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August 21, 2007

Thomasenia P. Duncan  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

*Comments to  
AOR 2007-13*

Re: Comments on AOR 2007-13

Dear Ms. Duncan:

We are writing on behalf of the American Nurses Association ("ANA") regarding Advisory Opinion Request ("AOR") 2007-13, submitted on behalf of the United American Nurses, AFL-CIO ("UAN"). UAN is seeking an Advisory Opinion ("AO") declaring that ANA and UAN are not affiliated within the meaning of the Federal Election Campaign Act ("the Act") and that the connected political action committees of the UAN and ANA would not be considered affiliated PACs. Unfortunately, despite the long association between the organizations, UAN did not make ANA aware of its AOR, and ANA did not learn of it, prior to the close of the comment period. ANA does not take a position on the question of whether the organizations are affiliated under the Act, but it does believe that certain representations made in the UAN request need to be clarified and put into their proper context. For that reason, ANA will only address factual matters regarding the relationship between ANA and UAN and will not address the underlying merits of the legal arguments. In this light, we respectfully ask the Federal Election Commission ("FEC") to accept these comments."

**I. ANA as an Organization**

In an attempt to downplay the significance of ANA's role, structure and members, UAN claims ANA is a "loose confederation" of organizations which "largely eschews" recognizing individual members. To the contrary, ANA, a 501(c)(6) corporation and a national labor organization, is a full-service professional organization representing the interests of the nation's 2.9 million registered nurses (RNs) through fifty-four Constituent Member Associations ("CMA"), with 157,000 individuals having membership in ANA. The CMAs determine much of the direction of the ANA through the ANA House of Delegates, which is comprised of delegates sent by each state, apportioned according to each state's membership dues payments to ANA.

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Full ANA/CMA members are members of both the American Nurses Association and a state Constituent Member Association with full rights and benefits in both organizations. ANA holds its national elections in conformance with the Labor-Management Reporting And Disclosure Act Of 1959 ("LMRDA") and individual members of ANA have member rights under LMRDA.

## **II. The Relationship Between ANA and UAN**

While ANA established the UAN, the relationship between the organizations has been evolving over time and is currently governed by the "Autonomy and Affiliation Agreement Between American Nurses Association and United American Nurses, AFL-CIO" ("ANA-UAN Agreement").<sup>1</sup> As its name implies, the "Autonomy and Affiliation" agreement not only establishes aspects of the separate identities of ANA and UAN, but it also establishes the ways in which the groups remain affiliated. This agreement, which went into effect in 2003, will govern the relationship between the organizations until at least July 1, 2008. UAN's submission focuses mainly on the "autonomy" part of the Agreement, ignoring some affiliation issues and relegating others to footnotes. However, there is a greater level of affiliation between the two groups than is immediately apparent from the AOR.

### **A. ANA-UAN Organizational Relationships**

The ANA-UAN Agreement is the most accurate statement of the actual legally binding organizational attachments that exist between the two groups. For example, the Agreement provides that all constituent members of ANA who represent nurses for the purposes of collective bargaining "shall be members of UAN." Moreover, it provides that all such constituent members had to join UAN by July 1, 2005. ANA-UAN Agreement, Para. 3. In addition, ANA agreed to seek Bylaw changes to allow certain UAN members to participate in ANA's governance structure. ANA-UAN Agreement, Para 4. To fulfill its obligation, the ANA adopted Bylaws allowing those UAN members to join ANA's Individual Member Division.

Pursuant to ANA's Bylaws, the UAN President is on ANA's Board and votes on all matters except those that address "business matters or involve confidential discussion regarding ANA's strategic position in relation to other organizations." ANA Bylaws Art II, sec 2.d.<sup>2</sup> In addition, at present, all officers of the UAN Executive Council are members of ANA and five of the fifteen elected ANA Board members are members of the UAN. At this time, all members of the UAN are members of the ANA, while approximately 57,000 ANA members are not members of UAN.

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<sup>1</sup> The Agreement is Exhibit 2 to the UAN AOR.

<sup>2</sup> The ANA Bylaws are at Exhibit 4 to UAN AOR.

