FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR #: 2024

Date Filmed 10/22/86 Camera No. --- 2

Cameraman AS

8604051491 4

FEDERAL ELECTION COMMISSION

NUR 2024

(1) Routing slips (2) Internal Memoranda (3) 12 Day reports

(4) Comment sheet (5) Conciliation material

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	___	(6) Personal privacy
✓	(2) Internal rules and practices	___	(7) Investigatory files
___	(3) Exempted by other statute	___	(8) Banking Information
___	(4) Trade secrets and commercial or financial information	___	(9) Well Information (geographic or geophysical)
✓	(5) Internal Documents		

Signed Eric Glustelot

date October 23, 1986

FEC 9-21-77

8604051491 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 22, 1986

Thomas J. Hattersley, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, Ohio 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersley:

On October 17 , 1986, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b(b)(6), a provision 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. However, 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.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosure
Conciliation Agreement

8604051491 6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
The Kroger Co.	)	MUR 2024
	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Local 7 of the United Food and Commercial Workers Union. The Commission found probable cause that The Kroger Co. ("Respondent") violated 2 U.S.C. §441b(b)(6) by failing to make available to Local 7 of the United Food and Commercial Workers Union a payroll deduction method for the making of voluntary contributions to its political action committee.

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.

8604051491 7

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

1. Respondent The Kroger Co. is a corporation organized, existing, and doing business under the laws of the State of Ohio and having its principal place of business at 1014 Vine Street, Cincinnati, Ohio 45202.

2. Dillon Companies, Inc. is a wholly-owned subsidiary of The Kroger Co., having its principal place of business at 700 East 30th Avenue, Hutchinson, Kansas 67501.

3. King Soopers, Inc. is a division of Dillon Companies, Inc., having its principal place of business at 65 Tejon Street, Denver, Colorado 80223.

4. Charles E. Mercer, President of Local 7 United Food and Commercial Workers Union requested that King Soopers, Inc. make available to Local 7 United Food and Commercial Workers Union the method of soliciting voluntary campaign contributions utilized by its parent corporation, The Kroger Co.

5. By letter dated May 1, 1985, King Soopers, Inc. denied the request of Local 7 United Food and Commercial Workers Union.

6. On June 7, 1985, Local 7 United Food and Commercial Workers Union filed a complaint with the Federal Election Commission alleging that Respondent violated 2 U.S.C. § 441b(b)(6).

86040614918

7. Respondent The Kroger Co. has established and maintained a separate segregated fund, the "Kroger Better Government Committee."

8. The Kroger Better Government Committee is a political committee within the meaning of 2 U.S.C. § 431(4) and contributes to candidates for federal office.

9. Respondent The Kroger Co. has established and maintained a payroll deduction plan to solicit voluntary contributions from Respondent's management employees for the Kroger Better Government Committee.

10. Respondent The Kroger Co. has failed to make the payroll deduction plan described in subparagraph 9 above available to Local 7 United Food and Commercial Workers Union.

11. Section 441b(b)(6), Title 2, United States Code, requires a parent corporation utilizing a payroll deduction to solicit voluntary contributions, to make that plan available to a labor organization representing members working for the corporation, its subsidiaries, branches, divisions, or affiliates, for the labor organization's use in soliciting voluntary contributions to its own separate segregated fund.

8 6 0 4 0 5 1 4 9 1 9

V. Respondent failed to make available its payroll deduction plan to Local 7 United Food and Commercial Workers Union, which the Commission has determined to be a probable violation of 2. U.S.C. § 441b(b)(6). Respondent, however, contends that this was not a knowing or willful violation of the Act.

VI. Respondent shall make available to Local 7 United Food and Commercial Workers Union its system of payroll deduction for use in soliciting voluntary contributions to the separate segregated fund of Local 7 United Food and Commercial Workers Union, subject to the reimbursement provisions of 2 U.S.C. § 441b(b)(6).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters 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 has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. Respondent will pay a civil penalty to the Treasurer of the United States in the amount of Two Hundred and Fifty Dollars ($250.00) pursuant to 2 U.S.C. §437g(a)(5)(A).

86040614920

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

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

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be valid.

FOR THE COMMISSION:

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Lawrence M. Noble
Deputy General Counsel

10/22/86
Date

FOR THE RESPONDENT:

Thomas J. Hattersley
Thomas J. Hattersley, Esquire
Attorney for The Kroger Co.

09-24-1986
Date

TJH/ms
0401-5

8604051492 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Thomas J. Hattersley, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, Ohio 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersley:

On , 1986, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 441b(b)(6), a provision 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. However, 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.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

Enclosure
Conciliation Agreement

EIC
RL

86040614922

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2024
The Kroger Company	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 17, 1986, the Commission decided by a vote of 5-1 to take the following actions in MUR 2024:

1. Accept the counterproposal submitted by Kroger, as recommended in the General Counsel's Report signed October 2, 1986.

2. Approve the letter, as recommended in the General Counsel's Report signed October 2, 1986.

3. Close the file in MUR 2024.

Commissioners Aikens, Josefiak, McDonald, McGarry and Thomas voted affirmatively for this decision; Commissioner Elliott dissented.

Attest:

10-17-86
Date

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

8604061149 23

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2024
The Kroger Company	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 5, 1986, the Commission decided by a vote of 4-0 to take the following actions in MUR 2024:

1. Reject the conciliation agreement submitted by the Kroger Company.

2. Approve the letter attached to the General Counsel's Report signed August 29, 1986.

Commissioners Harris, Josefiak, McDonald and McGarry voted affirmatively for this decision; Commissioner Elliott dissented and Commissioner Aikens did not cast a vote.

Attest:

9-5-86
Date

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

Received in Office of Commission Secretary:	Tues.,	9-2-86,	4:03
Circulated on 48 hour tally basis:	Wed.,	9-3-86,	11:00
Deadline for vote:	Fri.,	9-5-86,	11:00

86040514924

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 9, 1986

Thomas J. Hattersly, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, Ohio 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersly:

On August 14, 1986, the Commission received your proposed conciliation agreement. The Commission reviewed your submission, and on September 5, 1986, rejected it as unacceptable for settlement of this matter.

The Commission is still hopeful that this matter can be settled through a mutually acceptable conciliation agreement. Our records indicate that the conciliation period in this matter expires October 27, 1986. To continue conciliation discussions, Eric Kleinfeld, the attorney handling this matter, will contact you, or, you may call him at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

8604061 4925

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Thomas J. Hattersly, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, Ohio 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersly:

On August 14, 1986, the Commission received your proposed conciliation agreement. The Commission reviewed your submission, and on , 1986, rejected it as unacceptable for settlement of this matter.

The Commission is still hopeful that this matter can be settled through a mutually acceptable conciliation agreement. Our records indicate that the conciliation period in this matter expires October 27, 1986. To continue conciliation discussions, Eric Kleinfeld, the attorney handling this matter, will contact you, or, you may call him at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

8604051492 6

EK

pehm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 25, 1986

Thomas J. Hattersly, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, Ohio 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersly:

On July 22, 1986, the Commission determined that there is probable cause to believe The Kroger Company committed a violation of 2 U.S.C. § 441b(b)(6), a provision of the Federal Election Campaign Act of 1971, as amended, by refusing to make available a payroll deduction plan for soliciting contributions to Local 7 of the United Food and Commercial Workers Union.

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. If we are unable to reach an agreement during this period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose 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. I will then recommend that the Commission approve the agreement. Please make your check for the civil penalty payable to the U.S. Treasurer.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Eric Kleinfeld, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

8604051149927

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Thomas J. Hattersly, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, Ohio 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersly:

On , 1986, the Commission determined that there is probable cause to believe The Kroger Company committed a violation of 2 U.S.C. § 441b(b)(6), a provision of the Federal Election Campaign Act of 1971, as amended, by refusing to make available a payroll deduction plan for soliciting contributions to Local 7 of the United Food and Commercial Workers Union.

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. If we are unable to reach an agreement during this period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose 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. I will then recommend that the Commission approve the agreement. Please make your check for the civil penalty payable to the U.S. Treasurer.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Eric Kleinfeld, the attorney assigned to this matter, at (202)376-5690.

Sincerely,

Charles N. Steele
General Counsel

EK
RLT

Enclosure
Conciliation Agreement

8604051492 8

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
The Kroger Company } MUR 2024

86 JUL 14 A10:37

SENSITIVE
EXECUTIVE SESSION
JUL 22 1986

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Local 7 of the United Food and Commercial Workers Union (hereinafter the "Union" or "Local 7") filed a complaint with the Federal Election Commission (hereinafter the "Commission") alleging a violation of 2 U.S.C. § 441b(b)(6). The Union contends that it was improperly denied access to a method of soliciting voluntary campaign contributions maintained by respondent the Kroger Company (hereinafter "Kroger") or one of its subsidiaries.

On August 14, 1985, the Commission determined there was reason to believe that the Kroger Company violated 2 U.S.C. § 441b(b)(6) for refusing the make available to Local 7 a payroll deduction plan for soliciting contributions. On March 11, 1986, at Kroger's request, the Commission entered into conciliation discussions prior to a finding of probable cause to believe. However, negotiations failed to produce a mutually acceptable agreement, and on May 1, 1986, the Commission rejected a conciliation agreement proposed by respondent.

On June 5, 1986, a General Counsel's Brief was mailed to respondent. A response brief was received from Kroger on June 23, 1986.

II. LEGAL ANALYSIS

The Office of General Counsel relies primarily upon the analysis contained in the General Counsel's Brief of June 4,

86040514929

1986. Respondent's reply brief adds little in the way of analysis or argument. Once again, respondent argues that 2 U.S.C. § 441b(b)(6) requires only that Kroger permit complainant Union to solicit contributions in those corporate units of Kroger's where Kroger itself solicits. This would effectively preclude Local 7 from soliciting in the unit where it represents employees, since Kroger itself does not solicit in that unit.

This issue was dealt with extensively in the General Counsel's Brief. As stated therein, "a parent corporation utilizing a payroll deduction plan shall make its method available throughout its corporate structure, to a labor organization representing members working throughout the corporate structure . . . Unless the payroll deduction plan must be made available in all units of Kroger, there would have been no reason for the statute to make clear that the "labor organization" entitled to the benefit of the statute includes one with members working for subsidiaries. If the method were only to be required in the corporation utilizing the method and not in its subsidiaries, there would have been no logic in Congress requiring the corporation to make the method available to a union which only represents employees of subsidiaries.

Notwithstanding the fact that the Union's unit of Kroger's, King Soopers, does not participate in Kroger's payroll deduction plan, the Union is still entitled, pursuant to 2 U.S.C. § 441b(b)(6), to have that plan made available to it for the collection of voluntary contributions to its political action committee in every Kroger unit in which the Union represents its

86040514930

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2024
The Kroger Company	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 22, 1986, do hereby certify that the Commission took the following actions in MUR 2024:

1. Decided by a vote of 4-2 to find probable cause to believe that The Kroger Company violated 2 U.S.C. § 441b(b)(6).

   Commissioners Harris, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

(continued)

8604061493 1

8 6 0 4 0 5 1 4 9 3 2

5. Decided by a [illegible] proposed conciliation agreement attached to the General Counsel's report dated July 11, 1986, subject to amenments as noted above.

   Commissioners Aikens, Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively for the decision.

6. Decided by a vote of 6-0 to approve the letter attached to the General Counsel's report dated July 11, 1986.

   Commissioners Aikens, Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively for the decision.

Attest:

7-22-86
Date

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

members. Local 7 represents employees of Kroger's King Soopers unit. By refusing to make the payroll deduction plan available to Local 7 in King Soopers, Kroger violates 2 U.S.C. § 441b(b)(6). Accordingly, the Office of General Counsel recommends that the Commission find probable cause to believe that the Kroger Company violated 2 U.S.C. § 441b(b)(6).

86040614933

86040614934

IV. GENERAL COUNSEL'S RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Find probable cause to believe that The Kroger Company violated 2 U.S.C. § 441b(b)(6).
2. Approve the attached conciliation agreement.
3. Approve the attached letter.

7/11/86
Date

Charles N. Steele
Charles N. Steele
General Counsel

Attachments
1. Respondent's Brief
2. Conciliation Agreement
3. Letter

ATTACHMENT 1 ①

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF
THE KROGER CO.

MUR 2024

BRIEF FOR THE RESPONDENT

THOMAS J. HATTERSLEY
ATTORNEY
THE KROGER CO.
1014 VINE STREET
CINCINNATI, OHIO 45201
(513) 762-4426

8604061493 5

I. INTRODUCTION

Respondent adopts the General Counsel's Statement of the Case.

A new development with which the General Counsel does not deal, however, is the settling of this matter between King Soopers and UFCW Local 7, which General Counsel advises is inadequate, demanding a civil penalty and a public admission of a violation by Respondent, The Kroger Co. (King Soopers and Dillon, Companies, while charged by the Union, have been dismissed by the General Counsel.)

Moreover, the General Counsel's Brief, while framing the issues well, does not fairly and fully state the compelling reasons against requiring one corporation to create a PAC payroll deduction and solicitation system for one of its union bargaining units just because a related corporation has done so for its management employees.

These two issues will be dealt with below.

8 6 0 4 0 5 1 4 9 3 6

II. SETTLEMENT OF THE MATTER BETWEEN THE PARTIES

While the King Soopers and the Union have not yet signed the labor contracts which will permit payroll deduction for the Union's PAC, they have agreed to permit deductions and withdraw all charges. Attached hereto is the exchange of letters forming that agreement.

Unfortunately, the General Counsel advises that it will not accept any Conciliation Agreement in this matter which does not include an admission of a violation or payment of a civil penalty. This is certainly an extreme position under the circumstances.

The General Counsel does not maintain that there is a serious violation in this matter. Indeed, as will be pointed out below, the statutory construction clearly permits differing interpretations. Moreover, while the General Counsel refers to precedent applicable here, he fails to note the derth of precedent and its distinguishability from these facts.

The General Counsel, therefore, needlessly burdens the Commission with this minor matter in order to extract a fine or an admission when clear guidance on the law was unavailable.

86040514937

III. THE GENERAL COUNSEL'S INTERPRETATION FAILS TO BALANCE THE RIGHTS OF CORPORATIONS AND LABOR UNIONS AS WAS INTENDED BY THE ACT

While General Counsel attempts to briefly set out Respondent's positions in its Brief, he does not go far enough. The simple point is that the legislators obviously intended, by the section in dispute here, to balance the rights of a labor union with those of a corporation in taking advantage of payroll deduction for PAC solicitation. And, Commission precedent in Matter Under Review 947, involving AT&T, and in Advisory Opinion 1982-45, involving the Salt River Project, while requiring subsidiaries to offer PAC payroll deduction because their parents offered them, support this notion of balancing of rights.

All that the statute requires is the offering of "such method," employed by a corporation, to Unions anywhere in that corporation. Kroger is willing to do that. It will permit UFCW Local 7 to solicit for its PAC in the same corporate units that Kroger solicits. That is the literal offering of "such method." And, it strikes the proper balance. It allows the union the same breadth as the corporation, no more, no less.

In contrast, the General Counsel would require a huge corporation like General Motors to offer payroll deduction for all its unions' PAC because one small subsidiary, say with a few thousand employees -- operating completely independently with a different payroll system -- offered deduction to its few management employees. This is not striking a balance.

86040514938

While the Commission required AT&T -- before its breakup -- to offer payroll deduction in its subsidiaries because of the practices of the parent in offering deduction to management employees, the need for balance there was different. AT&T was a monolith; its subsidiaries were highly dependent and their operations were interrelated with the parent. The Salt River Project, while legally structured as separate corporations like AT&T, was also in reality a single unit. Its subsidiary even had the same union.

