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August 30, 2007

*Supplement to
AOR 2007-13*

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

Re: Advisory Opinion Request 2007-13

Dear Ms. Duncan:

This letter is a supplement to the June 25, 2007 advisory opinion request ("UAN Request") of the United American Nurses ("UAN") and follows several telephone conversations with your staff regarding that request and a comment on the request submitted by the American Nurses Association ("ANA Comment"). We wish to provide additional information about several matters.

1. The contractual relationship between UAN and ANA is governed by their "Autonomy and Affiliation Agreement" ("UAN-ANA Agreement") and its attachments, and the UAN Constitution predicates the organizations' "affiliation" with each other on that document. Art. I.C.

2. The UAN-ANA Agreement was the product of arm's-length, lengthy, intensive and, at times, contentious negotiations between UAN and ANA. These negotiations began in Washington, DC on May 6, 2002. UAN's negotiating team included then-Vice President Ann Converso, then-Secretary-Treasurer Jeanne Surdo, Executive Director Susan Bianchi-Sand, General Counsel Susan Davis and additional legal counsel Robert Savelson. ANA's negotiating team variously included Treasurer Lola Fehr, Secretary (later President) Rebecca Patton, Directors Pam Bussert and Pat Holloman, Chief Program Officer Pam Hagen, accountant Adrienne Garretson, and General Counsel Alice Bodley.

The parties' initial goal was to reach agreement by the June 2002 sequential meetings of the ANA House of Delegates ("HOD") and the UAN National Labor Assembly ("NLA") in Philadelphia. However, the negotiations failed to produce a resolution in time for those respective delegate bodies' consideration despite strenuous efforts in Philadelphia itself on the

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eve of the national meetings. Instead, the parties continued to meet. In August ANA unilaterally sought to alter the negotiation rules by barring any participation by the parties' respective lawyers, but UAN refused to accept that change and the parties continued to be represented by counsel at the negotiation meetings. Resolution of the UAN-ANA Agreement, including its complicated and extensive attachments, was finally realized in November, culminating dozens of negotiation sessions and dozens of exchanges of draft contractual documents.

3. The UAN-ANA Agreement states that for five years UAN is to pay ANA \$900,000/yr., "discounted" from \$1.2 million/yr., for operational support services. The terms of ANA's provision of ongoing administrative services to UAN was one of the thorniest and most complicated issues during the negotiations. The final agreement included the "discounted" reference as a UAN concession to ANA, but the agreement did not characterize the \$1.2 million figure as reflecting fair market value and, in fact, UAN believed at the time that the \$900,000 figure reflected a fair price for the anticipated services.

In 2006, however, UAN engaged a management consulting firm to evaluate the operational support services provided by ANA as part of UAN's consideration of how to address its future relationship with ANA following the July 1, 2008 expiration of the UAN-ANA Agreement. That firm concluded that UAN could secure the same services from alternative service providers at a cost of \$715,839, far less than either the \$900,000 or \$1.2 million figures. (This analysis has not been provided to ANA.) The firm also concluded that ANA was no longer providing particular services set forth in the parties' agreements that were valued at \$318,850 per year. However characterized, the \$300,000 difference between the two figures is equal to approximately 0.7% of ANA's 2006 receipts, 0.7% as well of ANA's 2006 disbursements, 2.3% of UAN's 2006 receipts and 2.3% as well of UAN's 2006 disbursements. See also UAN Request at 17-18.

4. Section 2(c) of the UAN-ANA Agreement includes ANA's "acknowledge[ment]" that "the purposes, functions and governance of UAN shall be defined by its own Constitution and Bylaws, including...levying dues and assessments to support the programs and activities of UAN." The UAN Constitution¹ in turn provides for the "calculat[ion] of dues" in accordance with Section 6 of the [UAN-ANA Agreement], Art. VII. A.1; increases in dues only by action of the UAN NLA, Art. VII. A.2; and the creation of a "UAN Mobilization Fund" to be "funded as determined by the [NLA]," whose "monies...shall be maintained as UAN funds, segregated from the UAN general funds, with earnings thereon to be a part of the Mobilization Fund," and "[d]istributions" from which are to be "made by the [UAN] Executive Council in accordance with procedures established by UAN policy." Art. VII. D.

In March 2006 the NLA raised member dues \$1.16/mo. exclusively for the Mobilization Fund, as reflected in the NLA's resolution approving that increase, which is attached as UAN Exhibit 6. Then and now, UAN interprets its Constitution to mean that none of this increase is subject to allocation with ANA because, in accordance with the provisions quoted above, the NLA "determined" to "fund[]" the Mobilization Fund with this dues increase, and these

¹ UAN has since adopted a constitution but not separate bylaws.

additional dues are “maintained as UAN funds, segregated from the UAN general funds” and “distribut[ed]...by the UAN Executive Council” accordingly. ANA has acceded to UAN’s full retention of the increase while maintaining the position that it is entitled to an allocated share. ANA Comment Attachments 2, 3 and 4 are documents about the increase that ANA unilaterally generated without UAN’s concurrence *nine months* after the NLA approved the increase, and they simply reflect ANA’s legal position and decision not to pursue the matter.

5. Section 15 of the UAN-ANA Agreement does not require that ANA receive any dues or other financial benefits in the event that UAN affiliates with an independent nurses’ union. Although ANA sought a contractual commitment for a share of any resulting dues during its negotiations with UAN over the terms of the UAN-ANA Agreement, UAN did not agree to such a commitment and the parties resolved the issue instead by adopting language that speaks only in terms of a “goal,” “explor[ing] alternative financial benefits,” and “consult[ing]” about “possible arrangements.”

