FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1072

Date Filmed 2/11/82 Camera No. --- 2

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FEDERAL ELECTION COMMISSION

1. Commissioner Aikens' vote sheet w/comments (12/31/80)

2. Commissioner Reiche's vote sheet w/comments (6/17/80)

3. Commissioner Reiche's vote sheet w/comments (9/23/81)

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

| | | | |
|---|---|---|---|
| ____ | (1) Classified Information | ____ | (6) Personal privacy |
| ____ | (2) Internal rules and practices | ____ | (7) Investigatory files |
| ____ | (3) Exempted by other statute | ____ | (8) Banking Information |
| ____ | (4) Trade secrets and commercial or financial information | ____ | (9) Well Information (geographic or geophysical) |
| X | (5) Internal Documents | | |

Signed Stephen W. Mims

date October 16, 1981

FEC 9-21-77

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 2, 1981

Mr. Alan R. Reuther
Assistant General Counsel
International Union, United
Automobile, Aerospace and
Agricultural Implement
Workers of America - UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Re: MUR 1072

Dear Mr. Reuther:

This is to advise you that after an investigation was conducted, the Commission concluded on September 29, 1981, that there is no probable cause to believe that your client, UAW and UAW-V-CAP, violated the Federal Election Campaign Act. Accordingly the file in this matter, numbered MUR 1072, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, please contact Stephen Mims, the staff member assigned, at (202) 523-4060.

Sincerely,

~~Charles N. Steele~~
General Counsel

By Kenneth A. Gross
Associate General Counsel

Mr. Alan R. Reuther
Assistant General Counsel
International Union, United
Automobile, Aerospace and
Agricultural Implement
Workers of America - UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Re: MUR 1072

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If you have any questions, please contact Stephen Mims, the staff member assigned, at (202) 523-4060.

Sincerely,

Charles N. Steele
General Counsel

By Kenneth A. Gross
Associate General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) | ) | MUR 1072 (79) |
| | ) | |
| and | ) | |
| | ) | |
| UAW-V-CAP | ) | |

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on September 29, 1981, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 1072(79):

1. Find no probable cause to believe that the UAW violated 2 U.S.C. §441b(b)(4)(A)(ii) by soliciting contributions to UAW-V-CAP from retirees;

2. Find no probable cause to believe that UAW-V-CAP violated 2 U.S.C. §441b(b)(4)(A)(ii) by UAW's solicitation of retirees on its behalf;

3. Find no probable cause to believe that UAW-V-CAP violated 2 U.S.C. §441b(a) by knowingly accepting contributions which violated 2 U.S.C. §441b;

4. Find no probable cause to believe that UAW violated 11 C.F.R. §114.5(a)(2) for failure to include the notice required by that section;

5. Find no probable cause to believe that UAW-V-CAP violated 11 C.F.R. §114.5(a)(2) for its failure to include the notice required by that section in the solicitations conducted by UAW on behalf of UAW-V-CAP

6. Close the file.

Continued

7. Approve and send the letter attached to the General Counsel's September 22, 1981 report.

Commissioners Aikens, McGarry, Reiche, and Tiernan voted affirmatively for the decision; Commissioner Thomson dissented. Commissioner Harris was not present at the time of the vote.

Attest:

9/30/81
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

8 2 0 4 0 3 0 3 6 1 2

September 23, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1072

Please have the attached General Counsel's Report distributed to the Commission on a 48 hour tally basis. Thank you.

Attachment

cc: Mims

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) | ) | MUR 1072 (79) |
| | ) | |
| and | ) | |
| | ) | |
| UAW-V-CAP | ) | |

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## GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was brought to the attention of the Office of General Counsel by the Audit Division on September 13, 1979. During an audit of UAW-V-CAP (which covered the period January 1, 1977 through March 31, 1979) it was noted that certain regional offices of the UAW had organized annual "dollar drives" which included the solicitation of retirees. The issue of whether such solicitation of retirees was unlawful was presented to this office together with the ancillary issue of whether the solicitations met the notice requirement of 11 C.F.R. § 114.5.

On December 28, 1979, the Office of General Counsel submitted to the Commission the First General Counsel's Report. That report contained recommendations that the Commission find reason to believe that:

1) the UAW and UAW-V-CAP violated 2 U.S.C. § 441b(b)(4)(A)(ii) by soliciting contributions to UAW-V-CAP from non-UAW members;

2) UAW-V-CAP violated 2 U.S.C. § 441b(a) by knowingly accepting contributions which violated § 441b;

3) UAW and UAW-V-CAP violated 11 C.F.R. § 114.5(a)(2) for failure to inform those solicited that the guideline in the solicitation materials was merely a suggestion and that the solicitees could contribute less or nothing at all.

On January 3, 1980, the Commission approved the recommendations of the Office of General Counsel and on January 7, 1980, the respondents were so notified.

Respondents, in their response of February 7, 1980, adopted the position that retirees, as members of the union in accordance with the Constitution of the International Union, are not excluded from the class of permissible solicitees established by 2 U.S.C. § 441b(b)(4)(A)(ii). Additionally, respondents asserted that the solicitations conducted as part of the annual "dollar drive" did not establish a "guideline" within the meaning of 11 C.F.R. § 114.5(a)(2).

After conducting an analysis of the positions adopted by respondents' reply brief, the Office of General Counsel prepared its brief recommending that the Commission find no probable cause to believe that either UAW or UAW-V-CAP violated 2 U.S.C. § 441b(b)(4)(A)(ii) or 11 C.F.R. § 114.5(a)(2). Respondents were mailed a copy of the General Counsel's brief on July 8, 1981. Acknowledgement of receipt of the General Counsel's brief was received on

July 17, 1981. There has been no further communication with respondents regarding this matter.

II. LEGAL ANALYSIS

Because there has been no additional comment by respondents to the General Counsel's brief, the position of the Office of General Counsel remains the same as that ennunciated in its brief which was circulated to the Commission on July 8, 1981.

III. RECOMMENDATION

1. The Office of General Counsel recommends that the Commission find no probable cause to believe that:

a) the UAW violated 2 U.S.C. § 441b(b)(4)(A)(ii) by soliciting contributions to UAW-V-CAP from retirees;

b) UAW-V-CAP violated 2 U.S.C. § 441b(b)(4)(A)(ii) by UAW's solicitation of retirees on its behalf;

c) UAW-V-CAP violated 2 U.S.C. § 441b(a) by knowingly accepting contributions which violated § 441b;

d) UAW violated 11 C.F.R. § 114.5(a)(2) for failure to include the notice required by that section; or that

e) UAW-V-CAP violated 11 C.F.R. § 114.5(a)(2) for its failure to include the notice required by that section in the solicitations conducted by UAW on behalf of UAW-V-CAP.

2. Close the file.

3. Approve and send the attached letter(1).

Charles N. Steele
General Counsel

Sept 22, 1981
Date

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

Attachments
Letter to Respondents

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mr. Alan R. Reuther
Assistant General Counsel
International Union, United
Automobile, Aerospace and
Agricultural Implement
Workers of America - UAW
8000 East Jefferson Avenue
Detroit, Michigan 48214

Re: MUR 1072

Dear Mr. Reuther:

This is to advise you that after an investigation was conducted, the Commission concluded on , 1981, that there is no probable cause to believe that your client, UAW and UAW-V-CAP, violated the Federal Election Campaign Act. Accordingly the file in this matter, numbered MUR 1072, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, please contact Stephen Mims, the staff member assigned, at (202) 523-4060.

Sincerely,

Charles N. Steele
General Counsel

July 8, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1072

Please have the attached Memo and Brief distributed to the Commission on an informational basis. Thank you.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 8, 1981

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 1072

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of no probable cause to believe was mailed on July 8, 1981. Following receipt of the Respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments
1. Brief
2. Letter to Respondents' counsel

BEFORE THE FEDERAL ELECTION COMMISSION
July , 1981

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| United Automobile, Aerospace and Agricultural Implement Workers of America | ) | MUR 1072 |
| | ) | |
| UAW-V-CAP | ) | |

## GENERAL COUNSEL'S BRIEF

### I. STATEMENT OF THE CASE

During the period January 1, 1977 to March 31, 1979, the UAW, on behalf of UAW-V-CAP made solicitations of contributions from retired members of the union. These solicitations, part of the annual "Dollar Drive," did not contain a notice to solicitees that contributions could be made in any amount or that the Union would be prohibited from taking any reprisals against or favoring any contributor.

These circumstances were brought to the attention of the Office of General Counsel by the Audit Division which identified the issues during an audit of UAW-V-CAP pursuant to the Commission's statutory authority under former 2 U.S.C. § 438(a)(8).

The solicitations raise the issues of (1) whether the retired members are "members" for the purpose of the solicitation provision of 2 U.S.C. § 441b(b)(4)(A)(ii) and 11 C.F.R. § 114.5(g) (2), and (2) whether the "Dollar Drive" amounted to the establishment of a guideline which would require a notice to solicitees that they were free to make contributions in any amount (including nothing at all). See 11 C.F.R. § 114.5 (a)(2).

On January 7, 1980, the Commission found reason to believe (1) that UAW and UAW-V-CAP violated 2 U.S.C. § 441b(b) (4)(A)(ii) in soliciting contributions from retirees and (2) that the solicitations contained guidelines for the amount of contributions but did not contain the notice required by § 114.5(a)(2) of the regulations.

Respondents submitted a response on February 7, 1980, which asserted that (1) the retired members are within the permissible class of solicitees under 2 U.S.C. § 441b(b) (4)(A)(ii) and that (2) the solicitations for contributions as part of the annual "Dollar Drive" did not contain guidelines which would trigger the notice requirement of 11 C.F.R. § 114.5(a)(2).

## II. LEGAL ANALYSIS

Section 441b(b)(4)(A)(ii) of Title 2, United States Code, makes it unlawful for a labor organization or its separate segregated fund "to solicit contributions to such a fund from any person other than its members and their families." Under 11 C.F.R. § 114.1(e), "members" are defined as "all persons who are currently satisfying the requirements for membership in a membership organization ... and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization." Section 114.5(a)(2) of the regulations allows a labor organization to include a suggested guideline for contribution amounts in the solicitation but, where such a guideline is utilized, requires that the solicitees be informed that the guidelines are merely suggestions and that the individual is free to contribute more or less than the guideline suggests and that the labor organization will not favor or disadvantage anyone by reason of their contribution or their decision not to contribute.

A. <u>Retirees as members</u>

Article 6, Section 19 of the UAW's constitution (adopted in May, 1977) provides that "any member in good standing who is retired, shall be entitled to a 'retired membership status.'" While this provision exempts such members from the requirement to pay dues, it affords the retired members "all the privileges of membership," except the rights to vote on strikes and proposed contracts and to participate in elections for shop stewards and committeemen. Retirees may hold elective office at the local or international union level, although that right is restricted by the union's interpretation of Article 6, Section 19:

> Under this Section, retired members are eligible to run for any office except for ... offices which require the presence of a member elected in the plant ...
>
> A retired member would also be ineligible to run for a Local Union Executive office where election to that executive office also automatically made him a member of a Bargaining Committee or any other such office which required seniority in a particular unit, division, or department of the plant.

The interpretation also further acknowledges the retired members' right "to participate in any and all elections conducted on a local-wide basis." Thus, while some restrictions apply, retired UAW members enjoy significant participatory rights and may exert some degree of influence in the union's decision-making.

The present circumstances differ from those presented in MUR 773 where the Commission found reasonable cause to believe the International Organization of Masters, Mates and Pilots (IOMMP) violated 2 U.S.C. § 441b(b)(4)(A)(ii) by soliciting IOMMP pensioners/retirees. There the pensioners/retirees could not vote on referenda or constitutional amendments, were ineligible to vote in any IOMMP elections, and could not hold any office in the IOMMP.

The precise issue here involved has not been addressed in Commission advisory opinions or case law. In Advisory Opinion 1977-67 the Commission held that persons with specified rights and obligations vis-a-vis the Public Service Research Council (PSRC) could be solicited as "members." It was stated that "a person can only be considered a member of an organization if he or she knowingly has taken some affirmative steps to become a member of the organization" and that "[i]f the membership relationship is to continue it must be subject to periodic renewal." The Commission further required that there be "a predetermined minimum amount for dues or contributions" and that any waiver of dues be granted "on the basis of predetermined specific criteria." However, Advisory Opinion 1977-67 did not involve a labor organization and did not deal with persons who had the right to vote on issues or officers of the organization. In reaching its conclusion, the Commission stated:

> In each instance where members do not have direct and enforceable participatory rights in the organization -- such as those held by a shareholder or union member -- facts must be examined before a determination can be made that a membership relationship exists.

Thus, where members do have direct and enforceable participatory rights in the organization, there is arguably no need to meet all of the various criteria referred to in Advisory Opinion 1977-67.

Federal Election Commission v. National Right to Work Committee, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9122 (D.D.C. 1980), appeal docketed Nos. 80-1487, 80-1488 (D.C. Cir. May 7, 1980) dealt again with a non-labor organization and with persons who had no right to vote on issues or officers of the organization. In this context the court stated:

> At the least, [the term "member"] denotes a formal relationship in which a person, whether specifically described as a member or not, has specified rights and obligations vis-a-vis an organization. In addition, "membership" assumes some right to participate in the organization's direction, as well as an obligation to help support the organization through regular financial contributions.

Thus, with regard to non-labor organizations, the court generally followed the concepts enunciated in Advisory Opinion 1977-67. However, the decision does not resolve the issue presented in the present matter.

While it is true that retired members of UAW do not have to pay union dues, the General Counsel does not view this as an absolute bar to being a "member" of a union within the meaning of the Act and regulations. Respondents have pointed out that only by having been an active dues paying member prior to retirement can a person become a retired member of UAW. In that sense, then, an obligation to financially support the organization has been satisfied. Respondents explain that the waiver of dues for retired members is premised upon bona fide policy considerations, i.e., that retirees often must live on reduced income.

The participatory rights that UAW retirees enjoy appear to have produced significant beneficial impact. Retirees, through Retired Worker Chapters and Councils as well as official positions within the local unions, "exercise a powerful voice in determining what the Union's priorities will be at the bargaining table," according to respondents. 1/ Respondents refer also to active support by the Union of "legislation of direct concern to retirees, such as the Employee Retirement Income Security Act of 1974 ... and Medicare." 2/ Such actions demonstrate that the voting rights given to UAW retirees

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1/ Respondents illustrate the success of this relationship in the negotiations between UAW and the "Big Three" auto companies which resulted in "significant increases in the levels of pension benefits for members who had already retired."

2/ The solicitation letter of September 20, 1977 (Attachment 1) from UAW Region 1-D includes a statement that the union will press for legislative action to "amend the National Labor Relations Act to make it mandatory for employees to bargain with Union Representatives over proposals affecting Retirees."

have meaning. 3/

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3/ It should be observed that there are other statutory provisions which have relevance to the legal status of retired union members. For example, 29 U.S.C. 401 et seq., provisions of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), grant union members equal rights to vote and nominate candidates and to run for and hold union office. See 29 U.S.C. §§ 411, 481(e). The term "member" is defined as "any person who has fulfilled the requirements for membership in such organization ...." It is important to note that the regulations promulgated by the Secretary of Labor provide that "[t]he right of retirees to vote may be restricted to the extent provided by the constitution and bylaws of the labor organization." 29 C.F.R. § 452.93. Thus, it appears that retirees are included within the protections given "members" under LMRDA.

Court decisions interpreting provisions of another statute, the Labor-Management Relations Act (LMRA), 29 U.S.C. § 141 et seq., indicate that retirees do not always enjoy the benefits that active employees have. For example, in Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157, 168 (1971), it was held that retirees do not qualify as "employees" under 29 U.S.C. § 152(3) and that the union did not have a statutory right to bargain over benefit increases for retirees. In Toensing v. Brown, 528 F.2d 69 (9th Cir. 1975), it was held that a union's duty of fair representation does not require that benefits of retirees be absolutely equal with those of active employees. However, these decisions do not address the issue of whether retirees may be deemed members of the union. Rather, they focus upon whether the rights and obligations of active employees vis-a-vis employers must be extended to retirees. Moreover, these decisions plainly acknowledge that a union may represent retired members to the extent that an employer agrees, as long as the rights of active employees and the vested rights of retirees are not disturbed.

The restrictions placed on retired union members by case law under LMRA do not preclude treating retirees as "members" solicitable under 2 U.S.C. § 441b. While such restrictions may partially explain why retired UAW members do not have all of the voting rights of active employee members, they do not modify the fact that retired UAW members have substantial participatory and voting rights.

The UAW has extended significant rights to retired members. As already noted, these rights are acknowledged in the union's constitution. The establishment of the participatory rights of retirees has resulted in a strong voice on behalf of the retirees; a voice which has resulted in substantial representation of retiree interests by the union both on matters dealing with the auto companies as well as issues affecting potential legislation in the Congress.

Because, in the General Counsel's view, retired members of the UAW qualify as "members" within the meaning of the Act and regulations, it was permissible to solicit them for contributions and no violation of 2 U.S.C. § 441b(b)(4)(A)(ii) occurred.

B. Notice Requirement of 11 C.F.R. § 114.5(a)(2)

Section 114.5(a)(2) of the Commission's regulations provides:

> A guideline for contributions may be suggested by a ... labor organization or ... [its] separate segregated fund, provided that the person soliciting or the solicitation informs the person being solicited -
>
> (i) That the guidelines are merely suggested; and
>
> (ii) That an individual is free to contribute more or less than the guidelines suggest and the ... labor organization will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.
>
> A ... labor organization or the separate segregated fund of either may not enforce any guideline for contributions.

In the solicitation letters of September 20, 1977 (Attachment 1), and May, 1979 (Attachment 2), retired members are requested to contribute to the annual "Dollar Drive." Although both letters ask for a dollar or more, there is no specific guideline provided which, for example, equates the amount of the contribution with a specific rate based upon the number of hours worked. 4/ Both letters do, however, provide for a minimum contribution to be eligible for entry in a prize program. This does not, however, affect the amount which may be contributed towards the dollar drive but merely establishes a basis upon which individual contributions may become eligible for a drawing in which a prize is to be awarded. No automatic witholding from compensation is utilized and the solicitees are encouraged to send in their "dollars" or check for the amount of the contribution.

