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March 16, 2015

By email and U.S. mail

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: RR 15L-01
Brotherhood of Railroad Signalmen
Political Action Committee

Dear Mr. Jordan:

I am responding on behalf of respondents Brotherhood of Railroad Signalmen Political Action Committee and Jerry C. Boles, in his official capacity as Treasurer (together, "BRS PAC") to your January 27 letter. Respondents respectfully request that the Federal Election Commission ("the Commission" or "FEC") exercise its prosecutorial discretion to proceed no further with this matter; or, at most, that it issue an admonishment letter. Alternatively, we respectfully request that the Commission refer this matter to the Commission's Alternative Dispute Resolution Office ("ADRO") for resolution.

BRS PAC is the separated segregated fund of the Brotherhood of Railroad Signalmen (BRS), a national labor organization whose nearly 11,000 members are employed throughout the United States and Canada by freight, passenger and commuter railroads to install, repair, inspect and maintain the signal systems used to direct train movements, and to install and maintain the warning systems used at railroad-highway crossings. The BRS national office of 26 employees, including its officers, professional, administrative and technical staff, are responsible for all aspects of BRS operations throughout North America, including coordinating BRS's 25 general committees, which are intermediate bodies that are responsible for particular collective bargaining relationships, as well as BRS's 133 local lodges, none of which employs full-time staff. BRS staff duties also include administration of BRS PAC, without special training and, until recently, without external compliance assistance.

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BRS PAC is funded almost entirely with payroll-deducted contributions from BRS members who are employed at approximately 20 railroads where BRS has negotiated this contribution method in accordance with the Commission's regulations. Employers regularly deduct contributions from employee paychecks and remit them directly to BRS PAC by either check or wire transfer. These remittances usually, but not always, are accompanied by itemizations of who contributed how much of the remitted funds, in order to enable BRS PAC both to confirm the lawfulness of the contribution sources and to report the contribution information to the Commission accurately on Form 3X, Line 11. When such information is missing or incomplete, BRS contacts the employer and persists in requesting that information until it is provided.

The Reports Analysis Division ("RAD") referral letter ("Referral") to the Office of General Counsel principally concerns a previous longstanding practice by BRS PAC that – while undertaken in good faith in order to file timely Form 3X reports that disclosed *both* the receipt of contributions *and* their properly itemized sources – unknowingly did not comply with Commission regulations. The Referral describes 19 periodic Form 3X reports that BRS PAC filed between May 2010 and October 2012, and one or more amendments to each report that disclosed receipts that either the original report or one or more prior amended reports did not include. As calculated by RAD, the additional receipts that were disclosed on these amended reports totaled \$76,504.89; BRS PAC does not dispute that figure or its calculation as set forth in the Referral.

At no time during this two and one-half year period did BRS PAC receive a single factual inquiry from RAD about its consistent pattern of amendments that belatedly reported additional receipts, even though during this period RAD sent three requests for additional information (RFAs) about report content that was unrelated to this practice (on September 17, 2010, regarding the amended June 2010 Report filed on July 15, 2010; on February 1, 2012, regarding the November 2011 Monthly Report; and on August 28, 2012, regarding the amended May 2012 Monthly Report filed on June 6, 2012). RAD sent its first and only RFAI about this practice on February 25, 2013 – nearly three years after the amendments began – asking about all of the belated reporting of receipts that are now comprised by the Referral.¹ RAD asked BRS PAC to "amend [its] report [sic] or provide an explanation to clarify why this additional activity was not provided with [its] original reports." RAD's letter did not explain how or why BRS PAC might have to "amend" its reports, as RAD did not suggest that the amended reports were inaccurate.

A BRS employee who handled BRS PAC administration, named Jillian Johnson – now Jillian Lasky – responded to the RFAI immediately and informatively. As related in the

¹ In the Referral, at footnote 1, RAD corrected some of the calculations in this RFAI.

Referral, on February 27 she called the RAD analyst about the RFAI “regarding the increases in activity disclosed on multiple reports,”² and “Ms. Johnson explained that [BRS PAC] does not always obtain information on donors during the reporting period; they amend their reports and add information later.” The analyst then “advised that [BRS PAC] should file a … Form 99 … to explain the situation for the public record.” BRS PAC did so the next day, February 28, via a Form 99. The Referral quotes this Form 99 communication almost in full (omitting its introductory statement, “I should begin with how our internal process works…”). There BRS PAC explained – over two years ago now – that BRS PAC’s practice *was to report the receipt of a contribution only when BRS PAC also had the full back-up information from the employer that itemized for BRS PAC the names of the contributors and the amounts of their contributions.* As discussed earlier, most employer remittances were accompanied by the back-up itemization, and when that occurred BRS PAC would report them accordingly on its original Form 3X. But when contributions were received with no back-up information, although BRS PAC then deposited them BRS PAC would *not* report them until it received the back-up information so it could make the appropriate allocation of the contributions between the itemized and unitemized receipts figures on Line 11(a); and, when it did so, BRS PAC would then amend the applicable report to disclose the receipt for the first time.

