



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 7, 2021

MEMORANDUM

TO: The Commission

THROUGH: Alec Palmer *AP*
Staff Director

FROM: Patricia C. Orrock *PCO*
Chief Compliance Officer

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: *KDR BH*
Kristin D. Roser/Ben Holly
Reports Analysis Division
Compliance Branch

SUBJECT: Withdrawal and Resubmission of Reason To Believe Recommendation –
2020 July Quarterly Report for the Administrative Fine Program

We are withdrawing the document circulated to the Commission on September 11, 2020 in order to reflect updates disclosed in filings received by the Commission after the initial submission of this recommendation. An overview of these updates has been provided below.

The following committees filed a 2020 July Quarterly Report that disclosed a level of activity lower than previously estimated:

International Union of Operating Engineers/Local 17 Political Action Committee (AF 3883)

Attached is a list of political committees and their treasurers who failed to file the 2020 July Quarterly Report in accordance with 52 U.S.C. § 30104(a). The July Quarterly Report was due on July 15, 2020.

The committees listed in the attached RTB Circulation Report either failed to file the report, filed the report no more than thirty (30) days after the due date (considered a late filed report), or filed the report more than thirty (30) days after the due date (considered a non-filed report). In accordance with the schedule of civil money penalties for reports at 11 C.F.R. 111.43, these committees should be assessed the civil money penalties highlighted on the attached circulation report.

Recommendation

1. Find reason to believe that the political committees and their treasurers, in their official capacity, listed on the RTB Circulation Report violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalties would be the amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

Federal Election Commission
Reason to Believe Circulation Report
2020 JULY QUARTERLY Not Election Sensitive 07/15/2020 H_S_P_UNAUTH

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
3878	C00710608	FOR VIRGINIA	THOMAS A. SPECIALE	CARL ALLARD	\$151,568	0		Not Filed	\$37,892 (est)	\$1,252
3883	C00104455	INTERNATIONAL UNION OF OPERATING ENGINEERS/LOCAL 17 POLITICAL ACTION COMMITTEE		GARY R. SWAIN	\$181,569	0	10/1/2020	Not Filed*	\$13,806	\$696

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
3904	C00676320	UNITED FORWARD 2020 BENZEL FOR CONGRESS	JULIANNE ELIZABETH BENZEL	GREG DON BENZEL	\$206,748	0	7/28/2020	13	\$1,420	\$114

* The committee filed their report more than thirty (30) days after the due date; therefore, the report is considered not filed.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Withdrawal and Resubmission of Reason)
To Believe Recommendation - 2020 July)
Quarterly Report for the Administrative)
Fine Program:)

Federal Election Commission
Withdrawal and Resubmission of Reason
to Believe Recommendation – 2020 July
Quarterly Report for the Administrative
Fine Program
January 08, 2021

FOR VIRGINIA, and ALLARD, CARL as) AF# 3878
treasurer;)

INTERNATIONAL UNION OF) AF# 3883
OPERATING ENGINEERS/LOCAL 17)
POLITICAL ACTION COMMITTEE, and)
SWAIN, GARY R as treasurer;)

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UNITED FORWARD 2020 BENZEL FOR) AF# 3904
CONGRESS, and BENZEL, GREG DON)
MR. as treasurer;)

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CERTIFICATION

I, Laura E. Sinram, Acting Secretary and Clerk of the Federal Election Commission, do hereby certify that on January 08, 2021, the Commission took the following actions on the Withdrawal and Resubmission of Reason To Believe Recommendation - 2020 July Quarterly Report for the Administrative Fine Program, as recommended in the Reports Analysis Division's Memorandum dated January 07, 2021, on the following committees:

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AF#3878 Decided by a vote of 6-0 to: (1) find reason to believe that FOR VIRGINIA, and ALLARD, CARL in his official capacity as treasurer violated 52 U.S.C. 30104(a) and make a preliminary determination that the civil money penalty would be the

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amount indicated on the report; (2) send the appropriate letter. Commissioners Broussard, Cooksey, Dickerson, Trainor, Walther, and Weintraub voted affirmatively for the decision.

AF#3883 Decided by a vote of 6-0 to: (1) find reason to believe that INTERNATIONAL UNION OF OPERATING ENGINEERS/LOCAL 17 POLITICAL ACTION COMMITTEE, and SWAIN, GARY R in his official capacity as treasurer violated 52 U.S.C. 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Broussard, Cooksey, Dickerson, Trainor, Walther, and Weintraub voted affirmatively for the decision.