In view of the circumstances, it does not appear that an actual "guideline" within the meaning of the regulations was established. Accordingly, in the General Counsel's view, the notice requirement of 11 C.F.R. § 114.5(a)(2) is not applicable to the solicitations at issue.

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4/ In Advisory Opinion 1979-60, a guideline which provided for a contribution based upon a specified rate per hour worked was held to violate 11 C.F.R. § 114.5(a)(2) to the extent that the solicitation did not make readily apparent a method by which an alternative witholding amount could be indicated.

II. General Counsel's Recommendation

The Office of General Counsel recommends that the Commission ind there is no probable cause to believe that respondents United utomobile, Aerospace and Agricultural Implement Workers of America nd UAW-VCAP violated 2 U.S.C. § 441b(b)(A)(4)(ii) or 11 C.F.R. 114.5(a)(2).

July 7, 1981
ate

Charles N. Steele by KAG
Charles N. Steele
General Counsel

ttachments

1 - letter of September 20, 1977

2 - letter of May, 1979

3 - letter sent to respondents' counsel

III. General Counsel's Recommendation

The Office of General Counsel recommends that the Commission find there is no probable cause to believe that respondents United Automobile, Aerospace and Agricultural Implement Workers of America and UAW-VCAP violated 2 U.S.C. § 441b(b)(A)(4)(ii) or 11 C.F.R. § 114.5(a)(2).

July 7, 1981
Date

Charles N. Steele
General Counsel

Attachments

1 - letter of September 20, 1977

2 - letter of May, 1979

3 - letter sent to respondents' counsel

ATTACHMENT 1

Box H
Grand Rapids, Michigan 01

844 EAST BELTLINE AVENUE, N E
GRAND RAPIDS
PHONE 943-4100

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW**



September 20, 1977

Greetings:

The 1976 Region 1-D Dollar Drive was an outstanding success. The response and contributions from Retirees of $12,113.42 was of great significance. A total of $86,012.45 was raised. At all Regional meetings since the 1976 Dollar Drive I have recognized the achievements of the UAW Retirees in the Dollar Drive.

In Michigan in 1978 we will elect a Governor, Secretary of State, Attorney General, all U. S. Congressmen, a U. S. Senator, and the State Legislature, both House and Senate. Campaigns are costly. As you know federal law prohibits the use of union dues for candidates for federal office. To aid progressive candidates we must raise money via the dollar drive for this purpose. I am again asking your help in this year's CAP Dollar Drive.

Retirees have many concerns and needs that can only be solved by intelligent legislation in the U. S. Congress.

The UAW fully endorses President Carter's proposals to make social security fiscally sound - higher benefits and correcting inequities.

The skyrocketing cost of health care and all medical costs are of great concern to all Americans. We can enact the National Health Security Plan, which will relieve all of us of this heavy financial burden.

Other legislative items that must be enacted to help Retirees include

- real consumer protection
- better housing
- mass transit systems that work
- tax reform-federal-state and local-lift the burden from Retirees.
- control of utility cost with relief for the elderly
- there is a need to amend the National Labor Relations Act to make it mandatory for employers to bargain with Union Representatives over proposals affecting Retirees.

ATTACHMENT 1

In addition to the first prize award of a 1978 Oldsmobile Cutlass, two 19-inch color TV sets, cash awards ranging from $50.00 to $500.00 will be awarded.

Also, because of your tremendous support in last year's Dollar Drive, ten $50.00 cash awards will be given to Retirees only.

Will you help with your contribution? All you need do is this:

(1) Put your dollars in the enclosed mail-back envelope.

(2) Fill out the enclosed stubs of the enclosed CAP tickets and place them in the mail-back envelope too.

(3) Seal and mail the envelope to us - and please note it is self-addressed, and does require postage.

Keep the large portion of the CAP ticket. This will entitle you to a chance to win any of the above listed prizes. The drawing will be held at the Region 1-D Headquarters, 844 East Beltline, NE, Grand Rapids, Michigan, on November 19, 1977, at 11:00 AM. You need not be present to win. If you send in more than a dollar we will make out extra tickets and put them in the drawing in your name.

I look forward to your continued support and favorable reply.

Fraternally,

Owen Bieber

Owen Bieber
Director, Region 1-D, UAW

OB/bh opeiu494 #1403

c: All Regional Staff

enclosures

ATTACHMENT 2

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA • UAW

DOUGLAS A. FRASER, PRESIDENT
EMIL MAZEY, SECRETARY-TREASURER

VICE-PRESIDENTS
PAT GREATHOUSE • KEN BANNON • DENNIS MC DERMOTT • IRVING BLUESTONE
ODESSA KOMER • MARCELLUS STEPP • MARTIN GERBER

May, 1979

TO: ALL RETIRED UAW MEMBERS RESIDING IN REGION 8

REGIONAL OFFICE
7124 AMBASSADOR ROAD
BALTIMORE, MARYLAND 21207
PHONE: AREA CODE 301-265-8800

Greetings:

The year 1979 will be a critical period for our Union with major agreements open for negotiations with certain corporations.

A great deal of our Union's energy and time will, therefore, be spent trying to secure justice and equity for our members - including retired members who worked for such corporations. However, we must not forget that what we gain at the bargaining table can be jeopardized, or taken away, in the legislative halls of government.

Moreover, the problems of inflation, ever-increasing medical costs, skyrocketing gas and oil prices and the unfair burden of taxation - both federal and state, cannot be solved at bargaining tables. It will require our maximum participation in the legislative halls of government. Strong lobbying efforts will be needed - both in the legislature and before regulatory agencies, to promote and protect the interest of our members.

We are, therefore, officially commencing our 1979 CAP Dollar Drive in an effort to adequately finance the UAW's Political Action Program. Please mail back your dollar or more in the enclosed postpaid envelope, along with the gold card stub filled in completely. If you send a check, please make it out to "UAW V-CAP Region 8". The stub will be used in the retiree prize program. Last year's winners are listed on the program enclosure.

The need for voluntary dollars was never more critical. Astronomical amounts of money are being raised by reactionary big business and the anti-labor right wing. They are embarked on an unholy crusade to weaken and destroy any legislation designed to help workers and retirees.

However, with your help, along with that of the membership in the plants, we hope to prevent any government "take aways" of benefits now enjoyed and lobby for passage of legislation beneficial to all UAW members.

Commending you for your past contributions, we are

Fraternally yours,

E. T. Michael
E. T. Michael
Director - Region 8

W. D. Haynes
W. D. Haynes, Chairman
Region 8 Retired Workers
Council

Enclosure

ATTACHMENT 2

ATTACHMENT 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 8, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Alan V. Reuther
Assistant General Counsel
International Union
United Automobile, Aerospace
  and Agricultural Implement
  Workers of America (UAW)
8000 East Jefferson Avenue
Detroit, Michigan 48214

Re: MUR 1072

Dear Mr. Reuther:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on January 3, 1980, found reason to believe that the UAW and the United Auto Workers Voluntary Community Action Program had violated 2 U.S.C. § 441b(b)(4)(A)(ii) and 11 C.F.R. § 114.5(a)(2) and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of no probable cause to believe a violation has occurred.

Should you have any questions, please contact Stephen Mims, the staff member assigned, at (202) 523-4060.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross

Kenneth A. Gross
Associate General Counsel

Enclosure
Brief

MUR1072 Mims

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- ☐ Show to whom and date delivered
- ☐ Show to whom, date and address of delivery
- ☐ RESTRICTED DELIVERY Show to whom and date delivered
- ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
alan V. Reuther
8000 East Jefferson Ave,
Detroit, Michigan 48214

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
| --- | --- | --- |
| | 438480 | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐Addressee ☐Authorized agent

4. Jim Swallow

DATE OF DELIVERY 7-14-81 POSTMARK JUL 14 1981

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

GPO : 1978-000-460

7-8-81

**SENSITIVE**

BEFORE THE FEDERAL ELECTION COMMISSION 81 APR 24 A11: 38

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| United Automobile, Aerospace, and Agricultural Implement Workers of America and UAW Voluntary Community Action Program | ) | MUR 1072(80) |

## INTERIM INVESTIGATIVE REPORT #6

This matter involves the apparent solicitation of retirees of the United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW") as part of the union's annual "Dollar Drive" for its separate segregated fund, the UAW Voluntary Community Action Program ("UAW-V-CAP"). Also involved is the apparent omission of a notice to solicitees that contributions could be made in any amount and that the union would be prohibited from taking any reprisals against or favoring any contributor.

The Office of General Counsel is presently reviewing the draft of its brief in this matter. Involved is an analysis of certain advisory opinions of the Commission, certain election case law, and relevant statutes and case law under the Labor Management Reporting and Disclosure Act of 1959 and the Labor-Management Relations Act. This Office expects to circulate its brief to the Commission within 30 days.

24 April 1981
Date

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

mwe

jc

DATE: APRIL 27, 1981

SUBJECT: MUR 1072 - Interim Investigative Report #6, dated 4-24-81; Received in OCS 4-24-81

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 2:00, April 24, 1981.

There were no objections to the Interim Investigative Report at the time of the deadline.

April 24, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 958

Please have the attached Interim Invest Report distributed to the Commission on PINK PAPER. Thank you.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY

DATE: JANUARY 7, 1981

SUBJECT: MUR 1072 - Interim Investigative Report #5, dated 12-30-80; Received in OCS 12-31-80, 11:11

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 4:00, December 31, 1980.

There were no objections to the Interim Investigative Report at the time of the deadline.

December 31, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1072

Please have the attached Interim Invest Report distributed to the Commission. Thank you.

BEFORE THE FEDERAL ELECTION COMMISSION

80 DEC 31 A11: 11

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| | ) | |
| United Auto Workers ("UAW") | ) | MUR 1072 |
| | ) | |
| UAW Voluntary Community Action Program ("VCAB") | ) | |

Interim Investigative Report #5

In Interim Report #4, this office indicated that the Commission had previously considered the issue of union solicitation of retirees in MUR 773 and that conciliation in the prior matter was expected shortly.

Although conciliation in MUR 773 has not yet been achieved, the Office of General Counsel believes that it can make further recommendations which will be consistent with the resolution of the issues in MUR 773 without awaiting a signed agreement. Accordingly, this office expects to make further recommendations within the next three weeks.

30 December 1980
Date

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MWE

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY mc

DATE: OCTOBER 6, 1980

SUBJECT: MUR 1072 - Interim Investigative Report #4, dated 10-1-80; Signed 10-2-80; Received in OCS 10-2-80, 2:52

The above-named document was circulated to the Commission on a no-objection basis at 2:00, October 3, 1980.

There were no objections to the Interim Investigative Report at the time of the deadline.

October 2, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1072

Please have the attached Interim Invest Report distributed to the Commission. Thank you.

BEFORE THE FEDERAL ELECTION COMMISSION
October 1, 1980

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

80 OCT 2 P2: 52

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| United Auto Workers ("UAW") | ) | MUR 1072 |
| | ) | |
| UAW Voluntary Community Action Program ("V-CAP") | ) | |

INTERIM INVESTIGATIVE REPORT #4

As stated in the First General Counsel's Report, the Commission has considered union solicitations of retirees in MUR 773. Although there are facts which can be distinguished in the two matters, this office recognizes the importance of coordinating our treatment of them.

The conciliation process in the prior matter is continuing, and we anticipate that it will be concluded in the near future. This office will make further recommendations in MUR 1072, the timing of which will insure consistency with the results in MUR 773.

2 October 1980
Date

Charles N. Steele
General Counsel

8 3 0 4 0 3 0 5 7 7

June 16, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Carr

SUBJECT: MUR 1072

Please have the attached Interim Invest Report distributed to the Commission. Thank you.

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

80 JUN 16 P12: 09

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| United Auto Workers ("UAW") | ) | |
| | ) | MUR 1072 (79) |
| UAW Voluntary Community Action Program ("V-CAP") | ) | |

INTERIM INVESTIGATIVE REPORT #3

The Office of General Counsel had fully expected to have set forth its recommendations in this matter by this time. Faced with a number of pressing and time-consuming issues, it was determined that such issues needed more immediate attention.

This office anticipates that it will need an additional four weeks before being in a position to make further recommendations.

14 Jun 1980
Date

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY

DATE: MARCH 20, 1980

SUBJECT: MUR 1072 - Interim Investigative Report #2 dated 3-14-89; Signed 3-17-80; Received in OCS 3-19-80, 10:18

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 4:00, March 19, 1980.

There were no objections to the Interim Investigative Report at the time of the deadline.

8 9 0 4 0 7 0 3 5 3 0

March 19, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1072

Pleas ehave the attached Interim Invest Report distributed to the Commission. Thank you.

BEFORE THE FEDERAL ELECTION COMMISSION
March 14, 1980

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| United Auto Workers ("UAW") | ) | MUR 1072 (79) |
| | ) | |
| UAW Voluntary Community Action Program ("V-CAP") | ) | |

## INTERIM INVESTIGATIVE REPORT #2

In Report #1, we stated that the attorney for UAW and V-CAP had informed this office that its response to the Commission's reason to believe findings was to have been submitted shortly.

The response has now been received, is 23 pages in length and seeks to demonstrate, inter alia, that UAW retirees are bona fide members of the union for purposes of solicitation under the Act. The brief discusses the status of members in the context of the union's constitution, inquires into the Act's legislative history, analyzes Commission Advisory Opinions, and touches upon federal labor laws, as well as constitutional issues.

In conversations with General Counsel staff, respondents' counsel has stated its intent not to conciliate, regardless of further action on the part of the Commission. In light of this, and in order to fully respond to the substantial issues raised in respondents' brief, the Office of General Counsel expects to set forth its recommendations within the next 2 - 4 weeks.

17 March 1980
Date

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY mc

DATE: FEBRUARY 12, 1980

SUBJECT: MUR 1072 - Interim Investigative Report dated 2-8-80; Received in OCS 2-11-80, 10:42

The above-named document was circulated to the Commission on a 24-hour no-objection basis at 4:00, February 11, 1980.

There were no objections to the Interim Investigative Report at the time of the deadline.

February 11, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1072

Please have the attached Interim Invest Report distributed to the Commission.

Thank you.

BEFORE THE FEDERAL ELECTION COMMISSION

80 FEB 11 A10:42

| | |
|---|---|
| In the Matter of<br>United Auto Workers ("UAW")<br>UAW Voluntary Community Action Program ("V-CAP") | MUR 1072 (79) |

## INTERIM INVESTIGATIVE REPORT #1

In letters approved by the Commission and dated January 7, 1980, the Office of General Counsel ("OGC") notified UAW and V-CAP of the Commission's reason to believe findings. On January 14, 1980, an attorney for both respondents visited Federal Election Commission ("FEC") offices to speak with a member of the OGC staff relative to the procedures and issues involved in the Matter Under Review ("MUR"). At that time, it was agreed that respondents would submit their response by January 31, 1980.

On January 31, 1980, respondents' attorney called OGC staff to give notice that the response was incomplete and could not be submitted for another week. During the course of the conversation, the respondents' attorney stated that the response would be in letter form, approximately 6-8 pages, and indicated, in summary, the major issues which will be treated in the response.

After submission of the response, or in the absence of such submission, a full report will be made to the Commission.

8 February 1980
Date

Charles N. Steele
General Counsel

6CC #304

*Solidarity House*

8000 EAST JEFFERSON AVE.
DETROIT, MICHIGAN 48214
PHONE (313) 926-5000

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW**

DOUGLAS A. FRASER, PRESIDENT — EMIL MAZEY, SECRETARY-TREASURER

VICE-PRESIDENTS

PAT GREATHOUSE • KEN BANNON • IRVING BLUESTONE • ODESSA KOMER • MARC STEPP • MARTIN GERBER • ROBERT WHITE

JOHN A FILLION
General Counsel
JORDAN ROSSEN
M. JAY WHITMAN
Associate General Counsel

EDWIN G. FABRE
RALPH O. JONES
CLAUDE D. MONTGOMERY
LEONARD R. PAGE
ALAN V. REUTHER
JUDITH A. SCOTT
MARLEY S. WEISS
Assistant General Counsel

February 6, 1980

Daniel J. Blessington, Jr.
Federal Election Commission
1325 "K" Street, N.W.
Washington, D.C. 20463

Re: MUR 1072 (79)
UAW and UAW V-CAP

Dear Mr. Blessington:

Enclosed please find the original and two (2) copies of the Statement of Position for the UAW and UAW V-CAP in connection with the above referenced compliance case.

Pursuant to our earlier telephone conversation, I trust that you will bring this Statement of Position to the attention of the Commission for their consideration.

If the Commission should have any additional questions after reviewing this Statement of Position, please do not hesitate to contact me.

Sincerely,

Alan Reuther

Alan V. Reuther
Assistant General Counsel

AVR:jt
opeiu494afl/cio

PRINTED IN USA

| | | |
|---|---|---|
| **IN RE: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)** | ) | |
| **and** | ) | **MUR 1072 (79)** |
| **UNITED AUTO WORKERS VOLUNTARY COMMUNITY ACTION PROGRAM (UAW V-CAP)** | ) | |

## INTRODUCTION

By letters dated January 7, 1980, the Federal Election Commission (hereinafter "FEC") advised the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (hereinafter "UAW" or "Union") and its separate, segregated fund, the Voluntary Community Action Program (hereinafter "UAW V-CAP"), that the FEC had found reason to believe that the UAW may have violated certain provisions of the Federal Election Campaign Act of 1971, as amended. (hereinafter "FECA") Specifically, the FEC alleged that the UAW may have violated §441b(b)(4)(A)(ii) of the FECA by soliciting voluntary contributions from its retirees, since "retirees are not union members for the purposes of solicitation under the Act." The FEC also alleged that the UAW may have violated §114.5(a)(2) of its regulations by proposing "guidelines" for contributions by the retirees, without informing them that the guidelines were merely suggestions and that they were free to contribute more or less without fear of any reprisal.

