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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2007 AUG -8 P 1:51

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August 7, 2007

Via UPS

Ms. Thomasenia P. Duncan, General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: FEC Complaint against Sumter Electric Cooperative, Inc.

Dear Ms. Duncan:

Enclosed for filing are an original and three copies of a Complaint against Sumter Electric Cooperative, Inc. for violations of the Federal Election Campaign Act of 1971, as amended.

Thank you for your assistance in this matter.

Sincerely,

SHERMAN, DUNN, COHEN, LEIFER & YELLIG, P.C.

By:

Sue D. Gunter

Sue D. Gunter

Enclosures

FEDERAL ELECTION COMMISSION

In the matter of: **Sumter Electric Cooperative, Inc.** MUR No. 5991
and
James P. Duncan,
CEO & General Manager

COMPLAINT

1. **International Brotherhood of Electrical Workers, Local 108** brings this complaint seeking an immediate investigation and enforcement action against **Sumter Electric Cooperative, Inc.** ("Sumter") for direct and serious violations of the **Federal Election Campaign Act of 1971, as amended** ("the Act").

Complainant

2. **International Brotherhood of Electrical Workers, Local 108** ("Local 108") is a local union affiliated with the **International Brotherhood of Electrical Workers**. Local 108 represents, *inter alia*, all employees of Sumter except introductory and temporary employees, office clerical employees, professional employees, guards, supervisors as defined by the **National Labor Relations Act**, 29 U.S.C. § 152(11), and all employees who have authority to employ and discharge. The employees Local 108 represents are referred to herein as "bargaining unit employees." Local 108 files this complaint to protect the bargaining unit employees from Sumter's unlawful solicitation and coercion.

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Respondents

3. Sumter is an electric distribution cooperative that supplies electricity to homes, farms, and businesses in seven counties in Central Florida. Sumter was incorporated in 1938, and is governed by a nine-member Board of Trustees. Three Trustees are elected at district membership meetings annually to serve three-year terms. Sumter is a member of the National Rural Electric Cooperative Association ("NRECA"), which is a national service organization dedicated to representing the national interests of cooperative electrical utilities, including its more than 900 member cooperatives.

4. James P. Duncan is the chief executive officer and general manager of Sumter.

Allegations of Fact

5. Action Committee for Rural Electrification (ACRE) is a political action committee of NRECA. NRECA recently established Co-op Owners for Political Action ("COPA") as its political action committee for affiliated cooperatives' non-employee members. Contributions to ACRE are now limited to affiliated cooperatives' employees.

6. Sumter solicited contributions to ACRE from its employees, including the bargaining unit employees. In furtherance of this endeavor, Sumter has established a payroll deduction system to deduct employee contributions to ACRE from employees' paychecks.

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7. At least once a year, Sumter requires its employees, including bargaining unit employees, to attend mandatory meetings at its corporate headquarters during which Sumter solicits the employees to contribute to ACRE. Some of the bargaining unit employees required to attend these meetings are not members of the cooperative. (The bargaining unit employees are not executive or administrative employees within the meaning of the Act.) During the meetings, each employee is given a form that indicates the employee's donation during the previous year and asks the employee to designate his or her contribution for the upcoming year. At the end of the meeting, the employees are required to turn in the forms, whether they are making contributions or not. At some of these meetings, Sumter gives employees pins or other gifts based on the amounts of their contributions.

8. In about mid-May to early June, 2007, a number of bargaining unit employees discontinued their payroll deductions to ACRE.

9. On or about June 5, 2007, Respondent James P. Duncan sent a letter (Exhibit 1), signed as CEO and General Manager of Sumter, to bargaining unit employees who had discontinued their payroll deductions to ACRE. In the letter Duncan stated, *inter alia*: "let me emphasize my personal disappointment in you that you have chosen this path" The letter did not advise the employees of their right to refuse to contribute to ACRE without reprisal and that they would not be favored or disfavored

because of the amount of their contributions or because of their decisions not to contribute. Nor did the letter contain a clear description of ACRE's political purposes.