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AF#3904 Decided by a vote of 6-0 to: (1) find reason to believe that UNITED FORWARD 2020 BENZEL FOR CONGRESS, and BENZEL, GREG DON MR. in his official capacity as treasurer violated 52 U.S.C. 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Broussard, Cooksey, Dickerson, Trainor, Walther, and Weintraub voted affirmatively for the decision.



Attest:

**Laura
Sinram**

Digitally signed by
Laura Sinram
Date: 2021.02.05
15:39:37 -05'00'

Laura E. Sinram
Acting Secretary and Clerk of the
Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AF

February 5, 2021

Gary R. Swain, in official capacity as Treasurer
International Union of Operating Engineers/Local 17 Political Action Committee
5959 Versailles Rd
Lakeview, NY 14085

C00104455

AF#: 3883

Dear Mr. Swain,

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file a July Quarterly Report of Receipts and Disbursements in a calendar year during which there is a regularly scheduled election. This report, covering the period April 1, 2020 through June 30, 2020, shall be filed no later than July 15, 2020. 52 U.S.C. § 30104(a). Because records at the Federal Election Commission ("FEC") indicate that you did not file this report within thirty (30) days of the due date, the report is considered not filed for the purpose of calculating the civil money penalty.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 52 U.S.C. § 30104(a). 52 U.S.C. § 30109g(a)(4). On January 8, 2021, the FEC found that there is reason to believe ("RTB") that International Union of Operating Engineers/Local 17 Political Action Committee and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) by failing to file timely this report on or before July 15, 2020. Based on the FEC's schedules of civil money penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$696. Please see the attached copy of the Commission's administrative fine regulations at 11 CFR §§ 111.30-111.55. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. See <https://www.fec.gov/af/pay.shtml> 11 CFR § 111.34. Your payment of \$696 is due within forty (40) days of the finding, or by February 17, 2021, and is based on these factors:

Election Sensitivity of Report: Not Election Sensitive

Level of Activity: \$13,806

Number of Days Late: Not Filed (reports not filed within thirty (30) days of the due date are considered not filed for the purpose of calculating the penalty)

Number of Previous Civil Money Penalties Assessed: 0

At this juncture, the following courses of action are available to you:

INTERNATIONAL UNION OF OPERATING ENGINEERS/LOCAL 17 POLITICAL ACTION
COMMITTEE

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1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response to the FEC's Office of Administrative Review. Your response must include the AF# (found at the top of page 1 under your committee's identification number) and be received within forty (40) days of the Commission's RTB finding, or February 17, 2021. 11 CFR § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 CFR § 111.36(c).

Please note, on June 18, 2020, the Federal Election Commission began the initial phase (Phase I) of its return to normal operations. At this stage, the agency's offices will remain closed to visitors and most of its employees will continue to telework in an effort to limit the spread of coronavirus (COVID-19). The Commission is processing some documents submitted by mail, though processing will not occur daily until the agency resumes normal mail operations. Nevertheless, a challenge to an RTB finding and/or calculated civil money penalty must be received on time. Thus, all written responses and supporting documentation should be converted to PDF (Portable Document Format) and must be emailed to administrativefines@fec.gov. The Commission encourages the use of electronic signatures on electronically submitted documents, but scanned copies of ink signatures will be accepted. Electronically submitted challenges will be deemed received on the date it is electronically received by staff.

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 CFR § 111.35(b). For a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 CFR § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) negligence; (2) delays caused by vendors or

INTERNATIONAL UNION OF OPERATING ENGINEERS/LOCAL 17 POLITICAL ACTION
COMMITTEE

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contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 CFR § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. District Court under 52 U.S.C. § 30109. 11 CFR § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that International Union of Operating Engineers/Local 17 Political Action Committee and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 et seq. The FEC may take any and all appropriate action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 CFR § 111.51(a)(2).

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the calculated civil money penalty, follow the payment instructions on page 4 of this letter. Upon receipt of your payment, the FEC will send you a final determination letter.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

4. Partial Payments

If you make a payment in an amount less than the calculated civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assesses upon making a final determination.

5. Settlement Offers

INTERNATIONAL UNION OF OPERATING ENGINEERS/LOCAL 17 POLITICAL ACTION
COMMITTEE

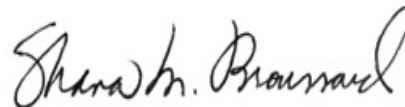
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Any offer to settle or compromise a debt owed to the Commission, including a payment in an amount less than the calculated civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assesses upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 52 U.S.C. § 30109(a)(2). Unless you notify the FEC in writing that you wish the matter to be made public, it will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) until it is placed on the public record at the conclusion of this matter in accordance with 11 CFR § 111.42.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <https://www.fec.gov/af/pay.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Ben Holly in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1158) or (202) 694-1158.