This brief is submitted on behalf of the UAW and UAW V-CAP, and constitutes their statement of position with respect to the matters raised in the FEC's letters of January 7, 1980. The UAW and UAW V-CAP respectfully submit that their actions are in full compliance with the provisions of the FECA and the FEC's regulations. The UAW's retirees are bona fide members of the Union for purposes of solicitation under the FECA. Furthermore, the solicitations in question did not propose any guidelines for contributions, and made it clear that retirees were free to contribute as much or as little as they desired.

## I.

### Retirees Are Members of the Union for the Purposes of Solicitation Under the FECA

A. The Status of Retirees in the UAW

Article 6, §19 of the UAW Constitution provides:

> Any member in good standing who is retired, shall be entitled to a "retired membership status" which, without being required to pay membership dues during the period of such retirement, shall entitle him to all of the privileges of membership except the right to vote in elections conducted pursuant to Article 19, Section 3; Article 45, Section 2; and Article 50, Sections 1 and 5. Appropriate cards denoting such membership status shall be prepared by the International Union and furnished to Local Unions upon request and at cost. The regular withdrawal-transfer provisions of this Constitution shall be applicable if such retired member returns to active employment.[1]

This provision makes it clear that any active employee who is a member in good standing of the UAW shall be entitled to continue his or her membership in the Union after retiring. Retired membership status differs from normal membership status in only two respects. The obligation to pay dues to the Union is suspended during the period of retirement. And the right to vote in elections pertaining to the ratification of collective bargaining agreements, the selection of stewards and committeepersons, and the commencement or termination of strike actions is also suspended. In all other respects, however, individuals in retired membership status are entitled to "all of the privileges of membership" enjoyed by active employees.[2]

Thus, retirees have the right to attend general membership meetings, and to express their views and vote on matters which come before the membership. See: **UAW Constitution**, Article 37, §4; Article 38, §10(a).

Retires also have the right to vote for the Officers of their Local Union. And they have the right to vote for delegates to the UAW's Constitutional Convention, who in turn elect the Officers of the International Union and the members of the International Executive Board. See: **UAW Constitution**, Article 8; Article 10, §§1-5; Article 38, §§1, 2, 10(a), **Interpretations of UAW Constitution**, Article 6, §19 ¶¶ (1) & (2). Retirees often hold the balance of power in union elections, and have traditionally been a powerful political force within the Union.[3]

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1 A copy of the UAW Constitution is attached hereto as Exhibit A.

2 Significantly, the UAW Constitution clearly distinguishes between individuals on retired membership status, and individuals who have separated themselves from the jurisdiction of the Union and received honorable withdrawal-transfer cards pursuant to Article 17. While retirees may continue to exercise the full panoply of membership rights accorded active employees under the Constitution, individuals who have received an honorable withdrawal-transfer card are not entitled to exercise any of the privileges of membership in the Union.

3 E.g., retirees tend to vote in a bloc, and usually turn out in greater numbers (proportionally) on election day than do active employees.

Retirees have the right to run for and hold elective office in the Union, except for the positions of steward and committeeperson which require the presence of the elected member in the plant. Thus, a retiree may be elected as a delegate to the UAW's Constitutional Convention. A retiree may also be elected as an Officer of the International Union, member of the International Executive Board, or Officer of his or her Local Union. Furthermore, retirees have the right to hold appointive positions within the International Union or their Local Union, such as the position of International Representative. See: **UAW Constitution**, Article 8, §11; Article 10, §6; Article 14, §§ 3 & 4; Article 38, §3; **Interpretations of UAW Constitution**, Article 6, §19, ¶(3).[4]

Retirees may also participate in the various intra-union bodies which are established under the UAW Constitution. For example, retirees are usually accorded special representation on the Community Action Program Councils established pursuant to Article 23. These Councils engage in a broad range of community, civic, educational, citizen-legislative and political activities.

Retirees are subject to the disciplinary provisions of Article 31 of the UAW Constitution, which deals with trials of union members for violations of the Constitution or conduct unbecoming a member of the Union. And retirees may invoke the various internal union procedures which are available for appealing any actions or decisions taken by the Union. This includes the taking of an appeal to the Public Review Board. See: **UAW Constitution**, Articles 31-33.

In addition to the foregoing rights and obligations which retirees share with active employees, Article 55 of the UAW Constitution establishes a special retiree structure within the Union to encourage the continued participation of retirees in the affairs of the Union. This Article provides for the establishment of Local Union Retired Worker Chapters, Area and Regional Retired Worker Councils, and an International Retired Worker Advisory Council. Retirees have the right to participate in the affairs of their Local Union Retired Worker Chapter, and to serve as delegates to the Area, Regional, and International Retired Worker Councils. Furthermore, retirees have the right to elect a retired member to serve on their Local Union Executive Board. And the elected members of the

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4 The UAW Constitution currently requires elected and appointed officials to retire at age 65. See: **UAW Constitution**, Article 8, §11; Article 14, §§ 3 & 4. Since members often retire prior to reaching this age (indeed, under the "30 and Out" provisions of the UAW's collective bargaining agreements, it is not uncommon for members to retire while still in their early fifties), it is quite possible for a retiree to hold elective or appointive office in the Union.

International Retired Worker Advisory Council automatically serve as delegates to the Union's Constitutional Convention. Through the various Retired Worker Chapters and Councils, retirees are encouraged to participate in educational programs sponsored by the Union. Retirees are also encouraged to participate in a myriad of historical, cultural, civic, and legislative-political activities.

Article 6, §19 of the UAW Constitution waives the requirement of paying membership dues for all persons on retired membership status. This blanket waiver for all retirees was inserted in the UAW Constitution in recognition of the fact that the income of members is usually reduced when they retire. However, under Article 55, §4 of the UAW Constitution, retirees may voluntarily agree to donate $1 per month to the Union as their membership dues. These monies are in turn allocated to pay for the operations of the various Retired Worker Chapters and Councils.

It is also important to note that, in order to be entitled to "retired membership status", an individual must previously have been an active employee who was a "member in good standing" of the Union. <u>See</u>: **UAW Constitution**, Article 6, §19. This means that the individual must have been current in the payment of the regular membership dues required of all active employees. <u>See</u>: **UAW Constitution**, Article 6, §§2 & 4. It also means that the individual must have voluntarily applied for membership in the Union by signing an application for membership card. <u>See</u>: **UAW Constitution**, Article 6, §§2 & 4. Thus, individuals who have not signed application for membership cards, but who have been paying dues pursuant to an agency shop clause in their collective bargaining agreement, are <u>not</u> eligible for retired membership status. <u>See</u>: **UAW Constitution**, Article 6, §20.

Under the UAW Constitution, neither active employees nor retirees are required to periodically renew their membership applications in order to continue as members in good standing in the Union. Instead, it is presumed that active and retired members desire to retain their status as members unless they take certain affirmative steps to resign or terminate their membership in the Union. Article 6, §17 of the UAW Constitution sets forth the procedure whereby both active and retired members may resign or terminate their membership.

Finally, it cannot be stressed too strongly that retirees continue to have a strong community of interest with active employees. Although retirees do not have the right to vote on matters pertaining to the negotiation and administration of collective bargaining agreements, <u>see</u>, **UAW Constitution**, Article 6, §19, they still play a vital role in the collective bargaining process and are one of the primary beneficiaries of the Union's collective bargaining efforts. Retirees exercise a powerful voice in determining what the Union's priorities will be at the bargaining table —both through their Retired Worker Chapters and Councils and through the Officers of the Local Unions who are dependent on their votes for re-election. Not surprisingly, therefore, UAW contracts have accorded extensive benefits to retirees, especially in the areas of pensions and health insurance. The 1979 negotiations between the UAW and the Big Three auto companies provide a classic illustration of these points. When the UAW drew up its list of demands for the negotiations, the top priority was obtaining "inflation protection" for the pensions of retired members. And, at the conclusion of negotiations, the most costly item won by the Union was significant increases in the levels of pension benefits for members who had already retired.

The strong community of interest shared by active employees and retirees at the bargaining table also extends to the legislative-political process. Both groups realize that what the Union wins at the bargaining table can be taken away from them in the halls of Congress and the various state legislatures. Thus, not only has the Union been active in pushing for legislation of concern to active employees, such as worker compensation and occupational safety and health legislation. The Union has also consistently championed legislation of direct concern to retirees, such as the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§1001 et seq. and Medicare.

## B. Retirees Qualify As Members of the Union Under the FEC's Regulations

Section 441(b)(4)(A)(ii) of the FECA makes it unlawful:

> for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

The FECA does not contain any definition of the term "members". However, the FEC has promulgated a regulation which defines this term as follows:

> "Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund. [11 C.F.R. §114.1(e)]

This regulation makes it clear that an individual qualifies as a "member" of a labor organization so long as he or she satisfies whatever requirements the union has established for membership in its organization. The only caveat is that the requirements must be more extensive than simply making a contribution to a separate, segregated political fund.

Article 6, §19 of the UAW Constitution specifically provides that any member in good standing who retires shall continue to be entitled to retired membership status in the Union. This means that, in order to qualify as members of the UAW, retirees must have voluntarily signed application for membership cards and kept current in the payment of their membership dues when they were active employees. Thus, the requirements for retired membership status are clearly more extensive than simply making a contribution to the UAW's separate, segregated political fund. From the discussion above, it is readily apparent that retired membership status in the Union entitles an individual to bona fide, substantial privileges of membership, and is not simply a subterfuge to evade the limitations on solicitation contained in the FECA. Accordingly, the UAW's retirees qualify as "members" of the Union under the regulation promulgated by the FEC.

The UAW submits that this should end the present inquiry. Since retirees plainly satisfy the requirements for membership in the Union under the UAW Constitution, they should be considered "members" for the purposes of solicitation under the FECA. The FEC does not have any authority to go beyond the express terms of the UAW Constitution, and to require that individuals possess certain substantive rights in order to be considered "members" of a labor organization for the purposes of solicitation. Indeed, for the FEC to take this position would raise serious questions about whether the government was unnecessarily infringing on 1st Amendment rights of association. As Chairman Aikens stated in his concurring opinion in **Advisory Opinion** 1977-67:

> "Direct and enforceable participatory rights in the organization" (AO 1977-67) are not necessary ingredients in the formation of the membership relationship. This notion is not contained anywhere in §441b, nor is it consistent with the thrust of the commission's regulation §114.1(e), which defines "member." That definition makes it clear that one is a member if he or she is "currently satisfying the requirements for membership in a membership organization." There is no ambiguity that it is the membership organization which establishes the terms, i.e., "the requirements," of membership. It is the individual who is free to seek or spurn membership on the terms offered. The terms of membership may include "rights and obligations vis-a-vis the corporation" but it is not mandatory. For the commission to prescribe an exclusive class of substantive rights in order to limit the type of associations which would qualify as "bona fide" membership organizations within the meaning of the act would inevitably and needlessly interject the government into an essentially private concern among individuals who are merely exercising their First Amendment right of association. (emphasis supplied)

C. The Legislative History of the FECA Supports the Conclusion that Retirees Should be Considered Members of the Union

Assuming arguendo that the FEC has the authority to go beyond the express terms of the UAW Constitution, the UAW submits that the legislative history of the FECA, the FEC's advisory opinions, and the provisions of the Labor-Management Reporting & Disclosure Act all support the conclusion that retirees should be considered members of the Union for the purpose of solicitation under the FECA.

The legislative history of the FECA does not contain any discussions about whether retirees qualify as "members" of labor organizations. Indeed, there is very little discussion about the meaning of this term in general. However, there are a number of oblique references which do provide some indication of what Congress had in mind when it used this word.

When the FECA was originally considered by Congress in 1971, Representative Hansen offered an amendment which expressly permitted labor organizations to use their treasury funds to pay for communications to their "members" on any subject. During the debates on this amendment, Representative Hansen made it clear that the purpose of the amendment was to codify existing law, which prohibited the use of union treasury funds for active electioneering directed at the general public, but allowed such funds to be used for communications directed solely at the members of a labor organization and their families. Hansen stated that the major policy consideration underlying his amendment was the belief that every organization should be allowed to communicate freely with its members regarding threats to the well-being of the members and the organization. Hansen also referred to union members as being "the beneficial owners" of labor organizations, and described labor unions as being "fiduciaries" for their members. See: 117 **Cong. Rec.** 43379-80 (Nov. 30, 1971).

Similarly, when the 1976 amendments to the FECA were being considered by Congress, it was repeatedly stated that one of the purposes of the amendments was to restore the balance between the solicitation rights of corporations and unions which Congress had originally intended when it enacted the FECA, and which had been destroyed by the FEC's decision in the **Sun Oil** case. The report of the House Administration Committee stated in this regard:

> The general rule enacted in 1971 is that 'corporations and labor unions (must) confine their activities (of a political nature) to their own stockholders and members, the beneficial owners of these organizations,' and the present statutory law not only draws a line between a

corporate and union political activities financed by treasury money limited to stockholders and members, which are permitted, and other treasury financed political activities, which are prohibited, but does so by spelling out rules that the Congress believed apply equally to labor unions and corporations.

The Sun Oil opinion destroys the intent of Congress to establish rules that apply equally to labor unions and corporations.

. . . H.R. 12406 continues the rule that unions may only solicit those they represent —their members — and reaffirms the intent of the 1971 Congress that corporations must also confine their activities to a roughly comparable group — namely, stockholders and executive officers. . . (emphasis supplied)

H.R. Rep. No. 94-917, 94th Cong., 2d Sess., 7 (1976). During the House debates on final passage of the amendments, Rep. Brademas stated:

Congress sought to establish a balance between the political activities allowed to corporations and labor unions in order that the extend of political activities carried on by either kind of entity might not burgeon so as completely to overwhelm the activities of the other.

Congress specifically did not allow either corporations or labor unions to cross-solicit contributions from each other's respective constituencies. Because the rationale for allowing a corporation to play a role in Federal elections was the legitimate interests of its owners and management. Congress restricted the solicitation rights of a corporation to its stockholders and managerial employees. And because the rationale for allowing labor unions to play a role in Federal elections was the legitimate interests of its members, Congress restricted the solicitation rights of a labor union to its members.

Mr. Speaker, this system worked well for a number of years, until last winter when a majority of the members of the Federal Election Commission arrogated to themselves the right to change the rules.

In December, 1975 in an advisory opinion issued at the request of the Sun Oil Co., the Commission announced that it would allow a corporation to solicit all of its employees, including wage and hourly workers, organized and unorganized. . . what the conference committee has done is to restore the rules which governed Federal elections from 1971 until the Commission's Sun Oil decision last December. (emphasis supplied)

122 **Cong. Rec.** 12203-4 (May 3, 1976) (remarks of Rep. Brademas)

Sen. Cannon likewise defended the amendments saying:

> . . . it must be remembered and emphasized that stockholders who are being solicited can vote out the corporate management who is doing the solicitation if they do not agree with the contributions made from the political committees.
>
> By the same token, the union members are in a position to vote out the union management with which it disagrees. However, employees of a corporation have no such recourse and should not be subject to political solicitation by their employers to such an all encompassing extent as has been interpreted under existing law by the Federal Election Commission. (emphasis supplied)

122 **Cong. Rec.** S 3860 (daily ed. March 22, 1976) (remarks of Sen. Cannon) Later, in commenting on the conference report, Sen. Cannon noted that there was no definition of the term "stockholder", and opined that this term was to be defined by reference to state law, which had focused on the right to vote and receive dividends as being the crucial attributes of a stockholder. See: 122 **Cong. Rec.** 12472 (May 4, 1976).

Based on the foregoing comments in the legislative history, it is apparent that retirees should be considered "members" of the UAW. To begin with, retirees clearly form part of the Union's natural constituency. Prior to retirement, they were dues paying members of the Union. And through the various Retired Worker Chapters and Councils established under Article 55 of the UAW Constitution, retirees are encouraged to continue active participation in the affairs of the Union. More importantly, the Union continues to represent the interests of its retirees, both in collective bargaining and in the legislative-political process. The Union has consistently placed the demands of retirees for increases in pension benefits and health insurance benefits at the top of its bargaining demands. And the Union has been a persistent advocate of legislation directed at the needs of senior citizens. Thus, if the rationale for allowing labor organizations to communicate with and solicit contributions from their "members" is based on the legitimate interests of the members and the need to protect them against threats to their well-being, then the concept of "members" must clearly be extended to encompass the Union's retirees. It must be admitted, certainly, that the relationship between the Union and its retirees is qualitatively different from the relationship between the Union and members of the general public.

Furthermore, under the UAW Constitution, retirees have the right to vote for the Officers of the International Union, the Members of the International Executive Board, and the Officers of their Local Union. Accordingly, they are in a position to exercise some degree of control over the management of the Union's affairs. If the retirees disagree with the political positions being taken by the leadership of the Union, they can always vote it out of office. Because the retirees can exercise control over the affairs of the Union, they must be considered the beneficial owners of the Union, along with active employees. And the elected officials who manage the Union owe a fiduciary duty to the retirees, as well as the active employees.

Finally, since the FECA does not contain any definition of the term "members", it is reasonable to suppose that Congress intended this word, like the term "stockholder", to be defined by reference to existing law. As is set forth more fully in section I D of this Brief, under the Labor-Management Reporting & Disclosure Act, which governs the union-membership relationship, retirees clearly qualify as "members" of the Union.

D. Retirees Qualify as Members of the Union Under the Criteria Set Forth in Several FEC Advisory Opinions

The history behind the development of the FEC's regulations does not provide any clue as to the meaning of the term "members". The regulation defining "members" remained unchanged throughout the long promulgation process. See: 41 **Fed. Reg.** 21592 (May 26, 1976); 41 **Fed. Reg.** 35956 (August 25, 1976); 42 **Fed. Reg.** 19324 (April 13, 1977).