We acknowledge that this practice was incorrect, because 11 C.F.R. §§.103.3 and 104.3(a) require a committee to report all contributions that it receives during a reporting period, even if there are outstanding questions about their sources. So, BRS PAC should not have delayed the reporting of its contribution receipts until it could reliably comply with 11 C.F.R. § 104.3(a)(4) regarding their itemization.

As is plain, however, BRS PAC had no intention to evade its disclosure obligations. Rather, this practice resulted from a simple but ongoing misunderstanding by a committee that, like many of its size, was administered by connected organization staff who primarily performed wholly unrelated duties, using procedures that made internal sense and were consistently followed in good faith, and without the benefit of experienced FECA compliance personnel or lawyers. That good faith is well reflected, in fact, by the diligence with which BRS PAC sought to ensure the accuracy of Line 11, even to the degree of filing multiple amendments of the same report in order to get it completely right (and in some cases to conform a report to updated year-to-date receipts and related totals on previously amended reports).

The Commission should consider these mitigating factors in deciding how to handle the Referral. But there is another mitigating factor that also warrants explanation and consideration: RAD’s failure at any time to inform BRS PAC that its admitted reporting practice was incorrect.

² This was one of two RFAIs sent to BRS PAC on February 25, 2013. The other RFAI inquired about discrepancies between the ending figures on the Amended October, 2012 Monthly Report and the Amended 2012 12-Day Pre-General Report and the respective next periodic reports, and it is not included in the Referral.

RAD did not even inquire about BRS PAC's reporting pattern until February 25, 2013, after *almost three years* of reviewing the repeatedly amended BRS PAC reports – that is, long after it was apparent that BRS PAC's reporting practices were flawed. BRS PAC immediately responded to that RFAI by telephone and in writing, candidly and clearly alerting RAD that the amendments resulted from BRS PAC's waiting to report contributions until BRS PAC had complete contributor back-up information in hand. Plainly, BRS PAC did not realize that this reporting approach was *incorrect* – just that it was the *cause* of its late reporting of receipts. Yet at no time – not during this phone call, not in response to the Form 99, and not later – did RAD advise BRS PAC that its method was incorrect (as the Referral implicitly acknowledges).

As a result, this practice continued. And, 18 months after the RFAI – in August 2014 – RAD contacted BRS PAC to notify it that its belated receipts reporting (in amendments of just *two* reports – May 2012 Monthly and October 2012 Monthly, *not* all 19 that are the subject of the Referral) would be referred to another Commission office for future action. But even then RAD did not explain to BRS PAC *why* BRS PAC's reporting was non-compliant. Nor did RAD do so the following month in response to a Form 99 that BRS PAC submitted on September 15, 2014 – on its own initiative, not in response to RAD inquiry – to explain, similarly to its February 2013 Form 99, that it was filing an amended July 2014 Monthly Report because “at the time the [original] report was filed, several railroads had not submitted their itemized deduction list (Long Island Rail Road, Union Pacific General Committee, TASI), which can account for much of the amendment.” Instead, BRS PAC next heard from the Commission when it received the Referral on January 27, 2015.

Promptly after reviewing the Referral, BRS PAC engaged legal counsel for advice about how to respond; and, as a result of that consultation, BRS PAC realized for the first time the substantive flaw in its approach to reporting, and realized that RAD's lengthy silence after the February 2013 phone call and follow-up Form 99 did *not* connote RAD's *acceptance* of BRS PAC's practice of delaying to report receipts that were unaccompanied by contributor information. Accordingly, BRS PAC immediately ended that practice, and it now reports all contribution receipts on the original Form 3X that it files. Consistently with Commission guidance, if subsequently received contributor information changes the appropriate Line 11 contribution allocations on a filed report, BRS PAC will either file a Schedule A memo entry on a subsequent report or amend a report. This simple change in reporting method should sharply reduce, if not eliminate, BRS PAC's need to file amendments of its reports going forward.

BRS PAC has also initiated other remedial measures. First, it is consulting with outside counsel about all of its PAC reporting practices to ensure their compliance with the Commission's regulations. Second, a PAC representative has registered for the March 25, 2015, all-day Commission webinar for Member/Labor PACs. Third, BRS PAC may send a representative to the August 25-26, 2015 FEC conference in Chicago for multiple kinds of

regulated committees; it will decide whether to undertake that expense (BRS PAC is headquartered in Virginia) when it obtains further information about the conference agenda.

To be clear, we are *not* blaming RAD for the reporting misconception that caused BRS PAC's ongoing belated receipts reporting that is the subject of the Referral. And, we are mindful that RAD has a heavy workload. But the fact remains that when RAD formally asks for an explanation, and that explanation plainly states a clear misconception about an undisputed reporting requirement, it should be incumbent upon RAD to respond, even informally with a single telephone call, to inform the committee about that misconception and thereby facilitate its immediate correction of its reporting practices.

In fact, RAD's silence here does not appear to have comported with its public guidance about how RAD operates. RAD advises:

How do I know if I responded correctly to the RFAI?

