



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 913

Date Filmed 4/30/79 Camera No. --- 2

Cameraman JPC

7904012a 734

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 913
National Education Association)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, certify that on March 29, 1979, the Commission, meeting in an executive session at which a quorum was present, determined by a vote of 6-0 to close the file in the above-captioned matter.

Attest:

3/29/79

Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

79040122735





FEDERAL ELECTION COMMISSION

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

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS *MWE*
DATE: MARCH 26, 1979
SUBJECT: MUR 913 - *A* First General Counsel's Report
dated 3-22-79; Received in OCS
3-22-79, 4:33

The above-named document was circulated on a 48 hour
vote basis at 11:00, March 23, 1979.

Commissioner Harris submitted an objection at 4:25,
March 23, 1979, thereby placing MUR 913 on the Executive
Session Agenda for March 29, 1979.

79040122736

March 22, 1979

MEMORANDUM TO: Marge Emmons
FROM: Elissa T. Garr
SUBJECT: MUR 913

Please have the attached First General Counsel's Report on MUR 913 distributed to the Commission on a 48 hour tally basis.

Thank you.

79040122737

FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO COMMISSION MAR 23 1979

79 MAR 22 P 4: 33
MUR NO. 913
STAFF MEMBER(S) _____

Marsha Gentner

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

RESPONDENT'S NAME: National Education Association ("NEA")

RELEVANT STATUTE: 2 U.S.C. § 431(f) (4)
2 U.S.C. § 441b

INTERNAL REPORTS CHECKED:

FEDERAL AGENCIES CHECKED:

GENERATION OF MATTER

This matter was referred to the Office of General Counsel by Thomas J. Cooper, Executive Assistant to Commissioner Vernon Thomson. On January 24, 1979, the Commission approved the recommendation that this matter be made a MUR.

SUMMARY OF ALLEGATIONS

On November 22, 1978, an article appeared in the NEA Reporter concerning the eligibility of non-members of NEA to receive rebates of the portion of their agency shop or fair share fees which was intended by NEA to be used for political activities. Political activity is defined in the article as including "the determination and/or publicizing of the NEA's preference for a candidate for political office." Because the article does not specify the audience to whom these preferences are addressed, there exists the possibility that NEA has violated 2 U.S.C. § 441b by communicating candidate preferences to persons other than its members. In addition, if NEA failed to report costs of such communication in excess of \$2,000, whether to members or non-members, it may be in violation of 2 U.S.C. § 431(f) (4).

PRELIMINARY LEGAL ANALYSIS

2 U.S.C. § 441b(a) prohibits a labor organization from making a contribution or expenditure in connection with any federal election.

79040122738

However, 2 U.S.C. § 431(f)(4) excludes from the definition of "expenditure" the costs of any communication by a membership organization to its members if the organization was not established primarily to influence elections of persons to federal office. If the communication expressly advocates the election or defeat of a clearly defined candidate, the organization must report the costs of such communication if they exceed \$2,000 per election. This latter reporting requirement is waived if the communication is one which is primarily devoted to subjects other than express advocacy of the election or defeat of a candidate.

Here it is unclear from the article appearing in the NEA Reporter whether the respondent's publicizing of NEA preferences reaches only to its members or a wider audience. Nor is it known what costs are incurred in this publication of preferences or what form this publication takes. All of this information will be needed in order to determine whether in fact NEA's "political activity" amounted to expenditures as defined by 2 U.S.C. § 431(f), and thus whether NEA has violated 2 U.S.C. § 441b and/or U.S.C. § 431(f)(4).

The Office of General Counsel, therefore, recommends that the Commission find reason to believe NEA violated 2 U.S.C. §§ 441b and 431(f)(4) so that a complete investigation of these possible violations can be made.