Such is not the case here. The subsidiary here was only recently acquired as an independently operating company and has remained that way.

Finally, under the circumstances, to require King Soopers to offer "such method" as is offered by Kroger is to require King Soopers to create a method for its union. A result not intended by the Act.

8604051493 9

IV. CONCLUSION

The logical solution in this matter is to let the actual parties enjoy their resolution. King Soopers operates independently from The Kroger Co. and has been able to independently resolve this matter with the Union.

This complaint should be dismissed.

Respectfully submitted,

THOMAS J. HATTERSLEY
ATTORNEY
THE KROGER CO.
1014 VINE STREET
CINCINNATI, OHIO 45201
(513) 762-4426

TJH/are
0619-2

R60406149 40

RECEIVED AT THE FEC
86 JUN 24 P12:13

HAND DELIVERED

BCC#787

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF
THE KROGER CO.

MUR 2024

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
86 JUN 24 P3:49

86040514941

BRIEF FOR THE RESPONDENT

THOMAS J. HATTERSLEY
ATTORNEY
THE KROGER CO.
1014 VINE STREET
CINCINNATI, OHIO 45201
(513) 762-4426

I. INTRODUCTION

Respondent adopts the General Counsel's Statement of the Case.

A new development with which the General Counsel does not deal, however, is the settling of this matter between King Soopers and UFCW Local 7, which General Counsel advises is inadequate, demanding a civil penalty and a public admission of a violation by Respondent, The Kroger Co. (King Soopers and Dillon, Companies, while charged by the Union, have been dismissed by the General Counsel.)

Moreover, the General Counsel's Brief, while framing the issues well, does not fairly and fully state the compelling reasons against requiring one corporation to create a PAC payroll deduction and solicitation system for one of its union bargaining units just because a related corporation has done so for its management employees.

These two issues will be dealt with below.

R 6 0 4 0 5 1 4 9 4 2

II. SETTLEMENT OF THE MATTER BETWEEN THE PARTIES

While the King Soopers and the Union have not yet signed the labor contracts which will permit payroll deduction for the Union's PAC, they have agreed to permit deductions and withdraw all charges. Attached hereto is the exchange of letters forming that agreement.

Unfortunately, the General Counsel advises that it will not accept any Conciliation Agreement in this matter which does not include an admission of a violation or payment of a civil penalty. This is certainly an extreme position under the circumstances.

The General Counsel does not maintain that there is a serious violation in this matter. Indeed, as will be pointed out below, the statutory construction clearly permits differing interpretations. Moreover, while the General Counsel refers to precedent applicable here, he fails to note the derth of precedent and its distinguishability from these facts.

The General Counsel, therefore, needlessly burdens the Commission with this minor matter in order to extract a fine or an admission when clear guidance on the law was unavailable.

8 6 0 4 0 5 1 4 9 4 3

III. THE GENERAL COUNSEL'S INTERPRETATION FAILS TO BALANCE THE RIGHTS OF CORPORATIONS AND LABOR UNIONS AS WAS INTENDED BY THE ACT

While General Counsel attempts to briefly set out Respondent's positions in its Brief, he does not go far enough. The simple point is that the legislators obviously intended, by the section in dispute here, to balance the rights of a labor union with those of a corporation in taking advantage of payroll deduction for PAC solicitation. And, Commission precedent in Matter Under Review 947, involving AT&T, and in Advisory Opinion 1982-45, involving the Salt River Project, while requiring subsidiaries to offer PAC payroll deduction because their parents offered them, support this notion of balancing of rights.

All that the statute requires is the offering of "such method," employed by a corporation, to Unions anywhere in that corporation. Kroger is willing to do that. It will permit UFCW Local 7 to solicit for its PAC in the same corporate units that Kroger solicits. That is the literal offering of "such method." And, it strikes the proper balance. It allows the union the same breadth as the corporation, no more, no less.

In contrast, the General Counsel would require a huge corporation like General Motors to offer payroll deduction for all its unions' PAC because one small subsidiary, say with a few thousand employees -- operating completely independently with a different payroll system -- offered deduction to its few management employees. This is not striking a balance.

R 5 0 4 0 5 1 4 9 4 4

While the Commission required AT&T -- before its breakup -- to offer payroll deduction in its subsidiaries because of the practices of the parent in offering deduction to management employees, the need for balance there was different. AT&T was a monolith; its subsidiaries were highly dependent and their operations were interrelated with the parent. The Salt River Project, while legally structured as separate corporations like AT&T, was also in reality a single unit. Its subsidiary even had the same union.

Such is not the case here. The subsidiary here was only recently acquired as an independently operating company and has remained that way.

Finally, under the circumstances, to require King Soopers to offer "such method" as is offered by Kroger is to require King Soopers to create a method for its union. A result not intended by the Act.

R60405149 45

IV. CONCLUSION

The logical solution in this matter is to let the actual parties enjoy their resolution. King Soopers operates independently from The Kroger Co. and has been able to independently resolve this matter with the Union.

This complaint should be dismissed.

Respectfully submitted,

THOMAS J. HATTERSLEY
ATTORNEY
THE KROGER CO.
1014 VINE STREET
CINCINNATI, OHIO 45201
(513) 762-4426

TJH/are
0619-2

8604061494 6

RECEIVED AT THE FEC
HAND DELIVERED
86 JUN 23 AM 11:37
CCC#177

LAW DEPARTMENT • THE KROGER CO. • 1014 VINE STREET • CINCINNATI, OHIO 45201

WRITER'S DIRECT DIAL NUMBER
513-762 -4428

GEORGE A. LEONARD
VICE PRESIDENT
AND GENERAL COUNSEL

THOMAS E. MURPHY
VICE PRESIDENT
SENIOR COUNSEL

JAMES S. JOHNS
THOMAS F. O'BRIEN, JR.
JAMES J. KELLY
JOHN M. FLYNN
NORMA SKOOG
WARREN H. WOLTER
LYNNE GELLENBECK
THOMAS J. HATTERSLEY
PAUL W. HELDMAN
FREDERICK W. KINDEL
BRUCE M. GACK

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
86 JUN 23 P3:08

June 16, 1986

Mr. Eric Kleinfeld
Federal Election Commission
Washington, DC 20463

RE: MUR 2024
The Kroger Co.

Dear Mr. Kleinfeld:

I am enclosing the Respondent's Brief in this matter which is due on June 24, 1986.

As is discussed therein, and as I mentioned to you over the phone, King Soopers and UFCW Local 7 have agreed to permit payroll deduction and withdraw FEC charges. Based upon this, I suggest that we conciliate this matter without any civil penalty or admissions clause.

Please let me know as soon as possible.

Very truly yours,

Thomas J. Hattersley

THOMAS J. HATTERSLEY

TJH/are
0619-1

8 5 0 4 0 5 1 4 9 4 7

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF
THE KROGER CO.

MUR 2024

BRIEF FOR THE RESPONDENT

THOMAS J. HATTERSLEY
ATTORNEY
THE KROGER CO.
1014 VINE STREET
CINCINNATI, OHIO 45201
(513) 762-4426

8604051494 8

I. INTRODUCTION

Respondent adopts the General Counsel's Statement of the Case.

A new development with which the General Counsel does not deal, however, is the settling of this matter between King Soopers and UFCW Local 7, which General Counsel advises is inadequate, demanding a civil penalty and a public admission of a violation by Respondent, The Kroger Co. (King Soopers and Dillon, Companies, while charged by the Union, have been dismissed by the General Counsel.)

Moreover, the General Counsel's Brief, while framing the issues well, does not fairly and fully state the compelling reasons against requiring one corporation to create a PAC payroll deduction and solicitation system for one of its union bargaining units just because a related corporation has done so for its management employees.

These two issues will be dealt with below.

R60405149 49

II. SETTLEMENT OF THE MATTER BETWEEN THE PARTIES

While the King Soopers and the Union have not yet signed the labor contracts which will permit payroll deduction for the Union's PAC, they have agreed to permit deductions and withdraw all charges. Attached hereto is the exchange of letters forming that agreement.

Unfortunately, the General Counsel advises that it will not accept any Conciliation Agreement in this matter which does not include an admission of a violation or payment of a civil penalty. This is certainly an extreme position under the circumstances.

The General Counsel does not maintain that there is a serious violation in this matter. Indeed, as will be pointed out below, the statutory construction clearly permits differing interpretations. Moreover, while the General Counsel refers to precedent applicable here, he fails to note the derth of precedent and its distinguishability from these facts.

The General Counsel, therefore, needlessly burdens the Commission with this minor matter in order to extract a fine or an admission when clear guidance on the law was unavailable.

8 6 0 4 0 6 1 4 9 5 0

III. THE GENERAL COUNSEL'S INTERPRETATION FAILS TO BALANCE THE RIGHTS OF CORPORATIONS AND LABOR UNIONS AS WAS INTENDED BY THE ACT

While General Counsel attempts to briefly set out Respondent's positions in its Brief, he does not go far enough. The simple point is that the legislators obviously intended, by the section in dispute here, to balance the rights of a labor union with those of a corporation in taking advantage of payroll deduction for PAC solicitation. And, Commission precedent in Matter Under Review 947, involving AT&T, and in Advisory Opinion 1982-45, involving the Salt River Project, while requiring subsidiaries to offer PAC payroll deduction because their parents offered them, support this notion of balancing of rights.

All that the statute requires is the offering of "such method," employed by a corporation, to Unions anywhere in that corporation. Kroger is willing to do that. It will permit UFCW Local 7 to solicit for its PAC in the same corporate units that Kroger solicits. That is the literal offering of "such method." And, it strikes the proper balance. It allows the union the same breadth as the corporation, no more, no less.

In contrast, the General Counsel would require a huge corporation like General Motors to offer payroll deduction for all its unions' PAC because one small subsidiary, say with a few thousand employees -- operating completely independently with a different payroll system -- offered deduction to its few management employees. This is not striking a balance.

86040614951

While the Commission required AT&T -- before its breakup -- to offer payroll deduction in its subsidiaries because of the practices of the parent in offering deduction to management employees, the need for balance there was different. AT&T was a monolith; its subsidiaries were highly dependent and their operations were interrelated with the parent. The Salt River Project, while legally structured as separate corporations like AT&T, was also in reality a single unit. Its subsidiary even had the same union.

Such is not the case here. The subsidiary here was only recently acquired as an independently operating company and has remained that way.

Finally, under the circumstances, to require King Soopers to offer "such method" as is offered by Kroger is to require King Soopers to create a method for its union. A result not intended by the Act.

8 6 0 4 0 5 1 4 9 5 2

ERAL ELECTION COMMISSION
ASHINGTON,D.C. 20463

cial Business
alty for Private Use $300

SPRINGFIELD, IL 62
PM
JUN
1986

U.S. MAIL

Postage and Fees Pai
Federal Election Commissio

86 JUN 23 PM 2:

Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Attn: S. Garr

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 5, 1986

Thomas J. Hattersly, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, OH 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersly:

Based on a complaint filed with the Commission on June 7, 1985, the Commission determined on August 14, 1985, that there was reason to believe that The Kroger Company had violated 2 U.S.C. § 441b(b)(6), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation 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 if possible) 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, if possible. 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.

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

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.

R 6 0 4 0 5 1 4 9 5 4

Should you have any questions, please contact Eric Kleinfeld, the attorney assigned to handle this matter, at (202)376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

86040614955

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Thomas J. Hattersly, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, OH 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersly:

Based on a complaint filed with the Commission on June 7, 1985, the Commission determined on August 14, 1985, that there was reason to believe that The Kroger Company had violated 2 U.S.C. § 441b(b)(6), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation 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 if possible) 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, if possible. 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.

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

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.

8604051495 6

Should you have any questions, please contact Eric Kleinfeld, the attorney assigned to handle this matter, at (202)376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

86040614957

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

86 JUN 5 AM : 02

June 5, 1986

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR # 2024

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 June 5, 1986. Following receipt of the Respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments
1. Brief
2. Letter to Respondent

86040514958

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 5, 1986

Thomas J. Hattersly, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, OH 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hatterely:

Based on a complaint filed with the Commission on June 7, 1985, the Commission determined on August 14, 1985, that there was reason to believe that The Kroger Company had violated 2 U.S.C. § 441b(b)(6), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation 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 if possible) 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, if possible. 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.

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

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.

R 6 0 4 0 6 1 4 9 5 9

Should you have any questions, please contact Eric Kleinfeld, the attorney assigned to handle this matter, at (202)376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

86040614960

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Kroger Company) MUR 2024

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

Local 7 of the United Food and Commercial Workers Union (hereinafter the "Union" or "Local 7") filed a complaint with the Federal Election Commission (hereinafter the "Commission") alleging a violation of 2 U.S.C. § 441b(b)(6). The Union contends that it was improperly denied access to a method of soliciting voluntary campaign contributions maintained by respondent The Kroger Company (hereinafter "Kroger") or one of its subsidiaries.

Complainant Union represents some employees of King Soopers, a small retail grocery chain in Denver, Colorado. King Soopers is an operating division of Dillon Companies, Inc., a subsidiary of Kroger. Apart from Kroger's three wholly-owned subsidiaries, Kroger also operates 17 manufacturing and operating units throughout the United States, which supervise over 1100 Kroger stores and production facilities.

Charles E. Mercer, President of Local 7 of the United Food and Commercial Workers Union, requested from King Soopers a method for soliticing political contributions from its members. By a letter dated May 1, 1985, Edward Behler, Vice President of Industrial Relations for King Soopers, denied the Union's request. Behler stated that King Soopers did not utilize any method to solicit political contributions from its managers, and accordingly, had no method to offer the Union. This denial

8504051496 1

provided the basis for the complaint in this matter.

On August 14, 1985, the Commission determined there was reason to believe that the Kroger Company violated 2 U.S.C. § 441b(b)(6) for refusing to make available to Local 7 a payroll deduction plan for soliciting contributions. On March 11, 1986, at Kroger's request, the Commission entered into conciliation discussions prior to a finding of probable cause to believe. However, negotiations failed to produce a mutually acceptable agreement, and on May 1, 1986, the Commission rejected a conciliation agreement proposed by respondent.

II. LEGAL ANALYSIS

This matter involves the construction of 2 U.S.C. § 441b(b)(6) which provides:

> 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.

Thus, as the Commission has previously recognized, 2 U.S.C. § 441b(b)(6) requires a corporation which utilizes a method of soliciting political contributions to make that method available to a labor organization (upon written request) which represents members working either for the corporation or one of its

8 6 0 4 0 5 1 4 9 6 2

affiliates. See Matter Under Review 947, In re American Telephone and Telegraph Company. This requirement holds even where some or all of the corporation's affiliates do not have federal PACs.

The Commission's Regulations amplify the rule of 2 U.S.C. § 441b(b)(6). Section 114.5(k) provides:

> Availability of methods. Any corporation, including its subsidiaries, branches, divisions, and affiliates, that uses a method of soliciting voluntary contributions or facilitating the making of voluntary contributions from its stockholders or executive or administrative personnel and their families, shall make that method available to a labor organization representing any members working for the corporation, its subsidiaries, branches, divisions, and affiliates for soliciting voluntary contributions or facilitating the making of voluntary contributions from its members and their families. Such method shall be made available on the written request of the labor organization and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby.