The ANA-UAN Agreement further provides for the establishment of a Joint Leadership Committee, comprised of the ANA Chief Executive Officer and the UAN Executive Director, as well as three members each from the ANA Board of Directors and the UAN Executive Council. The committee is required to meet twice a year "to coordinate and address issues of mutual concern." ANA-UAN Agreement, Para. 13.

The ANA-UAN Agreement reflects the understanding that there would be a continuing organizational relationship during the term of the Agreement, even as UAN sought to affiliate with independent unions. For example, the Agreement provides that it is "UAN's goal that affiliation agreements with independent nurses' unions...include provision for payment of standard ANA dues...provided that ANA will provide ANA membership and appropriate participation in the governance structure within ANA..." ANA-UAN Agreement, Para. 15. The Agreement further provides that if "UAN cannot achieve payment of the standard ANA dues payment...it shall explore alternative financial benefits to the ANA in exchange for the affiliates' receipt of something less than full membership in ANA. In this latter event, UAN shall consult the ANA regarding possible arrangements."

### **III. ANA's Ongoing Subsidization of UAN through Administrative Support**

The manner in which UAN is financed is based, in large part, on its relationship with ANA, as is reflected in the agreement regarding the allocation of dues between the two organizations, as well as the ANA dues policy adopted by the House of Delegate ("HOD").<sup>3</sup> ANA-UAN Agreement, Para. 6. In fact, ANA's decision to ask its CMAs to send the ANA share of the UAN dues increase to the UAN constitutes a financial contribution of approximately \$1.2 million per year, beginning January 2007. However, the financial connections between ANA and UAN go beyond the agreement regarding the allocation of dues.

Regardless of how UAN describes the financial arrangements between UAN and ANA, the facts demonstrate that ANA helped finance UAN's startup and continues to financially support UAN. First, as UAN acknowledges, ANA made a \$740,000 one-time grant to fund UAN's work. ANA-UAN Agreement, Para. 8.; UAN AOR Page 8, Fn. 6. But the financial support did not stop there. UAN states that in signing the UAN-ANA Agreement it "agreed to purchase from ANA, at market value, a variety of administrative services, detailed in related agreements, for a specified monthly fee." UAN AOR, Page 6. UAN's further states that it, "agreed to pay ANA \$900,000/yr., increasing to \$1.275 million on July 2, 2008...." UAN AOR, Pages 9-10.

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<sup>3</sup> The policy and related memoranda are Attachments 1 to 4 to this comment.

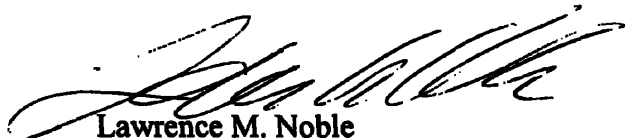
While acknowledging that ANA does provide administrative services for UAN, what the UAN does not explain is that this is not a normal fee for service agreement entered into in the ordinary course of business. The administrative services ANA agreed to provide UAN were valued in the ANA-UAN Agreement at \$1.2 million dollars per year in 2002, based on the formula ANA applies to other affiliated groups for which it provides administrative support. However, the parties also agreed UAN would only pay the "discounted" price of \$900,000 per year until July 1, 2008. This means that ANA has been providing UAN with additional and ongoing financial support in the amount of at least \$300,000 per year since 2003.

#### IV. Conclusion

UAN's submission regarding the relationship between the two organizations underplays the connections that exist between the two groups, many of which are apparent from the documents it submitted as exhibits to the AOR. As the legal protection offered by an Advisory Opinion are only as strong as the accuracy of the facts upon which it is based, ANA wants to ensure that the FEC's decision is based on a full understanding of the relationship between the two organizations.