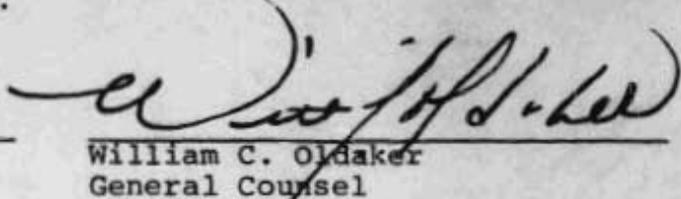
RECOMMENDATIONS

1. Find reason to believe that the National Education Association has violated 2 U.S.C. § 441b and 2 U.S.C. 431(f)(4).
2. Send the attached letter.

Date

3/21/79

William C. Oldaker
General Counsel



Attachments:

- Article in NEA Reporter
- Letter to Respondent

79040122739

Notice of Political Activity Rebate Procedure

A nonmember of NEA who is required to pay an agency shop, fair share, or similar fee which is equivalent to dues of members to a NEA affiliate is eligible to receive a rebate of that portion of the fee which otherwise would be used by the NEA for political activity.

As used herein, the phrase "political activity" means (1) the administration of the NEA's independent political action committee (i.e., NEA-PAC), (2) the determination and/or publicizing of the NEA's preference for a candidate for political office, (3) efforts to enact, defeat, repeal, or amend legislation which is not related to the working conditions (legislation establishing collective bargaining, professional negotiation, or some other system of employer-employee relations shall be deemed related to working conditions), welfare, or working environment of employees represented by the NEA and/or its affiliates, or (4) contributions to charitable, religious, or ideological causes.

Request for Rebate

A nonmember may request a rebate by sending a written communication to:

Political Activity Rebate
Office of Affiliate Relations
National Education Association
1201 - 16th Street, N.W.
Washington, DC 20036

The communication must include a statement by the nonmember that he or she is not a member of the NEA, objects to the expenditure by the NEA of any portion of his or her fee for political activity, a request for a rebate, and the following information: (1) the name and address of the nonmember; (2) the position in which the nonmember is employed; (3) the name of the NEA affiliate which is the nonmember's collective bargaining representative; and (4) the amount of the fee which the nonmember is required to pay to the collective bargaining representative for the membership year in question. The communication must be postmarked not more than thirty (30) days after the nonmember paid any portion of the fee to the collective bargaining representative; or the posting of a Political Activity Rebate Notice by the collective bargaining representative, whichever is later.

The amount of a nonmember's rebate is determined by multiplying the amount that he or she is required to pay to the NEA during the membership year in question by the percentage of the NEA budget which is expended for political activity during that year. A preliminary determination has been made that during the 1978-79 membership year 6 percent of the NEA budget will be expended for political activity. After the membership year has ended, a final determination will be made on the basis of the amount actually expended for political activity. Each nonmember who requests a rebate will be notified in writing of the amount to which he or she is entitled and the procedure for payment.

If service fees charged to nonmembers are established at an amount less than regular dues and the difference is greater than the actual rebate, the full rebate will be considered to have been paid to the nonmember by virtue of the reduction. If the difference is not greater than the rebate, nonmembers will be entitled only to that portion of the rebate which exceeds the difference between regular dues and the reduced fees.



FEDERAL ELECTION COMMISSION

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert H. Chanin
General Counsel
National Education Association
1201 Sixteenth Street, N.W.
Washington, D.C. 20036

Re: MUR 913 (79)

Dear Mr. Chanin:

This letter is to inform you that the Federal Election Commission has found reason to believe that the National Education Association has violated 2 U.S.C. § 441b and 2 U.S.C. § 431(f)(4). This finding is based upon language in an article appearing on page 14 of the NEA Reporter of November, 1978, which defined NEA "political activity" to include "the determination and/or publicizing of the NEA's preference for a candidate for political office." 2 U.S.C. § 441b(a) prohibits a labor organization from making expenditures in connection with federal elections.

Under the Act you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. In particular, we ask that you provide information concerning the audiences to whom the publicizing of candidate preferences is directed, the costs involved in communicating those preferences, and the forms such communications take. In reference to the latter information requested, if the form of the communication is a publication, please include the name of the publication and the general subject matter of the publication. A copy of the publication(s) would suffice to comply with this request.