The FEC has not issued any Advisory Opinions dealing directly with the question of who should be considered a "member" of a labor organization. However, the FEC has issued several Advisory Opinions which deal with the meaning of the term "members" in the context of incorporated membership organizations. See: **Advisory Opinions** 1977-17 & 1977-67. The UAW respectfully submits that these Advisory Opinions are not relevant to the present inquiry. As Chairman Aikens recognized in his concurring opinion in **Advisory Opinion** 1977-67, "membership" in a labor organization is not directly comparable to "membership" in an incorporated membership organization:

> My concerns begin with the inference in this advisory opinion that membership organizations are analogous to the other major entities subject to §441b, i.e., business corporations and labor organizations. For several reasons, I think that the commission must be wary of such comparisons. Incorporated membership organizations were inserted into §441b in the 1976 Amendments. The legislative history on this insertion is slim and therefore suggests to me that the legislature was somewhat unfocused as to its intended effect. . .
>
> Shareholders, union members and members of ideological organizations defy comparison. The type of relationship that exists between a business corporation and its shareholders and between a union and its members is entirely different from that between an association such as PSRC and individuals who join this group as members. Unions and corporations have long been recognized as economic interests within our society and within the framework of the election laws. It is for that reason that Congress chose to proscribe their political activity. However, with respect to groups such as PSRC, the relationship between this incorporated member-

> ship between this incorporated membership organization and its members is ideological rather than economic. Whereas the shareholder may be interested in higher profits and therefore a higher return on investment, and whereas the union member will be interested in improved wages and working conditions as negotiated through the collective bargaining process, those who join PSRC seem to do so for ideological reasons. For this reason, the terms upon which an individual establishes or enters into a relationship with a corporation or a labor union may not be transferable to other membership relationships. "Rights and obligations" in the context of union membership may be virtually meaningless in the context of membership in a group such as PSRC. Oftentimes "rights" are a matter of statute, such as a union member's bill of rights. 29 U.S.C. §§411-413.

Assuming arguendo that these two Advisory Opinions do shed some light on who should be considered a "member" of a labor organization, the UAW submits that its retirees clearly satisfy the various criteria set forth in these opinions. In Advisory Opinion 1977-17, the FEC ruled that commodity representatives were not "members" of the Chicago Mercantile Exchange for the purposes of solicitation under the FECA. The FEC based its decision on the fact that the rules of the Exchange specified that commodity representatives were not members. Also, the commodity representatives did not have trading privileges on the exchange floor, the right to vote in exchange elections or on the adoption of exchange rules, and the right to serve as directors or officers of the exchange. The FEC, therefore, concluded that "in several significant respects, commodity representatives do not have the same status within the exchange as it enjoyed by full members."

More importantly, in a sharply divided opinion. the FEC ruled in Advisory Opinion 1977-67, that individuals who satisfied certain criteria would be considered "members" of the Public Service Research Council for the purposes of solicitation under the FECA. The majority opinion began by stating that, under the FEC's regulation defining the term "members", an organization must in fact impose some "requirements" for membership in the organization. And individuals can only be considered "members" of the organization if they have taken some affirmative steps to meet those requirements. The majority opinion then went on to state:

> The solicitation of political contributions from members of an organization derive from the special relationship that the organization has to its members (see remarks of Representative Hansen, 117 Cong. Rec. 43380) and accordingly. the membership relationship must be evidenced by the existence of rights and obligations vis-a-vis the corporation. In each instance where members do not have direct and enforceable participatory rights in the organization - such as those held by a shareholder or union member - facts must be examined before a determination can be made that a membership relationship exists.

Although the individuals in question did not have any direct and enforceable participatory rights in the Public Seravice Research Council, the majority opinion went on to find that there still was sufficient indicia of a membership relationship between the Council and the individuals because the individuals (1) had expressed in writing a specific and unambiguous desire to join the Council, (2) were given the opportunity to participate in an annual membership opinion survey which was taken into consideration by the governing board of the Council, (3) were obligated to pay a predetermined minimum amount of dues to the Council (although this could be waived on the basis of predetermined specific criteria), and (4) had to renew their membership status at periodic intervals.

In a dissenting opinion, Commissioners Harris and Staebler argued that the "indicia of membership" required by the majority did not go far enough. Commissioners Harris and Staebler agreed with the majority that the membership relationship must be evidenced by the existence of member rights and obligations vis-a-vis the corporation, and that where a group of individuals do not enjoy "direct and enforceable participatory right as a matter of law or constitution", there must be some further evidence of the membership relationship before the individuals may be considered "members" for the purposes of solicitation. They also agreed that the various criteria enumerated by the majority were necessary indicia for a membership relationship. However, Commissioners Harris and Staebler went on to state that individuals must have voting rights which enable them to direct and control the policies of an organization in order to qualify as "members" of that organization:

> In our opinion, a bona fide membership relationship cannot exist unless members have certain fundamental rights guaranteed vis-a-vis the corporation.
>
> Paramount among these is the right of members to direct the policies and activities of the corporation, for this is what characterizes the corporation as a "membership" organization. Membership control can only be derived from a concomitant right in the membership to elect corporate directors or officers. It is the existence of this right guaranteed by law to corporate shareholders and labor union members which creates the fiduciary relationship between such organizations and their shareholders or members. And it is the existence of the fiduciary relationship that the statutory scheme in Section 441b seeks to protect by providing that a corporation without capital stock may solicit its members. PSRC's "Articles of Incorporation" not only fail to provide this fundamental right they specifically deny it. In our view, the absence of this right and the resultant lack of control by the alleged "members" over the corporation's policies and actions is fatal to the corporation's contention that it is a "membership" organization. A bona fide membership organization is one which represents its members; that is not the case here.

In a concurring opinion, Chairman Aikens disagreed vehemently with the approach taken by his colleagues. As previously noted, Aikens rejected any notion that incorporated membership organizations were analogous to business corporations or labor unions. And he also rejected the notion that "direct and enforceable participatory rights in the organization", or any other class of substantive rights and obligations such as predetermined dues or periodic renewal of membership. were necessary ingredients for the existence of a membership relationship. According to Aikens, under the literal language in the FEC's regulation defining the term "members", it is apparent that an organization is free to establish whatever terms or requirement for membership it desires. The term "member", therefore, encompasses any individual "who knowingly and voluntarily associates himself or herself with the organization", by taking affirmative steps to saatisfy the requirements for membership established by the organization. Chairman Aikens noted, in this regard, that the basic requirement which an individual must satisfy in order to be considered a "member" of a labor union is the signing of a membership card, not the payment of dues:

> Let us assume, however that union members were intended by Congress to be comparable to members of other forms of associations. What is it that makes an individual a member in the union? It could not be the mere payment of predetermined dues. Such payments would make workers who are subject to an agency shop agreement members of the union when, in fact, they are not. Payment of dues may be a consequence of joining a union, but it is not an act which confers membership. To the contrary, it is a well settled principle that an employee' signature on a membership card constitutes membership in the union because it manifests the requisite intent and desire to be a member. NLRB v. Delaware New Jersey Ferry Co., 128 F. 2d 130, 134 (3d Cir. 1942).

Although the FEC has not reached a concensus on the requirements which an individual must satisfy in order to be considered a "member" of an organization, nevertheless, it is apparent that the UAW's retirees meet the various criteria articulated by the FEC in these two Advisory Opinions. First, the UAW Constitution does establish certain threshold requirements which retirees must meet in order to be considered members of the Union. Specifically, retirees must have previously been active employees under the jurisdiction of the UAW who were members in good standing of the Union. This means that, as active employees, they must have remained current in the payment of their membership dues.

Second, retirees must have taken affirmative steps to knowingly and voluntarily associate themselves with the UAW. In order to have been members in good standing of the Union when they were active employees, retirees must have signed application for membership cards, indicating their desire to become members of the Union.

Third, retirees clearly have direct and enforceable participatory rights and obligations in the Union which are guaranteed both by the UAW Constitution and by federal labor laws. Specifically, retirees have the right to attend union meetings, and to express their views and vote on matters coming before the membership. They also have the right to vote for the Officers of the International Union, members of the International Executive Board, and Officers of their Local Unions. And retirees may run for and hold elective and appointive office in the International Union or their Local Unions. Retirees have the right to invoke the internal union appeals procedure, and are subject to disciplinary proceedings under the UAW Constitution. And, in addition to allowing retirees to participate in various subordinate bodies of the Union, the UAW Constitution also establishes a special structure of Retired Worker Chapters and Councils to encourage the continued participation of retirees in the affairs of the Union. Although retirees do not have the right to vote on matters pertaining to the negotiation and administration of collective bargaining agreements, the foregoing recitation clearly demonstrates that in most significant respects, retirees enjoy the same rights and obligations as active employees. Moreover, the various rights and obligations accorded retirees under the UAW Constitution are enforceable in state court under traditional concepts of contract law. And, as is discussed more fully in section I E of this Brief, these rights and obligations are also enforceable in federal court under the provisions of the Labor-Management Reporting & Disclosure Act.

Fourth, it is apparent that retirees have the same right as active employees to direct and control the policies and activities of the Union. That is, retirees have the same right as active employees to vote in elections for the Officers of the International Union, the members of the International Executive Board, and the Officers of their Local Unions.

Since retirees clearly satisfy the foregoing criteria, under the rationale articulated by the majority and dissenting opinions in **Advisory Opinion** 1977 67, there is no need to inquire into whether there is any additional evidence of a membership relationship between retirees and the Union. However, even if the scope of the present inquiry is expanded beyond the criteria set forth above, the UAW submits that there are still sufficient indicia of a membership relation to support the conclusion that retirees are bona fide members of the Union for the purposes of solicitation under the FECA.

Admittedly, the UAW Constitution provides that retirees do not have to pay any membership dues to the Union in order to retain their "retired membership status". However, this waiver of the obligation to pay dues is clearly based on a specific, predetermined criteria: that is, retirement. Moreover, it is apparent that the granting of this blanket waiver is based on <u>bona fide</u> policy considerations - i.e., the fact that retirees must live on reduced income - and is not a subterfuge to evade the limitations on solicitation contained in the FECA. It should also be noted that, in order to be entitled to retired membership status, a retiree must have been current in the payment of his or her regular membership dues while an active employee. Active employees, of course, are obligated to pay a predetermined, minimum amount of monthly dues to the Union.

It is also true that retirees do not have to periodically renew their membership in order to continue to be entitled to retired membership status. However, the same can be said of active employees. Under the UAW Constitution, once an active employee has signed an application for membership card and become a member of the Union, there is no requirement that the individual periodically renew his or her membership. Instead, it is assumed that the employee continues to be a member in good standing, unless he or she takes some affirmative action to resign or terminate their membership in the Union. <u>See</u>: **UAW Constitution**, Article 6, §17. Since there is no question that active employees are "members" of the UAW notwithstanding the absence of any mechanism for periodically renewing their membership, it follows that retirees should also qualify as members of the Union even though they are not required to periodically renew their membership.

Finally, it is important to remember that retirees continue to share a strong community of interest with active employees. As Chairman Aikens recognized in his concurring opinion in **Advisory Opinion** 1977-76, labor unions are basically economic organizations. It follows that the "members" of a labor organization are those individuals who have an economic "stake" in the activities of the union. As previously noted in section I B of this Brief, retirees continue to play an important role in the UAW's collective bargaining negotiations, and are among the primary beneficiaries of those negotiations. Moreover, the Union has traditionally represented and advocated the economic interests of its retirees in the legislative-political process. Thus, retirees form part of the UAW's natural constituency, and should therefore be considered "members" of the Union for the purposes of solicitation under the FECA.

E. The Federal Labor Laws Demonstrate that Retirees Should be Considered Members of the Union

1. The Labor-Management Reporting & Disclosure Act

The Labor-Management Reporting & Disclosure Act (LMRDA), 29 U.S.C. §§401 et seq., regulates the internal affairs of labor organizations. Section 3(o) of the LMRDA, 29 U.S.C. §402(o), contains the following definition of the term "member":

> "Member" or "member in good standing" when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

Like the FEC's regulation, this definition makes it clear that the term "member" encompasses all individuals who meet the requirements for membership which have been established by the labor organization. There is no separate class of substantive rights which the individuals must possess in order to qualify as members of the labor orgnization. Thus, so long as retirees meet the requirements for membership set forth in the constitution and bylaws of a labor organization, they clearly qualify as "members" of the union under the provisions of the LMRDA.

The provisions of Title I of the LMRDA grant union "members" equal rights to vote and nominate candidates, freedom of speech and assembly, and certain procedural due process safeguards against improper disciplinary action. See: 29 U.S.C. §411. Title IV of the LMRDA in turn grants every "member in good standing" the right to run for and hold union office. See: 29 U.S.C. §481(e). There is simply no indication in the language of the statute that Congress intended for these rights to be accorded only to active employees, and not to retirees.

The regulations promulgated by the Department of Labor provide an affirmative indication that the provisions of the LMRDA apply to retirees as well as active employees. Section 452.93 of the Department's regulations states:

> The right of retirees to vote may be restricted to the extent provided by the constitution and bylaws of the labor organization.

See: 29 C.F.R. §452.93. Where the constitution and bylaws of a labor organization permit retirees to vote in elections for the officers of the union, as is the case under the UAW Constitution, this regulation makes it clear that the retirees are covered by the provisions of the LMRDA and are entitled to the protections afforded thereunder.

The federal courts have also recognized that retirees may qualify as "members" under the constitution and bylaws of a labor organization, and thus be entitled to the protections afforded by the LMRDA. In **Thomas v. United Mine Workers**, 422 F. Supp. 1111, 1115-7 (D. Col. 1976), a number of retired mine workers sued the United Mine Workers Union, claiming that it had violated their rights under §§101(a)(1) and 101(a)(2) of the LMRDA by not allowing them to express their views and vote on a proposed collective bargaining agreement which had been negotiated by the union. The court consistently referred to the retirees as being "members" of the union, and held that they had stated a cause of action under the provisions of §§101(a)(1) & (2).

Similarly in **Schultz v. Radio Officers**, 344 F. Supp. 58, 61, 64 (S.D. N.Y. 1972), a retiree alleged that his union had violated the provisions of §401(e) by coercing him into not running for union office. The court found that the candidacy rights granted by this provision extended to the retiree, and accordingly that the union was guilty of violating §401(e).

Finally, in **Hodgson v. Local 592**, 350 F. Supp. 16 (C.D. Cal. 1972), the Secretary of Labor challenged the validity of a union election on the grounds that the union had failed to provide for absentee ballots, even though there were a large number of "travel card members" and retired members living some distance from the polls. Although the court found that the failure to provide for absentee ballots was reasonable and therefore refused to overturn the election, nevertheless it consistently referred to the retirees as being "members" of the union and assumed that they were covered by the provisions of §401(e).

### 2. Labor-Management Relations Act

The UAW submits that the provisions of the Labor-Managent Relations Act (LMRDA), 29 U.S.C. §141 et seq., are irrelevant to the present inquiry. This is because the LMRDA simply governs the employee-employer relationship, not the union-member relationship. The union-member relationship is governed by the LMRDA. **Navarro v. Gannon**, 385 F. 2d 512 (2d Cir 1967); Beaird & Player, **Free Speech and the Lamdrum-Griffin Act**, 25 Ala. L. Rev. 577 (1973); Cox, **International Affairs of Labor Unions Under the Labor Reform Act of 1959**, 58 Mich. L. Rev. 819 (1960).

For the same reason, the Supreme Court's decision in **Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Company**, 404 U.S. 157 (1971) is irrelevant here. The Supreme Court simply held that retirees do not qualify as "employees" under §2(c) of the LMRDA, 29 U.S.C. §152(3), and hence that benefit increases for retirees do not constitute a mandatory subject of bargaining under the LMRDA. Its decision did not address the distinct question of whether retirees may qualify as "members" of a labor organization. Also, the Supreme Court recognized that benefit increases for retirees are still a permissive subject of bargaining. Thus, unions and employers are free to negotiate over and enter into collective bargaining agreements pertaining to benefit increases for retirees.

As previously noted, retirees exercise a powerful voice in determining what the Union's priorities will be in collective bargaining negotiations. Because of this, retirees have been among the primary beneficiaries under the recent collective bargaining agreements negotiated by the UAW. Thus, notwithstanding the decision of the Suprmeme Court in **Pittsburgh Plate Glass**, the UAW continues to bargain collectively with employers on behalf of its retired members.

Finally the FEC's decision in **Compliance Case** MUR 666 (1978) is also distinguishable from the present case. The FEC simply decided that a fraternal affiliate of the American Federation of State, County & Municipal Employees (AFSCME) - the Retired Public Employees Council of Washington - could lawfully use its membership dues for political contributions because the Council constituted a "membership organization" rather than a "labor organization". The FEC reasoned that, under the FECA, members of a group must be considered "employees" before the group will be considered a "labor organization". Although the FEC does not define the term "employee", the FEC felt that it was appropriate to borrow the definition contained in the LMRA because the two statutes contain identical definitions of "labor organization". Noting that the federal courts have interpreted the definition of "employee" contained in the LMRA to exclude retirees, the FEC concluded that the members of the Retired Public Employees Council of Washington should not be considered "employees" under the FECA, and hence that this organization did not constitute a "labor organization" under the FECA.

Although the UAW does not concede the correctness of the FEC's decision in this Compliance Case, nevertheless it is plainly irrelevant to the present inquiry. The Compliance Case simply dealt with the question of whether retirees were "employees" - not the question of whether they were "members" under the FECA. Of course, there is no dispute here that the majority of the members of the UAW are active employees, and that the Union therefore qualifies as a labor organization.

F. The Term "Members" Must be Construed to Encompass Retirees in Order to Avoid Grave Constitutional Difficulties

The FECA contains two references to the "members" of labor organizations. First, §441b(b)(2) creates an exception to the general prohibition on the expenditure of union treasury funds in connection with federal elections, by providing that labor organizations may use their treasury funds to pay for communications on any subject which are directed solely at their "members". Second, §441b(b)(4)(A)(ii) makes it unlawful for labor organizations to solicit contributions to their separate, segregated funds from any person other than their "members".

It is well established that statutory terms should normally be construed as having the same meaning throughout a single statute. **Pampaga Sugar Mills v. Trinidad**, 279 U.S. 211, 218 (1929); **Kent Manufacturing Corp. v. Commission**, 288 F. 2d 812, 815 (4th Cir. 1961). And the legislative history of the FECA does not contain any indication that Congress intended for the term "members" to be interpreted differently in determining the scope of communications which can be paid for out of union treasury funds, and the scope of solicitations which unions can make for contributions to their separate, segregated funds.

