



**Federal Election Commission
Washington, DC 20463**

November 22, 2005

Robert D. Lenhard, Associate General Counsel
American Federation of State, County and
Municipal Employees, AFL-CIO
1101 17th Street N.W., Suite 900
Washington, DC 20036-5687

Re: ADR 227
American Federation of State, County and Municipal Employees, PEOPLE
and William Lucy, Treasurer

Dear Mr. Lenhard:

Enclosed is the signed copy of the agreement resolving the referral initiated on January 28, 2005 by the Federal Election Commission ("FEC/Commission") against American Federation of State, County and Municipal Employees, PEOPLE and William Lucy, Treasurer ("Respondents"). The agreement for ADR 227 (AR 03-50) was approved by the Commission on November 17, 2005 – the effective date of the agreement.

As you are aware, the settlement agreement will be made part of the record that is released to the public. The Commission will also place on the record copies of the complaint/referral, correspondence exchanged between your office and this office prior to our entry into settlement negotiations and reports prepared for the Commission by this office to assist in its consideration of this matter. The Commission is obliged by Federal statute to place on the public record documents in closed enforcement and alternative dispute resolution cases; accordingly, copies of documents relative to this matter will be forwarded shortly to the FEC's Public Information Office.

This agreement resolves the matter that was initiated by the Commission pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities regarding violations of federal election campaign laws. I appreciate your assistance in effectively resolving this matter and bringing the case to a mutually acceptable conclusion.

Sincerely,

Lynn M. Fraser, Assistant Director
Alternative Dispute Resolution Office
202-694-1665

Enclosure: Agreement

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**Federal Election Commission
Washington, DC 20463**

Case Number ADR 227
Source AR 03-50
Case Name American Federation of State,
County & Municipal Employees, PEOPLE

NEGOTIATED SETTLEMENT

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Following review of the matter, and in an effort to promote compliance with the Federal Election Campaign Act of 1971, as amended, ("FECA") and resolve this matter, the Federal Election Commission ("Commission") entered into negotiations with Robert Lenhard, representing the American Federation of State, County & Municipal Employees, PEOPLE and William Lucy, Treasurer ("the Committee" or "Respondents"). It is understood that this agreement will have no precedential value relative to any other matters coming before the Commission.

Negotiations between the Commission and Respondents addressed the issues raised in this referral. The parties agree to resolve the matter according to the following terms:

1. The Commission entered into this agreement as part of its responsibility for administering the FECA, and in an effort to promote compliance on the part of Respondents. The Commission's use of alternative dispute resolution procedures ("ADR") is authorized in "The Administrative Dispute Resolution Act of 1996," 5 U.S.C. § 572 and is an extension of 2 U.S.C. § 437g.
2. Respondents voluntarily enter into this agreement with the Commission.
3. An audit of the Committee's financial activities during the 2002 election cycle identified disbursements totaling \$2,026,926 that Respondents did not itemize on reports to the Commission on Schedule B. These membership and fund-raising disbursements were made from Respondents' Non-Federal account. The American Federation of State, County & Municipal Employees ("AFSCME") could have paid these expenses from union treasury funds pursuant to 2 USC 441b(b)(2)(C) in which case no disclosure would have been required. The Committee chose to pay these expenditures from funds raised by the separate segregated fund. Having made that decision, and given that all expenses that benefit both the federal and the nonfederal accounts must be initially paid from and reported by the federal account pursuant to 11 C.F.R. § 106.6, and that all funds raised by the separate segregated fund were initially deposited into its federal account, the

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disbursements should have been made from the federal account and disclosed on its reports to the Commission. The Audit Division staff acknowledges that no impermissible funds were used to make the disbursements at issue, as the Committee funds its Non-Federal account entirely with reported transfers from its Federal account.