Respectfully submitted,

  
Kenneth A. Gross *by [initials]*  
Skadden, Arps, Slate, Meagher & Flom LLP

  
Lawrence M. Noble  
Skadden, Arps, Slate, Meagher & Flom LLP

Attorneys for American Nurses Association

cc: Alice L. Bodley, General Counsel  
American Nurses Association

**AMERICAN NURSES ASSOCIATION**  
*2004 House of Delegates*  
*Policy/Position*

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**ASSESSMENT OF ANA DUES FROM CMAS**  
*(Policy Established By HOD in June 1984; Revised June 1990; Revised June 2003;  
Revised June 2004)*

1. that ANA recognize the CMA's right to establish dues categories;
2. that ANA dues be based on a percentage (%) of total dues income collected by each CMA per the ANA dues conversion factor formula\*;

\*The ANA dues conversion factor is defined by the following formula:

$$\frac{\text{ANA Assessment Factor}}{\text{CMA Dues}^1}$$

3. that the amount of CMA dues owed ANA be adjusted monthly based on the actual dues dollars received as of 12:01 a.m. on the day following the last day of the month;
4. that the amount of dues owed ANA by the CMA be due and payable by the last day of the month for which the CMA is paying;
5. that ANA remit dues collected on behalf of the CMA to the CMA by the last day of the month following the month for which the dues have been collected;
6. that all CMAs provide documentation and verification of total state dues revenue and the dues remitted to ANA for the fiscal year. Written verification of these revenue records should be done by a professional auditor or outside-of-CMA accountant utilizing generally accepted accounting principles and procedures. If the ANA Board of Directors has questions about documentation and verification of dues, ANA, at its own expense, may conduct an independent audit.

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<sup>1</sup> CMA Dues include both the ANA Assessment Factor and the CMA portion.

If there is an overage or underage in payment of ANA dues for the fiscal year, the CMA and ANA will reconcile the account within 60 days of the auditor's/accountants report to the ANA director, Division of Fiscal Administration;

7. that any change in the amount of the ANA Assessment Factor established by the House of Delegates become effective January 1 of the calendar year following the date on which it was enacted by the House of Delegates;
  8. that the ANA Assessment Factor will be increased automatically, based on the Consumer Price Index for Urban Consumers (CPI-U), (but not go below 0% or to exceed 2% per annum) without requiring additional authorization of the House of Delegates; and that this dues escalator will be calculated on an annual basis, implemented every 3 years and rounded to the nearest dollar;
  9. that any CMA which does not pay its dues within 20 days following the date on which they are due, shall pay an administrative fee in an amount sufficient to cover processing costs and a late charge of interest at the rate to be determined by the ANA Board of Directors. Payments received shall be applied to the oldest outstanding balance. ANA shall send a past dues notice to the CMA president, treasurer, and executive director on the day after the dues are payable.
- That ANA, if billing, collecting and disbursing dues on behalf of a CMA, pays interest at the same rate of interest applicable to the CMAs on the unpaid balance ANA owes to the CMA, if ANA does not remit dues owed to the CMA within 20 days following the date on which the dues are payable to the CMA; and
10. that a CMA, which at any time falls three (3) months in arrears on dues payments and/or interest owed to ANA and has not entered into an agreement mutually acceptable to ANA and the CMA for satisfying the obligation, shall be considered delinquent in payment of dues to ANA and subject to disciplinary action in accordance with ANA Bylaws, policies and procedures.
  11. that the dues paid to the ANA be subject to one of the following discounts:

- a. Effective July 1, 2003, for the purpose of paying dues to the Associate Organizational Member for collective bargaining<sup>2</sup>, the CMAs that belong to the ANA's Associate Organizational Member (AOM) for collective bargaining shall receive a dues discount on all dues paid from and on behalf of collective bargaining members by the following percentages and on the following schedule with only one discount available per individual member of the CMA

2003	54%
2004	54%
2005	56%
2006	58%
2007 and thereafter	60%

- b. Commencing on January 1, 2008, the CMAs shall receive a 63% discount on the dues paid on behalf of new collective bargaining members identified by the ANA consistent with applicable affiliation agreements.
- c. Commencing on July 1, 2005, for the purposes of paying dues to the Associate Organizational Member (AOM) for workplace advocacy (WPA)<sup>3</sup>, the CMAs that belong to or have members that belong to the ANA=s AOM for WPA shall receive a discount on all dues paid from and on behalf of the WPA members determined by the formula set forth below:
- (i) The total number of individual nurse members of ANA=s AOM for WPA as of June 30, 2005 shall be divided into \$1.5 million. The number thus derived shall then be divided by a number, which represents the average total dues per ANA non-collective bargaining member owed to ANA for the period January 1 through December 31, 2004. This fraction shall be converted to a percentage and the percentage thus derived shall become the dues conversion factor for ANA=s Associate Organizational Member for workplace advocacy members. The dues conversion factor shall then be applied to the total dues payable each month by ANA=s AOM for WPA members of each CMA to ANA. The amount thus derived shall be the discount from ANA dues, which shall be paid

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<sup>2</sup> The United American Nurses (UAN) is ANA's AOM for collective bargaining.