On behalf of the Commission,



Shana M. Broussard
Chair

ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at RTB is \$696 for the July Quarterly Report.

INTERNATIONAL UNION OF OPERATING ENGINEERS/LOCAL 17 POLITICAL ACTION
COMMITTEE

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You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit www.fec.gov/af/pay.shtml to be directed to Pay.gov's Administrative Fine Program Payment form. Please use the details below to complete the required fields. For additional payment options, please contact Ben Holly in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130.

COMMITTEE NAME: International Union of Operating Engineers/Local 17 Political Action Committee

FEC ID#: C00104455

AF#: 3883

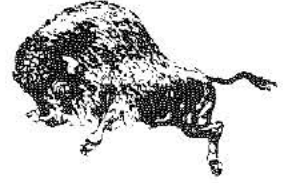
PAYMENT DUE DATE: February 17, 2021

PAYMENT AMOUNT DUE: \$696

International Union of Operating Engineers



5959 VERSAILLES ROAD • LAKEVIEW, NEW YORK 14085
Affiliated with AFL-CIO
LOCAL UNIONS No. 17, 17A, 17B, 17C, 17D, 17RA & 17S
Telephone: (716) 627-2648
Fax: (716) 627-2649



March 5, 2021

Office of Administrative Review
Federal Election Commission
1050 First Street NE
Washington, DC 20463

RE: Committee #C0004455 AF#3883

Dear Review Committee:

I am writing you to ask that you set aside the fine imposed of \$696.00.

If you look at local 17's records, the history will show that the International Union of Operating Engineers Local 17 Political Action Committee has never been late on any of our reports.

I don't have to tell you how trying the COVID-19 pandemic has been on everyone last year. Our staff like most had quite a few months of transition from working from home to the office and back home again.

I am asking you to please waive this fee for a first-time offense. I would hope that after you check our records you can see that we are not habitual filers and then can show us some compassion on this issue.

If you have any questions or concerns, please don't hesitate to give me a call at I look forward to resolving this matter.

Sincerely,

Gary Swain
Treasurer



International Union of Operating Engineers

5959 Versailles Road • Lakeview, New York 14085

Affiliated with AFL-CIO

LOCAL UNIONS NO. 17, 17A, 17B, 17C, 17D, 17RA & 17S



NEOPOST

03/05/2021

US POSTAGE



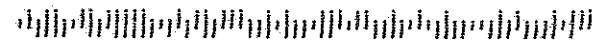
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RECEIVED
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Office of Administrative Review
Federal Election Commission
1050 First Street NE
Washington, DC 20463





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 17, 2021

REVIEWING OFFICER RECOMMENDATION OFFICE OF ADMINISTRATIVE REVIEW (“OAR”)

AF# 3883 – International Union of Operating Engineers/Local 17 Political Action Committee and Gary R. Swain, in his official capacity as Treasurer (C00104455)

Summary of Recommendation

Make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$696 civil money penalty.

Reason-to-Believe Background

The 2020 July Quarterly Report was due on July 15, 2020. The respondents filed the report on October 1, 2020, 78 days late. The report is not election sensitive and was not filed within 30 days of the due date; therefore, the report is considered not filed. 11 C.F.R. §§ 111.43(d)(1) and (e)(1).

On January 8, 2021, the Commission found reason to believe (“RTB”) that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file the 2020 July Quarterly Report and made a preliminary determination that the civil money penalty was \$696 based on the schedule of penalties at 11 C.F.R. § 111.43. A letter was mailed to the respondents’ address of record from the Reports Analysis Division (“RAD”) on February 5, 2021 to notify them of the Commission’s RTB finding and civil money penalty.

Legal Requirements

The Federal Election Campaign Act (“Act”) states that the treasurer of a committee not authorized by a candidate shall file, in an election year, a report for the period ending June 30 no later than July 15. 52 U.S.C. § 30104(a) and 11 C.F.R. § 104.5(c)(1)(i). Reports filed electronically must be received and validated at or before 11:59 pm, Eastern Standard/Daylight Time on July 15 for the July Quarterly Report to be timely filed. 11 C.F.R. §§ 100.19(c) and 104.5(e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

Summary of Respondents' Challenge

On March 18, 2021, the Commission received the written response (“challenge”) from the Treasurer requesting the Commission waive the penalty. He explains that due to COVID-19, “[Committee staff] like most had quite a few months of transition from working from home to the office and back again.” The Treasurer notes the Committee’s history of compliance and requests the Commission show compassion on this first-time offense.