Thus, the rule of 11 C.F.R. § 114.5(k) follows the statute in requiring a corporation which utilizes a method of soliciting political contributions in one of its units, to make that method available to a labor organization representing workers of the corporation or one of its units. 11 C.F.R. § 114.5(k) also contains several examples of its application, one of which is helpful in the present matter. 11 C.F.R. § 114.5(k)(1) provides:

> If a corporation, including its subsidiaries, branches, divisions, or affiliates utilizes a payroll deduction plan, checkoff system or other plan which deducts contributions from the dividend or payroll checks of stockholders or executive or administrative

R 6 0 4 0 6 1 4 9 6 3

> personnel, the corporation, shall, upon written request of the labor organization, make that method available to members of the labor organiztions working for the corporation, its subsidiaries, branches, divisions, or affiliates, who wish to contribute to the separate segregated fund of the labor organization representing any members working for the corporation, or any of its subsidiaries, branches, divisions, or affiliates. The corporation shall make the payroll deduction plan available to the labor organization at a cost sufficient only to reimburse the corporation for the actual expenses incurred thereby.

Thus, a parent corporation utilizing a payroll deduction plan shall make its method available throughout its corporate structure, to a labor organization representing members working throughout the corporate structure.

In this matter, the Act and regulations require that Kroger make available to complainant its payroll deduction plan for soliciting political contributions. Kroger clearly qualifies as "[a]ny corporation," as required by the statute. Kroger has established and maintained a separate segregated fund (Kroger Better Government Committee, FEC Identification No. C0059238) which makes contributions to candidates for federal office. The Kroger Better Government Committee utilizes a payroll deduction plan to solicit Kroger management employees for contributions which are in turn used to influence federal elections. Thus, Kroger "utilizes a method" (i.e. payroll deduction) and "such method" must, in turn, be made available to Local 7 at Kings Soopers, which is a "labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates."

8 6 0 4 0 5 1 4 9 6 4

Respondent asserts that King Soopers operates independently from Kroger with its own senior management and exclusive control over labor relations, personnel and payroll, and maintains no payroll deduction plan or other method of soliciting management employees for contributions used to influence federal elections. The result of this, according to respondent, is that Local 7 is only permitted to solicit employees for political contributions in Kroger units which already have in place an existing method. Under Kroger's interpretation of the Act, King Soopers would not be required to "create" a new method for Local 7.

Respondent's interpretation and application of the law belies the language and intent of the Act. Unless the payroll deduction plan must be made available in all units of Kroger, there would have been no reason for the statute to make clear that the "labor organization" entitled to the benefit of the statute includes one with members working for subsidiaries. If the method were only to be required in the corporation utilizing the method and not in its subsidiaries, there would have been no logic in Congress requiring the corporation to make the method available to a union which only represents employees of subsidiaries. Such a union would be entitled by the statutory language to have the method made available to it, but would have no use for the method unless it could use it in the subsidiaries

8 6 0 4 0 5 1 4 9 6 5

where its entire membership is employed. Since words used in a statute are presumed to have meaning and effect, the fact that Congress used language in describing "labor organization," which includes a union with no members in the corporation itself but only in a subsidiary, requires by necessary implication that the statute be construed to require that the method be made available in every subsidiary in which the union has members.

Thus, even though 2 U.S.C. § 441b(b)(6) does not in express terms provide where the union may use the method to which it is entitled, by including within its coverage a union, for example, whose entire membership works for a subsidiary of the corporation "that utilizies a method," the section necessarily implies that such a union can indeed use the method in the subsidiary where its members are employed. The fact that the subsidiary itself does not utilize such a method simply has no bearing on this conclusion.

Kroger's argument, then, that it is required to permit Local 7 to use Kroger's payroll deduction plan only in the Kroger unit where the plan currently exists, is without merit. Where a plan is in place, it is not the corporate structure which controls or shields its use. Its use is to be permitted throughout the Kroger units where the requesting union represents workers. Thus, the location of workers represented by complainant is key. Local 7 represents workers of King Soopers, a Kroger unit located in Denver, Colorado. The statute compels that the plan utilized

R 6 0 4 0 5 1 4 9 9 6 6

for Kroger management employees be made available so as to allow the solicitation of Local 7 members. Even to limit the solicitation by Local 7 to Kroger management employees (i.e. those same employees that Kroger currently solicits with its own plan) clearly defeats the purpose of the statute.

Notwithstanding the fact that the Union's unit of Kroger's, King Soopers, does not participate in Kroger's payroll deduction plan, the Union is still entitled, pursuant to 2 U.S.C. § 441b(b)(6), to have that plan made available to it for the collection of voluntary contributions to its political action committee in every Kroger unit in which the Union represents its members. Local 7 represents employees of Kroger's King Soopers Unit. By refusing to make the payroll deduction plan available to Local 7 in King Soopers, Kroger violates 2 U.S.C. § 441b(b)(6). Accordingly, the Office of General Counsel recommends that the Commission find probable cause to believe that the Kroger Company violated 2 U.S.C. § 441b(b)(6).

III. GENERAL COUNSEL'S RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Find probable cause to believe that The Kroger Company violated 2 U.S.C. § 441b(b)(6).

4 June 1986
Date

Charles N. Steele
General Counsel

8604051499 67

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Kroger Company) MUR 2024

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

Local 7 of the United Food and Commercial Workers Union (hereinafter the "Union" or "Local 7") filed a complaint with the Federal Election Commission (hereinafter the "Commission") alleging a violation of 2 U.S.C. § 441b(b)(6). The Union contends that it was improperly denied access to a method of soliciting voluntary campaign contributions maintained by respondent The Kroger Company (hereinafter "Kroger") or one of its subsidiaries.

Complainant Union represents some employees of King Soopers, a small retail grocery chain in Denver, Colorado. King Soopers is an operating division of Dillon Companies, Inc., a subsidiary of Kroger. Apart from Kroger's three wholly-owned subsidiaries, Kroger also operates 17 manufacturing and operating units throughout the United States, which supervise over 1100 Kroger stores and production facilities.

Charles E. Mercer, President of Local 7 of the United Food and Commercial Workers Union, requested from King Soopers a method for soliticing political contributions from its members. By a letter dated May 1, 1985, Edward Behler, Vice President of Industrial Relations for King Soopers, denied the Union's request. Behler stated that King Soopers did not utilize any method to solicit political contributions from its managers, and accordingly, had no method to offer the Union. This denial

8604051496 8

provided the basis for the complaint in this matter.

On August 14, 1985, the Commission determined there was reason to believe that the Kroger Company violated 2 U.S.C. § 441b(b)(6) for refusing to make available to Local 7 a payroll deduction plan for soliciting contributions. On March 11, 1986, at Kroger's request, the Commission entered into conciliation discussions prior to a finding of probable cause to believe. However, negotiations failed to produce a mutually acceptable agreement, and on May 1, 1986, the Commission rejected a conciliation agreement proposed by respondent.

II. LEGAL ANALYSIS

This matter involves the construction of 2 U.S.C. § 441b(b)(6) which provides:

> 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.

Thus, as the Commission has previously recognized, 2 U.S.C. § 441b(b)(6) requires a corporation which utilizes a method of soliciting political contributions to make that method available to a labor organization (upon written request) which represents members working either for the corporation or one of its

8604051149969

affiliates. See Matter Under Review 947, In re American Telephone and Telegraph Company. This requirement holds even where some or all of the corporation's affiliates do not have federal PACs.

The Commission's Regulations amplify the rule of 2 U.S.C. § 441b(b)(6). Section 114.5(k) provides:

> Availability of methods. Any corporation, including its subsidiaries, branches, divisions, and affiliates, that uses a method of soliciting voluntary contributions or facilitating the making of voluntary contributions from its stockholders or executive or administrative personnel and their families, shall make that method available to a labor organization representing any members working for the corporation, its subsidiaries, branches, divisions, and affiliates for soliciting voluntary contributions or facilitating the making of voluntary contributions from its members and their families. Such method shall be made available on the written request of the labor organization and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby.

Thus, the rule of 11 C.F.R. § 114.5(k) follows the statute in requiring a corporation which utilizes a method of soliciting political contributions in one of its units, to make that method available to a labor organization representing workers of the corporation or one of its units. 11 C.F.R. § 114.5(k) also contains several examples of its application, one of which is helpful in the present matter. 11 C.F.R. § 114.5(k)(1) provides:

> If a corporation, including its subsidiaries, branches, divisions, or affiliates utilizes a payroll deduction plan, checkoff system or other plan which deducts contributions from the dividend or payroll checks of stockholders or executive or administrative

8604051497 0

> personnel, the corporation, shall, upon written request of the labor organization, make that method available to members of the labor organistions working for the corporation, its subsidiaries, branches, divisions, or affiliates, who wish to contribute to the separate segregated fund of the labor organization representing any members working for the corporation, or any of its subsidiaries, branches, divisions, or affiliates. The corporation shall make the payroll deduction plan available to the labor organization at a cost sufficient only to reimburse the corporation for the actual expenses incurred thereby.

Thus, a parent corporation utilizing a payroll deduction plan shall make its method available throughout its corporate structure, to a labor organization representing members working throughout the corporate structure.

In this matter, the Act and regulations require that Kroger make available to complainant its payroll deduction plan for solicting political contributions. Kroger clearly qualifies as "[a]ny corporation," as required by the statute. Kroger has established and maintained a separate segregated fund (Kroger Better Government Committee, FEC Identification No. C0059238) which makes contributions to candidates for federal office. The Kroger Better Government Committee utilizes a payroll deduction plan to solicit Kroger management employees for contributions which are in turn used to influence federal elections. Thus, Kroger "utilizes a method" (i.e. payroll deduction) and "such method" must, in turn, be made available to Local 7 at Kings Soopers, which is a "labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates."

8604051497 1

Respondent asserts that King Soopers operates independently from Kroger with its own senior management and exclusive control over labor relations, personnel and payroll, and maintains no payroll deduction plan or other method of soliciting management employees for contributions used to influence federal elections. The result of this, according to respondent, is that Local 7 is only permitted to solicit employees for political contributions in Kroger units which already have in place an existing method. Under Kroger's interpretation of the Act, King Soopers would not be required to "create" a new method for Local 7.

Respondent's interpretation and application of the law belies the language and intent of the Act. Unless the payroll deduction plan must be made available in all units of Kroger, there would have been no reason for the statute to make clear that the "labor organization" entitled to the benefit of the statute includes one with members working for subsidiaries. If the method were only to be required in the corporation utilizing the method and not in its subsidiaries, there would have been no logic in Congress requiring the corporation to make the method available to a union which only represents employees of subsidiaries. Such a union would be entitled by the statutory language to have the method made available to it, but would have no use for the method unless it could use it in the subsidiaries

R60405149972

where its entire membership is employed. Since words used in a statute are presumed to have meaning and effect, the fact that Congress used language in describing "labor organization," which includes a union with no members in the corporation itself but only in a subsidiary, requires by necessary implication that the statute be construed to require that the method be made available in every subsidiary in which the union has members.

Thus, even though 2 U.S.C. § 441b(b)(6) does not in express terms provide where the union may use the method to which it is entitled, by including within its coverage a union, for example, whose entire membership works for a subsidiary of the corporation "that utilizies a method," the section necessarily implies that such a union can indeed use the method in the subsidiary where its members are employed. The fact that the subsidiary itself does not utilize such a method simply has no bearing on this conclusion.

Kroger's argument, then, that it is required to permit Local 7 to use Kroger's payroll deduction plan only in the Kroger unit where the plan currently exists, is without merit. Where a plan is in place, it is not the corporate structure which controls or shields its use. Its use is to be permitted throughout the Kroger units where the requesting union represents workers. Thus, the location of workers represented by complainant is key. Local 7 represents workers of King Soopers, a Kroger unit located in Denver, Colorado. The statute compels that the plan utilized

8604051497 3

for Kroger management employees be made available so as to allow the solicitation of Local 7 members. Even to limit the solicitation by Local 7 to Kroger management employees (i.e. those same employees that Kroger currently solicits with its own plan) clearly defeats the purpose of the statute.

Notwithstanding the fact that the Union's unit of Kroger's, King Soopers, does not participate in Kroger's payroll deduction plan, the Union is still entitled, pursuant to 2 U.S.C. § 441b(b)(6), to have that plan made available to it for the collection of voluntary contributions to its political action committee in every Kroger unit in which the Union represents its members. Local 7 represents employees of Kroger's King Soopers Unit. By refusing to make the payroll deduction plan available to Local 7 in King Soopers, Kroger violates 2 U.S.C. § 441b(b)(6). Accordingly, the Office of General Counsel recommends that the Commission find probable cause to believe that the Kroger Company violated 2 U.S.C. § 441b(b)(6).

III. GENERAL COUNSEL'S RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Find probable cause to believe that The Kroger Company violated 2 U.S.C. § 441b(b)(6).

4 June 1986
Date

Charles N. Steele
General Counsel

8604051497 4

Old Docket

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

86 JUN 5 AM 11:02

June 5, 1986

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR # 2024

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 June 5, 1986. Following receipt of the Respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments
1. Brief
2. Letter to Respondent

8604051497 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 5, 1986

Thomas J. Hattersly, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, OH 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersly:

Based on a complaint filed with the Commission on June 7, 1985, the Commission determined on August 14, 1985, that there was reason to believe that The Kroger Company had violated 2 U.S.C. § 441b(b)(6), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation 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 if possible) 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, if possible. 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.

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

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.

8604051497 6

Should you have any questions, please contact Eric Kleinfeld, the attorney assigned to handle this matter, at (202)376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

8604051497 7

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Kroger Company) MUR 2024

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

Local 7 of the United Food and Commercial Workers Union (hereinafter the "Union" or "Local 7") filed a complaint with the Federal Election Commission (hereinafter the "Commission") alleging a violation of 2 U.S.C. § 441b(b)(6). The Union contends that it was improperly denied access to a method of soliciting voluntary campaign contributions maintained by respondent The Kroger Company (hereinafter "Kroger") or one of its subsidiaries.

Complainant Union represents some employees of King Soopers, a small retail grocery chain in Denver, Colorado. King Soopers is an operating division of Dillon Companies, Inc., a subsidiary of Kroger. Apart from Kroger's three wholly-owned subsidiaries, Kroger also operates 17 manufacturing and operating units throughout the United States, which supervise over 1100 Kroger stores and production facilities.

Charles E. Mercer, President of Local 7 of the United Food and Commercial Workers Union, requested from King Soopers a method for soliticing political contributions from its members. By a letter dated May 1, 1985, Edward Behler, Vice President of Industrial Relations for King Soopers, denied the Union's request. Behler stated that King Soopers did not utilize any method to solicit political contributions from its managers, and accordingly, had no method to offer the Union. This denial

8 6 0 4 0 5 1 4 9 7 8

provided the basis for the complaint in this matter.

On August 14, 1985, the Commission determined there was reason to believe that the Kroger Company violated 2 U.S.C. § 441b(b)(6) for refusing to make available to Local 7 a payroll deduction plan for soliciting contributions. On March 11, 1986, at Kroger's request, the Commission entered into conciliation discussions prior to a finding of probable cause to believe. However, negotiations failed to produce a mutually acceptable agreement, and on May 1, 1986, the Commission rejected a conciliation agreement proposed by respondent.

8604051497 9

II. LEGAL ANALYSIS

This matter involves the construction of 2 U.S.C. § 441b(b)(6) which provides:

> 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.

Thus, as the Commission has previously recognized, 2 U.S.C. § 441b(b)(6) requires a corporation which utilizes a method of soliciting political contributions to make that method available to a labor organization (upon written request) which represents members working either for the corporation or one of its

affiliates. See Matter Under Review 947, In re American Telephone and Telegraph Company. This requirement holds even where some or all of the corporation's affiliates do not have federal PACs.

