Act, "implemented" § 321(b)(5) under a recent regulation which virtually repeats the statute verbatim. 11 C.F.R. 114.5(h) at 41 Fed. Reg. 21594. (May 26, 1976) The clear language of § 321(b)(5) should be applied, not further "interpreted."[4/] Any attempt to make the statute's plain terms "plainer" would be a vain effort tending only to create obscurity.

3/ One remedial purpose was to free employers and unions to bargain over solicitation rights in good faith. If employers like BCOA are allowed to raise spurious "objections" like these in the heat of negotiations, good-faith bargaining becomes impossible, and § 321(b)(5) becomes a virtual dead letter.

4/ An advisory opinion would not be appropriate here, even assuming that BCOA were interested in one. First, BCOA seeks a general construction of § 321(b)(5) of the Act, not one of its application to a specific factual situation. Second, an advisory opinion could add nothing anyway to what the statute itself makes clear.

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15. This Commission is empowered to prevent "possible violations of the Federal Election Campaign Act of 1971. . . ." 11 C.F.R. § 111.1 as now amended (unpublished). The UMWA respectfully requests that this Commission investigate BCOA's refusal to check off voluntary COMPAC contributions as a violation of § 321(b)(5) of the Act. Because of the BCOA's obvious bad faith in defiantly refusing to comply with § 321(b)(5), and the prejudice this has caused to the UMWA and its members, the UMWA further requests that any compliance agreement reached with the BCOA include the maximum possible civil penalty.

Respectfully submitted,

Harrison Combs
Steven B. Jacobson
Richard M. Bank
Thomas H. Geoghegan

900 15th Street, N.W.
Washington, DC 20005
(202) 638-0530
Counsel for United Mine Workers of America

CITY OF WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

The undersigned hereby certify that the facts alleged in the foregoing complaint are true and correct to the best of their knowledge and belief.

Thomas H. Geoghegan

Joseph Jurczak, Director, COMPAC

Subscribed and sworn to before me this 24th day of June 1976.

Notary Public

My commission expires 7/31/76.

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing complaint was hand-delivered on this 30th day of June 1976, to:

Bituminous Coal Operators' Association
918 Sixteenth Street, N.W.
Washington, DC 20006

Thomas H. Geoghegan

Thomas H. Geoghegan

FEDERAL ENERGY ADMINISTRATION
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CC#244

Article XV—CHECKOFF

The membership dues, including initiation fees, and assessments of the United Mine Workers of America and its various subdivisions, credit union and other voluntary deductions, and Union-sponsored group auto insurance, as authorized and approved by the International Union, United Mine Workers of America, shall be checked off the wages of the Employees by the Employers covered by this contract and shall be remitted by the Employers to the properly designated officers of the Union for distribution to its various branches. Such remittances shall be accompanied by an itemized statement showing the name of each Employee, his Social Security number, hours worked, and the amount checked off for dues, initiation fees, and assessments together with a list of Employees from whom dues, initiation fees and assessments have not been collected.

In order that this section may become effective and operate within the limitations of the Labor-Management Relations Act, 1947, the Union hereby agrees to furnish, with all reasonable dispatch to the respective Employers, and the Employers agree to aid, assist and cooperate in obtaining, written assignments from each Employee so employed. Upon the presentation to the Employers of such assignments in such reasonable form as time and circumstances, looking to the continuous and uninterrupted production of coal, may allow, said Employers shall make deduction so authorized and deliver the same to the designated District officer of the Union or to such authorized representative as may be designated by the Union.

FEDERAL ELECTION COMMISSION
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EXHIBIT A

October 1, 1975

Mr. Joseph P. Brennan
President
Bituminous Coal Operators Association
World Center Building
918 - 16th Street, N.W.
Washington, D. C. 20006

Dear Mr. Brennan:

Pursuant to Article XV of the National Bituminous Coal Wage Agreement of 1974, I hereby request that members of the Bituminous Coal Operators Association honor checkoff authorizations voluntarily executed by members of the United Mine Workers of America for deductions from their wages to be paid to the Coal Miners Political Action Committee (COMPAC) voluntary fund. Moneys from this Fund can be contributed to candidates for federal office, consistent with the Federal Corrupt Practices Act.

We have reviewed the legality of use of the checkoff for this purpose with counsel. We are advised that these moneys belong not to the employer but to the respective employees who earned them, and that use of the checkoff for this purpose would not violate Section 302 of the Taft-Hartley Act.

Please advise promptly whether BCOA will agree to cooperate with the UMWA in implementing the COMPAC voluntary checkoff.