Analysis

The respondents contend COVID-19 impacted the Committee’s normal operations. While they did not contend they were unaware of the filing requirements, the Reviewing Officer confirms that the Commission appropriately notified and reminded the Committee of its requirement to file the 2020 July Quarterly Report prior to and after the July 15, 2020 reporting deadline.¹ Further, while the respondents did not contend they experienced technical difficulties or required any type of assistance with filing, Commission records indicate the Committee did not contact the Commission for assistance at any point leading up to the Committee’s filing of the 2020 July Quarterly Report on October 1, 2020.

Since March 17, 2020, the Commission’s website has included a banner highlighting its current operating status and prompted visitors to click on a link to get the latest information on FEC operations. The original FEC Operations notice dated March 17, 2020 and all subsequent versions have consistently explained that filers should continue to file their reports on time, and the Commission’s electronic filing system is online. Moreover, the FEC Operations notice states, in part: “The FEC does not have statutory authority to extend filing deadlines, but it may choose not to pursue administrative fines against filers prevented from filing by reasonably unforeseen circumstances beyond their control. *See* 11 C.F.R. § 111.35.”

In accordance with 11 C.F.R. § 111.35, the FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond the respondents’ control. The “best efforts” defense is a two-part test: the respondents used best efforts to file on time but were prevented from doing so by reasonably unforeseen circumstances that were beyond their control, and they filed the report no later than 24 hours after the end of these circumstances.

The Commission states in its *Explanation and Justification for Revised 11 CFR § 111.35(b)(3) – “Best Efforts” Defense*, 72 Fed. Reg. 14662, 14664-14666 (Mar. 29, 2007) that respondents must show

...that the reasonably unforeseen circumstances in fact *prevented* the timely and proper filing of the required report...[T]his rule requires a strict causal relationship

¹ On June 30, 2020, the Commission’s Information Division sent the 2020 July Quarterly Report Prior Notice to opereng17@aol.com, the single email address listed on the Committee’s Statement of Organization at that time. On July 10, 2020, the Commission’s Electronic Filing Office (“EFO”) sent a reminder email regarding the 2020 July Quarterly Report to the same email address. On July 16, 2020, the day following the filing deadline, EFO sent a late notification email to the same email address because the report had not yet been filed. Further, on August 3, 2020, RAD sent the non-filer notification to the same email address.

between the circumstances described in the challenge...and the respondent's inability to file the report timely. It is not sufficient for reasonably unforeseen circumstances to make it merely more difficult than usual for the respondent to file on time. The circumstance must cause the respondent to be *unable* to file in a timely and proper manner, despite the respondent attempting to use all available methods of filing. (emphasis included)

While the Reviewing Officer recognizes COVID-19 and its related impacts may potentially be considered a reasonably unforeseen circumstance beyond a committee's control, the respondents did not demonstrate that the unforeseen circumstances directly *prevented* the respondents from filing the report by the July 15, 2020 filing deadline. Nor did the respondents demonstrate that they filed the report no later than 24 hours after the end of a circumstance considered to be unforeseen and beyond the respondents' control. Therefore, the "best efforts" defense does not succeed. Further, a committee's history of compliance is not considered when determining if a violation occurred. Therefore, Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$696.

OAR Recommendations

1. Adopt the Reviewing Officer recommendation for AF# 3883 involving International Union of Operating Engineers/Local 17 Political Action Committee and Gary R. Swain, in his official capacity as Treasurer, in making the final determination;
2. Make a final determination in AF# 3883 that International Union of Operating Engineers/Local 17 Political Action Committee and Gary R. Swain, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$696 civil money; and
3. Send the appropriate letter.

Attachments

- Attachment 1 –
- Attachment 2 –
- Attachment 3 –
- Attachment 4 –
- Attachment 5 – Declaration from RAD
- Attachment 6 – Declaration from OAR

DECLARATION OF KRISTIN D. ROSER

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission (“Commission”). In my capacity as Chief of the Compliance Branch, I oversee the initial processing of the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. It is the practice of the Reports Analysis Division to document all calls to or from committees regarding a letter they receive or any questions relating to the FECFile software or administrative fine regulations, including due dates of reports and filing requirements.
3. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to International Union of Operating Engineers/Local 17 Political Action Committee:
 - A) Non-Filer Letter, dated August 3, 2020, referencing the 2020 July Quarterly Report (sent via electronic mail to: opereng17@aol.com);
 - B) Reason-to-Believe Letter, dated February 5, 2021, referencing the 2020 July Quarterly Report (sent via electronic mail to: opereng17@aol.com).
4. I hereby certify that I have searched the Commission’s public records and find that International Union of Operating Engineers/Local 17 Political Action Committee filed the 2020 July Quarterly Report with the Commission on October 1, 2020.
5. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided. This declaration was executed on the 22nd day of April, 2021.