Time constraints will not allow RAD to follow up on amendments or responses submitted to an RFAI. We encourage you to contact your analyst to discuss any clarification you may need regarding the adequacy of your response. You will only receive a follow up RFAI if your amendment raised new discrepancies.

RAD, "Responding to a Request for Additional Information (RFAI)," available at <http://www.fec.gov/rad/FederalElectionCommission-RAD-RespondingtoRFAIs.shtml>. Plainly, BRS PAC's response to the RFAI here "raised [a] new discrep[an]cy" – namely, that it utilized a reporting method that was contrary to the Commission's regulations, which was not clearly discernible from the report amendments themselves. But there was no follow-up RFAI from RAD.

Moreover, RAD's public guidance generally emphasizes its mission in part to provide compliance *assistance* to committees:

REPORTS ANALYSIS DIVISION MISSION STATEMENT

The ultimate mission of the Reports Analysis Division (RAD) is to ensure that campaigns and political committees file timely and accurate reports that fully disclose their financial activities. RAD is responsible for reviewing statements and financial reports filed by political committees participating in Federal elections, providing assistance and guidance to the committees to properly file their reports, and for taking appropriate action to ensure compliance with the FECA. By enforcing the rules in a fair and objective

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manner, RAD fosters the electorate's faith in the ultimate integrity of the nation's political process.

FEC, "Reports Analysis Division," available at <http://www.fec.gov/rad>. To that end, RAD "Analyst Responsibilities" include "[a]ssist committees by phone and log calls"; "Customer service role – assist committees on the phone on a daily basis and log calls." See FEC, "Reports Analysis Division (RAD) Review Program," at 5, available at <http://www.fec.gov/rad/documents/RADProcessDocument7-13-12.pdf>. RAD further advises committees that "[a]nalysts are there to help committees with compliance and direct extensions are provided in the closing paragraph of the letter. Responding to RFAs timely and adequately may prevent a referral to OGC, ADRO or Audit." FEC, "Best Practices to Avoid Pitfalls," available at <http://www.fec.gov/rad/documents/BestPracticesToAvoidPitfalls.pdf>. Yet BRS PAC's timely RFAI response elicited no assistance to prevent the Referral.

Further with respect to the late-reported receipts, most of the increase in receipts reflected in the three amendments to the 2010 Post-General Report – \$18,944.32 out of a total increase of \$26,311.93 – consisted of a misdeposit by wire transfer from employer Union Pacific Railroad into BRS PAC's account of payroll-deducted BRS member dues, as BRS PAC explained on a Form 99 that it filed with its first amendment of that report on December 15, 2010. On each amendment, this dues figure was itemized on Line 11(a)(i) as a receipt on November 3, 2010, from "Local 72" (because all the dues originated from members of that BRS affiliate), with a memo entry stating "Deposit by Union Pacific RR into incorrect account." And, it was itemized on Line 29 as a disbursement *on that same day* to Local 72 with the memo entry "Repayment of Local 72 Dues which were deposited into incorrect account by UPRR." (At no time did RAD question this manner of disclosure of the receipt of this misdeposit.) The failure to include on the original Form 3X this highly unusual pair of mutually canceling transactions report was wholly inadvertent and promptly corrected in the first amendment of the report and its accompanying Form 99.

Finally, the Referral also concerns the late reporting of a single disbursement. On June 6, 2012, BRS PAC amended its 2012 May Monthly Report – which had been filed 19 days before, on May 18 – to disclose an additional disbursement of \$30,569.95 that occurred on April 9. BRS PAC's failure to include this disbursement on the original report was an inadvertent error that was promptly discovered and corrected by its June 6 amendment, which was filed just 17 days after the original report of that disbursement was due.

In light of BRS PAC's mistaken but good faith belief that its manner of reporting receipts was correct; RAD's inexplicable failure for years to provide the simple guidance to BRS PAC that would have ended its fully disclosed erroneous reporting practice; BRS PAC's ongoing, good faith, and diligent efforts to amend its reports whenever it acquired new or corrected

information about its contributors; and BRS PAC's self-initiated current and ongoing remedial efforts, we submit that no enforcement action should be taken, let alone that a reason-to-believe finding and an investigation ensue. Rather, the Commission should exercise its prosecutorial discretion and dismiss this matter; or at most, it should issue an admonishment letter. And, BRS PAC's immediate reversal of a November 2010 misdeposit of member dues from an employer and prompt amendment to report the transactions, and its inadvertent 17-day delay in reporting a single disbursement at a non-election sensitive time (April 2012) likewise merit no different treatment.

Alternatively, these matters should be referred for resolution by ADRO. The record is clear with respect to BRS PAC's Form 3X and Form 99 filings since 2010 and BRS PAC's reporting approach; no investigation is warranted. BRS PAC otherwise has a good record of compliance, and a demonstrated history of unprompted self-correction in other instances. And, late-reported activity like that which is at issue here is routinely referred, if at all, to ADRO.

Thank you for your consideration.

Respectfully submitted,



Laurence E. Gold

Counsel for Respondents
Brotherhood of Railroad Signalmen Political Action
Committee and Jerry C. Boles, as Treasurer

cc: Jerry C. Boles, Treasurer