FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: The Commission
Staff Director
General Counsel
FEC Press Office
FEC Public Records

FROM: Marjorie W. Emmons/Delores Hardy
Secretary of the Commission

DATE: July 24, 1996

SUBJECT: COMMENTS: REVISED DRAFT AO 1996-25

For your information, we are transmitting a comment from Mr. David Frulla.

Revised Draft Advisory Opinion 1996-25 is on the agenda for Thursday, August 1, 1996.

Attachment:

3 pages

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July 24, 1998

BY FACSIMILE

Commission Secretary
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Requester's Comments to Revised Draft Advisory Opinion 1996-25

Dear Madam Secretary:

We represent the Seafarers Political Activity Donation ("SPAD"), the separate segregated fund of the Seafarers International Union ("SIU").

We respectfully submit the following comments to the above-captioned revised draft advisory opinion, a copy of which we were provided yesterday and which is scheduled for Commission review on August 1. The Commission should consider our comments and opposition to the revised draft because it would require SPAD to undertake an even greater level of effort to obtain information that the Federal Election Campaign Act does not require it to obtain, to wit, the names of SPAD's contributors' former employers.

Our brief comments are as follows:

1. The revised draft, at page 5, is factually incorrect in its assertion that, "SPAD contributions . . . are derived from compensation in the form of vacation pay disbursed by the member's most recent employer." By contrast, employers make their vacation payments into a pool maintained by the Vacation Plan. The Vacation Plan, in turn, makes the vacation payment to a qualifying employee based on the number of days the employee has worked. In the majority of cases, the vacation payment is made for work from more than one employer. SPAD cannot simply match up former employers with vacation payments in the way that the revised draft implicitly suggests. We have explained how the plan operates in prior submissions.

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2. The revised draft now concludes that the best efforts rule applies to a separate segregated fund. The contrary conclusion in the first draft opinion was patently not defensible, although this issue may be a distracter now. We originally framed our advisory opinion request as one seeking an exception to the application of the best efforts rule (with which the Reports Analysis Division was insisting that SPAD comply) on the basis that such inquiries would not yield any current, relevant employer information and would thus be a hollow exercise. The draft advisory opinions have changed the issue presented in that they would impermissibly create an obligation to identify a contributor's past employer.

As we have explained, nowhere does the FECA or Commission regulations require disclosure of a contributor's former employers. Our original advisory opinion request offered to go beyond the requirements of the law and disclose the most accurate information: a SPAD contributor is employed by "various U.S.-flag vessel operators."

3. The revised draft would not only require SPAD to comply with the best efforts rule, but then does not provide SPAD any "safe harbor" if it does so. Specifically, if SPAD issues two requests to the contributor to identify its most recent past employer and the contributor does not respond, then the revised draft would require SPAD to obtain that information from the SIU, SPAD's connected organization. The revised draft's conclusion that the best efforts rule applies to a stock corporation or labor organization separate segregated fund is thus a nullity because no "safe harbor" is afforded.

All the revised draft has done is add another layer of burden on SPAD to identify its contributors' past employers. Under the revised draft, SPAD would be required both to: (1) undertake the multiple steps required by the new best efforts rule to obtain this former employer information that the FECA does not require to be collected, and then (2) get the information from the SIU if SPAD's multiple communications under the best efforts rule are not availing. We would also note that the revised draft provides no authority for requiring such information to be obtained from a connected organization – and for good reason, because there is none.

4. Finally, the revised draft again stubbornly refuses to acknowledge that, as we have explained, obtaining past employer information from the SIU is not practicable.

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Thank you very much in advance for including these comments in the decisional record.

Respectfully submitted,

BRAND, LOWELL & RYAN, P.C.

Stanley M. Brand
David E. Frulla