6. The only UAN members who are eligible to join ANA directly in ANA’s “Individual Member Division” (“IMD”) are those who are not also CMA members. UAN-ANA Agreement, Sec. 4. There are fewer than 500 UAN members who are eligible for this ANA membership, and ANA’s total IMD membership, which is not confined to UAN members, numbered 1,182 as of May 2007.

7. Any UAN member who runs for one of the 15 elected seats on the ANA Board of Directors (“BOD”) at the HOD meeting does so and, if elected, serves in that position as an individual and not as a representative of UAN. Four BOD elected positions are reserved for staff nurses, a group that is not limited to UAN members. Only one of 17 BOD positions is reserved for UAN, namely, the non-elective seat for the UAN President. See ANA Bylaws Art. V, Sec. 2.

8. The Joint Leadership Committee (“JLC”) provided for in Section 13 of UAN-ANA Agreement is a mechanism for twice-yearly communication and collaboration between the two organizations during the term of the UAN-ANA Agreement. The JLC is not a constitutional body of either UAN or ANA, and it neither possesses nor exercises any authority over either organization or their relationship to each other.

9. Finally, we note that in its comment ANA takes no position as to whether or not it and UAN are affiliated within the meaning of the Federal Election Campaign Act, ANA relates facts almost all of which are fully recited in our original request, and ANA does not dispute any other fact set forth in that request with the arguable exception of ANA’s characterization of the parties’ arrangement for ANA provision of administrative services to UAN. All told, the ANA Comment addresses facts that are relevant to four of the Communion’s ten affiliation factors, namely, 11 C.F.R. §§ 1001.5(g)(4)(ii)(B), (D), (G) and (H), 110.3(a)(3)(ii)(B), (D), (G) and (H). UAN’s original request discusses the application of all of the factors to the facts, and the Commission weights the various factors “in the context of [the] overall relationship.” AO 2004-23.

Thank you for your consideration of this supplement to UAN's request.

Yours truly,



Laurence E. Gold

cc: Cheryl L. Johnson, RN, President
United American Nurses, AFL-CIO

Susan Bianchi-Sand, Executive Director
United American Nurses, AFL-CIO

Susan Davis, Cohen, Weiss and Simon LLP
General Counsel, United American Nurses, AFL-CIO

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Skadden, Arps, Slate, Meagher & Flom LLP
Attorneys for American Nurses Association

SUBJECT: UAN Mobilization Fund Resolution 2006

Introduced by: UAN Executive Council

Action: Passed 3/15/06

WHEREAS, the 2003 and 2004 NLAs, after approving the appointment of a special task force to review and report on establishing a Mobilization Fund, endorsed the concept of a Mobilization Fund and charged the UAN Executive Council with bringing to the subsequent NLAs a recommendation for its funding; and

WHEREAS, nearly two million registered nurses remain unorganized, and the challenges from the industry require massive organization and increased numbers to effectively control the market and influence change to improve quality patient care; and

WHEREAS, the UAN, as the preeminent national union for staff RNs, places organizing at the top of our priority list, and seeks to continue to develop high standards of leadership and member services; and

WHEREAS, the UAN must solidify a strong future, overcome attacks by competing unions, and effectively engage in nationwide campaigns to organize unorganized registered nurses; and

WHEREAS, the 2005 NLA unanimously approved the concept of expeditiously funding the Mobilization Fund with a target of raising \$8 million in order to hire a baseline staff of 12 regionally based organizers, with appropriate staff support, and provide member and leadership training; and

WHEREAS, the 2005 NLA also directed the UAN Executive Council to educate and receive feedback from our Affiliates and delegates, and consult with the National Labor Cabinet (NLC), so that the 2006 NLA could adopt a funding mechanism for the Mobilization Fund; and

WHEREAS, after appointing a Mobilization Fund Advisory Committee comprised of E&GW Chairs and the UAN Secretary-Treasurer, which met and conferred over the past year, the UAN Executive Council held numerous meetings and conference calls with the National Labor Cabinet and NLA delegates; and

WHEREAS, as a result of this process, substantial input was given to the Executive Council and many highly useful suggestions were received and incorporated into the final report and recommendations; and

WHEREAS, during this process, it was strongly recommended that those Affiliates that do not currently have a “pass through” for UAN dues increases expeditiously amend their bylaws to include one;

NOW THEREFORE BE IT RESOLVED, that the 2006 NLA, pursuant to its authority under Article VII of the UAN Constitution, approves a dues increase – specifically and solely earmarked for organizing and related training – in the amount of \$1.16 per member every two weeks; and

BE IT FURTHER RESOLVED, that these dues monies shall be segregated from the UAN general fund, as required under Article VII.D.2 of the UAN Constitution, and utilized exclusively to hire approximately 12 regionally based organizers, with appropriate staff support, and provide leadership and member training to strengthen new and existing bargaining units; and

BE IT FURTHER RESOLVED, that the UAN Executive Council shall provide regular reports to the NLC, and annual reports to the NLA, concerning the utilization of these organizing fund monies; and

BE IT FURTHER RESOLVED, that the National Labor Assembly, in 2010, shall conduct a comprehensive review of UAN’s use of the Mobilization Fund monies, and shall have the authority to terminate the increase if it sees fit; and

BE IT FURTHER RESOLVED, that the Affiliates shall collect and segregate such dues for transmission exclusively to the UAN in accordance with the schedule set forth in Article VII.B of the UAN Constitution; and

BE IT FURTHER RESOLVED, that such dues increase shall be effective no later than January 1, 2007; and

BE IT FURTHER RESOLVED, that in anticipation of dues coming from the Mobilization Fund in early 2007 and that recognizing the objectives of the Mobilization Fund to be a priority for the NLA, the UAN is encouraged to begin the hiring and placement of appropriate personnel in 2006.