Very truly yours,

Arnold Miller

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

EXHIBIT B

7704111

Copy

BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.
918 SIXTEENTH STREET, N.W. • SUITE 303
WASHINGTON, D. C. 20006

(202) 783-3195

October 10, 1975

HAND DELIVERED

Mr. Arnold Miller
President
United Mine Workers of America
United Mine Workers' Building
900 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Arnold:

I have your letter received October 6, 1975, containing your request that the members of the Bituminous Coal Operators' Association, Inc., checkoff deductions from the wages of members of your organization pursuant to voluntary authorizations to be paid to the Coal Miners Political Action Committee.

As we had previously told Harry Patrick, we do have a serious question concerning the legality of such a checkoff under Section 302 of the Labor Management Relations Act, 1947, as amended. Counsel for some of our members have raised the same question. I note in your letter that you have reviewed the matter with Counsel and are advised that the deductions are lawful. If you feel it is appropriate, I would like to have a copy of any legal memoranda you may have so that it can be considered by our Counsel in advising us as to this question.

Very truly yours,

Joseph P. Brennan

Joseph P. Brennan

cc: Harry Patrick

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OFFICE OF GENERAL COUNSEL

EXHIBIT C

October 14, 1975

Mr. Joseph P. Brennan
Bituminous Coal Operators' Association, Inc.
918 Sixteenth Street, N.W.
Suite 303
Washington, D. C. 20006

Dear Joe:

Your letter of October 10 has been received.

The request in my letter dated October 1, 1975 that the members of BCOA honor checkoff authorizations for deductions from wages of UMW members to be paid to the Coal Miners Political Action Committee (COMPAC) voluntary fund was made after careful consideration and advice from legal counsel. This advice was given during conferences on this matter and not by legal memoranda.

We do not feel there is any tenable legal objections to the request. We urge you to promptly carry out your contractual obligation.

May I hear from you at your earliest convenience.

Very truly yours,

Arnold Miller

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

UMWA
OFFICE OF THE PRESIDENT
FILE BCOA

EXHIBIT D

BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.
918 SIXTEENTH STREET, N.W. • SUITE 303
WASHINGTON, D. C. 20006

(202) 783-3195

October 30, 1975

Mr. Arnold Miller
President
United Mine Workers of America
900 Fifteenth Street, N. W.
Washington, D. C. 20005

Dear Arnold:

I have your most recent letter of October 14, 1975, in response to my letter of October 10. In your letter you renew your request that B.C.O.A. members honor checkoff authorizations for deductions from wages of UMW members to be paid to COMPAC, the political fund established by your organization.

I have in my October 10 letter advised you that our Counsel had researched the matter and concluded that such wage deductions are prohibited by Section 302 of the Labor Management Relations Act of 1947, as amended. In addition, the question of potential violation of Section 602 of the Federal Corrupt Practices Act has been raised by several of our principals. At a recent meeting of B.C.O.A.'s Lawyers Committee, it was disclosed that attorneys for some of our member companies had independently researched the matter and arrived at the same conclusion.

I think you can understand that, given these circumstances, I cannot advise B.C.O.A. member companies to honor your request.

In addition, while we do not concede that there is a contractual obligation to check off for the purposes set forth in your request, it must be understood that the legal prohibitions take precedence.

Please accept my assurances that we have given this matter the most thorough and serious consideration before arriving at this conclusion.

Sincerely,

Joseph P. Brennan

Joseph P. Brennan
President

FEDERAL ELECTION COMMISSION
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EXHIBIT 2

United Mine Workers of America

ARNOLD MILLER
PRESIDENT

TELEPHONE
AREA CODE 202-638-0530

UNITED MINE WORKERS' BUILDING
900 FIFTEENTH STREET, N. W.
Washington, D.C.
20005

May 13, 1976

Mr. Joseph P. Brennan, President
Bituminous Coal Operators' Association
303 World Center Building
918 Sixteenth Street, N.W.
Washington, DC 20006

Dear Joe:

On Tuesday, President Ford signed into law the Federal Election Campaign Act Amendments of 1976. Section 321(b)(5) of the Act removes any possible statutory bar to an employer checkoff of member contributions to a segregated political fund. Paragraph 5 of § 321(b) states in its entirety:

> "(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members."

Paragraph (6) further provides:

> "(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates."

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EXHIBIT F

The conference report is abundantly clear that paragraph 5 means exactly what it says -- checkoff provisions for union segregated funds are legal subjects of bargaining. Even if the corporation does not use the checkoff method of solicitation itself, or does not solicit voluntary political contributions at all, it may legally permit the use of such a method to a union, by contract or otherwise. As the conference report declares:

> "[Sec. 321(b)] was intended to acknowledge the use by corporations of various methods, such as checkoff systems, to solicit voluntary contributions or to facilitate the making of such contributions to separate segregated political funds. If a corporation uses such a method, the House amendment extended the same right to labor organizations. The House amendment, however, also would permit a corporation to allow a labor organization to use a method even though the corporation has chosen not to use such method. The House amendment also intended to authorize such methods notwithstanding any other provision of law."