The Commission is under a duty to investigate this matter expeditiously. Therefore, any statements or explanations which you wish to submit to the Commission with regard to this matter should be submitted within ten days of receipt of this notification. If you have any questions, please contact Marsha Gentner, the attorney assigned to this matter, at (202) 523-4073.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(3)(B) unless you notify the Commission in writing that you wish the investigation to be made public.

Sincerely,

William C. Oldaker
General Counsel

7040122742

January 19, 1979

MEMORANDUM TO: Marge Emmons
FROM: Elissa T. Garr
SUBJECT: Pre MUR 22

Please have the attached Memo distributed to the
Commission on a 48 hour tally basis.

Thank you.

79040122744



FEDERAL ELECTION COMMISSION

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

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

79 JAN 19 P 3: 43

January 19, 1979

MEMORANDUM TO: The Commission

FROM: William C. Oldaker
General Counsel *WCO*

SUBJECT: NEA Reporter Article - Pre MUR 22

On November 22, 1978, an article which appeared in the NEA Reporter of November, 1978, was referred to the Office of General Counsel by Thomas J. Cooper, Executive Assistant to Commissioner Thomson. (See Attachment).

The article concerns the eligibility of nonmembers of NEA to receive rebates of the portion of their agency shop or fair share fees which would be used by NEA for political activities. The term "political" activity is defined to include:

1. the administration of NEA-PAC;
2. the determination and/or publicizing of NEA candidate preferences;
3. efforts to affect legislation not related to the working conditions, working environment or welfare of NEA members; or
4. contributions to charitable, religious or ideological causes.

It appears that activities #1, #3 and #4 are either permissible under the Act or not covered by its provisions. As described in the article, activity #2 raises a number of issues which cannot be adequately addressed without further investigation into NEA procedures.

2 U.S.C. §431(f) (4) excludes from the definition of "expenditure" the costs of any communication by a membership organization to its members if the organization was not established primarily to influence elections of persons to Federal office.

79040122745

If the communication expressly advocates the election or defeat of a clearly defined candidate, the organization must report the costs of such communication if they exceed \$2,000 per election; however, even this reporting requirement is waived if the communication is one which is primarily devoted to subjects other than express advocacy of the election or defeat of a candidate.

If, for example, the express advocacy is only one of a number of issues covered in a union publication, it has been Commission practice not to require reporting of the costs involved.

In the present situation, one would need to determine the audience which is the target of NEA's publicizing of its candidate preferences. Should that audience consist only of its own members, NEA would be required to report the costs only if they exceed \$2,000 per election.

NEA would have no reporting responsibility if its communication to its members of candidate preferences is disseminated only by means of publications such as the NEA Reporter which address many issues in addition to candidate choices.

Should NEA's publicizing of its candidate preferences go beyond its own membership, or if its costs of informing its members exceed \$2,000 per election and its mode of communication is primarily devoted to express advocacy with regard to clearly defined candidates, this organization would be in apparent violation of 2 U.S.C. § 441b.

Recommendation

We recommend that the Commission assign a MUR number to this matter so that further investigation may be undertaken concerning the Committee's determination and publicizing of candidate preferences.

79040122746



FEDERAL ELECTION COMMISSION

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

826
11/27

M E M O R A N D U M

To: William C. Oldaker, General Counsel

From: Thomas J. Cooper *Tom Cooper*

Subject: Referral of news article — potential internally generated MJR

Date: November 22, 1978

Pursuant to Section IID of the Commission's procedures for the handling of internally generated compliance matters (Commission Memorandum #86) I am referring the attached article which appeared on page 14 of the NEA Reporter in its November 1978 issue. I request that your office prepare a memorandum on whether any of the activities described therein violate the Federal Election Campaign Act.

Thank you for your assistance in this matter.