<sup>3</sup> The Center for American Nurses (CAN) is ANA's AOM for workplace advocacy.

by each CMA to the AOM for WPA as dues. In no event, however, shall the average dues payable to ANA=s AOM for WPA for each of its members during the term of this Agreement be less than \$22.50 or more than \$45.00 per member.

- (ii) For each year in which ANA=s AOM for WPA total overlapping membership increases by 5% or more, ANA=s AOM for WPA shall be entitled to an increase of 5% in the dues conversion factor. This 5% increase in the AOM for WPA dues conversion factor shall be added to the dues payable by the CMAs to ANA=s AOM for WPA for the next year and each year thereafter that the membership remains at the increased level, but in no event shall the average per member payment to ANA=s AOM for WPA exceed \$45.00.

- 12. that upon voluntary adoption of a direct membership option, the dues for said direct members to the ANA shall be \$165 per year for registered nurses who are not members of the United American Nurses National Council, with a \$45 rebate to the CMA for the state in which the direct member resides. Direct members of the ANA who are also members of the United American Nurses National Council, shall pay the same dues assessment factor or conversion factor set by the House of Delegates for CMA members.
- 13. that dues for Individual Affiliates shall be established by the ANA Board of Directors.





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PRESIDENT  
LINDA J. STIERLE, MSN, RN, CNAA, BC  
CHIEF EXECUTIVE OFFICER

**American Nurses Association  
Board of Directors  
Resolution: March 2006 UAN Dues increase  
January 5, 2007**

Whereas, the ANA and the UAN have an Autonomy and Affiliation Agreement that provides that "...dues collected from each UAN nurse collective bargaining member after applying the ANA dues conversion factor, shall be allocated as follows: ... 40% [to the ANA and] 60% [to the UAN]"; and

Whereas, the ANA informed the UAN of ANA's contractual right to the allocated share of the collective bargaining dues increase in advance of the UAN NLA meeting at which the dues increase was adopted; and

Whereas, notwithstanding the ANA's right to the contractually set proportion of the collective bargaining dues increase, the UAN National Labor Assembly voted to direct all of the dues increase to go directly to the UAN for a mobilization fund; and

Whereas, many of the CMAs that are members of ANA and also affiliates of the UAN have asked the ANA to relinquish its claim to its share of the dues increase; and

Whereas, the ANA understands and appreciates the intent of the delegates at the 2006 National Labor Assembly to raise money to support organizing to expand the CMA membership base, thereby expanding the ANA and UAN membership base; and

Whereas, the ANA wants to support the ANA-UAN overlapping members and the opportunity for organizational growth for the ANA enterprise and one of its Associate Organizational Members, the UAN,

Now therefore, be it resolved that the ANA shall support membership growth and organizational well-being by forgoing its share of the collective bargaining dues increase passed by the UAN National Labor Assembly in March 2006 for the remainder of the term of the current Autonomy and Affiliation Agreement; and it is

Further resolved that the ANA will inform the CMAs to forward all of the collective bargaining dues increase, including the ANA portion, to the UAN for the mobilization fund; and it is

Further resolved that the ANA is prepared to meet immediately and continually with UAN for the purpose of resolving conflict and restoring the relationship between the parties, and to secure and solidify a continued affiliated mutually beneficial relationship; and it is

Further resolved that ANA is prepared to have at least four facilitated meetings with the UAN regarding the affiliation; and it is

Further resolved that the ANA urge the CMAs to monitor our progress and hold each organization accountable for establishing a mutually beneficial relationship.