10. On or about June 7, 2007, Respondent James P. Duncan sent a "Manager's Memo" (Exhibit 2) to all Sumter employees. In the memorandum, Duncan, *inter alia*, asked employees who had withdrawn their support of ACRE to reconsider their decisions (Exhibit 2, p.2). The "Manager's Memo" did not advise the employees of their right to refuse to contribute to ACRE without reprisal and that they would not be favored or disfavored because of the amount of their contributions or because of their decision not to contribute. Nor did the memorandum contain a description of ACRE's political purposes.

11. Also on or about June 7, 2007, employees who had withdrawn their support of ACRE were sent letters (Exhibit 3) on Sumter letterhead from their "Elected ACRE Committee" signed by ten of their co-workers, stating that they were "very disappointed" in the employees' decision to withdraw their support. Although the letter states that the employees were "fully within [their] rights" to terminate their participation in "the ACRE program," the letter did not advise the employees of their right to refuse to contribute to ACRE without reprisal and that they would not be favored or disfavored because of the amount of their contributions or because of their

decision not to contribute. Nor did the memorandum contain a description of ACRE's political purposes.

12. On information and belief, at sometime around early June, 2007, employees who had withdrawn their support of ACRE were called in individually by Sumter managers and/or supervisors and encouraged to again contribute to ACRE. These one-on-one meetings with subordinate employees were inherently coercive and constituted threats of job discrimination and/or reprisal for failure to contribute to ACRE. In addition, during these one-on-one meetings, the employees were not advised of ACRE's political purposes, of their right to refuse to contribute to ACRE without reprisal, nor that they would not be favored or disfavored because of the amount of their contributions or because of their decision not to contribute.

VIOLATIONS OF THE ACT

13. The Act requires that solicitations inform employees and members of the political purposes of the separate segregated fund. 2 U.S.C. § 441b(b)(3)(B); 11 C.F.R. § 114.5(a)(3). *See* Advisory Opinion 2006-17.

14. The Act requires that solicitations inform employees and members of their right to refuse to contribute to the separate segregated fund without reprisal. 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a)(4). *See* Advisory Opinion 1999-40; Advisory Opinion 2006-17.

15. The Act requires that a written solicitation for contributions to a separate segregated fund addressed to an employee or member contain

statements informing the solicitee of the political purposes of the fund, that the solicitee is free to contribute more or less than any suggested guideline, that the solicitee will not be favored or disadvantaged because of the amount of the contribution or the decision not to contribute, and that the solicitee is free to contribute or refuse to contribute without reprisal. 11 C.F.R. § 114.5(a)(5). *See Advisory Opinion 2006-17.*

16. Solicitations by collecting agents must meet all the requirements described in Paragraphs 10-12, *supra*. *See Advisory Opinion 2006-17; Advisory Opinion 1999-40.*

17. NRECA and Sumter are membership organizations, within the meaning of the Act. 11 C.F.R. § 114.1(e)(1) & (2). *See Advisory Opinion 2006-17; Advisory Opinion 1999-40.*

18. When soliciting contributions to NRECA's separate segregated fund, Sumter acts as NRECA's collecting agent. *See Advisory Opinion 2006-17; Advisory Opinion 1999-40.*

19. By sending the June 5, 2007 letter to employees castigating them for no longer contributing to NRECA's separate segregated fund without therein informing the employees of the political purposes of the fund, that the employees would not be favored or disadvantaged because of the amount of the contribution or the decision not to contribute, and that the employees were free to contribute or refuse to contribute without reprisal,

Sumter and Duncan violated 2 U.S.C. § 441b(b)(3)(B) & (C). *See Advisory Opinion 2006-17; Advisory Opinion 1999-40.*

20. By issuing the June 7, 2007 memorandum to all employees soliciting employees to continue contributing to NRECA's separate segregated fund without therein informing the employees of the political purposes of the fund, that the employees would not be favored or disadvantaged because of the amount of the contribution or the decision not to contribute, and that the employees were free to contribute or refuse to contribute without reprisal, Sumter and Duncan violated 2 U.S.C. § 441b(b)(3)(B) & (C). *See Advisory Opinion 2006-17; Advisory Opinion 1999-40.*