79040122747

Notice of Political Activity Rebate Procedure

A nonmember of NEA who is required to pay an agency shop, fair share, or similar fee which is equivalent to dues of members to a NEA affiliate is eligible to receive a rebate of that portion of the fee which otherwise would be used by the NEA for political activity.

As used herein, the phrase "political activity" means (1) the administration of the NEA's independent political action committee (i.e., NEA-PAC), (2) the determination and/or publicizing of the NEA's preference for a candidate for political office, (3) efforts to enact, defeat, repeal, or amend legislation which is not related to the working conditions (legislation establishing collective bargaining, professional negotiation, or some other system of employer-employee relations shall be deemed related to working conditions), welfare, or working environment of employees represented by the NEA and/or its affiliates, or (4) contributions to charitable, religious, or ideological causes.

Request for Rebate

A nonmember may request a rebate by sending a written communication to:

Political Activity Rebate
Office of Affiliate Relations
National Education Association
1201 - 16th Street, N.W.
Washington, DC 20036

The communication must include a statement by the nonmember that he or she is not a member of the NEA, objects to the expenditure by the NEA of any portion of his or her fee for political activity, a request for a rebate, and the following information: (1) the name and address of the nonmember; (2) the position in which the nonmember is employed; (3) the name of the NEA affiliate which is the nonmember's collective bargaining representative; and (4) the amount of the fee which the nonmember is required to pay to the collective bargaining representative for the membership year in question. The communication must be postmarked not more than thirty (30) days after the nonmember paid any portion of the fee to the collective bargaining representative; or the posting of a Political Activity Rebate Notice by the collective bargaining representative, whichever is later.

The amount of a nonmember's rebate is determined by multiplying the amount that he or she is required to pay to the NEA during the membership year in question by the percentage of the NEA budget which is expended for political activity during that year. A preliminary determination has been made that during the 1978-79 membership year 6 percent of the NEA budget will be expended for political activity. After the membership year has ended, a final determination will be made on the basis of the amount actually expended for political activity. Each nonmember who requests a rebate will be notified in writing of the amount to which he or she is entitled and the procedure for payment.

If service fees charged to nonmembers are established at an amount less than regular dues and the difference is greater than the actual rebate, the full rebate will be considered to have been paid to the nonmember by virtue of the reduction. If the difference is not greater than the rebate, nonmembers will be entitled only to that portion of the rebate which exceeds the difference between regular dues and the reduced fees.



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20461

January 19, 1979

MEMORANDUM TO: The Commission
FROM: William C. Oldaker
General Counsel *WCO*
SUBJECT: NEA Reporter Article - Pre MUR 22

On November 22, 1978, an article which appeared in the NEA Reporter of November, 1978, was referred to the Office of General Counsel by Thomas J. Cooper, Executive Assistant to Commissioner Thomson. (See Attachment).

The article concerns the eligibility of nonmembers of NEA to receive rebates of the portion of their agency shop or fair share fees which would be used by NEA for political activities. The term "political" activity is defined to include:

1. the administration of NEA-PAC;
2. the determination and/or publicizing of NEA candidate preferences;
3. efforts to affect legislation not related to the working conditions, working environment or welfare of NEA members; or
4. contributions to charitable, religious or ideological causes.

It appears that activities #1, #3 and #4 are either permissible under the Act or not covered by its provisions. As described in the article, activity #2 raises a number of issues which cannot be adequately addressed without further investigation into NEA procedures.

2 U.S.C. §431(f) (4) excludes from the definition of "expenditure" the costs of any communication by a membership organization to its members if the organization was not established primarily to influence elections of persons to Federal office.

79040122749

If the communication expressly advocates the election or defeat of a clearly defined candidate, the organization must report the costs of such communication if they exceed \$2,000 per election; however, even this reporting requirement is waived if the communication is one which is primarily devoted to subjects other than express advocacy of the election or defeat of a candidate.

If, for example, the express advocacy is only one of a number of issues covered in a union publication, it has been Commission practice not to require reporting of the costs involved.

