



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

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

FROM: OFFICE OF THE COMMISSION SECRETARY *MWD*

DATE: September 24, 2007

SUBJECT: COMMENT: DRAFT AO 2007-13

Transmitted herewith is a late submitted comment by Laurence E. Gold regarding the above-captioned matter.

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

Attachment

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LAURENCE E. GOLD
Of Counsel

September 24, 2007

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

Re: Advisory Opinion Request 2007-13

Dear Ms. Duncan:

I write on behalf of the United American Nurses, AFL-CIO ("UAN") to request that the Commission accept and consider this comment on the Office of General Counsel's draft advisory opinion ("OGC Draft"), because it is prompted by the comment on the OGC Draft submitted by the American Nurses Association ("ANA"). We did not have access to that comment until late afternoon, Friday, September 21, just before both UAN counsel left to observe the Yom Kippur holiday.

At the risk of belaboring some points already made, UAN wishes to state the following, for we agree with ANA that "it is important for the record to be accurate" regarding the respective memberships of UAN and ANA, even if a particular fact "is not necessarily dispositive of the question of affiliation." Indeed, to that end UAN has provided unusually detailed submissions in support of its request along with all relevant governing documents of each organization.

First, the OGC Draft does not state or suggest that RNs were "transferred" from ANA to UAN, nor has UAN so characterized the pertinent history. Rather, as the OGC Draft (page 5, lines 4-10) correctly relates, pursuant to the UAN-ANA Agreement, ANA's Constituent Member Associations ("CMAs") that engaged in collective bargaining, or the collective bargaining portions of them, became UAN Affiliates, and the individual RNs who were represented in collective bargaining became eligible for individual UAN membership. There are approximately 97,000 registered nurses ("RNs") who have joined UAN and are members today; there are also currently 29,000 other UAN-represented RNs who have chosen either not to join UAN or to relinquish their UAN membership, as is their prerogative under federal labor law, which guarantees that union membership is voluntary. See generally *Marquez v. Screen Actors Guild*, 525 U.S. 33, 37-38 (1998). (The OGC Draft (page 7, lines 21-22) does suggest an absolute equation of UAN membership with represented status, and that factual reference should be corrected.)

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Second, and relatedly, it is simply not correct that, as ANA suggests, there is something mandatory about membership in UAN and ANA. In fact, an RN may voluntarily join a CMA, a body that ANA treats as a "member" of ANA, and the RN acquires certain membership rights within ANA through the CMA see ANA 2005 Bylaws (UAN Exhibit 5), Article II, Section 1; ANA otherwise sponsors two separate voluntary ANA individual membership categories, called "Individual Members" and "Individual Affiliates," see *id.*, Article. II, Sections 4 and 5, who number approximately 2,465. If the CMA or a portion of the CMA is one of the 27 that are also UAN "Affiliates" because it engages in collective bargaining, then the RN may voluntarily join UAN, which has just one membership category. See UAN Constitution (UAN Exhibit 3), Article II. Both UAN and the OGC Draft acknowledge the partial overlap of UAN and ANA membership, and the OGC Draft (page 14, lines 19-21) correctly concludes that this overlap "[does] not by itself constitute sufficient evidence that one organization currently finances, maintains or controls the other," quoting Advisory Opinion 2004-41.

Third, as the OGC Draft correctly relates and ANA does not question, the evidence with respect to each of the Commission's ten affiliation factors otherwise also supports the conclusion that the two organizations are not affiliated within the meaning of the Act - - a conclusion that is further underscored by the very fact that ANA has made the separate submissions it has in connection with this advisory opinion request.

Thank you for your consideration of this request and comment.

Yours truly,



Laurence E. Gold

cc: Cheryl L. Johnson, RN, President
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