21. By sending the June 7, 2007 letter to employees on Sumter letterhead and from an employee committee, castigating them for no longer contributing to NRECA's separate segregated fund without therein informing the employees of the political purposes of the fund, that the employees would not be favored or disadvantaged because of the amount of the contribution or the decision not to contribute, and that the employees were free to contribute or refuse to contribute without reprisal, Sumter and Duncan violated 2 U.S.C. § 441b(b)(3)(B) & (C). *See Advisory Opinion 2006-17; Advisory Opinion 1999-40.*

22. By calling employees in for one-on-one meetings with managers and/or supervisors and soliciting them to again contribute to ACRE without

informing the employees of the political purposes of the fund, that employees would not be favored or disadvantaged because of the amount of the contribution or the decision not to contribute, and that employees were free to contribute or refuse to contribute without reprisal, Sumter and Duncan violated 2 U.S.C. § 441b(b)(3)(B) & (C). *See Advisory Opinion 2006-17; Advisory Opinion 1999-40.*

23. By calling employees in for inherently coercive one-on-one meetings with managers and/or supervisors and soliciting them to again contribute to ACRE, Sumter and Duncan threatened employees with job discrimination and/or reprisals in violation of 2 U.S.C. § 441b(b)(3)(A). *See 11 C.F.R. § 114.5(a)(1).*

24. By soliciting non-member employees during mandatory employee meetings, Sumter and Duncan solicited outside Sumter's restricted class in violation of 2 U.S.C. § 441b(b)(3).

CONCLUSION

WHEREFORE, complainant requests that the Federal Election Commission conduct an investigation into these allegations, declare the respondents to have violated federal campaign finance laws and pursue appropriate civil and/or equitable remedies against them.

Respectfully submitted,


R. Floyd Suggs
ON BEHALF OF COMPLAINANT

R. Floyd Suggs, Business Manager/Financial Secretary
International Brotherhood of Electrical Workers,
Local 108
10108 Highway 92, East
Tampa, FL 33610
(813) 621-2418
(813) 621-1687

29190281069
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Counsel for Complainant
International Brotherhood of
Electrical Workers, Local 108

Verification

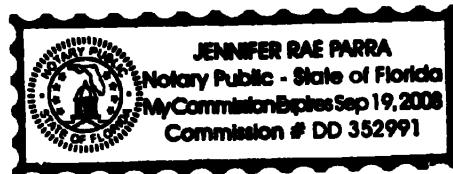
International Brotherhood of Electrical Workers, Local 108, hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

R. Floyd Suggs
R. Floyd Suggs,
Business Manager/Financial Secretary
International Brotherhood of Electrical Workers, Local 108

Sworn and subscribed before me this 6th day of August, 2007.

Jennifer Rae Parra
Notary Public





Sumter
Electric
Cooperative,
Inc.

June 5, 2007

29190281071

On June 5, 2007 we were informed from our Accounting & Finance department that you and some of your coworkers have requested that we discontinue your voluntary contributions to the United Way and to ACRE.

I can only assume that this request was intended to be a "protest" regarding some pending issues between the L.B.E.W. and the Cooperative.

There is a legal process that we are following to deal with these issues. In accordance with the Collective Bargaining Agreement, we intend to continue on this legal path, which we believe is the correct way to resolve this or any other issues that arise.

It is difficult for me to understand how withdrawing your commitment to the United Way and to ACRE could possibly relate to the issues at hand.

To the contrary, in the case of the United Way, you are simply withdrawing your commitment of support to people in your community who are less fortunate than you.

Your actions will affect the budget of these agencies, which in turn will affect people who need the help of these agencies and who may be adversely denied assistance.

With regard to ACRE, if you don't understand by now the importance of ACRE to the overall well being of electric cooperatives, including SECO (which is YOU!), you apparently were never committed to ACRE in the first place.

In closing, let me emphasize my personal disappointment in you that you have chosen to take this path, to withdraw support from people in your community who count on the services of United Way and from lobbyists who work every day to assure that cooperatives are treated fairly in the legislative process.