The Commission's Regulations amplify the rule of 2 U.S.C. § 441b(b)(6). Section 114.5(k) provides:

> Availability of methods. Any corporation, including its subsidiaries, branches, divisions, and affiliates, that uses a method of soliciting voluntary contributions or facilitating the making of voluntary contributions from its stockholders or executive or administrative personnel and their families, shall make that method available to a labor organization representing any members working for the corporation, its subsidiaries, branches, divisions, and affiliates for soliciting voluntary contributions or facilitating the making of voluntary contributions from its members and their families. Such method shall be made available on the written request of the labor organization and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby.

Thus, the rule of 11 C.F.R. § 114.5(k) follows the statute in requiring a corporation which utilizes a method of soliciting political contributions in one of its units, to make that method available to a labor organization representing workers of the corporation or one of its units. 11 C.F.R. § 114.5(k) also contains several examples of its application, one of which is helpful in the present matter. 11 C.F.R. § 114.5(k)(1) provides:

> If a corporation, including its subsidiaries, branches, divisions, or affiliates utilizes a payroll deduction plan, checkoff system or other plan which deducts contributions from the dividend or payroll checks of stockholders or executive or administrative

R 6 0 4 0 5 1 4 9 8 0

> personnel, the corporation, shall, upon written request of the labor organization, make that method available to members of the labor organiztions working for the corporation, its subsidiaries, branches, divisions, or affiliates, who wish to contribute to the separate segregated fund of the labor organization representing any members working for the corporation, or any of its subsidiaries, branches, divisions, or affiliates. The corporation shall make the payroll deduction plan available to the labor organization at a cost sufficient only to reimburse the corporation for the actual expenses incurred thereby.

Thus, a parent corporation utilizing a payroll deduction plan shall make its method available throughout its corporate structure, to a labor organization representing members working throughout the corporate structure.

In this matter, the Act and regulations require that Kroger make available to complainant its payroll deduction plan for solicting political contributions. Kroger clearly qualifies as "[a]ny corporation," as required by the statute. Kroger has established and maintained a separate segregated fund (Kroger Better Government Committee, FEC Identification No. C0059238) which makes contributions to candidates for federal office. The Kroger Better Government Committee utilizes a payroll deduction plan to solicit Kroger management employees for contributions which are in turn used to influence federal elections. Thus, Kroger "utilizes a method" (i.e. payroll deduction) and "such method" must, in turn, be made available to Local 7 at Kings Soopers, which is a "labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates."

8 6 0 4 0 5 1 4 9 8 1

Respondent asserts that King Soopers operates independently from Kroger with its own senior management and exclusive control over labor relations, personnel and payroll, and maintains no payroll deduction plan or other method of soliciting management employees for contributions used to influence federal elections. The result of this, according to respondent, is that Local 7 is only permitted to solicit employees for political contributions in Kroger units which already have in place an existing method. Under Kroger's interpretation of the Act, King Soopers would not be required to "create" a new method for Local 7.

Respondent's interpretation and application of the law belies the language and intent of the Act. Unless the payroll deduction plan must be made available in all units of Kroger, there would have been no reason for the statute to make clear that the "labor organization" entitled to the benefit of the statute includes one with members working for subsidiaries. If the method were only to be required in the corporation utilizing the method and not in its subsidiaries, there would have been no logic in Congress requiring the corporation to make the method available to a union which only represents employees of subsidiaries. Such a union would be entitled by the statutory language to have the method made available to it, but would have no use for the method unless it could use it in the subsidiaries

86040514982

where its entire membership is employed. Since words used in a statute are presumed to have meaning and effect, the fact that Congress used language in describing "labor organization," which includes a union with no members in the corporation itself but only in a subsidiary, requires by necessary implication that the statute be construed to require that the method be made available in every subsidiary in which the union has members.

Thus, even though 2 U.S.C. § 441b(b)(6) does not in express terms provide where the union may use the method to which it is entitled, by including within its coverage a union, for example, whose entire membership works for a subsidiary of the corporation "that utilizies a method," the section necessarily implies that such a union can indeed use the method in the subsidiary where its members are employed. The fact that the subsidiary itself does not utilize such a method simply has no bearing on this conclusion.

Kroger's argument, then, that it is required to permit Local 7 to use Kroger's payroll deduction plan only in the Kroger unit where the plan currently exists, is without merit. Where a plan is in place, it is not the corporate structure which controls or shields its use. Its use is to be permitted throughout the Kroger units where the requesting union represents workers. Thus, the location of workers represented by complainant is key. Local 7 represents workers of King Soopers, a Kroger unit located in Denver, Colorado. The statute compels that the plan utilized

8 6 0 4 0 5 1 4 9 8 3

for Kroger management employees be made available so as to allow the solicitation of Local 7 members. Even to limit the solicitation by Local 7 to Kroger management employees (i.e. those same employees that Kroger currently solicits with its own plan) clearly defeats the purpose of the statute.

Notwithstanding the fact that the Union's unit of Kroger's, King Soopers, does not participate in Kroger's payroll deduction plan, the Union is still entitled, pursuant to 2 U.S.C. § 441b(b)(6), to have that plan made available to it for the collection of voluntary contributions to its political action committee in every Kroger unit in which the Union represents its members. Local 7 represents employees of Kroger's King Soopers Unit. By refusing to make the payroll deduction plan available to Local 7 in King Soopers, Kroger violates 2 U.S.C. § 441b(b)(6). Accordingly, the Office of General Counsel recommends that the Commission find probable cause to believe that the Kroger Company violated 2 U.S.C. § 441b(b)(6).

III. GENERAL COUNSEL'S RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Find probable cause to believe that The Kroger Company violated 2 U.S.C. § 441b(b)(6).

4 June 1986
Date

Charles N. Steele
General Counsel

R 6 0 4 0 5 1 4 9 9 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 2, 1986

Thomas J. Hattersley, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, Ohio 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersley:

On March 11, 1985, at your request, the Federal Election Commission determined to enter into negotiations with the Kroger Company, directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Conciliation negotiations prior to a finding of probable cause to believe are limited to a period of 30 days.

The Commission received your proposed conciliation agreement on April 3, 1986. After reviewing your counterproposal, the Commission, on May 1, 1986, decided to reject your submission.

If you have any questions, please contact Eric Kleinfeld, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

86040514985

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Thomas J. Hattersley, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, Ohio 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersley:

On March 11, 1985, at your request, the Federal Election Commission determined to enter into negotiations with the Kroger Company, directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Conciliation negotiations prior to a finding of probable cause to believe are limited to a period of 30 days.

The Commission received your proposed conciliation agreement on April 3, 1986. After reviewing your counterproposal, the Commission, on , 1986, decided to reject your submission.

If you have any questions, please contact Eric Kleinfeld, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

8604061499 86

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 2024
	)	
The Kroger Company	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 1, 1986, the Commission decided by a vote of 4-2 to take the following actions in MUR 2024:

1. Reject the conciliation agreement submitted by the Kroger Company.

2. Approve the letter attached to the General Counsel's Report signed April 23, 1986.

Commissioners Harris, Josefiak, McDonald and McGarry voted affirmatively for this decision; Commissioners Aikens and Elliott dissented.

Attest:

5-2-86
Date

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

8604051498 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 22, 1986

Ernest L. Duran, Jr.
UFCW Building, Suite 400
7760 West 38th Avenue
Wheat Ridge, CO 80033

Dear Mr. Duran:

This is in response to your letter of April 10, 1986, in which you request information pertaining to the complaint filed by UFCW Local 7 with the Commission.

The Federal Election Campaign Act prohibits any person from making public the fact of any notification or investigation by the Commission unless the party being investigated has agreed in writing that the matter be made public. (See 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(a)). Because there has been no written agreement that the matter be made public, we are not in a position to release any information at this time.

As you were informed by letter of June 17, 1985, we will notify you as soon as the Commission determines what action should be taken.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

86040514988

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ernest L. Duran, Jr.
UFCW Building, Suite 400
7760 West 38th Avenue
Wheat Ridge, CO 80033

Dear Mr. Duran:

This is in response to your letter of April 10, 1986, in which you request information pertaining to the complaint filed by UFCW Local 7 with the Commission.

The Federal Election Campaign Act prohibits any person from making public the fact of any notification or investigation by the Commission unless the party being investigated has agreed in writing that the matter be made public. (See 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(a)). Because there has been no written agreement that the matter be made public, we are not in a position to release any information at this time.

As you were informed by letter of June 17, 1985, we will notify you as soon as the Commission determines what action should be taken.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

86040514989

GCC#222

RECEIVED THE FEC

Chartered by United Food & Commercial Workers International Union AFL-CIO
UFCW Building, Suite 400, 7760 West 38th Avenue, Wheat Ridge, CO 80033
Phone (303) 425-0897 • Interstate Toll Free 1-800-332-7735 • Colorado Toll Free 1-800-[illegible]

MUR2024

CHARLES E. MERCER
President
JOHN A. URBAN
Secretary-Treasurer

Affiliated with
Colorado Food & Allied Trades Council
Colorado AFL-CIO
Front Range Labor Federation
Pueblo Labor Council
Colorado Springs Labor Council
Boulder Labor Council
Northern Colorado Central Labor Council
Grand Junction Trades & Labor Assembly
Aspen Trades & Labor Assembly
Cheyenne Central Labor Council
Wyoming AFL-CIO

April 10, 1986

Mr. Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: UFCW Local 7 v. Krogers, Inc.; Dillon Companies; King Soopers, Inc.

86 APR 15 A10:05

RECEIVED
GENERAL COUNSEL

Dear Mr. Gross:

As you are aware, this organization filed a complaint in the above-referenced matter on June 3, 1985.

Would you please advise as to the current status of the case and as to when we may expect a decision.

Thank you for your prompt attention to this request.

Sincerely,

Ernest L. Duran, Jr.

Ernest L. Duran, Jr.
General Counsel

ELD:elhs

ufcw #7
afl-cio

8604051499 0

UNITED FOOD & COMMERCIAL WORKERS
LOCAL NO. 7, A.F.L.-C.I.O.
UFCW BUILDING, Suite 400
7760 WEST 38th AVENUE
WHEAT RIDGE, COLORADO 80033

Mr. Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2024
The Kroger Company)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of March 11, 1986, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 2024:

1. Enter into conciliation discussions with The Kroger Company prior to a finding of probable cause to believe a violation of 2 U.S.C. § 441b(b)(6) occurred.

2. Approve the proposed conciliation agreement attached to the General Counsel's report dated February 26, 1986.

3. Approve the letter attached to the General Counsel's report dated February 26, 1986.

Commissioners Harris, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

Attest:

3-12-86
Date

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

86040514992

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
86 FEB 27 P3:01

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2024
The Kroger Company)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Local 7 of the United Food and Commercial Workers Union (hereinafter the "Union") filed a complaint with the Federal Election Commission (hereinafter the "Commission") alleging a violation of 2 U.S.C. § 441b(b)(6). The Union contends that it was improperly denied access to a method of soliciting voluntary campaign contributions maintained by respondent The Kroger Company (hereinafter "Kroger") or one of its subsidiaries.

On August 14, 1985, the Commission determined there was reason to believe that Kroger violated 2 U.S.C. § 441b(b)(6) for refusing to make available a payroll deduction plan to complainant. Kroger submitted written responses to the Commission upon notification of the complaint and the Commission's reason to believe determinations, and requested that the Commission enter into conciliation discussions prior to a finding of probable cause to believe.

II. LEGAL ANALYSIS

Complainant Union represents some employees of King Soopers, a small retail grocery chain in Denver, Colorado. King Soopers is an operating division of Dillon Companies, Inc., a subsidiary of Kroger. Apart from Kroger's three wholly-owned subsidiaries, Kroger also operates 17 manufacturing and operating units throughout the United States, which supervise over 1100 Kroger

8604051493

stores and production facilities.

Charles E. Mercer, President of Local 7 of the United Food and Commercial Workers Union, requested from King Soopers a method for soliciting political contributions from its members. By a letter dated May 1, 1985, Edward Behler, Vice President of Industrial Relations for King Soopers, denied the Union's request. Behler stated that King Soopers did not utilize any method to solicit political contributions from its managers, and accordingly, had no method to offer the Union. This denial provided the basis for the complaint in this matter.

This matter involves the construction of 2 U.S.C. § 441b(b)(6) which provides:

> 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, or 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.

Thus, as the Commission has previously recognized, 2 U.S.C. § 441b(b)(6) requires a corporation which utilizes a method of soliciting political contributions to make that method available to a labor organization (upon written request) which represents members working either for the corporation or one of its affiliates. See Matter Under Review 947, In re American Telephone and Telegraph Company. This requirement holds even where some or all of the corporation's affiliates do not have federal PACs.

8 6 0 4 0 5 1 4 9 9 4

King Soopers, which respondent asserts operates independently from Kroger with its own senior management and exclusive control over labor relations, personnel and payroll, maintains no payroll deduction plan or other method of soliciting management employees for contributions used to influence federal elections. However, the Kroger Better Government Committee is a separate segregated fund established and maintained by Kroger and which makes contributions to candidates for federal office (FEC Identification No. C00059238). Based on representations of respondent's counsel, it is apparent that the Kroger Better Government Committee utilizes a payroll deduction plan to solicit Kroger management employees for contributions which are in turn used to influence federal elections.

The Commission's Regulations amplify the rule of 2 U.S.C. § 441b(b)(6). The example set forth at 11 C.F.R. § 114.5(k)(1) provides:

> If a corporation, including its subsidiaries, branches, divisions, or affiliates utilizes a payroll deduction plan, checkoff system or other plan which deducts contributions from the dividend or payroll checks of stockholders or executive or administrative personnel, the corporation shall, upon written request of the labor organization, make that method available to members of the labor organizations working for the corporation, its subsidiaries, branches, divisions, or affiliates, who wish to contribute to the separate segregated fund of the labor organization representing any members working for the corporation, or any of its subsidiaries, branches, divisions, or affiliates. The corporation shall make the payroll deduction plan available to the labor organization at a cost sufficient only to reimburse the corporation for the actual expenses incurred thereby.

Thus, a parent corporation utilizing a payroll deduction plan shall make its method available throughout its corporate

8604061499 5

structure to a labor organization representing members working throughout the corporate structure.

In this matter, the Act and regulations require that Kroger make available to complainant the deduction plan for soliticing political contributions, as utilized by the Kroger Better Government Committee, notwithstanding the fact that the Union's division, King Soopers, is not a participant in the plan. The Union is entitled to have a payroll deduction plan made available to it for the collection of voluntary contributions to its PAC in every unit of Kroger in which the Union represents its members. By refusing to make the plan available to the Union in King Soopers, athough the latter has no such plan, Kroger violates 2 U.S.C. § 441b(b)(6).

Kroger has requested pre-probable conciliation. In light of the foregoing analysis, the Office of General Counsel recommends that the Commission enter into conciliation discussions with the Kroger Company prior to a finding of probable cause to believe that a violation of 2 U.S.C. § 441b(b)(6) occurred.