Kristin D. Roser

Kristin D. Roser
Chief, Compliance Branch
Reports Analysis Division
Federal Election Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-7

August 3, 2020

SWAIN, GARY R, TREASURER
INTERNATIONAL UNION OF OPERATING ENGINEERS/LOCAL 17 POLITICAL ACTION
COMMITTEE
5959 VERSAILLES RD
LAKEVIEW, NY 14085

IDENTIFICATION NUMBER: C00104455

REFERENCE: JULY QUARTERLY REPORT (04/01/2020 - 06/30/2020)

Dear Treasurer:

It has come to the attention of the Federal Election Commission that you may have failed to file the above referenced report of receipts and disbursements or failed to file a report covering the entire reporting period as required by the Federal Election Campaign Act, as amended. 52 U.S.C. §30104(a)

It is important that you file this report immediately with the Federal Election Commission, 1050 First Street, NE, Washington, DC 20002. Please note, on June 18, 2020, the Federal Election Commission began the initial phase (Phase I) of its return to normal operations. At this stage, the agency's offices will remain closed to visitors and most of its employees will continue to telework in an effort to limit the spread of coronavirus (COVID-19). The Commission is processing some documents submitted by mail, though processing will not occur on a daily basis until the agency resumes normal mail operations. Reports sent by registered mail, overnight delivery, or certified mail, are considered filed with the FEC as of the date of the postmark. Reports submitted by first-class mail will be considered filed when actually received by Commission staff, subject to delays resulting from the agency's limited mail processing. The Commission will not be able to receive, or process reports filed by courier service during Phase I. The FEC does not have statutory authority to extend filing deadlines, but it may choose not to pursue administrative fines against filers prevented from filing by reasonably unforeseen circumstances beyond their control.

Please note that electronic filers must submit their reports electronically, as per 11 CFR §104.18. A copy of the report must also be filed with the Secretary of State or equivalent State officer unless the State is exempt from the federal requirement to receive and maintain paper copies. You can verify the Commission's receipt of any documents submitted by your committee on the FEC website at www.fec.gov.

The failure to timely file this report may result in civil money penalties, suspension of

INTERNATIONAL UNION OF OPERATING ENGINEERS/LOCAL 17 POLITICAL ACTION
COMMITTEE

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matching funds payments, an audit or legal enforcement action. The civil money penalty calculation for late reports does not include a grace period and begins on the day following the due date for the report. Due to heightened security screening measures, delivery of mail by the US Postal Service may be delayed. The Commission recommends that you submit your report via overnight delivery or courier service.

If you have any questions regarding this matter, please contact Christopher Ritchie in the Reports Analysis Division on our toll-free number (800)424-9530. The analyst's direct number is (202)694-1146.

Sincerely,



Deborah Chacona
Assistant Staff Director
Reports Analysis Division

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DECLARATION OF RHIANNON MAGRUDER

- 1) I am the Reviewing Officer in the Office of Administrative Review for the Federal Election Commission (“Commission”). In my capacity as Reviewing Officer, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
- 2) A political committee not authorized by a candidate shall file, in an election year, a report for the period ending June 30 no later than July 15. Reports filed electronically must be received and validated at or before 11:59 pm, Eastern Standard/Daylight Time on July 15, 2020 for the 2020 July Quarterly Report to be timely filed.
- 3) I hereby certify that I have searched the Commission’s public records and that the documents identified herein are the true and accurate copies of:
 - a) Cover Page, Summary Page, and Detailed Summary Pages of the 2020 July Quarterly Report filed by International Union of Operating Engineers/Local 17 Political Action Committee. The report covers April 1, 2020 through June 30, 2020 and was filed on October 1, 2020.
- 4) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 17th day of May, 2021.