Sincerely,

James P. Duncan
CEO & General Manager

CC: Barry Bowman
Ben Brickhouse
Jerry Sorenson
Alex Markley

John Chapman
John LaSelva
Mickey Gauldin

A Touchstone Energy® Cooperative
The power of human community

PO Box 301
Sumter, SC 29154-0301
(800) 795-3881

10 West Arthur Avenue
(800) 557-5660

850 North Hwy Road
(852) 429-2197

630 US Highway 41 South
(952) 726-7744

4972 SW 50th Avenue
(971) 227-4107

Ex. 1

Manager's Memo

TO: All Employees

SUBJECT: Employee Update – The Rest of the Story

DATE: June 7, 2007



The subject matter of this memo involves only a segment of our employee population. However, since I'm sure there is widespread discussion throughout the Cooperative regarding these issues and all of us are impacted by the actions taken by this group, I wanted to provide a factual explanation of the issues.

On June 5, 2007 we were informed by our Accounting & Finance department that a number of our employees had submitted a written request to discontinue their voluntary payroll deduction commitments to United Way and to the Action Committee for Rural Electrification (ACRE). In the last couple days a few additional requests have been received.

In a letter dated June 6, 2007 from R. Floyd Suggs, Business Manager/Financial Secretary for the IBEW Local Number 108 headquartered in Tampa, Mr. Suggs took the "credit" for this action:

"This letter is a brief explanation of your employee's decision to withdraw and/or discontinue their financial support to the above-referenced organizations through Sumter Electric. A large number of the covered employees have expressed dissatisfaction and displeasure with management's recent liberal interpretation of mature contract language and the recent layoff of covered employee(s).

The concept for this action was conceived and driven by the rank and file membership and supported by the union leadership. It needs to be noted that union leadership encourages employees to continue their support to United Way through direct donations and maintain political action through their union PAC Fund."

I am shocked and disappointed to learn that the Union would want to claim credit for people no longer supporting United Way and ACRE. While the Cooperative and the Union have had their agreements and disagreements over the years, we have always been able to resolve those issues. I know of nothing that would justify doing something like this, the only effect of which is to punish the underprivileged and needy members of our community.

Frankly, I am still struggling to understand how withdrawing financial support from needy individuals within the community and withdrawing support from an organization that lobbies daily to assure that cooperatives and their employees are protected, has anything to do with the Union contract.

I have been told that some within the Union feel that the United Way and ACRE are my "pet projects" and that by withdrawing their support they would get my attention. While I am and will continue to be a strong supporter of both organizations, it has never been about me, but rather about assuring that the entire employee group at SECO receives the well-deserved recognition for your incredible support of both organizations.

Ex. 2

I hope those of you who have withdrawn your support for both the United Way and ACRE will reconsider your decision. I hope that the vast majority of you will continue to support both because it is the right thing to do.

What the Union is mad about relates to some layoffs. The fact is that the layoff never needed to happen. As a starting point, all SECO jobs have changed over the years and some more significantly than others. We periodically review all of the positions within the Cooperative to determine the appropriate minimum job qualifications and job descriptions.

As part of the review, we recently reviewed the Sr. Engineering Technician functions and compared their actual duties to their job description. We also considered the additional duties the position has taken on during the past few years and where the position appropriately fits within our organization. This review reflected that the jobs had in fact changed significantly and were much more technical in nature than they were 5, 10 or 20 years ago.

To check our process, we contacted and verified with other utilities including cooperatives, municipals and investor-owned utilities to determine where their comparable position fit within their organizations. Specifically we asked if the positions were considered salaried, hourly, represented, or non-represented.

We found that almost all utilities had moved these enhanced positions into the non-represented sector.

On April 20, 2007 representatives of SECO's engineering and human resources management met with the Sr. Engineering Technicians to explain the position of Service Planner.

Mr. Brickhouse explained that the original position of Engineering Technician at one time could only stake single phase services and had evolved into the Sr. Engineering Technician position to meet the needs of the organization. In 2004, the incumbents were provided several training courses to improve their skills and were ultimately promoted to the Sr. Engineering Technician position in which they are able to complete single and three-phase work for our members. Along with the promotion, they received additional pay above that required in the 2002-2006 labor contract.

The Service Planner position is another upgrade in order to meet the continuing changing needs of our customers and their increasing expectations. The Service Planner position will allow all SECO engineering employees to work on all available work throughout the system to include underground, commercial, industrial and subdivision layouts in addition to the single-service jobs they were completing. As everyone knows, underground construction has and will continue to be a major part of our future business.