8604051499 6

IV. GENERAL COUNSEL'S RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Enter into conciliation discussions with The Kroger Company prior to a finding of probable cause to believe a violation of 2 U.S.C. § 441b(b)(6) occurred;

2. Approve the attached proposed conciliation agreement; and

3. Approve the attached letter.

Charles N. Steele
General Counsel

February 26, 1986
Date

BY: Kenneth A. Gross
Associate General Counsel

Attachments
1. Request for conciliation
2. Proposed conciliation agreement
3. Letter to respondent

8604051499 7

RECEIVED AT THE FEC
QCC#8212
85 OCT 28 A8:48

LAW DEPARTMENT • THE KROGER CO. • 1014 VINE STREET • CINCINNATI, OHIO 45201

WRITER'S DIRECT DIAL NUMBER
513-762-4826

GEORGE A. LEONARD
VICE PRESIDENT-SECRETARY
AND GENERAL COUNSEL

THOMAS E. MURPHY
VICE PRESIDENT-
SENIOR COUNSEL

ARTHUR L. FERGUSON
SENIOR COUNSEL

JAMES S. JOHNS
THOMAS P. O'BRIEN, JR.
JAMES J. KELLY
JOHN M. FLYNN
NORMA SKOOG
WARREN H. WOLTER
LYNNE GELLENBECK
THOMAS J. HATTERSLEY
PAUL W. HELDMAN
FREDERICK W. KINDEL
BRUCE M. GACK
DONNA K. SNIDER

October 24, 1985

85 OCT 28 A11:57
GENERAL COUNSEL

Mr. Craig Engle, Staff Attorney
Federal Election Commission
Washington, D C 20463

RE: The Kroger Co.
MUR 2024

Dear Mr. Engle:

I am enclosing an affidavit from Peter J. Larkin, in response to your inquiries regarding collection and solicitation of political contributions from Kroger's Texas managers.

Once you have reviewed it and are ready to make your report, I would appreciate a call advising me of the status of this matter.

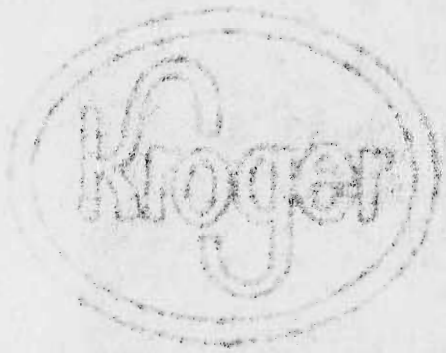
Very truly yours,

Thomas J. Hattersley

Thomas J. Hattersley

TJH/ms
1024-3

8604051499 8



AFFIDAVIT OF PETER J. LARKIN

STATE OF TEXAS)
) ss:
COUNTY OF DALLAS)

I, Peter J. Larkin, make the following voluntary statement:

1. I am employed by The Kroger Co. as Director of Public Affairs in Dallas, Texas.

2. I am the administrator of the "Kroger Political Action Committee of Texas" (hereinafter KRO-PACT), which includes both Kroger/Texas retail operating units, the Dallas Marketing Area and the Houston Marketing Area.

3. KRO-PACT is registered with the Secretary of State in Austin, Texas and no one else.

4. In the last approximately four years for which I have been KRO-PACT administrator, all solicitation by it has been by regular U.S. mail.

5. KRO-PACT provides payroll deduction for contributions through the local payroll system.

6. KRO-PACT does not and cannot, by virtue of its by-laws, give any contributions to candidates for federal office; it is strictly a state political action committee.

7. The "Kroger Better Government Committee" (hereinafter K-BGC), in Cincinnati, Ohio, solicits Kroger management employees, but it does so by regular U.S. mail and it does not solicit Kroger management employees in Texas.

8. K-BGC does make contributions to candidates for federal office.

10-22-85
Date

Peter J. Larkin
Peter J. Larkin

Sworn to and subscribed in my presence this 22nd day of October, 1985.

Natalie Owens

TJH/ms
1021-7

8604051499 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1985

Dillon Companies, Inc.
700 E. 30th Avenue
Hutchinson, Kansas 67501

RE: MUR 2024
Dillon Companies, Inc.

Dear Sir/Madam:

On June 19, 1985, the Commission notified you of a complaint alleging that Dillon Companies, Inc. had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on August 14, 1985, determined that on the basis of the information in the complaint, and information provided by the respondents there is no reason to believe that a violation of any statute within its jurisdiction has been committed by Dillon Companies, Inc. Accordingly, the Commission closed its file in this matter as it pertains to Dillon Companies, Inc. This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. The Commission reminds you 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 is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

8604061500

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1985

Edward Behlke
Vice President - Industrial Relations
King Soopers, Inc.
65 Tejon Street
Denver, Colorado 80223

Re: MUR 2024
King Soopers, Inc.

Dear Mr. Behlke:

On June 19, 1985, the Federal Election Commission notified you of a complaint alleging that King Soopers, Inc. had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on August 14, 1985, considered the complaint but was equally divided on the question of whether to find reason to believe a violation of any statute within its jurisdiction has been committed by King Soopers, Inc. Accordingly, the Commission closed its file in this matter as it pertains to King Soopers, Inc. This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. The Commission reminds you 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 is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

8604051500 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1985

Thomas J. Hattersley, Esq.
The Kroger Company
1014 Vine Street
Cincinnati, OH 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersley:

On June 19, 1985, the Federal Election Commission notified you of a complaint alleging that the Kroger Company had violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you and other respondents, the Commission, on August 14, 1985, determined that there is reason to believe that the Kroger Company violated 2 U.S.C. § 441b(b)(6), a provision of the Act. Specifically, it appears that the Kroger Company failed to make its solicitation method available to members of Local 7 employed by King Soopers, Inc.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent will not be entertained.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

8604051502

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Lois Lerner, the attorney assigned to this matter, at (202) 523-4143.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Vice Chairman

Enclosure
Procedures

86040615003

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Thomas J. Hattersley, Esq.
The Kroger Company
1014 Vine Street
Cincinnati, OH 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersley:

On June 19, 1985, the Federal Election Commission notified you of a complaint alleging that the Kroger Company had violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you and other respondents, the Commission, on August 14, 1985, determined that there is reason to believe that the Kroger Company violated 2 U.S.C. § 441b(b)(6), a provision of the Act. Specifically, it appears that the Kroger Company failed to make its solicitation method available to members of Local 7 employed by King Soopers, Inc.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent will not be entertained.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

8604061 5004

198

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Lois Lerner, the attorney assigned to this matter, at (202) 523-4143.

Sincerely,

Joan D. Aikens
Vice Chairman

Enclosure
Procedures

86040615005

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edward Behlke
Vice President - Industrial Relations
King Soopers, Inc.
65 Tejon Street
Denver, Colorado 80223

Re: MUR 2024
King Soopers, Inc.

Dear Mr. Behlke:

On June 19, 1985, the Federal Election Commission notified you of a complaint alleging that King Soopers, Inc. had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on August 14, 1985, considered the complaint but was equally divided on the question of whether to find reason to believe a violation of any statute within its jurisdiction has been committed by King Soopers, Inc. Accordingly, the Commission closed its file in this matter as it pertains to King Soopers, Inc. This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. The Commission reminds you 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 is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

86040615006

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Dillon Companies, Inc.
700 E. 30th Avenue
Hutchinson, Kansas 67501

RE: MUR 2024
Dillon Companies, Inc.

Dear Sir/Madam:

On June 19, 1985, the Commission notified you of a complaint alleging that Dillon Companies, Inc. had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on August 14, 1985, determined that on the basis of the information in the complaint, and information provided by the respondents there is no reason to believe that a violation of any statute within its jurisdiction has been committed by Dillon Companies, Inc. Accordingly, the Commission closed its file in this matter as it pertains to Dillon Companies, Inc. This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. The Commission reminds you 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 is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

8604051507

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
The Kroger Company	)	MUR 2024
Dillon Companies	)	
King Soopers, Inc.	)	

CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission meeting on August 14, 1985, do hereby certify that the Commission took the following actions in MUR 2024:

1. Failed by a vote of 3-3 to find reason to believe King Soopers, Inc., violated 2 U.S.C. § 441b(b)(6).

   Commissioners Harris, McDonald, and McGarry voted affirmatively for the decision. Commissioners Aikens, Elliott, and Josefiak dissented.

2. Decided by a vote of 4-2 to find reason to believe The Kroger Company violated 2 U.S.C. § 441b(b)(6).

   Commissioners Harris, Josefiak, McDonald, and McGarry voted affirmatively for this decision. Commissioners Aikens and Elliott dissented.

3. Decided by a vote of 6-0 to send the appropriate letters.

   Commissioners Aikens, Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively.

4. Decided by a vote of 5-1 to find no reason to believe Dillon Companies, Inc., violated 2 U.S.C. § 441b(b)(6).

   Commissioners Aikens, Elliott, Josefiak, McDonald, and McGarry voted affirmatively. Commissioner Harris dissented.

Attest:

8-15-85
Date

Mary W. Dove
Mary W. Dove
Recording Secretary

8 5 0 4 0 5 1 5 0 0 8

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

FIRST GENERAL COUNSEL'S REPO[redacted]

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY
85 AUG 2 P 5:4

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION_____

MUR 2024
DATE COMPLAINT RECEIVED
BY OGC June 7, 1985
DATE OF NOTIFICATION TO
RESPONDENT June 17, 1985
STAFF MEMBER Cullinan

COMPLAINANTS' NAMES: Local 7, United Food and Commercial Workers Union

RESPONDENTS' NAMES: The Kroger Company
Dillon Companies
King Soopers, Inc.

RELEVANT STATUTES AND REGULATIONS: 2 U.S.C. § 441b(b)(6)

INTERNAL REPORTS CHECKED: None

FEDERAL REPORTS CHECKED: None

SUMMARY OF ALLEGATIONS

Complainant, Local 7 of United Food and Commercial Workers ("Local 7" or the "union"), represents employees of King Soopers, Inc. This grocery chain is an independent division of Dillon Companies, Inc., which in turn is owned by The Kroger Company. Dillon Companies, after merging with a subsidiary of Kroger in 1983, retained separateness in all labor relations, personnel and payroll operations. The complaint cites the union's written request to King Soopers to make available to the union a method for the solicitation of voluntary political contributions utilized by the parent corporation, Kroger. Attachment No. 1.

King Soopers denied the request on May 1, 1985. The corporation admitted that Kroger used a method to solicit

8604051509

contributions but contended that, "Kroger's utilization of any method for political contributions does not affect King Soopers." See Exhibit No. 1 of the complaint.

The union responded by filing a complaint on June 7, 1985, with the Office of the General Counsel alleging respondents violated 2 U.S.C. § 441b(b)(6) of the Act. The issue raised by complainant is whether a subsidiary of a corporation that uses a method of soliciting voluntary political contributions must make that method available to labor organizations representing members employed by the subsidiary, even if that particular subsidiary does not itself use any method.

FACTUAL AND LEGAL ANALYSIS

The primary issue involved in this matter is the applicability of 2 U.S.C. § 441b(b)(6) which provides that:

> 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.

In their response dated July 19, 1985, King Soopers denies this section of the Act requires them to make available to the union the method of solicitation employed by its parent corporation, Kroger. See Attachment No. 2. Respondents counter that § 441b(b)(5) and (6) require only that a labor organization be placed on an equal footing with any corporation whose

86040515010

employees the union directly represents. According to King Soopers, since the employee solicitation method requested by Local 7 is "in a different corporation, with a different labor organization, in a different state, in a different operating structure...and through a different computerized payroll system," 2 U.S.C. § 441b(b)(6) does not apply. Likewise, counsel for Kroger, in its response dated July 23, 1985, comments that the National Labor Relations Board recognizes the separateness of jointly owned, but autonomously run corporations for purposes such as picketing. Attachment No. 3. Counsel encourages the Commission to do the same: "Balance compels the same result." Kroger contends that the choice of Kroger management to utilize a solicitation method "should have no affect" on the personnel and payroll practices of autonomous corporations.1/

The Commission's Regulations at 11 C.F.R. § 114.5(k), however, track 2 U.S.C. § 441b(b)(6) and contain language specifically requiring King Soopers to make the solicitation method available to the union:

> Availability of methods. Any corporation, including its subsidiaries, branches, divisions, and affiliates, that uses a method of soliciting voluntary contributions or facilitating the making of voluntary contributions from its stockholders or executive or administrative personnel and their families, shall make that method available to a labor organization representing any members working for the corporation, its subsidiaries, branches,

---

1/ Counsel for Kroger includes in his response on affidavit by the Assistant Secretary of Kroger swearing to the autonomy of Dillon as regards Kroger.

86040615011

> divisions, and affiliates for soliciting voluntary contributions or facilitating the making of voluntary contributions from its members and their families. Such method shall be made available on the written request of the labor organization and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby.

Examples included in the Regulations regarding implementation of this provision include one on point with the facts presented by the complaint. Specifically, § 114.5(k)(1) requires that any method utilized by a corporation to solicit contributions from its permissible class of solicitees must, upon request by a labor organization, be made available to that organization (on a cost-reimburseable basis) for the solicitation of its members <u>even though</u> the particular subsidiary, branch, division or corporate affiliate does not itself utilize such a method.

MUR 947 involved an extensive analysis of § 441b(b)(6). There, the Commission concluded that where a parent corporation (AT&T) utilized a method of soliciting contributions from its employees or stockholders, the Act compels the corporation to make the method available to a union representing members employed by a subsidiary which itself did not utilize any solicitation method. <u>See</u> also MUR 994 (Sandia Corporation).

In addition, in AO 1982-45, the Commission determined that a corporation and its affiliate would be required to make a payroll deduction method available to a union local PAC if <u>either</u> the corporation <u>or</u> its affiliate utilized such a plan for its employees.

8 6 0 4 0 5 1 5 0 1 2

Counsel for Kroger attempts to distinguish the Commission's decision in MUR 974 by calling attention to the 'interrelationship' of AT&T subsidiaries. Before the break-up, each AT&T unit was represented by the same complainant union. In contrast, Local 7 does not represent any Kroger or Dillon employees. Kroger thus argues that the lack of a sufficient nexus of interrelationship between Local 7 and Kroger employees compels the Commission to uphold King Soopers' refusal to make available to Local 7 the solicitation method utilized by Kroger.

The language of 2 U.S.C. § 441b(b)(6), however, expressly discourages debates over the extent of control or 'interrelationship' between a parent corporation and its subsidiary necessary for the applicability of §441b(b)(6). Rather in simple, plain language, the section requires <u>all</u> subsidiaries of <u>any</u> corporation to cooperate with local union requests for solicitation methods utilized by <u>any unit</u>, including the parent, corporation.

Although complainant names both Dillon and Kroger in the complaint, the reason is unclear. The complaint does not allege that either Kroger or Dillon refused a request by the union to make the method utilized by Kroger available to union employees. Neither does the complaint appear to hold Dillon and Kroger responsible for King Soopers' refusal to provide the solicitation method to Local 7 in their capacities as owners of King Soopers. This lack of any direct allegation or evidence of wrongdoing compels this office to recommend that the Commission find no reason to believe Kroger or Dillon violated 2 U.S.C. § 441b(b)(6).

8604061501 3

However, on the basis of the Commission's prior interpretation of 2 U.S.C. § 441b(b)(6), it appears that King Soopers, Inc., violated the Act by refusing to make the method to solicit political contributions utilized by The Kroger Co. available to Local 7 of the United Food and Commercial Workers.

Recommendations

1. Find reason to believe King Soopers, Inc., violated 2 U.S.C. § 441b(b)(6).

2. Find no reason to believe The Kroger Co. or Dillon Companies, Inc., violated 2 U.S.C. § 441b(b)(6).

3. Approve the attached letters.

Charles N. Steele
General Counsel

Aug 1, 1985
Date

By: Kenneth A. Gross
Associate General Counsel

Attachments
1. Complaint
2. Response - King Soopers, Inc.
3. Response - The Kroger Co.
4a. Proposed Letter
4b. Proposed Letter
4c. Proposed Letter

8604061501 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edward P. Behlke
Vice President of Industrial
Relations
King Soopers, Inc.
65 Tejon Street
Denver, CO 80223

RE: MUR 2024
King Soopers, Inc.