Thus, it is readily apparent that the question of whether retirees are "members" for the purposes of solicitation under the FECA is also determinative of whether retirees are "members" for the purposes of membership communications by a labor organization under the FECA. If retirees are not "members" for the purposes of solicitation, then the ability of unions to communicate with their retirees must also be restricted.

The Supreme Court has repeatedly held that expenditures for communications on political subjects constitute a form of political speech and association, and as such, are at the heart of the protection afforded by the 1st Amendment. **First National Bank of Boston v. Bellotti**, 435 U.S. 765 (1978); **Buckley v. Valeo**, 424 U.S. 1 (1976); **United States v. UAW**, 352 U.S. 567 (1957); **United States v. CIO**, 335 U.S. 106 (1948). In **United States v. CIO**, supra at 121, the Court held that the provisions of the Federal Corrupt Practices Act had to be construed as not applying to expenditures by labor organizations for communications on political subjects which are directed solely at their members and their families, in order to avoid serious doubts about the constitutionality of the law:

> If §313 were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures or the election to office of men, espousing such measures, the gravest doubt would arise in our minds as to its constitutionality.

The provisions of §441(b)(2) which permit labor organizations to spend their treasury funds for communications with their "members" on any subject were added by an amendment offered on the floor of the House by Representative Hansen. During the debates on this amendment. Hansen specifically stated that it was designed to codify the decision of the Supreme Court in **United States v. CIO,** and to avoid the constitutional problems which would otherwise be created by restrictions on the ability of corporations and unions to communicate with their members. See: 117 **Cong. Rec.** 43379-80 (Nov. 30, 1971) (Remarks of Rep. Hansen).

We respectfully submit that a determination by the FEC that retirees are not members of the Union for the purposes of solicitation under the FECA would raise serious constitutional questions. In so ruling, the FEC would not only be restricting the ability of labor unions to communicate freely with their retirees on political subjects. It would also be needlessly interjecting itself into the private, associational interests of active employees and retirees, by effectively circumscribing the scope of the Union as an organization. In order to avoid these grave constitutional difficulties, the FEC should rule that retirees are members of the Union for the purposs of solicitation.

## II.

## The Union's Solicitations Did Not Violate FEC Regulation §114.5(a)(2)

Section 441(b)(4)(A)(ii) of the FECA makes it unlawful for a labor organization or a separate, segregated fund established by a labor organization to solicit contributions to such a fund from any persons other than its members and their families. Section 441b(b)(3) further provides that:

> It shall be unlawful —
> (A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;

The regulations promulgated by the FEC to implement this statutory provision have two parts. Section 114.5(a)(1) of the FEC's regulations basically tracks the statutory language, with some additional explanation as to the meaning of the phrase "fees, or other monies required as a condition of membership". Section 114.5(a)(2) then goes on to deal with the specific situation where a solicitation by a corporation or labor organization proposes a "guideline" for contributions:

> A guideline for contributions may be suggested by a corporation or a labor organization, or the separate segregated fund of either, provided that the person soliciting or the solicitation informs the persons being solicited —
>
> (i) That the guidelines are merely suggestions; and
>
> (ii) That an individual is free to contribute more or less than the guidelines suggest and the corporation or labor organization will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.
>
> A corporation or labor organization or the separate segregated fund of either may not enforce any guideline for contributions.

The FEC's regulations do not elaborate on the meaning of the term "guidelines". However, the original version of these regulations which was proposed by the FEC in its Notice of Proposed Rulemaking simply stated:

> A corporation or labor organization or the separate segregated fund of either may not enforce a guideline for contributions, as by requiring that a certain percent of salary or wages must be contributed or that a certain percent of employees or members must contribute.

41 **Fed. Reg.** 21593, §114.5(a)(2) (May 26, 1976).

This proposed regulation makes it clear that the term "guidelines" was intended to encompass situations where corporations or labor unions established certain rigid percentages or dollar amounts which employees or members were expected to contribute. Although the FEC subsequently modified this proposed regulation to permit corporations and unions to suggest guidelines for contributions by their employees or members, so long as certain precautions are observed which insure that nobody is coerced into making a contribution, nevertheless it is apparent that the FEC did <u>not</u> intend to impose the various requirements set forth in Regulation 114.5(a)(2) on <u>all</u> solicitations by corporations and unions. Rather, these safeguards were only required in those situations where corporate or union solicitations urged employees or members to contribute specific percentages of their wages or rigid dollar amounts. Thus, where corporate or union solicitations do not propose such "guidelines", the only requirements are the more general prohibitions on coercion contained in Regulation 114.5(a)(1).

A perusal of the two solicitations at issue in the present case clearly demonstrates that the UAW has not violated FEC Regulation 114.5(a)(2).[5] First, neither solicitation suggests any "guidelines" for contributions by retirees. The September 20, 1977 letter from Region 1-D, UAW simply states:

> I am again asking your help in this year's CAP Dollar Drive . . .
>
> Will you help with your contribution? All you need do is this: (1) Put your dollars in the enclosed mail-back envelope . . .
>
> If you send in more than a dollar we will make out extra tickets and put them in the drawing in your name.

Similarly, the May, 1977 letter from Region 8, UAW merely states, "Please mail back your dollar or more in the enclosed postpaid envelope . . ." Thus, neither letter establishes rigid percentages of the retirees' income or specific dollar amounts which the retirees are expected to contribute. Since the two solicitations do not suggest any "guidelines" for contributions by the retirees, the Union did not have to include the various "disclaimers" set forth in Regulation 114.5(a)(2) in the letters.

Second, assuming arguendo that the two letters somehow can be construed as suggesting "guidelines" for contributions by retirees, the UAW submits that the solicitations still complied with the spirit, if not the literal language, of Regulation 114.5(a)(2). The unmistakable impression conveyed by the two letters is that the retirees are free to decide whether or not they will contribute to UAW V-CAP. And if they decide to make a contribution, they are free to contribute a dollar or more, as they so desire.[6] The letters understandably do not track the precise language of Regulation 114.5(a)(2), since they were prepared by laymen rather than attorneys. The important point, however, is that nothing in the letters suggests that retirees will suffer any disadvantage if they decide not to contribute or if their contributions are small. Furthermore, there is simply no evidence which would suggest that the UAW actively "enforced" any guidelines for contributions, or exerted any coercion on the retirees to make contributions to UAW V-CAP.

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5 Copies of the two letters referred to by the FEC in its letters of January 7, 1980 are attached hereto as Exhibits B & C respectively.

6 Although the letters did not specify that retirees could contribute less than one dollar, at most this would only constitute a technical violation of Regulation 114 5(a)(2), which is hardly worthy of the FEC's attention.

Thus, the UAW submits that the FEC's allegations can only be based on a hypertechnical construction of Regulation 114.5(a)(2). The basic thrust of §441b(b)(3) of the FECA, as well as §114.5(a)(1) & (2) of the FEC's regulations, is that union members should not be coerced, either directly or indirectly, into making contributions to their union's separate, segregated fund. From all of the surrounding circumstances, it is apparent that the UAW's solicitations did not coerce retirees into making any contributions. Accordingly, the solicitations were perfectly proper under the provisions of the FECA and the FEC's regulations.

## Conclusion

For the foregoing reasons, the UAW and UAW V-CAP respectfully submit that there is no reason to believe that they have violated the provisions of the FECA and the FEC's regulations. Accordingly, the UAW and UAW V-CAP contend that the FEC's investigation should be terminated, and that no further action should be taken in this matter.

Respectfully submitted,

John A. Fillion
General Counsel
M. Jay Whitman
Associate General Counsel
Alan V. Reuther
Assistant General Counsel

8000 East Jefferson Ave.
Detroit, Mich. 48214
(313) 926-5216

By: Alan Reuther
Alan V. Reuther

Dated: February 6, 1980.

MAILING ADDRESS
Region 1-D, UAW
Box H
Grand Rapids, Michigan 49501

OWEN BIEBER, DIRECTOR
REGION 1-D, UAW
544 EAST BELTLINE AVENUE, N.E.
GRAND RAPIDS
PHONE 949-4100

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Attachment III p1 of 2

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - UAW



September 20, 1977

Greetings:

The 1976 Region 1-D Dollar Drive was an outstanding success. The response and contributions from Retirees of $12,113.42 was of great significance. A total of $86,012.45 was raised. At all Regional meetings since the 1976 Dollar Drive I have recognized the achievements of the UAW Retirees in the Dollar Drive.

In Michigan in 1978 we will elect a Governor, Secretary of State, Attorney General, all U. S. Congressmen, a U. S. Senator, and the State Legislature, both House and Senate. Campaigns are costly. As you know federal law prohibits the use of union dues for candidates for federal office. To aid progressive candidates we must raise money via the dollar drive for this purpose. I am again asking your help in this year's CAP Dollar Drive.

Retirees have many concerns and needs that can only be solved by intelligent legislation in the U. S. Congress.

The UAW fully endorses President Carter's proposals to make social security fiscally sound - higher benefits and correcting inequities.

The skyrocketing cost of health care and all medical costs are of great concern to all Americans. We can enact the National Health Security Plan, which will relieve all of us of this heavy financial burden.

Other legislative items that must be enacted to help Retirees include

- -real consumer protection
- -better housing
- -mass transit systems that work
- -tax reform-federal-state and local-lift the burden from Retirees.
- -control of utility cost with relief for the elderly
- -there is a need to amend the National Labor Relations Act to make it mandatory for employers to bargain with Union Representatives over proposals affecting Retirees.

EXHIBIT "B"

21

In addition to the first prize award of a 1978 Oldsmobile Cutlass, two 19-inch color TV sets, cash awards ranging from $50.00 to $500.00 will be awarded.

Also, because of your tremendous support in last year's Dollar Drive, ten $50.00 cash awards will be given to Retirees only.

Will you help with your contribution? All you need do is this:

(1) Put your dollars in the enclosed mail-back envelope.

(2) Fill out the enclosed stubs of the enclosed CAP tickets and place them in the mail-back envelope too.

(3) Seal and mail the envelope to us - and please note it is self-addressed, and does require postage.

Keep the large portion of the CAP ticket. This will entitle you to a chance to win any of the above listed prizes. The drawing will be held at the Region 1-D Headquarters, 844 East Beltline, NE, Grand Rapids, Michigan, on November 19, 1977, at 11:00 AM. You need not be present to win. If you send in more than a dollar we will make out extra tickets and put them in the drawing in your name.

I look forward to your continued support and favorable reply.

Fraternally,

Owen Bieber

Owen Bieber
Director, Region 1-D, UAW

OB/bh opeiu494 #1403

c: All Regional Staff

enclosures

Attachment II

E. T. MICHAEL
DIRECTOR. REGION 8

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA • UAW



May, 1979

REGIONAL OFFICE
7124 AMBASSADOR ROAD
BALTIMORE, MARYLAND 21207
PHONE: AREA CODE 301-265-8800

TO: ALL RETIRED UAW MEMBERS RESIDING IN REGION 8

Greetings:

The year 1979 will be a critical period for our Union with major agreements open for negotiations with certain corporations.

> A great deal of our Union's energy and time will, therefore, be spent trying to secure justice and equity for our members - including retired members who worked for such corporations. However, we must not forget that what we gain at the bargaining table can be jeopardized, or taken away, in the legislative halls of government.

Moreover, the problems of inflation, ever-increasing medical costs, skyrocketing gas and oil prices and the unfair burden of taxation - both federal and state, cannot be solved at bargaining tables. It will require our maximum participation in the legislative halls of government. Strong lobbying efforts will be needed - both in the legislature and before regulatory agencies, to promote and protect the interest of our members.

> We are, therefore, officially commencing our 1979 CAP Dollar Drive in an effort to adequately finance the UAW's Political Action Program. Please mail back your dollar or more in the enclosed postpaid envelope, along with the gold card stub filled in completely. If you send a check, please make it out to "UAW V-CAP Region 8". The stub will be used in the retiree prize program. Last year's winners are listed on the program enclosure.

The need for voluntary dollars was never more critical. Astronomical amounts of money are being raised by reactionary big business and the anti-labor right wing. They are embarked on an unholy crusade to weaken and destroy any legislation designed to help workers and retirees.

However, with your help, along with that of the membership in the plants, we hope to prevent any government "take aways" of benefits now enjoyed and lobby for passage of legislation beneficial to all UAW members.

Commending you for your past contributions, we are

Fraternally yours,

E. T. Michael
E. T. Michael
Director - Region 8

W. D. Haynes
W. D. Haynes, Chairman
Region 8 Retired Workers Council

Enclosure

EXHIBIT "C"

IMPORTANT
Upon Delivery
Recipient Please
Notify: ____________
Tel. Ext: ____________

FEDERAL EXPRESS

FEDERAL EXPRESS

PLEASE COMPLETE ALL INFORMATION IN THE 5 BLOCKS OUTLINED IN ORANGE. SEE REVERSE SIDE FOR COMPLETE PREPARATION INSTRUCTIONS.

YOUR F.E.C. ACCOUNT NUMBER 482-2874-5

DATE 2-6-80 AIRBILL NO. 021

FROM (Your Name) ALAN REUTHER

COMPANY UAW DEPARTMENT/FLOOR NO. LEGAL

STREET ADDRESS 8000 EAST JEFFERSON AVENUE

CITY DETROIT STATE MI ZIP 48214

TO (Consignee's Name) DANIEL J. BLESSINGTON,

COMPANY FEDERAL ELECTION COMMISSION

STREET ADDRESS 1325 "K" Street, N.W.

CITY WASHINGTON, DC STATE ZIP 2

PURCHASE ORDER NO. OR YOUR REFERENCE NO.

PURCHASE ORDER NO. OR CONSIGNEE REFERENCE NO.

PAYMENT X Bill Shipper ☐ Bill Consignee F.E.C. Acct. ☐ Cash in Advance ☐ Bill Third Party F.E.C. Acct.

SERVICE (Check One)
PRIORITY ONE Overnight Package
X COURIER PAK Overnight Envelope (Up to 2 lbs.)
☐ Overnight Box (Up to 5 lbs.)
☐ Overnight Tube (Up to 5 lbs.)
STANDARD AIR (Scheduled 2 Day Delivery)

DELIVERY INSTRUCTIONS (Check One)
SPECIAL HANDLING (Check If Desired)
Sat. Delv. SSS Govt. N/A

Pieces Weight Total Total

O/S NON-NEGOTIABLE ... SUBJECT TO CONDITIONS ... SET FORTH ON REVERSE ... SHIPPER'S COPY

EMP. NO. DATE AGT/PRO

ADDRESS CORRECTION STATE ZIP

FREIGHT CHARGES
VALUATION CHARGE
ADVANCE ORIGIN
ADVANCE DESTINATION
OTHER
TOTAL CHARGES

RECEIVED AT X Shipper's Door ☐ FEC Station EMPLOYEE NO. DATE/TIME

RECEIVED BY (Signature) X DATE/TIME

FEC-S-0049 8/78

DCA

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If yes, please affix the proper amount of postage for the letter material only and cancel by lining through in ink.

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|---|---|---|
| IN RE: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) and UNITED AUTO WORKERS VOLUNTARY COMMUNITY ACTION PROGRAM (UAW V-CAP) | ) | MUR 1072 (79) |

## INTRODUCTION

By letters dated January 7, 1980, the Federal Election Commission (hereinafter "FEC") advised the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (hereinafter "UAW" or "Union") and its separate, segregated fund, the Voluntary Community Action Program (hereinafter "UAW V-CAP"), that the FEC had found reason to believe that the UAW may have violated certain provisions of the Federal Election Campaign Act of 1971, as amended. (hereinafter "FECA") Specifically, the FEC alleged that the UAW may have violated §441b(b)(4)(A)(ii) of the FECA by soliciting voluntary contributions from its retirees, since "retirees are not union members for the purposes of solicitation under the Act." The FEC also alleged that the UAW may have violated §114.5(a)(2) of its regulations by proposing "guidelines" for contributions by the retirees, without informing them that the guidelines were merely suggestions and that they were free to contribute more or less without fear of any reprisal.

This brief is submitted on behalf of the UAW and UAW V-CAP, and constitutes their statement of position with respect to the matters raised in the FEC's letters of January 7, 1980. The UAW and UAW V-CAP respectfully submit that their actions are in full compliance with the provisions of the FECA and the FEC's regulations. The UAW's retirees are bona fide members of the Union for purposes of solicitation under the FECA. Furthermore, the solicitations in question did not propose any guidelines for contributions, and made it clear that retirees were free to contribute as much or as little as they desired.

## I.

## Retirees Are Members of the Union for the Purposes of Solicitation Under the FECA

### A. The Status of Retirees in the UAW

Article 6, §19 of the UAW Constitution provides:

> Any member in good standing who is retired, shall be entitled to a "retired membership status" which, without being required to pay membership dues during the period of such retirement, shall entitle him to all of the privileges of membership except the right to vote in elections conducted pursuant to Article 19, Section 3; Article 45, Section 2; and Article 50, Sections 1 and 5. Appropriate cards denoting such membership status shall be prepared by the International Union and furnished to Local Unions upon request and at cost. The regular withdrawal-transfer provisions of this Constitution shall be applicable if such retired member returns to active employment.[1]

This provision makes it clear that any active employee who is a member in good standing of the UAW shall be entitled to continue his or her membership in the Union after retiring. Retired membership status differs from normal membership status in only two respects. The obligation to pay dues to the Union is suspended during the period of retirement. And the right to vote in elections pertaining to the ratification of collective bargaining agreements, the selection of stewards and committeepersons, and the commencement or termination of strike actions is also suspended. In all other respects, however, individuals in retired membership status are entitled to "all of the privileges of membership" enjoyed by active employees.[2]

Thus, retirees have the right to attend general membership meetings, and to express their views and vote on matters which come before the membership. See: **UAW Constitution**, Article 37, §4; Article 38, §10(a).