Rhiannon Magruder
Rhiannon Magruder
Reviewing Officer
Office of Administrative Review
Federal Election Commission

**SUMMARY PAGE
OF RECEIPTS AND DISBURSEMENTS**

FEC Form 3X (Rev. 05/2016)

Page 2

Write or Type Committee Name

INTERNATIONAL UNION OF OPERATING ENGINEERS/LOCAL 17 POLITICAL ACTION COMMITTEE

Report Covering the Period: From: / / To: / /

	COLUMN A This Period	COLUMN B Calendar Year-to-Date
6. (a) Cash on Hand January 1, <input type="text" value="2020"/>	<input type="text" value="229126.37"/>	<input type="text" value="229126.37"/>
(b) Cash on Hand at Beginning of Reporting Period.....	<input type="text" value="243524.69"/>	
(c) Total Receipts (from Line 19)	<input type="text" value="8638.18"/>	<input type="text" value="23202.95"/>
(d) Subtotal (add Lines 6(b) and 6(c) for Column A and Lines 6(a) and 6(c) for Column B).....	<input type="text" value="252162.87"/>	<input type="text" value="252329.32"/>
7. Total Disbursements (from Line 31).....	<input type="text" value="5168.45"/>	<input type="text" value="5334.90"/>
8. Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(d)).....	<input type="text" value="246994.42"/>	<input type="text" value="246994.42"/>
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)	<input type="text" value="0.00"/>	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	<input type="text" value="0.00"/>	

This committee has qualified as a multicandidate committee. (see FEC FORM 1M)

For further information contact:

Federal Election Commission
999 E Street, NW
Washington, DC 20463

Toll Free 800-424-9530
Local 202-694-1100

DETAILED SUMMARY PAGE
of Receipts

FEC Form 3X (Rev. 05/2016)

Page 3

Write or Type Committee Name

INTERNATIONAL UNION OF OPERATING ENGINEERS/LOCAL 17 POLITICAL ACTION COMMITTEE

Report Covering the Period: From: / / To: / /

I. Receipts	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
11. Contributions (other than loans) From:		
(a) Individuals/Persons Other Than Political Committees		
(i) Itemized (use Schedule A).....	0.00	0.00
(ii) Unitemized	8526.22	22960.51
(iii) TOTAL (add Lines 11(a)(i) and (ii)).....▶	8526.22	22960.51
(b) Political Party Committees	0.00	0.00
(c) Other Political Committees (such as PACs).....	0.00	0.00
(d) Total Contributions (add Lines 11(a)(iii), (b), and (c)) (Carry Totals to Line 33, page 5)	8526.22	22960.51
12. Transfers From Affiliated/Other Party Committees.....	0.00	0.00
13. All Loans Received	0.00	0.00
14. Loan Repayments Received.....	0.00	0.00
15. Offsets To Operating Expenditures (Refunds, Rebates, etc.) (Carry Totals to Line 37, page 5).....	0.00	0.00
16. Refunds of Contributions Made to Federal Candidates and Other Political Committees.....	0.00	0.00
17. Other Federal Receipts (Dividends, Interest, etc.).....	111.96	242.44
18. Transfers from Non-Federal and Levin Funds		
(a) Non-Federal Account (from Schedule H3).....	0.00	0.00
(b) Levin Funds (from Schedule H5)	0.00	0.00
(c) Total Transfers (add 18(a) and 18(b))..	0.00	0.00
19. Total Receipts (add Lines 11(d), 12, 13, 14, 15, 16, 17, and 18(c)).....▶	8638.18	23202.95
20. Total Federal Receipts (subtract Line 18(c) from Line 19).....▶	8638.18	23202.95

DETAILED SUMMARY PAGE
of Disbursements

II. Disbursements	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
21. Operating Expenditures:		
(a) Allocated Federal/Non-Federal Activity (from Schedule H4)		
(i) Federal Share	0.00	0.00
(ii) Non-Federal Share.....	0.00	0.00
(b) Other Federal Operating Expenditures	168.45	334.90
(c) Total Operating Expenditures (add 21(a)(i), (a)(ii), and (b))	168.45	334.90
22. Transfers to Affiliated/Other Party Committees.....	0.00	0.00
23. Contributions to Federal Candidates/Committees and Other Political Committees.....	5000.00	5000.00
24. Independent Expenditures (use Schedule E)	0.00	0.00
25. Coordinated Party Expenditures (52 U.S.C. § 30116(d)) (use Schedule F).....	0.00	0.00
26. Loan Repayments Made.....	0.00	0.00
27. Loans Made.....	0.00	0.00
28. Refunds of Contributions To:		
(a) Individuals/Persons Other Than Political Committees	0.00	0.00
(b) Political Party Committees	0.00	0.00
(c) Other Political Committees (such as PACs).....	0.00	0.00
(d) Total Contribution Refunds (add Lines 28(a), (b), and (c)).....	0.00	0.00
29. Other Disbursements (Including Non-Federal Donations).....	0.00	0.00
30. Federal Election Activity (52 U.S.C. § 30101(20))		
(a) Allocated Federal Election Activity (from Schedule H6)		
(i) Federal Share	0.00	0.00
(ii) "Levin" Share.....	0.00	0.00
(b) Federal Election Activity Paid Entirely With Federal Funds	0.00	0.00
(c) Total Federal Election Activity (add Lines 30(a)(i), 30(a)(ii) and 30(b))	0.00	0.00
31. Total Disbursements (add Lines 21(c), 22, 23, 24, 25, 26, 27, 28(d), 29 and 30(c)) ..	5168.45	5334.90
32. Total Federal Disbursements (subtract Line 21(a)(ii) and Line 30(a)(ii) from Line 31).....	5168.45	5334.90

