

REPORTS ANALYSIS DIVISION REFERRAL
TO
ALTERNATIVE DISPUTE RESOLUTION OFFICE

DATE: April 10, 2017

ANALYST: Maureen Benitz

I. COMMITTEE:

Int'l Union of Bricklayers and Allied
Craftworkers PAC
C00003632
Timothy J. Driscoll, Treasurer
(1/5/17-Present)
Henry F. Kramer, Treasurer (4/7/10-
1/4/17)
620 F Street, NW
Suite 900
Washington, DC 20004

II. RELEVANT STATUTE:

52 U.S.C. §30104(g)(2)
11 CFR §104.4(b)(2)

III. BACKGROUND:

Failure to Provide Supporting Schedules (Failure to Timely File 48-Hour Reports)

Int'l Union of Bricklayers and Allied Craftworkers PAC ("the Committee") failed to timely file two (2) 48-Hour Reports totaling \$30,140.42 to support twelve (12) independent expenditures disclosed on the 2016 October Monthly Report made up to and including the 20th day before the 2016 General Election (Attachment 2).

On October 19, 2016, the Committee filed the 2016 October Monthly Report covering the period from September 1, 2016 through September 30, 2016, which included a Schedule E (Itemized Independent Expenditures) disclosing fourteen (14) independent expenditures totaling \$32,081.72 made in support of one (1) federal candidate. The Committee failed to timely file two (2) 48-Hour Reports to support twelve (12) independent expenditures totaling \$30,140.42 for the 2016 General Election (Images 201610199033061233-9).

On December 11, 2016, a Request for Additional Information ("RFAI") was sent to the Committee referencing the 2016 October Monthly Report. The RFAI noted that the Committee may have failed to file one or more required 48-Hour Reports regarding independent expenditures. A chart was included with the RFAI identifying the twelve (12) independent expenditures, totaling \$30,140.42, for which 48-Hour Reports had not been filed (Image 201612110300069840).

On January 14, 2017, the Committee filed a Miscellaneous Electronic Submission ("FEC Form 99") in response to the RFAI, which stated in part,

"It appears that BACPAC may have inadvertently and unintentionally missed two 48-Hour Reports, on 09/09/2016 and 09/17/2016. We note that all of the expenditures were fully reported on BACPAC's monthly reports. Moreover, we note that we have taken steps to ensure reporting happens timely in the future, including by notifying appropriate staff of the 48-Hour Reporting requirements and deadlines.

It is important to state that all the actual disbursements at issue were payments for express-advocacy materials that were distributed only to local and intermediate labor organizations (?Affiliates?) that are affiliated with the International Union of Bricklayers and Allied Craftworkers (BAC) for those Affiliates' subsequent distribution to their members, all of whom are in the restricted class of BAC and the Affiliates in accordance with 52 U.S.C. ? 30118(b)(2)(A). The materials primarily included t-shirts, bumper stickers, hardhat stickers and rally signs, along with some banners, that contained express advocacy in support of Hillary Clinton for the office of President. We recognize that ? despite their conveyance only to BAC Affiliates and then to BAC members ? such distributions are treated as independent expenditures. See FEC, ?Interpretive Rule on When Certain Independent Expenditures Are ?Publicly Disseminated? for Reporting Purposes,? 76 Fed. Reg. 61254 (Oct. 4, 2011) (?Interpretive Rule?). And, in accordance with the Interpretive Rule, the Committee chose and reported in each case as the public dissemination date ?the date that [the Committee] distribute[d] the communications to its affiliate or member organizations for later public dissemination,? id. at 61255 ? that is, when the materials were shipped to Affiliates.

However, it is largely speculative whether or not, and when, any of these materials were ever actually used by BAC members or viewed by persons beyond BAC's restricted class. Accordingly, in reviewing this matter, the Commission should take into account that the very fact of the ?public dissemination? of these independent expenditures is not clear, unlike the certainty that conventional communications that are made directly to the general public, such as via print, broadcast and digital advertising, mass

CONFIDENTIAL

mailings, telephone banks, outdoor advertising facilities and the like, are publicly disseminated in full when those communications occur. Moreover, it is entirely possible that any actual public dissemination, insofar as it occurred, in fact post-dated the election where the distribution took place, due to delays in affiliate-to-member distribution, delays in member utilization of the materials, or both.” (Image 201701149041389240).