4. In addition, the audit identified invoices totaling \$19,276 that were not reported as a debt or obligation on Schedule D as required in the regulations.
5. The FECA requires a political committee to disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet operating expenses. The disclosure must include the date, amount and purpose of such operating expenditures. 2 U.S.C. § 434(b)(5)(A), 11 C.F.R. § 104.3(b)(3)(i). The statute and regulations also require the reporting of debts and obligations, including loans, owed by or to the committee. 2 U.S.C. § 434(b)(8), 11 C.F.R. §§ 104.3(d). The regulations state that debts and obligations owed by or to the committee which remain outstanding shall be continuously reported until extinguished. 11 C.F.R. § 104.11(a). The regulations go on to clarify that a debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time the payment is made or not later than 60 days after such obligation is incurred, whichever is less. If the amount is more than \$500, it shall be reported as of the date on which the debt or obligation is incurred. 11 C.F.R. § 104.11(b).
6. On various occasions in 2001 and 2002, Respondents paid some of its administrative and solicitation costs from an affiliated non-federal account, instead of its usual practice of paying for those costs from AFSCME's treasury funds. Respondents note that all of the money in the non-federal account was transferred from the Committee's federal account, and as a consequence, all of the funds in the non-federal account were raised "subject to the prohibitions and limitations of the Act" as those terms are used in 11 C.F.R. § 106.6(a). Respondents contend that 11 C.F.R. § 106.6(a) requires that the money used to pay administrative and solicitation costs be either funds "subject to the prohibitions and limitations of the Act," (i.e., "federal funds") or an allocation of federal funds and funds that are not "subject to the prohibitions and limitations of the Act" (i.e., "non-federal funds"). Respondents assert that the confusion in this case arose because the non-federal funds at issue here were raised "subject to the prohibitions and limitations of the Act" and thus compliant with the plain meaning of 11 C.F.R. § 106.6, but were not funds from the Committee's federal account, the activities of which are reported to the FEC on a monthly basis. Respondents argue that 11 C.F.R. § 106.6 does not contain an explicit requirement that the funds also be subject to the reporting requirements of the Act, unlike the definition of federal funds in other regulations implementing the FECA. *See, e.g.,* 11 C.F.R. § 300.10(g). Respondents also note that the non-federal account at issue here is registered with the IRS as a 527 organization and there was no attempt to hide these expenditures, as the disbursements of the non-federal account were disclosed on IRS Form 8872 and copies of Form 8872 filed with the IRS are available to the public on the internet.

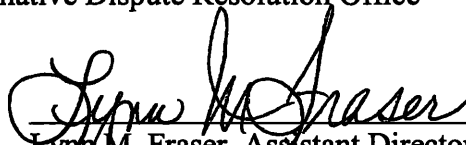
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7. In response to the audit, the Committee amended its practices in how it reports debts and obligations. Respondents now report as debt all sums for which it incurred an obligation that exceeds \$500, even if the invoice has not been received, nor due for payment, on the date the report is filed. Respondents state that any obligations that are less than \$500 are reported as debt if outstanding for more than sixty days.
8. Respondents, in an effort to avoid a dispute with the FEC, ceased paying any of the administrative and solicitation costs from the non-federal hard money account in late 2002, and instead began paying for all of these costs out of AFSCME's treasury funds. Respondents contend that this change was made more than one year prior to the audit by the Commission. The Committee maintains that it cooperated fully with Audit staff in fashioning a reporting system, and amended all relevant reports to comply with this issue, as well as the reporting of debts and obligations on schedule D as also noted in the audit. The Respondents agree that in the future, they will use either the Committee's federal account or AFSCME's treasury funds to pay for these types of expenses.
9. Respondents agree that all information provided to resolve this matter is true and accurate to the best of their knowledge and that they sign this agreement under penalty of perjury pursuant to 28 U.S.C. § 1746.
10. This agreement shall become effective on the date signed by all parties and approved by the Commission.
11. This Negotiated Settlement constitutes the entire agreement between the parties on ADR 227 (AR 03-~~50~~), and effectively resolves this matter. No other statement, promise or agreement, either written or oral, made by either party, not included herein, shall be enforceable.

FOR THE COMMISSION:

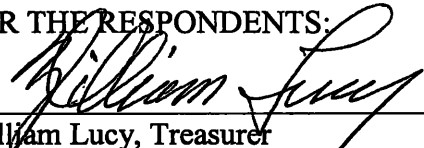
Allan D. Silberman, Director
Alternative Dispute Resolution Office

By:


Lynn M. Fraser, Assistant Director
Alternative Dispute Resolution Office


Date Signed

FOR THE RESPONDENTS:


William Lucy, Treasurer
for the American Federation of State, County
and Municipal Employees PEOPLE
and William Lucy, Treasurer


Date Signed

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