In the present situation, one would need to determine the audience which is the target of NEA's publicizing of its candidate preferences. Should that audience consist only of its own members, NEA would be required to report the costs only if they exceed \$2,000 per election.

NEA would have no reporting responsibility if its communication to its members of candidate preferences is disseminated only by means of publications such as the NEA Reporter which address many issues in addition to candidate choices.

Should NEA's publicizing of its candidate preferences go beyond its own membership, or if its costs of informing its members exceed \$2,000 per election and its mode of communication is primarily devoted to express advocacy with regard to clearly defined candidates, this organization would be in apparent violation of 2 U.S.C. § 441b.

Recommendation

We recommend that the Commission assign a MUR number to this matter so that further investigation may be undertaken concerning the Committee's determination and publicizing of candidate preferences.

79040122750



FEDERAL ELECTION COMMISSION

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

WCS
11/27

M E M O R A N D U M

To: William C. Oldaker, General Counsel

From: Thomas J. Cooper *Tom Cooper*

Subject: Referral of news article — potential internally generated MUR

Date: November 22, 1978

Pursuant to Section IID of the Commission's procedures for the handling of internally generated compliance matters (Commission Memorandum #86) I am referring the attached article which appeared on page 14 of the NEA Reporter in its November 1978 issue. I request that your office prepare a memorandum on whether any of the activities described therein violate the Federal Election Campaign Act.

Thank you for your assistance in this matter.



79040122751

Notice of Political Activity Rebate Procedure

A nonmember of NEA who is required to pay an agency shop, fair share, or similar fee which is equivalent to dues of members to a NEA affiliate is eligible to receive a rebate of that portion of the fee which otherwise would be used by the NEA for political activity.

As used herein, the phrase "political activity" means (1) the administration of the NEA's independent political action committee (i.e., NEA-PAC), (2) the determination and/or publicizing of the NEA's preference for a candidate for political office, (3) efforts to enact, defeat, repeal, or amend legislation which is not related to the working conditions (legislation establishing collective bargaining, professional negotiation, or some other system of employer-employee relations shall be deemed related to working conditions), welfare, or working environment of employees represented by the NEA and/or its affiliates, or (4) contributions to charitable, religious, or ideological causes.

Request for Rebate

A nonmember may request a rebate by sending a written communication to:

Political Activity Rebate
Office of Affiliate Relations
National Education Association
1201 - 16th Street, N.W.
Washington, DC 20036

The communication must include a statement by the nonmember that he or she is not a member of the NEA, objects to the expenditure by the NEA of any portion of his or her fee for political activity, a request for a rebate, and the following information: (1) the name and address of the nonmember; (2) the position in which the nonmember is employed; (3) the name of the NEA affiliate which is the nonmember's collective bargaining representative; and (4) the amount of the fee which the nonmember is required to pay to the collective bargaining representative for the membership year in question. The communication must be postmarked not more than thirty (30) days after the nonmember paid any portion of the fee to the collective bargaining representative; or the posting of a Political Activity Rebate Notice by the collective bargaining representative, whichever is later.

The amount of a nonmember's rebate is determined by multiplying the amount that he or she is required to pay to the NEA during the membership year in question by the percentage of the NEA budget which is expended for political activity during that year. A preliminary determination has been made that during the 1978-79 membership year 6 percent of the NEA budget will be expended for political activity. After the membership year has ended, a final determination will be made on the basis of the amount actually expended for political activity. Each nonmember who requests a rebate will be notified in writing of the amount to which he or she is entitled and the procedure for payment.

If service fees charged to nonmembers are established at an amount less than regular dues and the difference is greater than the actual rebate, the full rebate will be considered to have been paid to the nonmember by virtue of the reduction. If the difference is not greater than the rebate, nonmembers will be entitled only to that portion of the rebate which exceeds the difference between regular dues and the reduced fees.



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 913

Date Filmed 4/30/79 Camera No. --- 2

Cameraman SPC

79040122753