On January 23, 2017, the Reports Analysis Division (RAD) Analyst attempted to reach Timothy Driscoll, the Committee's Treasurer. The Analyst left a voicemail stating that the FEC Form 99 filed on January 14, 2017 was not an adequate response to the RFAI. Further, the Analyst encouraged Mr. Driscoll to clarify their response by either amending the report to change the category of activity if the expenditure should not be categorized as an Independent Expenditure or to file the missing 48-Hour Reports. The Analyst explained that the issue could be referred for further action by the Commission. The Analyst encouraged Mr. Driscoll to return the voicemail as soon as possible, as this was a time sensitive matter (Attachment 3).

Also on January 23, 2017, the Analyst called Holly Giarraputo, a consultant for the Committee. The Analyst explained that the FEC Form 99 filed on January 14, 2017 was not considered an adequate response to the RFAI. Ms. Giarraputo stated that this was the language the Committee's attorney wanted filed. The Analyst advised that the Committee should either file an amended report to change the category of activity if the expenditure should not be categorized as an Independent Expenditure or file the missing 48-Hour Reports. She understood that the 48-Hour Reports would be late, but would be disclosed on the public record. The Analyst advised that this is a time sensitive matter and a response should be filed as soon as possible (Attachment 3).

Also on January 23, 2017, Larry Gold, the Committee's Attorney, called the Analyst. He called on behalf of Mr. Driscoll. The Analyst advised that the FEC Form 99 filed on January 14, 2017 was not an adequate response to the RFAI. Mr. Gold said he believed the activity was independent expenditures and that the Committee failed to file the appropriate report(s). The Analyst advised that the Committee should either file an amended report to change the category of activity if the expenditure should not be categorized as an Independent Expenditure or file the missing 48-Hour Reports. He understood that the 48-Hour Reports would be late, but would be disclosed on the public record (Attachment 3).

On January 24, 2017 the Committee filed one (1) 48-Hour Report to support twelve (12) independent expenditures, totaling \$30,140.42, which had been cited as missing on the RFAI (Images 201701249041454479 - 84).

To date, no further communication has been received from the Committee regarding this matter.

CONFIDENTIAL

Int'l Union of Bricklayers and Allied Craftworkers PAC (C00003632)
2016 October Monthly Report

48-Hour Reports Not Timely Filed

Name of Payee	Date of Dissemination (Schedule E)	Expenditure Amount	Candidate Supported	Election	48-Hour Report Filed
Financial Innovations	9/1/16	\$3,498.88	Hillary Rodham Clinton	2016 General	1/24/17
Financial Innovations	9/2/16	\$3,018.40	Hillary Rodham Clinton	2016 General	1/24/17
Financial Innovations	9/6/16	\$1,815.00	Hillary Rodham Clinton	2016 General	1/24/17
Financial Innovations	9/6/16	\$455.34	Hillary Rodham Clinton	2016 General	1/24/17
Financial Innovations	9/7/16	\$128.70	Hillary Rodham Clinton	2016 General	1/24/17
Financial Innovations	9/7/16	\$1,817.20 48-Hour Report Required	Hillary Rodham Clinton	2016 General	1/24/17
Financial Innovations	9/8/16	\$1,540.00	Hillary Rodham Clinton	2016 General	1/24/17
Financial Innovations	9/8/16	\$349.50	Hillary Rodham Clinton	2016 General	1/24/17
Financial Innovations	9/9/16	\$1,320.00	Hillary Rodham Clinton	2016 General	1/24/17
Financial Innovations	9/9/16	\$161.55	Hillary Rodham Clinton	2016 General	1/24/17
Financial Innovations	9/15/16	\$1,751.25	Hillary Rodham Clinton	2016 General	1/24/17
Financial Innovations	9/15/16	\$14,284.60 48-Hour Report Required	Hillary Rodham Clinton	2016 General	1/24/17
	Total	\$30,140.42			