Conference Report on S. 3605 (H. Rept. No. 94-1057) (April 28, 1976) p. 62. (Emphasis added).

Under the present contract, BCOA and its members have agreed that "voluntary deductions . . . authorized and approved by the International Union, United Mine Workers of America, shall be checked off the wages of the Employees by the Employers covered by the contract." Article XV, 1974 Agreement. Your correspondence of April 21 once again assured us that BCOA members do not question the right of the Union to employer withholding of voluntary political contributions under Article XV. BCOA's objection was the possible statutory bar in Section 302 of the Taft-Hartley Act, now removed entirely by the Federal Election Campaign Act.

Therefore, by the prior contractual agreement of the parties, the UMWA instructs BCOA and all BCOA members to withhold all voluntary employee contributions made payable to COMPAC on May 24 or after. If your attorneys have any questions concerning the recent developments in the law, they should respond immediately to the UMWA Legal Department. Otherwise, members of my staff will plan to meet with representatives of

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OFFICE OF GENERAL COUNSEL

May 13, 1976

BCOA sometime next week to begin implementing the voluntary COMPAC checkoff.

Very truly yours,

Arnold Miller

FEDERAL ELECTION COMMISSION
ORIGINAL FILE COPY
OFFICE OF GENERAL COUNSEL

BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.
918 SIXTEENTH STREET, N.W. • SUITE 303
WASHINGTON, D. C. 20006

(202) 783-3195

May 19, 1976

Mr. Arnold Miller
President
United Mine Workers of America
900 Fifteenth Street, N. W.
Washington, D. C. 20005

Dear Arnold:

This is in response to your letter dated May 13, 1976, in which you renew your request that B.C.O.A. members check off contributions to COMPAC. You indicate that you interpret the new Federal Election Campaign Act as removing any statutory bar to the checkoff. You further state that by the prior contractual agreement between the parties, the checkoff is required.

First, I must comment on your interpretation of my April 21 letter. That letter was not intended to, and does not, state that the contractual obligation is clear as applied to the checkoff of political contributions.

Second, and more broadly, we have just obtained a copy of the new Elections Act and its legislative history, and our Counsel is studying it for any possible impact on the checkoff provision of the Contract and the law relating to it. He advises me that the provisions of the new law are quite complex, and that, preliminarily, it appears that there are serious legal questions as to its interpretation in this context.

We are going about the study of the new law expeditiously, and will communicate with you further just as soon as we possibly can.

Sincerely,

Joseph P. Brennan

Joseph P. Brennan
President

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

EXHIBIT G

APR - 1 1976

United Mine Workers of America

ARNOLD MILLER
PRESIDENT

TELEPHONE
AREA CODE 202-638-0530

UNITED MINE WORKERS' BUILDING
900 FIFTEENTH STREET, N. W.
Washington, D.C.
20005

March 31, 1976

Mr. Joseph P. Brennan, President
Bituminous Coal Operators' Association
303 World Center Building
918 Sixteenth Street N.W.
Washington, D. C. 20006

Dear Joe:

This letter is in further reference to the subject of checkoff by BCOA members of voluntary contributions by UMWA members to COMPAC. In light of the opinion rendered by your counsel which indicates that such wage deductions are prohibited by law, I requested our lawyers to re-evaluate this entire matter. They have done so, and their further analysis confirms their initial conclusion that such deductions are entirely legal.

It is unfortunate, but to some extent understandable, that we differ on the question of legality. As I understand it, our checkoff clause is one of the broadest in existence, and the question of the legal propriety of the deductions the Union seeks has not come up before. What is more unfortunate, but quite frankly beyond my understanding, is your very late found reservations concerning the BCOA's purely contractual obligation to check off voluntary COMPAC deductions. In your first letter to me on the subject of checkoff for COMPAC, you made no mention of any doubts concerning the BCOA's contractual duty to check off. It was only twenty days later in your second letter, without the issue having come up in the interim, that you stated "...we do not concede that there is a contractual obligation to check off for the purposes set forth in your request."

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EXHIBIT H

I am not in the habit of making offhand accusations of bad faith, but the BCOA's "contractual" reservations strain the credibility of any reasonable person, and certainly anyone who was present during negotiations.

I sat at the bargaining table when Article XV was negotiated. There was not one word spoken there by either side which implied any contractual limitation upon the types of voluntary deductions which might be checked off, and I challenge your negotiators to refute me on this point.

I can read, and Article XV of the National Bituminous Coal Wage Agreement of 1974 states with no equivocation whatever that "...other voluntary deductions, as authorized and approved by the International Union, United Mine Workers of America, shall be checked off the wages of the Employees by the Employers covered by this contract..." Nothing could be clearer, and, in the absence of a valid legal prohibition, there is no question but that your members must check off for any voluntary deduction "authorized and approved."