8 5 0 4 0 5 1 5 0 1 5

Dear Mr. Behlke:

The Federal Election notified you as an officer of King Soopers, Inc., on June 19, 1985, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on , 1985, determined that there is reason to believe that King Soopers Inc. violated 2 U.S.C. § 441b(b)(6), a provision of the Act. Specifically, it appears the King Soopers' refusal to make available to Local 7 of the United Food and Commercial Workers Union the solicitation method utilized by the Kroger Co., oweners of King Soopers, resulted in a violation of 2 U.S.C. § 441b(b)(6).

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent will not be entertained.

Attachment 4a

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your client wish the matter to be made public.

If you have any questions, please contact Joyce Cullinan, the staff member assigned to this matter, at (202) 523-4143.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Procedures

8604051501 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Dillon Companies, Inc.
700 E. 30th Avenue
Hutchinson, Kansas 67501

RE: MUR 2024
Dillon Companies, Inc.

Dear Sir/Madam:

On June 15, 1985, the Commission notified your company of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1985, determined that on the basis of the information in the complaint, and information provided by other respondents, there is no reason to believe that a violation of any statute within its jurisdiction has been committed by Dillon Companies, Inc. Accordingly, the Commission closed its file in this matter as it pertains to your company. This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. The Commission reminds you 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 is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8604051501 7

Attachment 46

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Thomas J. Hattersley, Esquire
The Kroger Company
1014 Vine Street
Cincinnati, Ohio 45201

RE: MUR 2024
The Kroger Company

Dear Mr. Hattersley:

On June 15, 1985, the Commission notified you and The Kroger Company of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1985, determined that on the basis of the information in the complaint, and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed by The Kroger Co. Accordingly, the Commission closed its file in this matter as it pertains to The Kroger Co. This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. The Commission reminds you 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 is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8604061501 8

Attachment 4c

BEFORE THE FEDERAL ELECTION COMMISSION OF THE UNITED STATES

Local 7, United Food and Commercial Workers Union

Complainant

v. Docket No. _____

Krogers, Inc.

Respondent

Dillon Companies

Respondent

King Soopers, Inc.

Respondent

COMPLAINT

Pursuant to 2 USC §437g and 11 CFR §111.4, Complainant alleges:

I.

Complainant, Local 7, United Food and Commercial Workers Union, is a resident of UFCW Building, Suite 400, 7760 W. 38th Avenue, Wheat Ridge, Colorado 80033, and may be reached at the following telephone number: (303) 425-0897.

II.

Respondent, Krogers, Inc., is a resident of Ohio, and is a corporate enterprise engaged in interstate commerce.

Respondent, Dillon Companies, is a resident of Kansas, and is a subsidiary of Krogers, Inc.

Respondent, King Soopers, Inc., is a resident of Colorado, and is a subsidiary of Krogers, Inc.

III.

On May 1, 1985, Respondents violated 2 USC §441b(6), in that King Soopers, Inc., upon written request of Local 7, United Food and Commercial Workers Union, improperly refused to make available to the Union the method of soliciting

Attachment No. 1

8604051519

voluntary campaign contributions utilized by its parent corporation, Krogers, Inc.

IV.

Complainant is not a candidate for political office, and is not filing the complaint on behalf of or at the request or suggestion of any candidate.

V.

In support of the foregoing allegations, Complainant presents and files herewith the following documents: King Soopers' refusal of Union demand for political contribution method.

Ernest L. Duran, Jr.

Ernest L. Duran, Jr.
Attorney For Local 7, UFCW
7760 W. 38th Ave., Suite 400
Wheat Ridge, CO 80033

STATE OF COLORADO)
) ss
COUNTY OF JEFFERSON)

Ernest L. Duran, Jr., first being duly sworn, on oath deposes and says: That he is the Complainant; that he has read the foregoing complaint and knows the contents thereof; and that the matters and things therein stated are true of his own knowledge, except those matters stated on the information or belief, and as to them he believes it to be true.

Ernest L. Duran, Jr.

Ernest L. Duran, Jr.

Subscribed and sworn to before me this 3rd day of June, 1985.

Ellen L. Haws-Sayre

Notary Public

8604051502 0

EDWARD P. BEHLKE, VICE PRESIDENT, INDUSTRIAL RELATIONS

May 1, 1985

Reviewed by CEM MAY 2 1985
Copies to
File
Return to

Mr. Charles E. Mercer
President
UFCW LOCAL NO. 7
7760 West 38th Avenue
Wheat Ridge, CO 80033

Re: Political Check Off

Dear Charlie:

I have looked into your question about solicitation of political contributions from union members.

I find that King Soopers does not utilize any method to solicit or facilitate political contributions from its managers. Accordingly, there is none to offer you.

In your recent letter, you mention the practice of Kroger in two cities. Kroger's utilization of any method for political contributions does not affect King Soopers. King Soopers operates autonomously and is completely separate from Kroger except for common ownership.

The statute on which you rely requires that a labor organization be provided rights parallel to the practice of its corporation, subsidiary, branch, division, or affiliate. This subsidiary does not utilize any such method and therefore is not required to offer any.

Very truly yours,

Edward P. Behlke
Vice President of Industrial Relations

EPB/er

cc: Ernest L. Duran, Jr.

PER/85.121/2

GENERAL OFFICE AND WAREHOUSE • 65 TEJON STREET • DENVER, COLORADO 80223 • (303) 778-3100

A DILLON COMPANY

8 6 0 4 0 5 1 5 0 2 1

Exhibit No. 1
of the complaint

KING Soopers

MAILING ADDRESS: P.O. BOX 5567, DENVER, COLORADO 80217
GENERAL OFFICE AND WAREHOUSE 65 TEJON STREET, DENVER, COLORADO 80222 • 303/778-3100

RECEIVED AT THE FEC
HAND DELIVERED
85 JUL 23 AM 11:10
GCC#8089

July 19, 1985

FEC
GENERAL COUNSEL
85 JUL 23 P 3:28

Ms. Joyce Cullinan
Office of General Counsel
FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

RE: Local 7, UFCW vs. Kroger, et al.
Complaint No. MUR 2024

8604061502 2

Dear Ms. Cullinan:

The following is King Soopers, Inc.'s response to the above-referenced complaint.

INTRODUCTION

The complaint in this matter was received by Respondent, King Soopers, Inc., a division of Dillon Companies, on July 12, 1985. In it, Local 7 alleges that King Soopers violated the Federal Election Campaign Act, 2 USC Sec 441b(6), by refusing, by letter dated May 1, 1985, to offer any method for making voluntary political contributions by Local 7's members.

It is true that King Soopers refuses to offer any such method. However, as you will see from the following analysis, the Act was not violated, since King Soopers utilizes no such method for its stockholders or for any of its executive or administrative employees.

BACKGROUND OF KING SOOPERS

King Soopers is a division of Dillon Companies, Inc. It was a separate corporation until purchased by Dillon many years ago. King Soopers operates approximately sixty-seven retail grocery stores, exclusively in Colorado, and warehouse and manufacturing facilities in Denver, Colorado. I am enclosing a copy of Dillon's last annual report.

Local 7, United Food and Commercial Workers Union, represents a multi-store bargaining unit of King Soopers employees.

Attachment #2a

RELATIONSHIP BETWEEN KING SOOPERS AND THE KROGER CO.

1. Kroger Purchase of Dillon Companies, Inc.

In January of 1983, Dillon Companies, Inc. merged with a subsidiary of The Kroger Co. of Cincinnati, Ohio. Of course, King Soopers as a division of Dillon was included.

Kroger is the nation's second largest grocery retailer, operating in more than twenty states, mostly in the Midwest, Southeast and Texas.

Kroger also owns SupeRx Drugs Corporation and Hook Drugs, Inc., as wholly-owned subsidiaries. SupeRx operates retail drug stores in over twenty states and Hook operates retail drug stores mostly in Indiana.

2. Dillon's Maintenance of Autonomy

Dillon, itself, operates various retail stores and support facilities, such as warehouses and food manufacturing plants, in over ten states in the South and West.

Dillon was started in Hutchinson, Kansas and continues to be headquartered there. Indeed, there is no plan ever to integrate Dillon management into Kroger.

Dillon divisions are totally responsible for their own real estate, personnel and labor relations, accounting, payroll, marketing, security, insurance and all other aspects of the day-to-day management of its stores.

The Chief Executive officer of Dillon is Joseph A. Pichler, President. He is not and has never been an employee of Kroger, and he serves as a Director of Kroger without compensation. Chairman of the Board Ray E. Dillon, Jr. and Vice Chairman Richard W. Dillon, likewise, have never been Kroger employees, and similarly serve as Kroger Directors.

3. King Sooper's Autonomy

King Soopers has its own senior management. Jim D. Baldwin is the President, William C. Boggess, the Executive Vice President and Chief Operating Officer, Jan S. Loutzenhiser, the Executive Vice President of Manufacturing and Warehousing, Edward P. Behlke, the Vice President of Industrial Relations, Thomas P. Hosman, the Vice President of Finance, and Russell J. Dispense, Jr., Vice President of Retail Operations.

BACKGROUND ON THE COMPLAINANT'S ALLEGATIONS

Complainant attached a May 1, 1985 letter of King Soopers to its complaint. Complainant demanded that King Soopers offer a method of payroll deduction for it to solicit and collect political contributions from its members who were employees of King Soopers. King Soopers responded, in short, that it had no such system.

Attachment #2b

R 6 0 4 0 5 1 5 0 2 3

After some time, Complainant again raised the issue, pointing out that one or two Kroger divisions in Texas have payroll deductions available for management employees to make political contributions. Apparently, Complainant is unaware of any other Kroger operating unit offering such and so is King Soopers.

More importantly, no such method is offered anywhere within King Soopers or even within Dillon. Accordingly, King Soopers refuses to create such a method merely for Complainant, merely because an operating unit of the parent company has done so.

CONCLUSION

All that the Federal Election Campaign Act at Section 441b(5) and (6) requires is that a labor organization be put on an equal footing with any corporation whose employees its represents when soliciting political contributions. Indeed, the purpose of the law, in general, was to balance power among the electorate during election campaigns.

Accordingly, that is all that subsection 5 requires. It states that a corporation need offer to its labor organizations only that which it offers to its stockholders and executive or administrative personnel. It states:

> 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. [emphasis added herein]

Of course, King Soopers offers no such method. But, even if you apply subsection 5 to Kroger and its subsidiaries as a single unit, still no such method is offered. That is, Kroger offers such a method only to a limited and discrete unit of executives, so only the corresponding labor organization need be offered the same.

To effectuate this notion of balance, it seems that subsection 6 was added. It specifically recognizes that different methods or no methods may be offered by various subsidiaries, branches, divisions, etc. It states:

> 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. [emphasis added herein]

Attachment #2c

8 6 0 4 0 5 1 5 0 2 4

As you can see, subsection 6 like subsection 5 requires only that an already created method of solicitation and collection be offered. And, it requires only that "such method" be offered to a labor organization.

Here, the only "such method" available is in place, in a different corporation, with a different labor organization, in a different state, in a different operating structure and - probably most importantly - through a different computerized payroll system. The inapplicability of subsection 5 and 6 is, perhaps, most compellingly shown by this last point. If King Soopers were to offer "such method" to Complainant, it would most likely have to restructure its payroll system. This is not what the Act contemplated in offering "such method."

Clearly, the complaint in this matter should be dismissed without further proceedings.

Respectfully submitted,

KING SOOPERS, INC.

Edward P. Behlke
Vice President of Industrial Relations

EPB/er

8 6 0 4 0 5 1 5 0 2 5

Attachment #2d

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

LOCAL 7, UFCW,
COMPLAINANT

and

THE KROGER CO.,
RESPONDENT

MUR 2024

ANSWER OF RESPONDENT

Now comes The Kroger Co., one of three Respondents in this matter, and answers as follows:

1. The Kroger Co. admits the allegations of paragraph I.

2. The Kroger Co. admits the allegations of paragraph II, except that its proper name is "The Kroger Co.", "Dillon Companies, Inc." is its proper name, and King Soopers, Inc. is a division of Dillon Companies, Inc.

Attachment #3a

R 6 0 4 0 5 1 5 0 2 6

3. The Kroger Co. denies the allegations of paragraph III.

4. The Kroger Co. admits the allegations of paragraphs IV and V.

Thomas J. Hattersley

THOMAS J. HATTERSLEY
ATTORNEY
THE KROGER CO.
1014 VINE STREET
CINCINNATI, OHIO 45201
(513) 762-4428

8604061502 7

Attachment #3b

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

LOCAL 7, UFCW,
COMPLAINANT

and

THE KROGER CO.,
RESPONDENT

MUR 2024

8 6 0 4 0 5 1 5 0 2 8

MEMORANDUM IN SUPPORT OF THE KROGER CO.'S ANSWER

I. INTRODUCTION

This is a Matter Under Review with the Federal Election Commission. Respondent, The Kroger Co., received the Complaint in this matter on July 12, 1985.

The Kroger Co. operates a national retail grocery chain and owns other retail grocery chains and retail drug chains.

Complainant is a labor organization which represents some employees of a retail grocery chain which Kroger owns, King Soopers, division of Dillon Companies, Inc.

Attachment #3c

Complainant contends that, under the Federal Elections Campaign Act, 2 U.S.C., 441b(6), King Soopers is required to create a method of solicitation for the payroll deduction of political contributions for its members, since at least one operating unit of Kroger has such a system for its executive employees.

Regardless of whether Kroger does utilize payroll deduction for executive employees in some Kroger operating units, King Soopers has refused to set up such a method because of the complete separateness of King Soopers from Kroger, both in day-to-day operation and in labor matters. Also, Complainant union does not represent any Kroger employees.

R 6 0 4 0 5 1 5 0 2 9

Attachment #3d

II. FACTS

A. Relationship Between King Soopers and Kroger

King Soopers is an operating division of Dillon Companies, Inc. Dillon merged with a subsidiary of Kroger in 1983.

Dillon, like two other Kroger subsidiaries, SupeRx Drugs Corporation and Hooks Drugs, Inc., is operated autonomously. Attached is an affidavit from Kroger's Assistant Corporate Secretary on this point. Most important in regard to this matter, each Dillon Company completely controls its labor relations, personnel, and payroll.

B. Kroger's Use of Payroll Deduction

Kroger operates over a dozen retail operating units throughout the U.S., each run by its own Vice President of Retail Operations. Some of those units utilize payroll deductions for management political action committees.

R604051503 0

Attachment #3e

III. ARGUMENT

A. Summary of Argument

While in other matters the Commission has treated affiliated corporations as one for purposes of Section 441b(6)'s requirement that labor organizations be offered solicitation and collection methods used by management political action committees, in no other matter before the Commission has there been the distinct autonomy as in this matter and application of those principles here works a hardship and creates a result not intended by the Act.

B. Prior Commission Action Is Inapplicable

There are two prior Commission actions which, on first reading, support the Complaint herein, but which, upon analysis, are shown to be clearly inapplicable. In both of these, one or more affiliated corporations offered payroll deduction as a method of collecting contributions to management political action committees. A question in each was whether the offering of "such method" by one of a group of corporations required all of the corporations in the group to offer such method of collection to their labor organizations.

In Advisory Opinion 1982-45, the Commission held that the closely affiliated Salt River Project Agricultural Improvement & Power District and the Salt River Valley Water Users' Association could

8604061503 1

Attachment #3f

each, by offering payroll deductions to its management employees, create an obligation of the other to offer payroll deductions to its labor organization.

However, the District and the Association were, in actuality, one operation. The District was created merely as a financing arm of the Association. And, the Commission's framing of the questions in its Advisory Opinion indicates that there was one union for both entities.