Retires also have the right to vote for the Officers of their Local Union. And they have the right to vote for delegates to the UAW's Constitutional Convention, who in turn elect the Officers of the International Union and the members of the International Executive Board. See: **UAW Constitution**, Article 8; Article 10, §§1-5; Article 38, §§1, 2, 10(a), **Interpretations of UAW Constitution**, Article 6, §19 ¶¶ (1) & (2). Retirees often hold the balance of power in union elections, and have traditionally been a powerful political force within the Union.[3]

---

1 A copy of the UAW Constitution is attached hereto as Exhibit A.

2 Significantly, the UAW Constitution clearly distinguishes between individuals on retired membership status, and individuals who have separated themselves from the jurisdiction of the Union and received honorable withdrawal-transfer cards pursuant to Article 17. While retirees may continue to exercise the full panoply of membership rights accorded active employees under the Constitution, individuals who have received an honorable withdrawal-transfer card are not entitled to exercise any of the privileges of membership in the Union.

3 E.g., retirees tend to vote in a bloc, and usually turn out in greater numbers (proportionally) on election day than do active employees.

Retirees have the right to run for and hold elective office in the Union, except for the positions of steward and committeeperson which require the presence of the elected member in the plant. Thus, a retiree may be elected as a delegate to the UAW's Constitutional Convention. A retiree may also be elected as an Officer of the International Union, member of the International Executive Board, or Officer of his or her Local Union. Furthermore, retirees have the right to hold appointive positions within the International Union or their Local Union, such as the position of International Representative. See: **UAW Constitution**, Article 8, §11; Article 10, §6; Article 14, §§ 3 & 4; Article 38, §3; **Interpretations of UAW Constitution**, Article 6, §19, ¶(3).[4]

Retirees may also participate in the various intra-union bodies which are established under the UAW Constitution. For example, retirees are usually accorded special representation on the Community Action Program Councils established pursuant to Article 23. These Councils engage in a broad range of community, civic, educational, citizen-legislative and political activities.

Retirees are subject to the disciplinary provisions of Article 31 of the UAW Constitution, which deals with trials of union members for violations of the Constitution or conduct unbecoming a member of the Union. And retirees may invoke the various internal union procedures which are available for appealing any actions or decisions taken by the Union. This includes the taking of an appeal to the Public Review Board. See: **UAW Constitution**, Articles 31-33.

In addition to the foregoing rights and obligations which retirees share with active employees, Article 55 of the UAW Constitution establishes a special retiree structure within the Union to encourage the continued participation of retirees in the affairs of the Union. This Article provides for the establishment of Local Union Retired Worker Chapters, Area and Regional Retired Worker Councils, and an International Retired Worker Advisory Council. Retirees have the right to participate in the affairs of their Local Union Retired Worker Chapter, and to serve as delegates to the Area, Regional, and International Retired Worker Councils. Furthermore, retirees have the right to elect a retired member to serve on their Local Union Executive Board. And the elected members of the

4 The UAW Constitution currently requires elected and appointed officials to retire at age 65. See: **UAW Constitution**, Article 8, §11; Article 14, §§ 3 & 4. Since members often retire prior to reaching this age (indeed, under the "30 and Out" provisions of the UAW's collective bargaining agreements, it is not uncommon for members to retire while still in their early fifties), it is quite possible for a retiree to hold elective or appointive office in the Union.

International Retired Worker Advisory Council automatically serve as delegates to the Union's Constitutional Convention. Through the various Retired Worker Chapters and Councils, retirees are encouraged to participate in educational programs sponsored by the Union. Retirees are also encouraged to participate in a myriad of historical, cultural, civic, and legislative-political activities.

Article 6, §19 of the UAW Constitution waives the requirement of paying membership dues for all persons on retired membership status. This blanket waiver for all retirees was inserted in the UAW Constitution in recognition of the fact that the income of members is usually reduced when they retire. However, under Article 55, §4 of the UAW Constitution, retirees may voluntarily agree to donate $1 per month to the Union as their membership dues. These monies are in turn allocated to pay for the operations of the various Retired Worker Chapters and Councils.

It is also important to note that, in order to be entitled to "retired membership status", an individual must previously have been an active employee who was a "member in good standing" of the Union. See: **UAW Constitution**, Article 6, §19. This means that the individual must have been current in the payment of the regular membership dues required of all active employees. See: **UAW Constitution**, Article 6, §§2 & 4. It also means that the individual must have voluntarily applied for membership in the Union by signing an application for membership card. See: **UAW Constitution**, Article 6, §§2 & 4. Thus, individuals who have not signed application for membership cards, but who have been paying dues pursuant to an agency shop clause in their collective bargaining agreement, are not eligible for retired membership status. See: **UAW Constitution**, Article 6, §20.

Under the UAW Constitution, neither active employees nor retirees are required to periodically renew their membership applications in order to continue as members in good standing in the Union. Instead, it is presumed that active and retired members desire to retain their status as members unless they take certain affirmative steps to resign or terminate their membership in the Union. Article 6, §17 of the UAW Constitution sets forth the procedure whereby both active and retired members may resign or terminate their membership.

Finally, it cannot be stressed too strongly that retirees continue to have a strong community of interest with active employees. Although retirees do not have the right to vote on matters pertaining to the negotiation and administration of collective bargaining agreements, see, **UAW Constitution**, Article 6, §19, they still play a vital role in the collective bargaining process and are one of the primary beneficiaries of the Union's collective bargaining efforts. Retirees exercise a powerful voice in determining what the Union's priorities will be at the bargaining table —both through their Retired Worker Chapters and Councils and through the Officers of the Local Unions who are dependent on their votes for re-election. Not surprisingly, therefore, UAW contracts have accorded extensive benefits to retirees, especially in the areas of pensions and health insurance. The 1979 negotiations between the UAW and the Big Three auto companies provide a classic illustration of these points. When the UAW drew up its list of demands for the negotiations, the top priority was obtaining "inflation protection" for the pensions of retired members. And, at the conclusion of negotiations, the most costly item won by the Union was significant increases in the levels of pension benefits for members who had already retired.

The strong community of interest shared by active employees and retirees at the bargaining table also extends to the legislative-political process. Both groups realize that what the Union wins at the bargaining table can be taken away from them in the halls of Congress and the various state legislatures. Thus, not only has the Union been active in pushing for legislation of concern to active employees, such as worker compensation and occupational safety and health legislation. The Union has also consistently championed legislation of direct concern to retirees, such as the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§1001 _et seq._ and Medicare.

B. Retirees Qualify As Members of the Union Under the FEC's Regulations

Section 441(b)(4)(A)(ii) of the FECA makes it unlawful:

> for a labor organization, or a separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

The FECA does not contain any definition of the term "members". However, the FEC has promulgated a regulation which defines this term as follows:

> "Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund. [11 C.F.R. §114.1(e)]

This regulation makes it clear that an individual qualifies as a "member" of a labor organization so long as he or she satisfies whatever requirements the union has established for membership in its organization. The only caveat is that the requirements must be more extensive than simply making a contribution to a separate, segregated political fund.

Article 6, §19 of the UAW Constitution specifically provides that any member in good standing who retires shall continue to be entitled to retired membership status in the Union. This means that, in order to qualify as members of the UAW, retirees must have voluntarily signed application for membership cards and kept current in the payment of their membership dues when they were active employees. Thus, the requirements for retired membership status are clearly more extensive than simply making a contribution to the UAW's separate, segregated political fund. From the discussion above, it is readily apparent that retired membership status in the Union entitles an individual to bona fide, substantial privileges of membership, and is not simply a subterfuge to evade the limitations on solicitation contained in the FECA. Accordingly, the UAW's retirees qualify as "members" of the Union under the regulation promulgated by the FEC.

The UAW submits that this should end the present inquiry. Since retirees plainly satisfy the requirements for membership in the Union under the UAW Constitution, they should be considered "members" for the purposes of solicitation under the FECA. The FEC does not have any authority to go beyond the express terms of the UAW Constitution, and to require that individuals possess certain substantive rights in order to be considered "members" of a labor organization for the purposes of solicitation. Indeed, for the FEC to take this position would raise serious questions about whether the government was unnecessarily infringing on 1st Amendment rights of association. As Chairman Aikens stated in his concurring opinion in **Advisory Opinion** 1977-67:

> "Direct and enforceable participatory rights in the organization" (AO 1977-67) are not necessary ingredients in the formation of the membership relationship. This notion is not contained anywhere in §441b, nor is it consistent with the thrust of the commission's regulation §114.1(e), which defines "member." That definition makes it clear that one is a member if he or she is "currently satisfying the requirements for membership in a membership organization." There is no ambiguity that <u>it is the membership organization which establishes the terms, i.e., "the requirements," of membership</u>. It is the individual who is free to seek or spurn membership on the terms offered. The terms of membership may include "rights and obligations vis-a-vis the corporation" but it is not mandatory. <u>For the commission to prescribe an exclusive class of substantive rights in order to limit the type of associations which would qualify as "bona fide" membership organizations within the meaning of the act would inevitably and needlessly interject the government into an essentially private concern among individuals who are merely exercising their First Amendment right of association.</u> (emphasis supplied)

C. The Legislative History of the FECA Supports the Conclusion that Retirees Should be Considered Members of the Union

Assuming arguendo that the FEC has the authority to go beyond the express terms of the UAW Constitution, the UAW submits that the legislative history of the FECA, the FEC's advisory opinions, and the provisions of the Labor-Management Reporting & Disclosure Act all support the conclusion that retirees should be considered members of the Union for the purpose of solicitation under the FECA.

The legislative history of the FECA does not contain any discussions about whether retirees qualify as "members" of labor organizations. Indeed, there is very little discussion about the meaning of this term in general. However, there are a number of oblique references which do provide some indication of what Congress had in mind when it used this word.

When the FECA was originally considered by Congress in 1971, Representative Hansen offered an amendment which expressly permitted labor organizations to use their treasury funds to pay for communications to their "members" on any subject. During the debates on this amendment, Representative Hansen made it clear that the purpose of the amendment was to codify existing law, which prohibited the use of union treasury funds for active electioneering directed at the general public, but allowed such funds to be used for communications directed solely at the members of a labor organization and their families. Hansen stated that the major policy consideration underlying his amendment was the belief that every organization should be allowed to communicate freely with its members regarding threats to the well-being of the members and the organization. Hansen also referred to union members as being "the beneficial owners" of labor organizations, and described labor unions as being "fiduciaries" for their members. See: 117 Cong. Rec. 43379-80 (Nov. 30, 1971).

Similarly, when the 1976 amendments to the FECA were being considered by Congress, it was repeatedly stated that one of the purposes of the amendments was to restore the balance between the solicitation rights of corporations and unions which Congress had originally intended when it enacted the FECA, and which had been destroyed by the FEC's decision in the Sun Oil case. The report of the House Administration Committee stated in this regard:

> The general rule enacted in 1971 is that 'corporations and labor unions (must) confine their activities (of a political nature) to their own stockholders and members, the beneficial owners of these organizations,' and the present statutory law not only draws a line between a

corporate and union political activities financed by treasury money limited to stockholders and members, which are permitted, and other treasury financed political activities, which are prohibited, but does so by spelling out rules that the Congress believed apply equally to labor unions and corporations.

The Sun Oil opinion destroys the intent of Congress to establish rules that apply equally to labor unions and corporations.

. . . H.R. 12406 continues the rule that unions may only solicit those they represent —their members — and reaffirms the intent of the 1971 Congress that corporations must also confine their activities to a roughly comparable group — namely, stockholders and executive officers. . . (emphasis supplied)

H.R. Rep. No. 94-917, 94th Cong., 2d Sess., 7 (1976). During the House debates on final passage of the amendments, Rep. Brademas stated:

Congress sought to establish a balance between the political activities allowed to corporations and labor unions in order that the extend of political activities carried on by either kind of entity might not burgeon so as completely to overwhelm the activities of the other.

Congress specifically did not allow either corporations or labor unions to cross-solicit contributions from each other's respective constituencies. Because the rationale for allowing a corporation to play a role in Federal elections was the legitimate interests of its owners and management. Congress restricted the solicitation rights of a corporation to its stockholders and managerial employees. And because the rationale for allowing labor unions to play a role in Federal elections was the legitimate interests of its members, Congress restricted the solicitation rights of a labor union to its members.

Mr. Speaker, this system worked well for a number of years, until last winter when a majority of the members of the Federal Election Commission arrogated to themselves the right to change the rules.

In December, 1975 in an advisory opinion issued at the request of the Sun Oil Co., the Commission announced that it would allow a corporation to solicit all of its employees, including wage and hourly workers, organized and unorganized. . . what the conference committee has done is to restore the rules which governed Federal elections from 1971 until the Commission's Sun Oil decision last December. (emphasis supplied)

122 Cong. Rec. 12203-4 (May 3, 1976) (remarks of Rep. Brademas)

Sen. Cannon likewise defended the amendments saying:

> . . . it must be remembered and emphasized that stockholders who are being solicited can vote out the corporate management who is doing the solicitation if they do not agree with the contributions made from the political committees.
>
> By the same token, <u>the union members are in a position to vote out the union management with which it disagrees.</u> However, employees of a corporation have no such recourse and should not be subject to political solicitation by their employers to such an all encompassing extent as has been interpreted under existing law by the Federal Election Commission. (emphasis supplied)

122 **Cong. Rec.** S 3860 (daily ed. March 22, 1976) (remarks of Sen. Cannon) Later, in commenting on the conference report, Sen. Cannon noted that there was no definition of the term "stockholder", and opined that this term was to be defined by reference to state law, which had focused on the right to vote and receive dividends as being the crucial attributes of a stockholder. <u>See</u>: 122 **Cong. Rec.** 12472 (May 4, 1976).

Based on the foregoing comments in the legislative history, it is apparent that retirees should be considered "members" of the UAW. To begin with, retirees clearly form part of the Union's natural <u>constituency</u>. Prior to retirement, they were dues paying members of the Union. And through the various Retired Worker Chapters and Councils established under Article 55 of the UAW Constitution, retirees are encouraged to continue active participation in the affairs of the Union. More importantly, the Union continues to <u>represent</u> the interests of its retirees, both in collective bargaining and in the legislative-political process. The Union has consistently placed the demands of retirees for increases in pension benefits and health insurance benefits at the top of its bargaining demands. And the Union has been a persistent advocate of legislation directed at the needs of senior citizens. Thus, if the rationale for allowing labor organizations to communicate with and solicit contributions from their "members" is based on the <u>legitimate interests</u> of the members and the need to protect them against <u>threats to their well-being</u>, then the concept of "members" must clearly be extended to encompass the Union's retirees. It must be admitted, certainly, that the relationship between the Union and its retirees is qualitatively different from the relationship between the Union and members of the <u>general public</u>.

Furthermore, under the UAW Constitution, retirees have the right to <u>vote</u> for the Officers of the International Union, the Members of the International Executive Board, and the Officers of their Local Union. Accordingly, they are in a position to exercise some degree of <u>control</u> over the <u>management</u> of the Union's affairs. If the retirees disagree with the political positions being taken by the leadership of the Union, they can always vote it out of office. Because the retirees can exercise control over the affairs of the Union, they must be considered the <u>beneficial owners</u> of the Union, along with active employees. And the elected officials who manage the Union owe a <u>fiduciary</u> duty to the retirees, as well as the active employees.

Finally, since the FECA does not contain any definition of the term "members", it is reasonable to suppose that Congress intended this word, like the term "stockholder", to be defined by reference to existing law. As is set forth more fully in section I D of this Brief, under the Labor-Management Reporting & Disclosure Act, which governs the union-membership relationship, retirees clearly qualify as "members" of the Union.

D. Retirees Qualify as Members of the Union Under the Criteria Set Forth in Several FEC Advisory Opinions

The history behind the development of the FEC's regulations does not provide any clue as to the meaning of the term "members". The regulation defining "members" remained unchanged throughout the long promulgation process. See: 41 **Fed. Reg.** 21592 (May 26, 1976); 41 **Fed. Reg.** 35956 (August 25, 1976); 42 **Fed. Reg.** 19324 (April 13, 1977).

The FEC has not issued any Advisory Opinions dealing directly with the question of who should be considered a "member" of a labor organization. However, the FEC has issued several Advisory Opinions which deal with the meaning of the term "members" in the context of incorporated membership organizations. See: **Advisory Opinions** 1977-17 & 1977-67. The UAW respectfully submits that these Advisory Opinions are not relevant to the present inquiry. As Chairman Aikens recognized in his concurring opinion in **Advisory Opinion** 1977-67, "membership" in a labor organization is not directly comparable to "membership" in an incorporated membership organization:

> My concerns begin with the inference in this advisory opinion that membership organizations are analogous to the other major entities subject to §441b, i.e., business corporations and labor organizations. For several reasons, I think that the commission must be wary of such comparisons. Incorporated membership organizations were inserted into §441b in the 1976 Amendments. The legislative history on this insertion is slim and therefore suggests to me that the legislature was somewhat unfocused as to its intended effect. . .
>
> Shareholders, union members and members of ideological organizations defy comparison. The type of relationship that exists between a business corporation and its shareholders and between a union and its members is entirely different from that between an association such as PSRC and individuals who join this group as members. Unions and corporations have long been recognized as economic interests within our society and within the framework of the election laws. It is for that reason that Congress chose to proscribe their political activity. However, with respect to groups such as PSRC, the relationship between this incorporated member-

> ship between this incorporated membership organization and its members is ideological rather than economic. Whereas the shareholder may be interested in higher profits and therefore a higher return on investment, and whereas the union member will be interested in improved wages and working conditions as negotiated through the collective bargaining process, those who join PSRC seem to do so for ideological reasons. For this reason, the terms upon which an individual establishes or enters into a relationship with a corporation or a labor union may not be transferable to other membership relationships. "Rights and obligations" in the context of union membership may be virtually meaningless in the context of membership in a group such as PSRC. Oftentimes "rights" are a matter of statute, such as a union member's bill of rights. 29 U.S.C. §§411-413.

Assuming arguendo that these two Advisory Opinions do shed some light on who should be considered a "member" of a labor organization, the UAW submits that its retirees clearly satisfy the various criteria set forth in these opinions. In **Advisory Opinion** 1977-17, the FEC ruled that commodity representatives were not "members" of the Chicago Mercantile Exchange for the purposes of solicitation under the FECA. The FEC based its decision on the fact that the rules of the Exchange specified that commodity representatives were not members. Also, the commodity representatives did not have trading privileges on the exchange floor, the right to vote in exchange elections or on the adoption of exchange rules, and the right to serve as directors or officers of the exchange. The FEC, therefore, concluded that "in several significant respects, commodity representatives do not have the same status within the exchange as it enjoyed by full members."