DETAILED SUMMARY PAGE
of Disbursements

FEC Form 3X (Rev. 05/2016)

Page 5

III. Net Contributions/ Operating Expenditures	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date
33. Total Contributions (other than loans) (from Line 11(d), page 3)	8526.22	22960.51
34. Total Contribution Refunds (from Line 28(d))	0.00	0.00
35. Net Contributions (other than loans) (subtract Line 34 from Line 33)	8526.22	22960.51
36. Total Federal Operating Expenditures (add Line 21(a)(i) and Line 21(b))	168.45	334.90
37. Offsets to Operating Expenditures (from Line 15, page 3).....	0.00	0.00
38. Net Operating Expenditures (subtract Line 37 from Line 36)	168.45	334.90



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 18, 2021

Gary R. Swain, in official capacity as Treasurer
International Union of Operating Engineers/Local 17 Political Action Committee
5959 Versailles Rd
Lakeview, NY 14085

C00104455
AF# 3883

Dear Mr. Swain:

On January 8, 2021, the Federal Election Commission (“the Commission”) found reason to believe (“RTB”) that International Union of Operating Engineers/Local 17 Political Action Committee and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to file the 2020 July Quarterly Report. The Commission also made a preliminary determination that the civil money penalty was \$696 based on the schedule of penalties at 11 C.F.R. § 111.43.

After reviewing your written response and any supplemental information submitted by you and Commission staff, the Reviewing Officer has recommended that the Commission make a final determination and assess a civil money penalty. A copy of the Reviewing Officer’s recommendation is attached.

You may file with the Commission Secretary a written response to the recommendation within 10 days of the date of this letter. Please note, the agency's offices remain closed to visitors and most of its employees will continue to telework in an effort to limit the spread of coronavirus (COVID-19). The Commission is processing some documents submitted by mail, though processing will not occur on a daily basis until the agency resumes normal mail operations. Nevertheless, if you choose to submit a response to the recommendation, it must be received on time. Thus, all written responses and supporting documentation should be converted to PDF (Portable Document Format) and must be emailed to the Commission Secretary at secretary@fec.gov. The Commission encourages the use of electronic signatures on electronically submitted documents, but scanned copies of ink signatures will be accepted. Electronically submitted responses will be deemed received on the date it is electronically received by staff. Please include the AF # in your response. Your response may not raise any arguments not raised in your original written response or not directly responsive to the Reviewing Officer’s recommendation. 11 C.F.R. § 111.36(f). The Commission will then make a final determination in this matter.

Please contact me at the toll free number 800-424-9530 (press 0, then press 1660) or 202-694-1158 if you have any questions.

Sincerely,

Rhiannon Magruder
Reviewing Officer
Office of Administrative Review

RECEIVED

By Office of the Commission Secretary at 1:07 pm, Jun 15, 2021

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463**SENSITIVE**

June 15, 2021

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Rhiannon Magruder *RM*
Reviewing Officer
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 3883 – International Union of Operating Engineers/Local 17 Political Action Committee and Gary R. Swain, in his official capacity as Treasurer (C00104455)

On January 8, 2021, the Commission found reason to believe (“RTB”) that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file the 2020 July Quarterly Report and made a preliminary determination that the civil money penalty was \$696 based on the schedule of penalties at 11 C.F.R. § 111.43.

On March 18, 2021, the Commission received their written response (“challenge”). After reviewing the challenge, the Reviewing Officer Recommendation (“ROR”) dated May 17, 2021 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. The Reviewing Officer determined the respondents’ “best efforts” defense did not succeed because the respondents did not demonstrate that the unforeseen circumstances directly prevented the respondents from filing the report by the filing deadline, nor did they demonstrate that they filed the report no later than 24 hours after the end of a circumstance considered to be unforeseen and beyond the respondents’ control. Therefore, the Reviewing Officer recommended that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$696 civil money penalty.

Within 10 days of transmittal of the recommendation, the respondents may file a written response with the Commission Secretary which may not raise any arguments not raised in their challenge or not directly responsive to the ROR. 11 C.F.R. § 111.36(f). The respondents have since paid the recommended civil money penalty of \$696.

