



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY *MWD*

DATE: SEPTEMBER 21, 2007

SUBJECT: COMMENT ON DRAFT AO 2007-13
United American Nurses, AFL-CIO

Transmitted herewith is a timely submitted comment from Lawrence M. Noble regarding the above-captioned matter.

Proposed Advisory Opinion 2007-13 is on the agenda for Monday, September 24, 2007.

Attachment

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September 20, 2007

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

RE: Comments on Draft Advisory Opinion 2007-13

Dear Ms. Duncan:

We are writing on behalf of the American Nurses Association (the "Association") regarding the FEC's proposed draft Advisory Opinion 2007-13. The FEC's discussion of the overlapping membership of the Association and the United American Nurses, AFL-CIO ("Union") reveals a fundamental misunderstanding of the relationship among the Association, the Union and the state associations (described as "constituent member associations" by the Association and as "affiliates" by the Union.) While a proper understanding or explanation of the overlapping membership is not necessarily dispositive of the question of affiliation, it is important for the record to be accurate in this regard.

It is true that there are approximately 500 members of the Association's Individual Member Division who are members of the Union's National Council alone, and not members of a Constituent Member Association ("CMA"). This unique relationship is described in the Autonomy and Affiliation Agreement¹ and in the Association's Bylaws² and

¹ The Agreement is Exhibit 2 to the Union's AOR.

² The ANA 2004 Bylaws are at Exhibit 4 and the ANA 2005 Bylaws are at Exhibit 5 to Union's AOR.

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permits a direct connection to both the Association and the Union, without having an affiliation with the state association, when the Union holds the bargaining rights in its name.³

In contrast, the 97,000 members of the Association who became members of the Union when it was established as an independent organization in 2003, are represented in bargaining units where the CMA holds the bargaining rights, rather than the unique situation of the Union's National Bargaining Council. These members were not "transferred" to the Union from the Association rolls. Rather, by virtue of the state association choosing to affiliate with both the Association and the Union, the 97,000 members became members of both national organizations.

These 97,000 members are in no different a relationship to the Union than they are to the Association. The Union Constitution⁴ notes:

All Registered Nurse members of a UAN Affiliate who are represented for collective bargaining by the Affiliate or its collective bargaining program shall be eligible for membership in the UAN. Eligibility under this provision shall include members of a State Nurses Association who are represented for collective bargaining by the UAN or a UAN National Bargaining Council, under arrangements approved by the State Nurses Association or its separate insulated collective bargaining program and the UAN Executive Council.

Article II, Section A.

The Association expresses the membership eligibility and rights differently, but to the same effect, as follows:

- Each CMA shall --
- a. apprise individual members of the CMA of their right to --
 - i. receive a membership card and the ANA news periodical.
 - ii. be a candidate for ANA elective and appointive positions in accordance with these bylaws and applicable policies.
 - iii. participate in the election of CMA delegates to the ANA House of Delegates in accordance with these bylaws.
 - iv. attend the meetings of the ANA House of Delegates, the convention, and other unrestricted ANA activities.

³ The Union currently has only one National Bargaining Council where it holds the representation certificate. This is the Council for VA nurses with a membership estimated at 1500, of which 500 belong directly to the Union and Association and approximately 1000 belong to the Union, Association and a state association.

⁴ The Union's Constitution is Exhibit 3 to the Union's AOR.

- v. attend the congress of the International Council of Nurses.
- b. require that individual members of the CMA abide by the *Code of Ethics for Nurses* and applicable ANA bylaws.

Association Bylaws, Article II, Section 1. Further, elsewhere in the Association Bylaws, as in the description of the Association's House of Delegates, the members are referred to as "CMA/ANA members" (the 97,000 overlapping members, as well as 57,000 others) or IMD members (members of the Individual Member Division, which includes the 500 Union National Council Members):

ANA delegates duly elected by secret ballot by CMA/ANA members, and
IMD members.

Association Bylaws, Article IV, Section 2.

From the perspective of the state nurses association, the relationship to the two national organizations is quite similar. See, for example, the description of the Association and Union relationships in the bylaws of the Illinois Nurses Association.

<http://www.illinoisnurses.com/displaycommon.cfm?an=1&subarticlenbr=83> (last visited September 20, 2007).

Lastly, an individual nurse who is a member of a bargaining unit represented by a state nurses association is not free to "terminate or maintain her membership in the Association through the state nursing association" as is stated in the advisory opinion draft at page 14, lines 16-17. Such an option applies only to the 1,500 RNs who belong to the Union's VA National Bargaining Council. The remaining 97,000 Union members must and do remain members of the Association, as well as of the Union.

Respectfully submitted,



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

Attorney for American Nurses Association

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