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REBECCA M. PATTON, MSN, RN, CNOR  
PRESIDENT

LINDA J. STIERLE, MSN, RN, CNAAB.C  
CHIEF EXECUTIVE OFFICER

**Memorandum**

To: CMA Presidents and Executive Directors

From: Rebecca M. Patton, MSN, RN, CNOR

Subj: Dues Increase for Mobilization

Date: January 5, 2007

The American Nurses Association Board of Directors has reached a decision on issues surrounding the dues increase approved by the UAN National Labor Assembly in March 2006. In recognition of the contemplated benefit to ANA and the CMAs of a robust UAN Mobilization and membership campaign, ANA has decided to forward its share of the dues increase to the UAN Mobilization fund and is asking that all CMAs direct 100% of the March 2006 collective bargaining dues increase to the UAN.

Attached is a copy of the resolution passed by the ANA Board as well as a letter to the CMAs regarding the processing of this dues increase. We encourage you to share this information with your Board of Directors, Program Director and staff, Labor Cabinet representatives, and local bargaining unit chairs. A hard copy of this letter will follow by mail.

As always, I encourage you to contact me or Linda Stierle if you have questions regarding this situation, and I appreciate the open dialogue that the CMAs engaged in to bring this to a resolution. Thank you all for your support of ANA and the profession.

cc: UAN Executive Council  
ANA Board of Directors



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REBECCA M. PATTON, MSN, RN, CNOR  
PRESIDENT

LINDA J. STIERLE, MSN, RN, CNAACB  
CHIEF EXECUTIVE OFFICER

Memo

**To:** Executive Directors of UAN Affiliated CMAs

**From:** Susan Rimland  
Director, Revenue Operations, x 5181  
[srimland@ana.org](mailto:srimland@ana.org)

**Date:** January 5, 2007

**Subject:** Reminder of Dues Increase

As per the notification in October, please do not forget that the 2006 National Labor Assembly (NLA) passed a collective bargaining member dues increase of \$30.00 per year per member that is effective January 1, 2007. It is to be collected in the amount of \$1.16 per member every two weeks, or for those members paying on different intervals, the \$30.00 should be collected on an annual basis or evenly allocated per payment throughout the year.

As agreed in the Autonomy and Affiliation Agreement between the American Nurses Association and the United American Nurses, CMAs will continue to collect national dues from UAN collective bargaining members at the rate of \$126 per the current assessment factor. These dues will be forwarded after applying the Dues Conversion Factor, based upon the agreed upon allocation. Please remember that the bifurcation of these dues will be 40% to ANA and 60% to UAN in 2007.

Contrary to the notification in October, ANA has determined that the entire amount collected from the collective bargaining member dues increase should be forwarded to the UAN. ANA has made this determination in order to support membership expansion that will benefit the organization in its entirety, notwithstanding the agreement with the UAN that a portion of all collective bargaining dues will go to the ANA. As you were previously informed, the collective bargaining member dues increase will need to be accounted for on a by member basis to allow the UAN to properly account for the dues received. We will be sending instructions, remittance documents and mailing labels later this month to assist in the process of remitting all dues properly.

As noted in October, it is each CMA's responsibility to notify their members and facilities participating in payroll deduction programs of this dues increase. If your CMA has collective bargaining members that are billed through Central Billing, we are billing your members based on the information you provided as to whether your state will be passing through or absorbing the collective bargaining member dues increase. Please note that members paying via either of

the monthly dues payment options (CCM or EFT) will be billed at the new rate, if applicable, in January.

Please recall that the increase to the ANA Dues Assessment factor based on the escalator clause passed at the June 2004 House of Delegates is calculated each year based on the CPIU, but the actual increase resulting from this calculation is only implemented every three years. This means that the next increase based on this action will not be effective until January 1, 2008.

If you have any questions or concerns regarding the implementation of the \$30.00 dues increase for collective bargaining members or the shift in the bifurcation percentage in 2007, please feel free to contact me.

cc: Linda J. Stierle, MSN, RN, CNAA, Chief Executive Officer  
Alice L. Bodley, General Counsel  
Rebecca M. Patton, MSN, RN, CNOR President, American Nurses Association  
Anne M. McNamara, PhD, RN, Treasurer, American Nurses Asso