More importantly, in a sharply divided opinion, the FEC ruled in **Advisory Opinion** 1977-67, that individuals who satisfied certain criteria would be considered "members" of the Public Service Research Council for the purposes of solicitation under the FECA. The majority opinion began by stating that, under the FEC's regulation defining the term "members", an organization must in fact impose some "requirements" for membership in the organization. And individuals can only be considered "members" of the organization if they have taken some affirmative steps to meet those requirements. The majority opinion then went on to state:

> The solicitation of political contributions from members of an organization derive from the special relationship that the organization has to its members (see remarks of Representative Hansen, 117 Cong. Rec. 43380) and accordingly. the membership relationship must be evidenced by the existence of rights and obligations vis-a-vis the corporation. In each instance where members do not have direct and enforceable participatory rights in the organization - such as those held by a shareholder or union member - facts must be examined before a determination can be made that a membership relationship exists.

Although the individuals in question did not have any direct and enforceable participatory rights in the Public Seravice Research Council, the majority opinion went on to find that there still was sufficient indicia of a membership relationship between the Council and the individuals because the individuals (1) had expressed in writing a specific and unambiguous desire to join the Council, (2) were given the opportunity to participate in an annual membership opinion survey which was taken into consideration by the governing board of the Council, (3) were obligated to pay a predetermined minimum amount of dues to the Council (although this could be waived on the basis of predetermined specific criteria), and (4) had to renew their membership status at periodic intervals.

In a dissenting opinion, Commissioners Harris and Staebler argued that the "indicia of membership" required by the majority did not go far enough. Commissioners Harris and Staebler agreed with the majority that the membership relationship must be evidenced by the existence of member rights and obligations vis-a-vis the corporation, and that where a group of individuals do not enjoy "direct and enforceable participatory right as a matter of law or constitution", there must be some further evidence of the membership relationship before the individuals may be considered "members" for the purposes of solicitation. They also agreed that the various criteria enumerated by the majority were necessary indicia for a membership relationship. However, Commissioners Harris and Staebler went on to state that individuals must have voting rights which enable them to direct and control the policies of an organization in order to qualify as "members" of that organization:

> In our opinion, a bona fide membership relationship cannot exist unless members have certain fundamental rights guaranteed vis-a-vis the corporation.
>
> Paramount among these is the right of members to direct the policies and activities of the corporation, for this is what characterizes the corporation as a "membership" organization. Membership control can only be derived from a concomitant right in the membership to elect corporate directors or officers. It is the existence of this right guaranteed by law to corporate shareholders and labor union members which creates the fiduciary relationship between such organizations and their shareholders or members. And it is the existence of the fiduciary relationship that the statutory scheme in Section 441b seeks to protect by providing that a corporation without capital stock may solicit its members. PSRC's "Articles of Incorporation" not only fail to provide this fundamental right they specifically deny it. In our view, the absence of this right and the resultant lack of control by the alleged "members" over the corporation's policies and actions is fatal to the corporation's contention that it is a "membership" organization. A bona fide membership organization is one which represents its members; that is not the case here.

In a concurring opinion, Chairman Aikens disagreed vehemently with the approach taken by his colleagues. As previously noted, Aikens rejected any notion that incorporated membership organizations were analogous to business corporations or labor unions. And he also rejected the notion that "direct and enforceable participatory rights in the organization", or any other class of substantive rights and obligations such as predetermined dues or periodic renewal of membership. were necessary ingredients for the existence of a membership relationship. According to Aikens, under the literal language in the FEC's regulation defining the term "members", it is apparent that an organization is free to establish whatever terms or requirement for membership it desires. The term "member", therefore, encompasses any individual "who knowingly and voluntarily associates himself or herself with the organization", by taking affirmative steps to saatisfy the requirements for membership established by the organization. Chairman Aikens noted, in this regard, that the basic requirement which an individual must satisfy in order to be considered a "member" of a labor union is the signing of a membership card, not the payment of dues:

> Let us assume, however that union members were intended by Congress to be comparable to members of other forms of associations. What is it that makes an individual a member in the union? It could not be the mere payment of predetermined dues. Such payments would make workers who are subject to an agency shop agreement members of the union when, in fact, they are not. Payment of dues may be a consequence of joining a union, but it is not an act which confers membership. To the contrary, it is a well settled principle that an employee' signature on a membership card constitutes membership in the union because it manifests the requisite intent and desire to be a member. NLRB v. Delaware New Jersey Ferry Co., 128 F. 2d 130, 134 (3d Cir. 1942).

Although the FEC has not reached a concensus on the requirements which an individual must satisfy in order to be considered a "member" of an organization, nevertheless, it is apparent that the UAW's retirees meet the various criteria articulated by the FEC in these two Advisory Opinions. First, the UAW Constitution does establish certain threshold requirements which retirees must meet in order to be considered members of the Union. Specifically, retirees must have previously been active employees under the jurisdiction of the UAW who were members in good standing of the Union. This means that, as active employees, they must have remained current in the payment of their membership dues.

Second, retirees must have taken affirmative steps to knowingly and voluntarily associate themselves with the UAW. In order to have been members in good standing of the Union when they were active employees, retirees must have signed application for membership cards, indicating their desire to become members of the Union.

Third, retirees clearly have direct and enforceable participatory rights and obligations in the Union which are guaranteed both by the UAW Constitution and by federal labor laws. Specifically, retirees have the right to attend union meetings, and to express their views and vote on matters coming before the membership. They also have the right to vote for the Officers of the International Union, members of the International Executive Board, and Officers of their Local Unions. And retirees may run for and hold elective and appointive office in the International Union or their Local Unions. Retirees have the right to invoke the internal union appeals procedure, and are subject to disciplinary proceedings under the UAW Constitution. And, in addition to allowing retirees to participate in various subordinate bodies of the Union, the UAW Constitution also establishes a special structure of Retired Worker Chapters and Councils to encourage the continued participation of retirees in the affairs of the Union. Although retirees do not have the right to vote on matters pertaining to the negotiation and administration of collective bargaining agreements, the foregoing recitation clearly demonstrates that in most significant respects, retirees enjoy the same rights and obligations as active employees. Moreover, the various rights and obligations accorded retirees under the UAW Constitution are enforceable in state court under traditional concepts of contract law. And, as is discussed more fully in section I E of this Brief, these rights and obligations are also enforceable in federal court under the provisions of the Labor-Management Reporting & Disclosure Act.

Fourth, it is apparent that retirees have the same right as active employees to direct and control the policies and activities of the Union. That is, retirees have the same right as active employees to vote in elections for the Officers of the International Union, the members of the International Executive Board, and the Officers of their Local Unions.

Since retirees clearly satisfy the foregoing criteria, under the rationale articulated by the majority and dissenting opinions in **Advisory Opinion** 1977-67, there is no need to inquire into whether there is any additional evidence of a membership relationship between retirees and the Union. However, even if the scope of the present inquiry is expanded beyond the criteria set forth above, the UAW submits that there are still sufficient indicia of a membership relation to support the conclusion that retirees are bona fide members of the Union for the purposes of solicitation under the FECA.

Admittedly, the UAW Constitution provides that retirees do not have to pay any membership dues to the Union in order to retain their "retired membership status". However, this waiver of the obligation to pay dues is clearly based on a specific, predetermined criteria: that is, retirement. Moreover, it is apparent that the granting of this blanket waiver is based on bona fide policy considerations - i.e., the fact that retirees must live on reduced income - and is not a subterfuge to evade the limitations on solicitation contained in the FECA. It should also be noted that, in order to be entitled to retired membership status, a retiree must have been current in the payment of his or her regular membership dues while an active employee. Active employees, of course, are obligated to pay a predetermined, minimum amount of monthly dues to the Union.

It is also true that retirees do not have to periodically renew their membership in order to continue to be entitled to retired membership status. However, the same can be said of active employees. Under the UAW Constitution, once an active employee has signed an application for membership card and become a member of the Union, there is no requirement that the individual periodically renew his or her membership. Instead, it is assumed that the employee continues to be a member in good standing, unless he or she takes some affirmative action to resign or terminate their membership in the Union. See: **UAW Constitution**, Article 6, §17. Since there is no question that active employees are "members" of the UAW notwithstanding the absence of any mechanism for periodically renewing their membership, it follows that retirees should also qualify as members of the Union even though they are not required to periodically renew their membership.

Finally, it is important to remember that retirees continue to share a strong community of interest with active employees. As Chairman Aikens recognized in his concurring opinion in **Advisory Opinion** 1977-76, labor unions are basically economic organizations. It follows that the "members" of a labor organization are those individuals who have an economic "stake" in the activities of the union. As previously noted in section I B of this Brief, retirees continue to play an important role in the U 's collective bargaining negotiations, and are among the primary beneficiaries of those negotiations. Moreover, the Union has traditionally represented and advocated the economic interests of its retirees in the legislative-political process. Thus, retirees form part of the UAW's natural constituency, and should therefore be considered "members" of the Union for the purposes of solicitation under the FECA.

E. The Federal Labor Laws Demonstrate that Retirees Should be Considered Members of the Union

1. The Labor-Management Reporting & Disclosure Act

The Labor-Management Reporting & Disclosure Act (LMRDA), 29 U.S.C. §§401 et seq., regulates the internal affairs of labor organizations. Section 3(o) of the LMRDA, 29 U.S.C. §402(o), contains the following definition of the term "member":

> "Member" or "member in good standing", when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

Like the FEC's regulation, this definition makes it clear that the term "member" encompasses all individuals who meet the requirements for membership which have been established by the labor organization. There is no separate class of substantive rights which the individuals must possess in order to qualify as members of the labor orgnization. Thus, so long as retirees meet the requirements for membership set forth in the constitution and bylaws of a labor organization, they clearly qualify as "members" of the union under the provisions of the LMRDA.

The provisions of Title I of the LMRDA grant union "members" equal rights to vote and nominate candidates, freedom of speech and assembly, and certain procedural due process safeguards against improper disciplinary action. See: 29 U.S.C. §411. Title IV of the LMRDA in turn grants every "member in good standing" the right to run for and hold union office. See: 29 U.S.C. §481(e). There is simply no indication in the language of the statute that Congress intended for these rights to be accorded only to active employees, and not to retirees.

The regulations promulgated by the Department of Labor provide an affirmative indication that the provisions of the LMRDA apply to retirees as well as active employees. Section 452.93 of the Department's regulations states:

> The right of retirees to vote may be restricted to the extent provided by the constitution and bylaws of the labor organization.

See: 29 C.F.R. §452.93. Where the constitution and bylaws of a labor organization permit retirees to vote in elections for the officers of the union, as is the case under the UAW Constitution, this regulation makes it clear that the retirees are covered by the provisions of the LMRDA and are entitled to the protections afforded thereunder.

The federal courts have also recognized that retirees may qualify as "members" under the constitution and bylaws of a labor organization, and thus be entitled to the protections afforded by the LMRDA. In **Thomas v. United Mine Workers**, 422 F. Supp. 1111, 1115-7 (D. Col. 1976), a number of retired mine workers sued the United Mine Workers Union, claiming that it had violated their rights under §§101(a)(1) and 101(a)(2) of the LMRDA by not allowing them to express their views and vote on a proposed collective bargaining agreement which had been negotiated by the union. The court consistently referred to the retirees as being "members" of the union, and held that they had stated a cause of action under the provisions of §§101(a)(1) & (2).

Similarly in **Schultz v. Radio Officers**, 344 F. Supp. 58, 61, 64 (S.D. N.Y. 1972), a retiree alleged that his union had violated the provisions of §401(e) by coercing him into not running for union office. The court found that the candidacy rights granted by this provision extended to the retiree, and accordingly that the union was guilty of violating §401(e).

Finally, in **Hodgson v. Local 592**, 350 F. Supp. 16 (C.D. Cal. 1972), the Secretary of Labor challenged the validity of a union election on the grounds that the union had failed to provide for absentee ballots, even though there were a large number of "travel card members" and retired members living some distance from the polls. Although the court found that the failure to provide for absentee ballots was reasonable and therefore refused to overturn the election, nevertheless it consistently referred to the retirees as being "members" of the union and assumed that they were covered by the provisions of §401(e).

2. Labor-Management Relations Act

The UAW submits that the provisions of the Labor-Managent Relations Act (LMRDA), 29 U.S.C. §141 et seq., are irrelevant to the present inquiry. This is because the LMRDA simply governs the employee-employer relationship, not the union-member relationship. The union-member relationship is governed by the LMRDA. **Navarro v. Gannon**, 385 F. 2d 512 (2d Cir 1967); Beaird & Player, **Free Speech and the Lamdrum-Griffin Act**, 25 Ala. L. Rev. 577 (1973); Cox, **International Affairs of Labor Unions Under the Labor Reform Act of 1959**, 58 Mich. L. Rev. 819 (1960).

For the same reason, the Supreme Court's decision in **Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Company,** 404 U.S. 157 (1971) is irrelevant here. The Supreme Court simply held that retirees do not qualify as "employees" under §2(c) of the LMRDA, 29 U.S.C. §152(3), and hence that benefit increases for retirees do not constitute a mandatory subject of bargaining under the LMRDA. Its decision did not address the distinct question of whether retirees may qualify as "members" of a labor organization. Also, the Supreme Court recognized that benefit increases for retirees are still a permissive subject of bargaining. Thus, unions and employers are free to negotiate over and enter into collective bargaining agreements pertaining to benefit increases for retirees.

As previously noted, retirees exercise a powerful voice in determining what the Union's priorities will be in collective bargaining negotiations. Because of this, retirees have been among the primary beneficiaries under the recent collective bargaining agreements negotiated by the UAW. Thus, notwithstanding the decision of the Suprmeme Court in **Pittsburgh Plate Glass,** the UAW continues to bargain collectively with employers on behalf of its retired members.

Finally the FEC's decision in **Compliance Case** MUR 666 (1978) is also distinguishable from the present case. The FEC simply decided that a fraternal affiliate of the American Federation of State, County & Municipal Employees (AFSCME) - the Retired Public Employees Council of Washington - could lawfully use its membership dues for political contributions because the Council constituted a "membership organization" rather than a "labor organization". The FEC reasoned that, under the FECA, members of a group must be considered "employees" before the group will be considered a "labor organization". Although the FEC does not define the term "employee", the FEC felt that it was appropriate to borrow the definition contained in the LMRA because the two statutes contain identical definitions of "labor organization". Noting that the federal courts have interpreted the definition of "employee" contained in the LMRA to exclude retirees, the FEC concluded that the members of the Retired Public Employees Council of Washington should not be considered "employees" under the FECA, and hence that this organization did not constitute a "labor organization" under the FECA.

Although the UAW does not concede the correctness of the FEC's decision in this Compliance Case, nevertheless it is plainly irrelevant to the present inquiry. The Compliance Case simply dealt with the question of whether retirees were "employees" - not the question of whether they were "members" under the FECA. Of course, there is no dispute here that the majority of the members of the UAW are active employees, and that the Union therefore qualifies as a labor organization.

F. The Term "Members" Must be Construed to Encompass Retirees in Order to Avoid Grave Constitutional Difficulties

The FECA contains two references to the "members" of labor organizations. First, §441b(b)(2) creates an exception to the general prohibition on the expenditure of union treasury funds in connection with federal elections, by providing that labor organizations may use their treasury funds to pay for communications on any subject which are directed solely at their "members". Second, §441b(b)(4)(A)(ii) makes it unlawful for labor organizations to solicit contributions to their separate, segregated funds from any person other than their "members".

It is well established that statutory terms should normally be construed as having the same meaning throughout a single statute. **Pampaga Sugar Mills v. Trinidad**, 279 U.S. 211, 218 (1929); **Kent Manufacturing Corp. v. Commission**, 288 F. 2d 812, 815 (4th Cir. 1961). And the legislative history of the FECA does not contain any indication that Congress intended for the term "members" to be interpreted differently in determining the scope of communications which can be paid for out of union treasury funds, and the scope of solicitations which unions can make for contributions to their separate, segregated funds.

Thus, it is readily apparent that the question of whether retirees are "members" for the purposes of solicitation under the FECA is also determinative of whether retirees are "members" for the purposes of membership communications by a labor organization under the FECA. If retirees are not "members" for the purposes of solicitation, then the ability of unions to communicate with their retirees must also be restricted.

The Supreme Court has repeatedly held that expenditures for communications on political subjects constitute a form of political speech and association, and as such, are at the heart of the protection afforded by the 1st Amendment. **First National Bank of Boston v. Bellotti**, 435 U.S. 765 (1978); **Buckley v. Valeo**, 424 U.S. 1 (1976); **United States v. UAW**, 352 U.S. 567 (1957); **United States v. CIO**, 335 U.S. 106 (1948). In **United States v. CIO**, supra at 121, the Court held that the provisions of the Federal Corrupt Practices Act had to be construed as not applying to expenditures by labor organizations for communications on political subjects which are directed solely at their members and their families, in order to avoid serious doubts about the constitutionality of the law:

> If §313 were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures or the election to office of men, espousing such measures, the gravest doubt would arise in our minds as to its constitutionality.

The provisions of §441(b)(2) which permit labor organizations to spend their treasury funds for communications with their "members" on any subject were added by an amendment offered on the floor of the House by Representative Hansen. During the debates on this amendment. Hansen specifically stated that it was designed to codify the decision of the Supreme Court in **United States v. CIO,** and to avoid the constitutional problems which would otherwise be created by restrictions on the ability of corporations and unions to communicate with their members. See: 117 Cong. Rec. 43379-80 (Nov. 30, 1971) (Remarks of Rep. Hansen).

We respectfully submit that a determination by the FEC that retirees are not members of the Union for the purposes of solicitation under the FECA would raise serious constitutional questions. In so ruling, the FEC would not only be restricting the ability of labor unions to communicate freely with their retirees on political subjects. It would also be needlessly interjecting itself into the private, associational interests of active employees and retirees, by effectively circumscribing the scope of the Union as an organization. In order to avoid these grave constitutional difficulties, the FEC should rule that retirees are members of the Union for the purposs of solicitation.