We had 11 Sr. Engineering Technicians and we told them during the meeting that we would post 11 positions both internally and externally. We said that they would automatically receive the position if they requested the promotion. We further advised them that if they chose to remain in the Sr. Engineering Technician positions, we would continue with our objective of having 11 Service Planners, hiring from the outside if necessary, and then we would evaluate our staffing levels.

We committed to providing significant training opportunities for the engineering group to assure they had the increased skills required for the position and the higher compensation it offers. Training modules and milestones were established for the position and upon completion of these milestones, each person will receive pay adjustments in excess of 10% over the next 12 months.

At the conclusion of this April 20, 2007 meeting, each person received a packet of information consisting of the job description and minimum job qualifications for the Sr. Engineering Technician and the Service Planner positions along with a comparison sheet highlighting the differences in the jobs, the training schedules, and a compensation schedule.

At the end of the posting period, four Sr. Engineering Technicians chose not to apply for the Service Planner positions. Although not required, on Monday, April 30, 2007, engineering management spoke with each of these four employees and asked them to reconsider their intent to not apply for the Service Planner positions. Each one confirmed their decision to remain as a Sr. Engineering Technician. Since then, one of the four employees has applied for and has been accepted to another position within SECO.

As we communicated in the April 20, 2007 and the April 30, 2007 meeting, we have now hired three Service Planners from the outside and two have already begun work. Thus far, we have laid-off one Sr. Engineering Technician and are continuing to evaluate our staffing levels.

I hope you can see that this process was not an abrupt decision but rather a decision that has been considered for the long-term interest of SECO, our members and our employees. It is a decision carefully researched, planned and communicated to the affected employees and offers them an opportunity to receive additional training, more challenging work, more responsibility, and higher compensation.

As you all know we have made no distinction in the past between salaried, hourly, represented or non-represented employees. We are all simply SECO employees. The benefits packages are basically identical to all employees and include pension, 401k, life insurance, medical insurances and vacation and sick leave. Although not contractually required, then or now, we have offered all employees the opportunity for additional money through the SMART program.

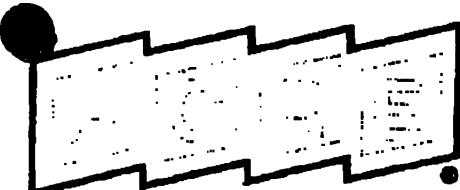
Hopefully this clarifies any misconceptions or misunderstanding that are being communicated.

Jim Duncan

JPD/kn
xc: Board of Trustees



Sumter
Electric
Cooperative,
Inc.



COMMITTEE MEMBERS

Victoria Bucher Karen Burke Brian Chevous
Carl Cole Gus Komegey Dave McCullen Daryl Powell
Tony Shaw Kimberly Smallwood Jesse Thomas

June 7, 2007

Mark McIntosh
P. O. Box 26
Sumterville, FL 33585

Dear Mark,

As your elected representatives to the ACRE Committee, we felt compelled to write to you about your recent action to cease support for the ACRE program.

You are certainly fully within your rights to terminate your participation in the ACRE program at any time and for any reason. However, we are very disappointed with your decision. We have seen the value of this program first hand and we respectfully ask that you rethink the recent action you took.

As an ACRE member you are represented every day of the year by dedicated lobbyists whose sole purpose is to make sure that electric cooperatives (including SECO) are not hurt by bad legislation and that co-op jobs are protected. A good example is the huge win a couple of years ago in protecting co-op pension plans (including yours). No PAC can represent co-ops and co-op employees as effectively as ACRE.

We are also very puzzled by the decision of a number of employees to abandon their pledges to United Way. All this would seem to do is hurt the most vulnerable people in our various communities.

We can't help but wonder whether the information you were given, and which apparently prompted your action, was complete or fully accurate. We'd urge you to investigate further.

We hope that you will have a change of heart.

Sincerely,

Your Elected ACRE Committee

Mark McIntosh
Dave McCullen
Brian Chevous
Carl Cole
Gus Komegey
Kimberly Smallwood
Jesse Thomas
Victoria Bucher
Tony Shaw

Daryl Powell
Ronald Komegey
Kimberly Smallwood
Jesse Thomas

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