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March 2, 2007

Lynn M. Fraser, Assistant Director
Alternative Dispute Resolution Office
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: ADR 344

Dear Ms. Fraser:

Since I find myself with available time but only limited mobility, I thought that I would take this opportunity state to you in writing the position of the International Association of Heat and Frost Insulators and Asbestos Workers Political Action Committee ("the Committee") in this matter. As a preliminary matter, however, I have to express to you my sincere thanks for your patience and understanding. My recovery from injury and surgery has been facilitated by people like you who understand that sometimes work and business are not necessarily the first priority. I am very grateful.

In general, there are two alternative ways to view this matter: First, it could be viewed as a case in which there was a mistake, but no violation of the Act, because the Committee's treasurer used his best efforts to provide the Commission with accurate reports of receipts and expenditures. Second, it could be viewed as a self-reported violation in which all of the criteria for imposing no penalty have been satisfied.

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Some background information about the Committee may help to put this matter in perspective. The Committee began its existence in 1979. It has never been the subject of a MUR or an alleged violation. The Asbestos Workers is a small union and the Committee, its PAC, makes a handful of federal contributions each year. The Committee files quarterly in election years and semi-annually in non-election years.

Our office has been filing reports for the Committee since its creation in 1979. The Asbestos Workers uses a software program that records all of the Committee's receipts and expenditures. When reports are due, our office requests a printout showing those receipts and expenditures for the relevant time periods and we prepare the reports. I prepared the reports myself, until the Commission began requiring electronic reports, which were beyond my limited computer skills. It then became my clerical assistant's responsibility to prepare the reports and my responsibility to check her work. To be honest, we have struggled with the FEC's software, and have frequently sought assistance from our reports analyst on how to prepare and submit the reports successfully.

In July 2005, my clerical assistant prepared the Committee's 2005 mid-year report. Either she filed it without showing it to me or there were mistakes that I did not catch; I do not remember which. That report, however, contained two errors. The figure entered for the Committee's unitemized receipts was incorrect, and the non-federal expenditures were not entered. Looking at the report, it appears that she got the two items confused and entered the approximate amount of the non-federal expenditures as the Committee's unitemized receipts.

Shortly after preparing the report, she terminated her employment with our office. I hired a new assistant in October 2005, who undertook the task of learning how to use the FEC's software. In January 2006, while she was working on the Committee's 2005 year-end report, she asked me why we were itemizing non-federal expenditures, since they had not been itemized in the previous report. As a result of that question, I went back and reviewed the previous report (and others) and discovered the two mistakes. We did two things: We immediately filed an amended mid-year report correcting the errors, and we established an internal procedure for reviewing each report in detail before it was filed.

To be sure, there was a mistake made, but not necessarily a violation of the Act. Section 431(i) provides that, if a treasurer uses his or her best efforts to submit information required, any reports submitted will be deemed in compliance with the Act. In December, the Commission issued a proposed policy statement announcing that "the Commission intends to apply Section 432(i) to obtaining, maintaining and

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submitting information and records to the Commission for the purpose of complying with FECA's disclosure and reporting requirements." 71 Fed. Reg. 71084 (Dec. 8, 2006). In this matter, the Committee's treasurer used his best efforts – by creating a system that accurately records receipts and expenditures, by retaining our office to prepare the necessary reports and by providing our office with accurate information to do so. Our office has been filing reports that are accurate and on time for over twenty-five years. The fact that a one report contained a mistake, which was then corrected, does not mean that the Committee's treasurer did not use his best efforts.

In December 2006, the Commission also issued its proposed policy regarding self-reported violations. 71 Fed. Reg. 71090 (Dec. 8, 2006). That policy lists several factors to be considered in determining what action to take when a person or organization self-reports a violation. Among the actions available is that of "[t]ake[ing] no action against particular respondents." *Id.* at 79091.

To the extent that a violation occurred here, it was disclosed to the Commission immediately upon its discovery by filing an amended report. Application of the criteria listed in the Commission's proposed policy statement strongly suggests that no penalty should be imposed here. The mistake at issue here was an inadvertent clerical mistake that was corrected immediately upon its discovery, without any prompting from the Commission or anyone else. The mistake resulted from a one-time event, and the only people involved were my clerical assistant and me. The conduct that resulted in the mistake was not in any way intended to advance the interests of the Committee or anyone else. Investigative and corrective actions were taken, and more effective compliance procedures were implemented. The violation was fully disclosed to the Commission, and the Committee has fully cooperated with the Commission and its staff.

Under these circumstances, no good purpose would be served by the imposition of a penalty. Thank you for your consideration of this information. I will contact you early next week to arrange a telephone conference, so that we can discuss this matter in more detail.

Sincerely,

Sherman, Dunn, Cohen, Leifer & Yellig, P.C.

By:



Robert D. Kurnick

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