Joe, mutilation of clear contractual language because it suits the BCOA's purposes must end if we are ever to develop trust and communication. If the BCOA has a valid argument on the contractual issue, I am asking you to communicate it to me now, in detail, and in writing. If there is no dispute on your contractual obligations, our controversy should, and must be, narrowed to the legal questions which divide us, so that we may resolve this very thorny problem as quickly as possible.

Very truly yours,

Arnold Miller

Arnold Miller

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OFFICE OF GENERAL COUNSEL

APR 22 1976

BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.
918 SIXTEENTH STREET, N.W. • SUITE 303
WASHINGTON, D. C. 20006

(202) 783-3195

April 21, 1976

Mr. Arnold Miller
President
United Mine Workers of America
900 Fifteenth Street, N. W.
Washington, D. C. 20005

Dear Arnold:

I have your letter of April 13, 1976, in which you explain the purposes of the 10 cents per week assessment that your organization had previously advised us of and requested that this amount be checked off the wages of UMWA members on a monthly basis for a period of one year.

In your letter you assured us that these sums will be used for lawful purposes. Further, as your organization has indicated, you are requesting these amounts to be checked off pursuant to Article XV of the 1974 National Bituminous Coal Wage Agreement, which specifically commits signatories to check off membership dues, including initiation fees and assessments, and there appears to be no question that the obligation to accede to your request is mandatory under the Agreement.

We are sending this letter to our members to confirm B.C.O.A.'s position that the checkoff of the 10 cents per week assessment is in conformity with the National Agreement and does not, in our opinion, violate any Federal law. We are, therefore, advising our members to honor your request unless they find something in the laws of the states in which they operate that would prohibit such checkoff. We are not aware of any such prohibitions, but that is a matter for consideration of each company's legal counsel. As we have previously advised in our letters of October 10 and October 30, 1975, we cannot agree to the checkoff of voluntary political contributions because of the Taft-Hartley Act restrictions contained in Section 302 of that statute.

We emphasize, as your letter states, that B.C.O.A. and its members assume no responsibility for the lawful use of these funds, although we do have your assurance that the funds will be used only as permitted by law.

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OFFICE OF GENERAL COUNSEL

EXHIBIT I

BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.

We suggest that representatives of our two organizations get together to discuss and work out the administrative details.

Sincerely,

Joseph P. Brennan

Joseph P. Brennan
President

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OFFICE OF GENERAL COUNSEL

United Mine Workers of America

ARNOLD MILLER
PRESIDENT

TELEPHONE
AREA CODE 202-638-0530

UNITED MINE WORKERS' BUILDING
900 FIFTEENTH STREET, N. W.
Washington, D.C.
20005

May 3, 1976

Joseph P. Brennan, President
Bituminous Coal Operators' Association
918 Sixteenth Street, N. W.
303 World Center Building
Washington, D. C. 20006

Dear Joe:

This is in response to your letter of April 21, 1976 concerning checkoff under Article XV of the National Bituminous Coal Wage Agreement of 1974 of the previously discussed COMPAC assessment. I am gratified to know that the BCOA is willing to cooperate with us in this endeavor, as it is contractually bound to do, and Bob Ward informs me that he met with Bob Vines on Thursday, April 22, 1976, to discuss the technical matters connected with implementation of the assessment.

Although the union disagrees with your legal contentions, I am, also, glad to note that BCOA's objection to the deduction of voluntary contributions to COMPAC is that "...we cannot agree to the checkoff of voluntary contributions because of the Taft-Hartley Act restrictions contained in Section 302 of that statute," and that you agree with us that any BCOA refusal to check off voluntary contributions cannot in good faith be founded upon contractual grounds.

Very truly yours,

Arnold Miller

Arnold Miller

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

EXHIBIT J

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RETURN IN FIVE DAYS TO

LEGAL DEPARTMENT
UNITED MINE WORKERS OF AMERICA
900 FIFTEENTH STREET, N. W.
WASHINGTON, D. C. 20005

33

General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, DC 20463

Attention: Mr. Oldaker

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FEDERAL ELECTION COMMISSION

1. Memo to Oldaker from Emmons - 7/12/77

2. Commission Vote Tally Sheet -

1) Staebler

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):

____ (1) Classified Information

____ (2) Internal rules and practices

____ (3) Exempted by other statute

____ (4) Trade secrets and commercial or financial information

____ (5) Internal Documents

____ (6) Personal privacy

____ (7) Investigatory files

____ (8) Banking Information

____ (9) Well Information (geographic or geophysical)

Signed Kurt Bukhart

date 9/27/77

FEC 9-21-77