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August 13, 2014

By email and regular mail

Confidential per 2 U.S.C. § 437g(a)(12)

Mr. Jeff S. Jordan  
Assistant General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
2014 AUG 18 PM 1:43  
OFFICE OF GENERAL  
COUNSEL

Re: RR 14L-22  
NYS CONF IUOE FED VPAF

Dear Mr. Jordan:

I am writing on behalf of the New York State Conference of the International Union of Operating Engineers Fed VPAF and its Treasurer, Theron H. Hogle, in his official capacity (together, "the Committee"), in response to the notice of an internal referral at the Federal Election Commission ("the Commission") to the Office of General Counsel for possible enforcement action under 2 U.S.C. § 437g.

The Committee acknowledges, as it did in a miscellaneous text filing with Commission on April 15, 2014, that it erred by omitting from its 2012 12-day Pre-General Report a transfer to an affiliated political committee, and we further explain the circumstances below. We request that the Commission refer this matter to its Alternative Dispute Resolution ("ADR") office prior to making any reason-to-believe determination regarding this matter; alternatively, we request that the Commission enter into pre-probable cause conciliation consistent with 11 C.F.R. § 111.18(d) prior to any such determination.

The Committee is a separate segregated fund of the New York State Conference of the International Union of Operating Engineers ("NYS Conference"). During the relevant time period – October 2012 through July 2013 - the Committee reports were prepared in the following manner. The NYS Conference shares office space with a union affiliate Operating Engineers

Local 15, where various administrative support of the NYS Conference is performed. The office manager is paid by both Local 15 and the NYS Conference, and she performed day-to-day administrative support for the Committee, including making disbursements as directed by the Committee. The Committee's reports to the Commission were prepared and filed on the Committee's behalf by the NYS Conference's retained accounting firm. The office manager entered all Committee transactions into a Quickbooks file, and she provided access to that file to the accounting firm. The accounting firm then converted that information into Form 3X entries. However, the Quickbooks file was not regularly reconciled with the Committee's bank account.

This procedure failed to produce a proper internal record of the October 11, 2012 transfer of \$400,000 to the Engineers Political Education Committee/International Union of Operating Engineers ("EPEC"), the political committee that is a separate segregated fund of the international union affiliate of the NYS Conference. From a review of the Committee's Quickbooks file, it appears that the transfer information was not successfully transmitted, which resulted in the omission from the Pre-General Report; and, the ongoing lack of reconciliation with the bank account caused the subsequent Post-General and Year-End Reports to reflect a balance that was \$400,000 more than was in fact the case. These omissions were entirely inadvertent at both the Committee and the accounting firm.

The Committee and the NYS Conference each uses a July-to-June fiscal year. The accounting firm routinely audits their accounts at the end of the fiscal year, and in early July 2013, during that audit, the firm discovered the discrepancy and notified the NYS Conference. As an immediate result, on July 16 the Committee amended its three preceding reports and filed its Mid-Year Report with a cash balance that accurately accounted for the transfer to EPEC.

As a result of these events, the Committee has reviewed the Commission's "Best Practices for Committee Management" and "Internal Controls for Political Committees," and it is implementing the following steps to improve its operations and internal controls:

- The Committee's bank statements are reconciled monthly by the accounting firm rather than the office manager (because she processes Committee transactions)
- The accounting firm has "read-only" access to the Committee's bank account so it has complete and current information about the Committee's account when it prepares each Form 3X report.
- The Committee separately notifies the accounting firm by email of each disbursement by check when it is made, so that check disbursements can be timely recorded on Form 3X even if the check has not yet cleared when the report is prepared.

A referral of this matter to ADR would be most appropriate for the following reasons. First, no investigation is warranted; the Committee made a single error and the facts are

straightforward. Second, the error that prompted the Commission's referral is a marked exception to the Committee's ordinary accuracy, as reflected by its consistently accurate reports with the Commission since the Committee's establishment in 2006. Third, the transfer to EPEC was timely reported by EPEC itself on its own Pre-General Report, so this information was timely publicly disclosed.

Fourth, late-reported disbursements through self-corrective action like the Committee's transfer to EPEC here are routinely resolved through the ADR process. Recently, the Reports Analysis Division referred the National Association of Realtors to ADR for failing to disclose receipts totaling \$1,065,000 and disbursements totaling \$134,854 over the course of two reports during the 2012 election cycle. *See* ADR 671 (May 22, 2014). Similarly, there was a referral of Maragos4NY and its treasurer to ADR for failure to disclose receipts of \$794,086 and disbursements of \$800,000. *See* ADR 654 (Jan. 15, 2014). In both cases, as here, the respondents realized their accounting errors and filed amended reports to rectify the mistake. Numerous other recent settlement agreements confirm the practice. *See, e.g.,* ADR 676 (June 19, 2014) (regarding American Bridge 21<sup>st</sup> Century's failure to disclose additional debts of \$360,061); ADR 655 (April 28, 2014) (involving the Massachusetts Republican Party's failure to disclose an increase in activity totaling \$419,610 during the 2009-2010 election cycle); ADR 591 (Feb. 22, 2012) (settling the Ohio Republican Party's failure to disclose debts totaling \$1,195,892).

Accordingly, we respectfully request that the Commission refer this matter to its ADR office prior to making any reason-to-believe determination or, alternatively, that the Commission enter into pre-probable cause conciliation consistent with 11 C.F.R. § 111.18(d) prior to making any such determination.

Thank you for your consideration of this response.

Respectfully submitted,



Laurence E. Gold

Counsel for the New York State Conference  
of the International Union of Operating  
Engineers Fed VPAF and  
Theron H. Hogle, Treasurer, in his official  
capacity