This degree of interrelation has long been important in the law in issues of whether one entity's action can bind another. It is simply an analysis of agency status. A principal is bound by its agent's actions, but requisite control must be shown to establish agency. Salt River District was an agent of Salt River Association, and vice versa. This is not so with Kroger and King Soopers.

This same issue of interrelation is raised in the second matter supporting the Complaint. In MURs 947 and 994 the Commission conciliated the refusal of AT&T to offer payroll deduction in some of its units when such was offered in others and in the parent. The interrelation of AT&T units - before the well-known breakup - was much greater than Kroger's and King Soopers's mere common ownership.

First, like Salt River District and Association, AT&T had one union for itself and all of its units. King Soopers's complaining

Attachment #39

8 6 0 4 0 6 1 5 0 3 2

union local does not represent any Kroger employees or, indeed, any other Dillon employees.

Second, like Salt River District and Association, AT&T operated as a monolith. AT&T was one system, recognized throughout the country. In contrast, Kroger and King Soopers operate separately, in different geographical areas, with different headquarters and with different labor organizations.

Thus, this is a clear case for recognition of the Statute's requirement that only "such method" which any corporation uses be offered. Section (6), 2 U.S.C. 441b, requires that when a corporation uses a payroll solicitation and deduction method for its management employees that only "such method" be offered to labor organizations.

That means, at most, that in this matter Complainant can solicit the organized employees for political contributions in Kroger units with "such method." The statute does not require another employer to create "such method" for its own employees.

And, contrary to General Counsel's assertion in his Brief in MUR 947 (at p. 10 et seq.), such an interpretation is not illogical. It would maintain parallel rights, which is exactly what is intended by the Act. The issues affecting labor organizations in one area of the country in federal elections are normally identical to those in other areas of the country. Labor issues tend to be

8604051503 3

Attachment #3 h

national in scope. Accordingly, labor organizations waged national campaigns against several Senators and Congressmen in the recent past.

Because of the clear separation between Kroger and King Soopers and their labor organizations, all that the Commission can require be offered is the existing "such method" in Kroger. And, upon proper request labor organizations can use "such method". But, the Statute does not require that any "such method" be created by another employer, namely, King Soopers.

C. Analogous Principles of Labor Law Compel A Finding of No Violation

The Federal Election Campaign Act, in part, attempts to balance the power of corporations and labor organization in supporting candidates for federal office. Similarly, the National Labor Relation Act, as amended, attempts to balance the power of employers and unions in collective bargaining.

Their decisions, effecting similar purposes, should then be mutually instructive. Accordingly, recognition by the National Labor Relations Board of the separateness of jointly owned, but separately operated, employers should be heeded by the Commission here.

The Board has long recognized that commonly owned employers may still be separate under its Act, for purposes, for example, of

Attachment #3;

8604061503 4

picketing. [See generally, Charles J. Morris, The Developing Labor Law, pps. 1170-1174]. With the degree of separateness between Kroger and King Soopers, particularly considering the separate labor relations, personnel and payroll functions, the Labor Board would easily find separate employer status.

Balance compels the same result here. Accordingly, what Kroger does with its employees who have no management authority over King Soopers employees should have no affect on King Soopers's personnel and payroll practices.

R 6 0 4 0 6 1 5 0 3 5

Attachment #3j

IV. CONCLUSION

The overriding intent of the Act is to the balance power of corporations' managers and labor unions' members to influence federal elections. Thus, it makes sense to simply give the parties parallel rights.

The properly narrow reading of Section 441b(6) does just that. It requires the providing to a labor organization of only "such method" as exists. A decision requiring King Soopers to set up a payroll deduction system would be unjust and not intended by the Act.

The Complaint in this matter should be dismissed.

Thomas J. Hattersley

THOMAS J. HATTERSLEY
ATTORNEY
THE KROGER CO.
1014 VINE STREET
CINCINNATI, OHIO 45201
(513) 762-4428

8 6 0 4 0 5 1 5 0 3 6

Attachment #3K

AFFIDAVIT

I, Arthur L. Ferguson, Assistant Secretary of The Kroger Co., state that the following is true:

1. The Kroger Co. and Dillon Companies, Inc. are separate corporations;

2. The Kroger Co. was incorporated in Ohio in 1902.

3. The corporate offices of The Kroger Co. have been continuously in Cincinnati, Ohio;

4. Dillon Companies, Inc. was incorporated in Kansas in 1921 and merged with a subsidiary of The Kroger Co. in 1983;

5. The corporate offices of Dillon Companies, Inc. continue to be in Hutchinson, Kansas;

6. The management of Dillon Companies, Inc. is conducted by its President, Joseph A. Pichler, and its other senior officers, none of whom are employed by The Kroger Co.; There are some common Board members;

7. Dillon Companies, Inc. is managed separately from The Kroger Co. and exclusively conducts its own retailing, store management, marketing, procurement, advertising, real estate, financial, accounting, pharmaceutical, personnel and employee relations, security, risk management, and all other aspects of its day-to-day affairs; and

8. The Kroger Co. owns other corporations engaged in retailing which operate with the same independence, to wit: SupeRx Drugs Corporation of Michigan and Hook Drugs, Inc. of Indiana.

8 6 0 4 0 6 1 5 0 3 7

Arthur L. Ferguson — 7-23-85

ARTHUR L. FERGUSON — Date

Sworn to and subscribed before me this 23 day of July, 1985.

Kay Roush — 7-23-85

Notary Public — Date

KAY ROUSH
Notary Public, State of Ohio
My Commission Expires Sept. 16, 1988

TJH/are
0718-5

Attachment #31

RECEIVED AT THE FEC
HAND DELIVERED
85 JUL 25 P12:24
GCC#8110

LAW DEPARTMENT • THE KROGER CO. • 1014 VINE STREET • CINCINNATI, OHIO 45201

WRITER'S DIRECT DIAL NUMBER
513-762-4427

GEORGE A. LEONARD
VICE PRESIDENT-SECRETARY
AND GENERAL COUNSEL

THOMAS E. MURPHY
VICE PRESIDENT-
SENIOR COUNSEL

ARTHUR L. FERGUSON
SENIOR COUNSEL

JAMES S. JOHNS
THOMAS P. O'BRIEN, JR.
JAMES J. KELLY
JOHN M. FLYNN
NORMA SKOOG
WARREN H. WOLTER
LYNNE GELLENBECK
THOMAS J. HATTERSLEY
PAUL W. HEERMAN
FREDERICK W. KINDEL
BRUCE M. [illegible]
DONALD K. [illegible]

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
1985 JUL 25 P12:03

July 23, 1985

Ms. Joyce Cullinan
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
7th Floor
Washington, D.C. 20463

Re: Local 7, UFCW v. Kroger, et al.
Complaint No. MUR 2024

Dear Ms. Cullinan:

I am enclosing the Answer of The Kroger Co., Memorandum in Support of The Kroger Co.'s Answer, and an Affidavit in the above-referenced matter.

Very truly yours,

Tom Hattersley

THOMAS J. HATTERSLEY

TJH/va
0723-2

Enclosures

R 6 0 4 0 4 1 5 0 3 8

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF
****
LOCAL 7, UFCW, *
COMPLAINANT *
* MUR 2024
and *
*
THE KROGER CO., *
RESPONDENT *
****

8604061503 9

ANSWER OF RESPONDENT

Now comes The Kroger Co., one of three Respondents in this matter, and answers as follows:

1. The Kroger Co. admits the allegations of paragraph I.

2. The Kroger Co. admits the allegations of paragraph II, except that its proper name is "The Kroger Co.", "Dillon Companies, Inc." is its proper name, and King Soopers, Inc. is a division of Dillon Companies, Inc.

3. The Kroger Co. denies the allegations of paragraph III.

4. The Kroger Co. admits the allegations of paragraphs IV and V.

Thomas J. Hattersley

THOMAS J. HATTERSLEY
ATTORNEY
THE KROGER CO.
1014 VINE STREET
CINCINNATI, OHIO 45201
(513) 762-4428

R604061 5040

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

LOCAL 7, UFCW,
COMPLAINANT

and

THE KROGER CO.,
RESPONDENT

MUR 2024

8604051504 1

MEMORANDUM IN SUPPORT OF THE KROGER CO.'S ANSWER

I. INTRODUCTION

This is a Matter Under Review with the Federal Election Commission. Respondent, The Kroger Co., received the Complaint in this matter on July 12, 1985.

The Kroger Co. operates a national retail grocery chain and owns other retail grocery chains and retail drug chains.

Complainant is a labor organization which represents some employees of a retail grocery chain which Kroger owns, King Soopers, division of Dillon Companies, Inc.

Complainant contends that, under the Federal Elections Campaign Act, 2 U.S.C., 441b(6), King Soopers is required to create a method of solicitation for the payroll deduction of political contributions for its members, since at least one operating unit of Kroger has such a system for its executive employees.

Regardless of whether Kroger does utilize payroll deduction for executive employees in some Kroger operating units, King Soopers has refused to set up such a method because of the complete separateness of King Soopers from Kroger, both in day-to-day operation and in labor matters. Also, Complainant union does not represent any Kroger employees.

III. ARGUMENT

A. Summary of Argument

While in other matters the Commission has treated affiliated corporations as one for purposes of Section 441b(6)'s requirement that labor organizations be offered solicitation and collection methods used by management political action committees, in no other matter before the Commission has there been the distinct autonomy as in this matter and application of those principles here works a hardship and creates a result not intended by the Act.

B. Prior Commission Action Is Inapplicable

There are two prior Commission actions which, on first reading, support the Complaint herein, but which, upon analysis, are shown to be clearly inapplicable. In both of these, one or more affiliated corporations offered payroll deduction as a method of collecting contributions to management political action committees. A question in each was whether the offering of "such method" by one of a group of corporations required all of the corporations in the group to offer such method of collection to their labor organizations.

In Advisory Opinion 1982-45, the Commission held that the closely affiliated Salt River Project Agricultural Improvement & Power District and the Salt River Valley Water Users' Association could

8 6 0 4 0 6 1 5 0 4 3

each, by offering payroll deductions to its management employees, create an obligation of the other to offer payroll deductions to its labor organization.

However, the District and the Association were, in actuality, one operation. The District was created merely as a financing arm of the Association. And, the Commission's framing of the questions in its Advisory Opinion indicates that there was one union for both entities.

This degree of interrelation has long been important in the law in issues of whether one entity's action can bind another. It is simply an analysis of agency status. A principal is bound by its agent's actions, but requisite control must be shown to establish agency. Salt River District was an agent of Salt River Association, and vice versa. This is not so with Kroger and King Soopers.

This same issue of interrelation is raised in the second matter supporting the Complaint. In MURs 947 and 994 the Commission conciliated the refusal of AT&T to offer payroll deduction in some of its units when such was offered in others and in the parent. The interrelation of AT&T units - before the well-known breakup - was much greater than Kroger's and King Soopers's mere common ownership.

First, like Salt River District and Association, AT&T had one union for itself and all of its units. King Soopers's complaining

9604051504 4

union local does not represent any Kroger employees or, indeed, any other Dillon employees.

Second, like Salt River District and Association, AT&T operated as a monolith. AT&T was one system, recognized throughout the country. In contrast, Kroger and King Soopers operate separately, in different geographical areas, with different headquarters and with different labor organizations.

Thus, this is a clear case for recognition of the Statute's requirement that only "such method" which any corporation uses be offered. Section (6), 2 U.S.C. 441b, requires that when a corporation uses a payroll solicitation and deduction method for its management employees that only "such method" be offered to labor organizations.

That means, at most, that in this matter Complainant can solicit the organized employees for political contributions in Kroger units with "such method." The statute does not require another employer to create "such method" for its own employees.

And, contrary to General Counsel's assertion in his Brief in MUR 947 (at p. 10 et seq.), such an interpretation is not illogical. It would maintain parallel rights, which is exactly what is intended by the Act. The issues affecting labor organizations in one area of the country in federal elections are normally identical to those in other areas of the country. Labor issues tend to be

8 6 0 4 0 5 1 5 0 4 5

national in scope. Accordingly, labor organizations waged national campaigns against several Senators and Congressmen in the recent past.

Because of the clear separation between Kroger and King Soopers and their labor organizations, all that the Commission can require be offered is the existing "such method" in Kroger. And, upon proper request labor organizations can use "such method". But, the Statute does not require that any "such method" be created by another employer, namely, King Soopers.

C. Analogous Principles of Labor Law Compel A Finding of No Violation

The Federal Election Campaign Act, in part, attempts to balance the power of corporations and labor organization in supporting candidates for federal office. Similarly, the National Labor Relation Act, as amended, attempts to balance the power of employers and unions in collective bargaining.

Their decisions, effecting similar purposes, should then be mutually instructive. Accordingly, recognition by the National Labor Relations Board of the separateness of jointly owned, but separately operated, employers should be heeded by the Commission here.

The Board has long recognized that commonly owned employers may still be separate under its Act, for purposes, for example, of

86040615046

picketing. [See generally, Charles J. Morris, The Developing Labor Law, pps. 1170-1174]. With the degree of separateness between Kroger and King Soopers, particularly considering the separate labor relations, personnel and payroll functions, the Labor Board would easily find separate employer status.

Balance compels the same result here. Accordingly, what Kroger does with its employees who have no management authority over King Soopers employees should have no affect on King Soopers's personnel and payroll practices.

AFFIDAVIT

I, Arthur L. Ferguson, Assistant Secretary of The Kroger Co., state that the following is true:

1. The Kroger Co. and Dillon Companies, Inc. are separate corporations;

2. The Kroger Co. was incorporated in Ohio in 1902.

3. The corporate offices of The Kroger Co. have been continuously in Cincinnati, Ohio;

4. Dillon Companies, Inc. was incorporated in Kansas in 1921 and merged with a subsidiary of The Kroger Co. in 1983;

5. The corporate offices of Dillon Companies, Inc. continue to be in Hutchinson, Kansas;

6. The management of Dillon Companies, Inc. is conducted by its President, Joseph A. Pichler, and its other senior officers, none of whom are employed by The Kroger Co.; There are some common Board members;

7. Dillon Companies, Inc. is managed separately from The Kroger Co. and exclusively conducts its own retailing, store management, marketing, procurement, advertising, real estate, financial, accounting, pharmaceutical, personnel and employee relations, security, risk management, and all other aspects of its day-to-day affairs; and

8. The Kroger Co. owns other corporations engaged in retailing which operate with the same independence, to wit: SupeRx Drugs Corporation of Michigan and Hook Drugs, Inc. of Indiana.

Arthur L. Ferguson — 7-23-85
ARTHUR L. FERGUSON — Date

Sworn to and subscribed before me this 23 day of July, 1985.

Kay Roush — 7-23-85
Notary Public — Date

KAY ROUSH
Notary Public, State of Ohio
My Commission Expires Sept. 16, 1988

TJH/are
0718-5

8604061 5048

KING Soopers

MAILING ADDRESS: P.O. BOX 5567, DENVER, COLORADO 80217
GENERAL OFFICE AND WAREHOUSE 65 TEJON STREET, DENVER, COLORADO 80223 • 303/778-3100

RECEIVED AT THE FEC
HAND DELIVERED
85 JUL 23 AM 11:10
GCC #2089

July 19, 1985

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
85 JUL 23 P 3:28

Ms. Joyce Cullinan
Office of General Counsel
FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

RE: Local 7, UFCW vs. Kroger, et al.
Complaint No. MUR 2024

8604061504 9

Dear Ms. Cullinan:

The following is King Soopers, Inc.'s response to the above-referenced complaint.