OAR Recommendations

1. Adopt the Reviewing Officer recommendation for AF# 3883 involving International Union of Operating Engineers/Local 17 Political Action Committee and Gary R. Swain, in his official capacity as Treasurer, in making the final determination;
2. Make a final determination in AF# 3883 that International Union of Operating Engineers/Local 17 Political Action Committee and Gary R. Swain, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$696 civil money; and
3. Send the appropriate letter.

BEFORE THE FEDERAL ELECTION COMMISSION

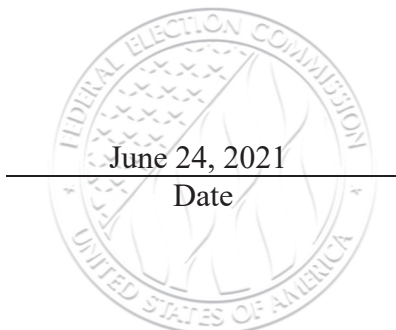
In the Matter of)
) AF 3883
 Final Determination Recommendation:)
 International Union of Operating)
 Engineers/Local 17 Political Action)
 Committee and Gary R. Swain, in his)
 official capacity as Treasurer)
 (C00104455))

CERTIFICATION

I, Laura E. Sinram, Acting Secretary and Clerk of the Federal Election Commission, do hereby certify that on June 23, 2021, the Commission decided by a vote of 6-0 to take the following actions in AF 3883:

1. Adopt the Reviewing Officer recommendation for AF# 3883 involving International Union of Operating Engineers/Local 17 Political Action Committee and Gary R. Swain, in his official capacity as Treasurer, in making the final determination.
2. Make a final determination in AF# 3883 that International Union of Operating Engineers/Local 17 Political Action Committee and Gary R. Swain, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$696 civil money penalty.
3. Send the appropriate letter.

Commissioners Broussard, Cooksey, Dickerson, Trainor, Walther, and Weintraub voted affirmatively for the decision.



Attest:

**Laura
Sinram**

Digitally signed by
 Laura Sinram
 Date: 2021.06.24
 13:53:39 -04'00'

 Laura E. Sinram
 Acting Secretary and Clerk of the
 Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 25, 2021

Gary R. Swain, in official capacity as Treasurer
International Union of Operating Engineers/Local 17 Political Action Committee
5959 Versailles Rd
Lakeview, NY 14085

C00104455
AF# 3883

Dear Mr. Swain:

On January 8, 2021, the Federal Election Commission (“the Commission”) found reason to believe (“RTB”) that International Union of Operating Engineers/Local 17 Political Action Committee and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to file the 2020 July Quarterly Report. By letter dated February 5, 2021, the Commission sent notification of the RTB finding that included a civil money penalty calculated at RTB of \$696 in accordance with the schedule of penalties at 11 C.F.R. § 111.43. On March 18, 2021, the Office of Administrative Review received your written response challenging the RTB finding.

The Reviewing Officer reviewed the Commission’s RTB finding with its supporting documentation and your written response. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that International Union of Operating Engineers/Local 17 Political Action Committee and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty in the amount of \$696 in accordance with 11 C.F.R. § 111.43. The Reviewing Officer Recommendation was sent to you on May 18, 2021.

On June 23, 2021, the Commission adopted the Reviewing Officer’s recommendation and made a final determination that International Union of Operating Engineers/Local 17 Political Action Committee and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assessed a civil money penalty of \$696. It is based on the same factors used to calculate the civil money penalty at RTB. A copy of the Final Determination Recommendation is attached.

On June 14, 2021, the Commission received your \$696 payment.

If You Choose to Appeal the Final Determination and/or Civil Money Penalty

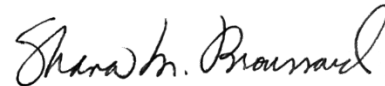
If you choose to appeal the final determination, you should submit a written petition, within 30 days of receipt of this letter, to the U.S. District Court for the district in which the committee or you reside, or transact business, requesting that the final determination be modified or set aside.

See 52 U.S.C. § 30109(a)(4)(C)(iii). Your failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondents' right to present such argument in a petition to the district court under 52 U.S.C. § 30109. 11 CFR § 111.38.

The confidentiality provisions at 52 U.S.C. § 30109(a)(12) no longer apply and this matter is now public. Pursuant to 11 C.F.R. §§ 111.42(b) and 111.20(c), the file will be placed on the public record within 30 days from the date of this notification.

If you have any questions regarding the payment of the civil money penalty, please contact Rhiannon Magruder on our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,



Shana M. Broussard
Chair