INTRODUCTION

The complaint in this matter was received by Respondent, King Soopers, Inc., a division of Dillon Companies, on July 12, 1985. In it, Local 7 alleges that King Soopers violated the Federal Election Campaign Act, 2 USC Sec 441b(6), by refusing, by letter dated May 1, 1985, to offer any method for making voluntary political contributions by Local 7's members.

It is true that King Soopers refuses to offer any such method. However, as you will see from the following analysis, the Act was not violated, since King Soopers utilizes no such method for its stockholders or for any of its executive or administrative employees.

BACKGROUND OF KING SOOPERS

King Soopers is a division of Dillon Companies, Inc. It was a separate corporation until purchased by Dillon many years ago. King Soopers operates approximately sixty-seven retail grocery stores, exclusively in Colorado, and warehouse and manufacturing facilities in Denver, Colorado. I am enclosing a copy of Dillon's last annual report.

Local 7, United Food and Commercial Workers Union, represents a multi-store bargaining unit of King Soopers employees.

RELATIONSHIP BETWEEN KING SOOPERS AND THE KROGER CO.

1. Kroger Purchase of Dillon Companies, Inc.

In January of 1983, Dillon Companies, Inc. merged with a subsidiary of The Kroger Co. of Cincinnati, Ohio. Of course, King Soopers as a division of Dillon was included.

Kroger is the nation's second largest grocery retailer, operating in more than twenty states, mostly in the Midwest, Southeast and Texas.

Kroger also owns SupeRx Drugs Corporation and Hook Drugs, Inc., as wholly-owned subsidiaries. SupeRx operates retail drug stores in over twenty states and Hook operates retail drug stores mostly in Indiana.

2. Dillon's Maintenance of Autonomy

Dillon, itself, operates various retail stores and support facilities, such as warehouses and food manufacturing plants, in over ten states in the South and West.

Dillon was started in Hutchinson, Kansas and continues to be headquartered there. Indeed, there is no plan ever to integrate Dillon management into Kroger.

Dillon divisions are totally responsible for their own real estate, personnel and labor relations, accounting, payroll, marketing, security, insurance and all other aspects of the day-to-day management of its stores.

The Chief Executive officer of Dillon is Joseph A. Pichler, President. He is not and has never been an employee of Kroger, and he serves as a Director of Kroger without compensation. Chairman of the Board Ray E. Dillon, Jr. and Vice Chairman Richard W. Dillon, likewise, have never been Kroger employees, and similarly serve as Kroger Directors.

3. King Sooper's Autonomy

King Soopers has its own senior management. Jim D. Baldwin is the President, William C. Boggess, the Executive Vice President and Chief Operating Officer, Jan S. Loutzenhiser, the Executive Vice President of Manufacturing and Warehousing, Edward P. Behlke, the Vice President of Industrial Relations, Thomas P. Hosman, the Vice President of Finance, and Russell J. Dispense, Jr., Vice President of Retail Operations.

BACKGROUND ON THE COMPLAINANT'S ALLEGATIONS

Complainant attached a May 1, 1985 letter of King Soopers to its complaint. Complainant demanded that King Soopers offer a method of payroll deduction for it to solicit and collect political contributions from its members who were employees of King Soopers. King Soopers responded, in short, that it had no such system.

8604061505 0

After some time, Complainant again raised the issue, pointing out that one or two Kroger divisions in Texas have payroll deductions available for management employees to make political contributions. Apparently, Complainant is unaware of any other Kroger operating unit offering such and so is King Soopers.

More importantly, no such method is offered anywhere within King Soopers or even within Dillon. Accordingly, King Soopers refuses to create such a method merely for Complainant, merely because an operating unit of the parent company has done so.

CONCLUSION

All that the Federal Election Campaign Act at Section 441b(5) and (6) requires is that a labor organization be put on an equal footing with any corporation whose employees its represents when soliciting political contributions. Indeed, the purpose of the law, in general, was to balance power among the electorate during election campaigns.

Accordingly, that is all that subsection 5 requires. It states that a corporation need offer to its labor organizations only that which it offers to its stockholders and executive or administrative personnel. It states:

> Notwithstanding any other law, <u>any method</u> 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. [emphasis added herein]

Of course, King Soopers offers no such method. But, even if you apply subsection 5 to Kroger and its subsidiaries as a single unit, still no such method is offered. That is, Kroger offers such a method only to a limited and discrete unit of executives, so only the corresponding labor organization need be offered the same.

To effectuate this notion of balance, it seems that subsection 6 was added. It specifically recognizes that different methods or no methods may be offered by various subsidiaries, branches, divisions, etc. It states:

> 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 <u>make available such method</u>, 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. [emphasis added herein]

8604061505 1

As you can see, subsection 6 like subsection 5 requires only that an already created method of solicitation and collection be offered. And, it requires only that "such method" be offered to a labor organization.

Here, the only "such method" available is in place, in a different corporation, with a different labor organization, in a different state, in a different operating structure and - probably most importantly - through a different computerized payroll system. The inapplicability of subsection 5 and 6 is, perhaps, most compellingly shown by this last point. If King Soopers were to offer "such method" to Complainant, it would most likely have to restructure its payroll system. This is not what the Act contemplated in offering "such method."

Clearly, the complaint in this matter should be dismissed without further proceedings.

Respectfully submitted,

KING SOOPERS, INC.

Edward P. Behlke
Vice President of Industrial Relations

EPB/er

R 6 0 4 0 5 1 5 0 5 2

GCC #50555
RECEIVED AT THE FEC
Cullman
85 JUL 19 A8:41

KING Soopers

MAILING ADDRESS: P.O. BOX 5567, DENVER, COLORADO 80217
GENERAL OFFICE AND WAREHOUSE 65 TEJON STREET, DENVER, COLORADO 80223 • 303/778-3100

85 JUL 19 A11:15
GENERAL COUNSEL

July 12, 1985

Kenneth A. Gross, Esq.
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: Complaint #MUR 2024

Dear Mr. Gross:

We received your letter dated June 19, 1985 on July 11, 1985. You can expect a complete response to this complaint within two (2) weeks of that date.

Sincerely,

KING SOOPERS, INC.

Edward P. Behlke
Vice President of Industrial Relations

8604051053

PER/85.196/4

A DILLON COMPANY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 19, 1985

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

King Soopers
Edward P. Behlke, Vice President
65 Tejon Street
Denver, Colorado 80223

Dear Mr. Behlke:

This letter is to notify you that on June 7, 1985 the Federal Election Commission received a complaint which alleges that King Soopers may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2024. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against King Soopers in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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.

This matter will remain confidential in accordance with 2 U.S.C. §437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

8604061505 4

If you have any questions, please contact Joyce Cullinan, the staff member assigned to this matter at (202) 523-4143. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

8604061505 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 19, 1985

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dillon Companies, Inc.
700 E. 30th Avenue
Hutchinson, Kansas 67501

Dear Sir or Madame:

This letter is to notify you that on June 7, 1985 the Federal Election Commission received a complaint which alleges that the Dillon Companies, Inc. may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2024. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against the Dillon Companies, Inc. in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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.

This matter will remain confidential in accordance with 2 U.S.C. 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

8604061505 6

If you have any questions, please contact Joyce Cullinan, the staff member assigned to this matter at (202) 523-4143. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

8604061505 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 19, 1985

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Kroger Company
1014 Vine Street
Cincinnati, Ohio 45201

Dear Sir or Madame:

This letter is to notify you that on June 7, 1985 the Federal Election Commission received a complaint which alleges that The Kroger Company may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2024. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against The Kroger Company in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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.

This matter will remain confidential in accordance with 2 U.S.C. 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

8604061505 8

If you have any questions, please contact Joyce Cullinan, the staff member assigned to this matter at (202) 523-4143. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

R 6 0 4 0 5 1 5 0 5 9

RECEIVED AT THE FEC
GCC#7120
85 JUN 7 AM: 09

BEFORE THE FEDERAL ELECTION COMMISSION OF THE UNITED STATES

Local 7, United Food and Commercial Workers Union

Complainant

v. Docket No. _____

Krogers, Inc.

Respondent

Dillon Companies

Respondent

King Soopers, Inc.

Respondent

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
85 JUN 7 P2:13

COMPLAINT

Pursuant to 2 USC §437g and 11 CFR §111.4, Complainant alleges:

I.

Complainant, Local 7, United Food and Commercial Workers Union, is a resident of UFCW Building, Suite 400, 7760 W. 38th Avenue, Wheat Ridge, Colorado 80033, and may be reached at the following telephone number: (303) 425-0897.

II.

Respondent, Krogers, Inc., is a resident of Ohio, and is a corporate enterprise engaged in interstate commerce.

Respondent, Dillon Companies, is a resident of Kansas, and is a subsidiary of Krogers, Inc.

Respondent, King Soopers, Inc., is a resident of Colorado, and is a subsidiary of Krogers, Inc.

III.

On May 1, 1985, Respondents violated 2 USC §441b(6), in that King Soopers, Inc., upon written request of Local 7, United Food and Commercial Workers Union, improperly refused to make available to the Union the method of soliciting

8604051506 0

voluntary campaign contributions utilized by its parent corporation, Krogers, Inc.

IV.

Complainant is not a candidate for political office, and is not filing the complaint on behalf of or at the request or suggestion of any candidate.

V.

In support of the foregoing allegations, Complainant presents and files herewith the following documents: King Soopers' refusal of Union demand for political contribution method.

Ernest L. Duran, Jr.

Ernest L. Duran, Jr.
Attorney For Local 7, UFCW
7760 W. 38th Ave., Suite 400
Wheat Ridge, CO 80033

STATE OF COLORADO)
) ss
COUNTY OF JEFFERSON)

Ernest L. Duran, Jr., first being duly sworn, on oath deposes and says: That he is the Complainant; that he has read the foregoing complaint and knows the contents thereof; and that the matters and things therein stated are true of his own knowledge, except those matters stated on the information or belief, and as to them he believes it to be true.

Ernest L. Duran, Jr.

Ernest L. Duran, Jr.

Subscribed and sworn to before me this 3rd day of June, 1985.

Ellen L Haws-Sayre

Notary Public

8604061 5061

EDWARD P. BEHLKE, VICE PRESIDENT, INDUSTRIAL RELATIONS

May 1, 1985

Reviewed by CEM MAY 2 1985

Copies to

File

Return to

Mr. Charles E. Mercer
President
UFCW LOCAL NO. 7
7760 West 38th Avenue
Wheat Ridge, CO 80033

Re: Political Check Off

Dear Charlie:

I have looked into your question about solicitation of political contributions from union members.

I find that King Soopers does not utilize any method to solicit or facilitate political contributions from its managers. Accordingly, there is none to offer you.

In your recent letter, you mention the practice of Kroger in two cities. Kroger's utilization of any method for political contributions does not affect King Soopers. King Soopers operates autonomously and is completely separate from Kroger except for common ownership.

The statute on which you rely requires that a labor organization be provided rights parallel to the practice of its corporation, subsidiary, branch, division, or affiliate. This subsidiary does not utilize any such method and therefore is not required to offer any.

Very truly yours,

Edward P. Behlke
Vice President of Industrial Relations

EPB/er

cc: Ernest L. Duran, Jr.

PER/85.121/2

GENERAL OFFICE AND WAREHOUSE • 66 TEJON STREET • DENVER, COLORADO 80223 • (303) 778-3100

R 6 0 4 0 6 1 5 0 6 2

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2029

Date Filmed 10/29/86 Camera No. --- 2

Cameraman AS

86040615063

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2/13/87

THE FOLLOWING MATERIAL IS BEING ADDED TO THE PUBLIC FILE OF CLOSED MUR 2024.

87110642125

GCC#2045

RECEIVED AT THE FEC

86 NOV 20 A9:10

MUR2024

Chartered by United Food & Commercial Workers International Union AFL-CIO
UFCW Building, Suite 400, 7760 West 38th Avenue, Wheat Ridge, CO 80033
Phone (303) 425-0897 • Interstate Toll Free 1-800-332-7735 • Colorado Toll Free 1-800-854-7654

CHARLES E. MERCER
President
DWAYNE A. ADKINS
Secretary-Treasurer

Affiliated with
Colorado Food & Beverage Trades Council
Colorado AFL-CIO
Denver Area Labor Federation
Pueblo Labor Council
Colorado Springs Labor Council
Boulder Labor Council
Northern Colorado Central Labor Council
Grand Junction Trade & Labor Assembly
Casper Trades & Labor Assembly
Cheyenne Central Labor Council
Wyoming AFL-CIO

November 17, 1986

86 NOV 20 A10:04

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Mr. Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: UFCW Local 7 v. Krogers, Inc.; Dillon Companies; King Soopers, Inc.

Dear Mr. Gross:

As the above-referenced matter has been resolved, I am hereby requesting any and all decisions reached in this matter. The local newspapers reported that the Commission found the Company to be in violation of the Act and that it was fined $250.00. Thus, would you please submit any documentation concerning the same.

Thank you for your attention to this matter.

Sincerely,

Ernest L. Duran, Jr.

Ernest L. Duran, Jr.
General Counsel

ELD:elhs

ufcw #7
afl-cio

UFCW BUILDING Suite 400
7760 WEST 38th AVENUE
WHEAT RIDGE, COLORADO 80033-9982

Mr. Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

AUG 10 A9:10

pln

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 26, 1986

Ernest L. Duran, Jr.
General Counsel
UFCW Local 7
Suite 400
7760 West 38th Avenue
Wheat Ridge, CO 80033

RE: MUR 2024

Dear Mr. Duran:

This is in reference to your letter dated November 17, 1986 requesting documentation in the above-captioned matter.

After conducting an investigation in this matter the Commission determined there was probable cause to believe that the Kroger Company violated 2 U.S.C. § 441b(b)(6), a provision of the Federal Election Campaign Act of 1971, as amended. On October 17, 1986, a conciliation agreement signed by the respondent was accepted by the Commission, thereby concluding the matter. A copy of this agreement is enclosed for your information.

The file number in this matter is MUR 2024. If you have any questions, please contact Eric Kleinfeld, the attorney assigned to this matter, at (202) 376-5690. If you desire any further documents, please contact our Public Records Office at (202) 376-3140.

Sincerely,

Charles N. Steele
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

LOCAL 7
UFCW

Chartered by United Food & Commercial Workers International Union AFL-CIO
UFCW Building, Suite 400, 7760 West 38th Avenue, Wheat Ridge, CO 80033
Phone (303) 425-0897 • Interstate Toll Free 1-800-332-7735 • Colorado Toll Free 1-800-854-7054

RECEIVED AT THE FEC
GCC#1724
86 OCT 10 P 1:38

October 7, 1986

CHARLES E. MERCER
President
DWAYNE A. ADKINS
Secretary-Treasurer

Affiliated with:
Colorado Food & Beverage Trades Council
Colorado AFL-CIO
Denver Area Labor Federation
Pueblo Labor Council
Colorado Springs Labor Council
Boulder Labor Council
Northern Colorado Central Labor Council
Grand Junction Trade & Labor Assembly
Casper Trades & Labor Assembly
Cheyenne Central Labor Council
Wyoming AFL-CIO

Mr. Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: UFCW Local 7 v. Krogers, Inc.; Dillon Companies; King Soopers, Inc.

Dear Mr. Gross:

The Union is hereby withdrawing the Complaint filed in the above-referenced matter. The parties have agreed to a method of political checkoff.

Sincerely,

Ernest L. Duran, Jr.
General Counsel

ELD:elhs

ufcw #7
afl-cio

cc: Charles E. Mercer
Edward Behlke

UFCW BUILDING Suite 400
7760 WEST 38th AVENUE
WHEAT RIDGE, COLORADO 80033-9982

Mr. Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463