## II.

## The Union's Solicitations Did Not Violate FEC Regulation §114.5(a)(2)

Section 441(b)(4)(A)(ii) of the FECA makes it unlawful for a labor organization or a separate, segregated fund established by a labor organization to solicit contributions to such a fund from any persons other than its members and their families. Section 441b(b)(3) further provides that:

> It shall be unlawful —
> (A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;

The regulations promulgated by the FEC to implement this statutory provision have two parts. Section 114.5(a)(1) of the FEC's regulations basically tracks the statutory language, with some additional explanation as to the meaning of the phrase "fees, or other monies required as a condition of membership". Section 114.5(a)(2) then goes on to deal with the specific situation where a solicitation by a corporation or labor organization proposes a "guideline" for contributions:

> A guideline for contributions may be suggested by a corporation or a labor organization, or the separate segregated fund of either, provided that the person soliciting or the solicitation informs the persons being solicited —
>
> (i) That the guidelines are merely suggestions; and
>
> (ii) That an individual is free to contribute more or less than the guidelines suggest and the corporation or labor organization will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.
>
> A corporation or labor organization or the separate segregated fund of either may not enforce any guideline for contributions.

The FEC's regulations do not elaborate on the meaning of the term "guidelines". However, the original version of these regulations which was proposed by the FEC in its Notice of Proposed Rulemaking simply stated:

> A corporation or labor organization or the separate segregated fund of either may not enforce a guideline for contributions, as by requiring that a certain percent of salary or wages must be contributed or that a certain percent of employees or members must contribute.

41 Fed. Reg. 21593, §114.5(a)(2) (May 26, 1976).

This proposed regulation makes it clear that the term "guidelines" was intended to encompass situations where corporations or labor unions established certain rigid percentages or dollar amounts which employees or members were expected to contribute. Although the FEC subsequently modified this proposed regulation to permit corporations and unions to suggest guidelines for contributions by their employees or members, so long as certain precautions are observed which insure that nobody is coerced into making a contribution, nevertheless it is apparent that the FEC did <u>not</u> intend to impose the various requirements set forth in Regulation 114.5(a)(2) on <u>all</u> solicitations by corporations and unions. Rather, these safeguards were only required in those situations where corporate or union solicitations urged employees or members to contribute specific percentages of their wages or rigid dollar amounts. Thus, where corporate or union solicitations do not propose such "guidelines", the only requirements are the more general prohibitions on coercion contained in Regulation 114.5(a)(1).

A perusal of the two solicitations at issue in the present case clearly demonstrates that the UAW has not violated FEC Regulation 114.5(a)(2).[5] First, neither solicitation suggests any "guidelines" for contributions by retirees. The September 20, 1977 letter from Region 1-D, UAW simply states:

> I am again asking your help in this year's CAP Dollar Drive . . .
>
> Will you help with your contribution? All you need do is this: (1) Put your dollars in the enclosed mail-back envelope . . .
>
> If you send in more than a dollar we will make out extra tickets and put them in the drawing in your name.

Similarly, the May, 1977 letter from Region 8, UAW merely states, "Please mail back your dollar or more in the enclosed postpaid envelope . . ." Thus, neither letter establishes rigid percentages of the retirees' income or specific dollar amounts which the retirees are expected to contribute. Since the two solicitations do not suggest any "guidelines" for contributions by the retirees, the Union did not have to include the various "disclaimers" set forth in Regulation 114.5(a)(2) in the letters.

Second, assuming arguendo that the two letters somehow can be construed as suggesting "guidelines" for contributions by retirees, the UAW submits that the solicitations still complied with the spirit, if not the literal language, of Regulation 114.5(a)(2). The unmistakable impression conveyed by the two letters is that the retirees are free to decide whether or not they will contribute to UAW V-CAP. And if they decide to make a contribution, they are free to contribute a dollar or more, as they so desire.[6] The letters understandably do not track the precise language of Regulation 114.5(a)(2), since they were prepared by laymen rather than attorneys. The important point, however, is that nothing in the letters suggests that retirees will suffer any disadvantage if they decide not to contribute or if their contributions are small. Furthermore, there is simply no evidence which would suggest that the UAW actively "enforced" any guidelines for contributions, or exerted any coercion on the retirees to make contributions to UAW V-CAP.

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5 Copies of the two letters referred to by the FEC in its letters of January 7, 1980 are attached hereto as Exhibits B & C respectively.

6 Although the letters did not specify that retirees could contribute less than one dollar, at most this would only constitute a technical violation of Regulation 114 5(a)(2), which is hardly worthy of the FEC's attention.

Thus, the UAW submits that the FEC's allegations can only be based on a hypertechnical construction of Regulation 114.5(a)(2). The basic thrust of §441b(b)(3) of the FECA, as well as §114.5(a)(1) & (2) of the FEC's regulations, is that union members should not be coerced, either directly or indirectly, into making contributions to their union's separate, segregated fund. From all of the surrounding circumstances, it is apparent that the UAW's solicitations did not coerce retirees into making any contributions. Accordingly, the solicitations were perfectly proper under the provisions of the FECA and the FEC's regulations.

## Conclusion

For the foregoing reasons, the UAW and UAW V-CAP respectfully submit that there is no reason to believe that they have violated the provisions of the FECA and the FEC's regulations. Accordingly, the UAW and UAW V-CAP contend that the FEC's investigation should be terminated, and that no further action should be taken in this matter.

Respectfully submitted,

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Attachment III p1 of 2

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW



September 20, 1977

Greetings:

The 1976 Region 1-D Dollar Drive was an outstanding success. The response and contributions from Retirees of $12,113.42 was of great significance. A total of $86,012.45 was raised. At all Regional meetings since the 1976 Dollar Drive I have recognized the achievements of the UAW Retirees in the Dollar Drive.

In Michigan in 1978 we will elect a Governor, Secretary of State, Attorney General, all U. S. Congressmen, a U. S. Senator, and the State Legislature, both House and Senate. Campaigns are costly. As you know federal law prohibits the use of union dues for candidates for federal office. To aid progressive candidates we must raise money via the dollar drive for this purpose. I am again asking your help in this year's CAP Dollar Drive.

Retirees have many concerns and needs that can only be solved by intelligent legislation in the U. S. Congress.

The UAW fully endorses President Carter's proposals to make social security fiscally sound - higher benefits and correcting inequities.

The skyrocketing cost of health care and all medical costs are of great concern to all Americans. We can enact the National Health Security Plan, which will relieve all of us of this heavy financial burden.

Other legislative items that must be enacted to help Retirees include

- real consumer protection
- better housing
- mass transit systems that work
- tax reform-federal-state and local-lift the burden from Retirees.
- control of utility cost with relief for the elderly
- there is a need to amend the National Labor Relations Act to make it mandatory for employers to bargain with Union Representatives over proposals affecting Retirees.

EXHIBIT "B"

In addition to the first prize award of a 1978 Oldsmobile Cutlass, two 19-inch color TV sets, cash awards ranging from $50.00 to $500.00 will be awarded.

Also, because of your tremendous support in last year's Dollar Drive, ten $50.00 cash awards will be given to Retirees only.

Will you help with your contribution? All you need do is this:

(1) Put your dollars in the enclosed mail-back envelope.

(2) Fill out the enclosed stubs of the enclosed CAP tickets and place them in the mail-back envelope too.

(3) Seal and mail the envelope to us - and please note it is self-addressed, and does require postage.

Keep the large portion of the CAP ticket. This will entitle you to a chance to win any of the above listed prizes. The drawing will be held at the Region 1-D Headquarters, 844 East Beltline, NE, Grand Rapids, Michigan, on November 19, 1977, at 11:00 AM. You need not be present to win. If you send in more than a dollar we will make out extra tickets and put them in the drawing in your name.

I look forward to your continued support and favorable reply.

Fraternally,

Owen Bieber

Owen Bieber
Director, Region 1-D, UAW

OB/bh opeiu494 #1403

c: All Regional Staff

enclosures

E. T. MICHAEL
DIRECTOR. REGION 8

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA • UAW



May, 1979

TO: ALL RETIRED UAW MEMBERS RESIDING IN REGION 8

REGIONAL OFFICE
7124 AMBASSADOR ROAD
BALTIMORE, MARYLAND 21207
PHONE: AREA CODE 301-265-8800

Greetings:

The year 1979 will be a critical period for our Union with major agreements open for negotiations with certain corporations.

A great deal of our Union's energy and time will, therefore, be spent trying to secure justice and equity for our members - including retired members who worked for such corporations. However, we must not forget that what we gain at the bargaining table can be jeopardized, or taken away, in the legislative halls of government.

Moreover, the problems of inflation, ever-increasing medical costs, skyrocketing gas and oil prices and the unfair burden of taxation - both federal and state, cannot be solved at bargaining tables. It will require our maximum participation in the legislative halls of government. Strong lobbying efforts will be needed - both in the legislature and before regulatory agencies, to promote and protect the interest of our members.

We are, therefore, officially commencing our 1979 CAP Dollar Drive in an effort to adequately finance the UAW's Political Action Program. Please mail back your dollar or more in the enclosed postpaid envelope, along with the gold card stub filled in completely. If you send a check, please make it out to "UAW V-CAP Region 8". The stub will be used in the retiree prize program. Last year's winners are listed on the program enclosure.

The need for voluntary dollars was never more critical. Astronomical amounts of money are being raised by reactionary big business and the anti-labor right wing. They are embarked on an unholy crusade to weaken and destroy any legislation designed to help workers and retirees.

However, with your help, along with that of the membership in the plants, we hope to prevent any government "take aways" of benefits now enjoyed and lobby for passage of legislation beneficial to all UAW members.

Commending you for your past contributions, we are

Fraternally yours,

E. T. Michael
E. T. Michael
Director - Region 8

W. D. Haynes
W. D. Haynes, Chairman
Region 8 Retired Workers Council

Enclosure

EXHIBIT "C"

ACC# 88

Solidarity House

8000 EAST JEFFERSON AVE.
DETROIT, MICHIGAN 48214
PHONE (313) 926-5000

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW

DOUGLAS A. FRASER, PRESIDENT EMIL MAZEY, SECRETARY-TREASURER

VICE-PRESIDENTS

PAT GREATHOUSE • KEN BANNON • IRVING BLUESTONE • ODESSA KOMER • MARC STEPP • MARTIN GERBER • ROBERT WHITE

80 JAN 14 12 54

JOHN A. FILLION
General Counsel
JORDAN ROSSEN
M. JAY WHITMAN
Associate General Counsel

January 11, 1980

EDWIN G. FABRÉ
RALPH O. JONES
CLAUDE D. MONTGOMERY
LEONARD R. PAGE
ALAN V. REUTHER
JUDITH A. SCOTT
MARLEY S. WEISS
Assistant General Counsel

Daniel J. Blessing, Jr., Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1072 (79)

Dear Mr. Blessing:

We have Mr. Steele's letter of January 7th to Mr. Fraser on the above. M. Jay Whitman and Alan Reuther, of this office, will be representing the UAW and UAW V-CAP in this matter. You should be hearing from them shortly.

Sincerely,

John Fillion

JAF:dec
opeiu494

80 JAN 16 P1:40

PRINTED IN USA

Solidarity House
8000 EAST JEFFERSON AVE.
DETROIT, MICHIGAN 48214

Daniel J. Blessing, Jr., Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER. Complete items 1, 2, and 3
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered ........ ¢
- ☐ Show to whom, date, and address of delivery ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered ........ ¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery. $

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Donald J. Moll, Treas.
United Auto Workers Voluntary Comm. Action Program
8000 East Jefferson Avenue
Detroit, Michigan 48214

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| | 609343 | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. [signature]

DATE OF DELIVERY
1-10-80

POSTMARK
JAN 10 1980

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE

CLERK'S INITIALS

GPO: 1979-272-382

MUR-1072 Blessington

8 0 0 4 0 0 3 3 7 1 1

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

January 7, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald J. Moll, Treasurer
United Auto Workers Voluntary
Community Action Program
8000 East Jefferson Avenue
Detroit, Michigan 48214

Re: MUR 1072 (79)

Dear Mr. Moll:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission has found reason to believe that the Voluntary Community Action Program ("V-CAP") of the International Union, United Automobile Aerospace and Agricultural Implement Workers of America ("UAW") may have violated 2 U.S.C. §441b(b)(4)(A)(ii) of the Federal Election Campaign Act of 1971, as amended ("Act"). This section of the Act makes it unlawful for a labor organization, or its separate segregated fund, to solicit contributions to such fund from any person other than its members and their families.

Specifically, UAW Regions 1-D and 8, in letters to its retirees in September of 1977 and May of 1979, respectively, solicited those retirees for UAW's Voluntary Community Action Program's annual "Dollar Drives." The reason to believe finding is based on the Commission's view that retirees are not union members for the purposes of solicitation under the Act. In addition, the Commission has found reason to believe that V-CAP may have violated 2 U.S.C. §441b(a) which makes it unlawful for a political committee to knowingly accept or receive any contributions in violation of §441b.

The Commission has also found reason to believe that V-CAP may have violated Commission Regulations at 11 C.F.R. §114.5(a)(2) which requires an organization to inform persons being solicited that contribution guidelines are merely suggestions, and that an individual is free to contribute more or less without favor or disadvantage by reason of the amount contributed or

decision not to contribute. Specifically, the aforementioned letters proposed guidelines without meeting the requirements of the above-cited regulations.

This matter has been numbered MUR 1072. Please refer to it in all future correspondence.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you or your committee. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be made under oath.

The Commission has a responsibility to investigate this matter and requests your response to be submitted within ten days after your receipt of this notification. If no response is received, the Commission may take further action based on information from other sources.

This matter will remain confidential in accordance with 2 U.S.C. §437g(a)(3)(B) unless you notify the Commission in writing of your consent that it be made public.

If you intend to be represented by counsel, please have such counsel so notify us in writing.

Should you have any questions, please contact Daniel J. Blessington, Jr., the attorney assigned to this matter, at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald J. Moll, Treasurer
United Auto Workers Voluntary
Community Action Program
8000 East Jefferson Avenue
Detroit, Michigan 48214

1/7/79

Re: MUR 1072 (79)

Dear Mr. Moll:

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Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
1325 K STREET N.W
WASHINGTON, D.C. 20463

January 7, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald Fraser
International President
United Auto Workers
8000 East Jefferson Avenue
Detroit, Michigan 48214

Re: MUR 1072 (79)

Dear Mr. Fraser:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission has found reason to believe that the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") may have violated 2 U.S.C. §441b(b)(4)(A)(ii) of the Federal Election Campaign Act of 1971, as amended ("Act"). This section of the Act makes it unlawful for a labor organization, or its separate segregated fund, to solicit contributions to such fund from any person other than its members and their families.

Specifically, UAW Regions 1-D and 8, in letters to its retirees in September of 1977 and May of 1979, respectively, solicited those retirees for UAW's Voluntary Community Action Program's annual "Dollar Drives." The reason to believe finding is based on the Commission's view that retirees are not union members for the purposes of solicitation under the Act.

The Commission has also found reason to believe that UAW may have violated Commission Regulations at 11 C.F.R. §114.5(a)(2) which requires an organization to inform persons being solicited that contribution guidelines are merely suggestions, and that an individual is free to contribute more or less without favor or disadvantage by reason of the amount contributed or decision not to contribute. Specifically, the aforementioned letters proposed guidelines without meeting the requirements of the above-cited regulations.

This matter has been numbered MUR 1072. Please refer to it in all future correspondence.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you or your organization. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be made under oath.

The Commission has a responsibility to investigate this matter and requests your response to be submitted within ten days after your receipt of this notification. If no response is received, the Commission may take further action based on information from other sources.

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Should you have any questions, please contact Daniel J. Blessington, Jr., the attorney assigned to this matter, at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered ......¢
- ☐ Show to whom, date, and address of delivery ......¢
- ☐ RESTRICTED DELIVERY Show to whom and date delivered ......¢
- ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery $____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Donald Fraser
8000 East Jefferson Ave.
Detroit, Michigan 48214

3. ARTICLE DESCRIPTION:

| REGISTERED NO. | CERTIFIED NO. | INSURED NO. |
|---|---|---|
| | 609245 | |

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY 1-10-80 POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

PS Form 3811, Aug. 1978 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

MUR-1072

Blessington

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald Fraser
International President
United Auto Workers
8000 East Jefferson Avenue
Detroit, Michigan 48214

1/7/79

Re: MUR 1072 (79)

Dear Mr. Fraser:

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The Commission has also found reason to believe that UAW may have violated Commission Regulations at 11 C.F.R. §114.5(a)(2) which requires an organization to inform persons being solicited that contribution guidelines are merely suggestions, and that an individual is free to contribute more or less without favor or disadvantage by reason of the amount contributed or decision not to contribute. Specifically, the aforementioned letters proposed guidelines without meeting the requirements of the above-cited regulations.

This matter has been numbered MUR 1072. Please refer to it in all future correspondence.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you or your organization. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be made under oath.

The Commission has a responsibility to investigate this matter and requests your response to be submitted within ten days after your receipt of this notification. If no response is received, the Commission may take further action based on information from other sources.

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If you intend to be represented by counsel, please have such counsel so notify us in writing.

Should you have any questions, please contact Daniel J. Blessington, Jr., the attorney assigned to this matter, at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )<br>
) MUR 1072<br>
United Auto Workers (UAW) )<br>
UAW Voluntary Community )<br>
Action Program ("V-CAP") )

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on January 3, 1980, the Commission decided by a vote of 4-0 to take the following actions regarding the above-captioned matter:

1. Find REASON TO BELIEVE that UAW may have violated 2 U.S.C. §441b(b)(4)(A)(ii) by soliciting contributions to its V-CAP from non-UAW members.

2. Find REASON TO BELIEVE that V-CAP may have violated 2 U.S.C. §441b(b)(4)(A)(ii) by UAW's solicitation of non-UAW members in its behalf.

3. Find REASON TO BELIEVE that V-CAP may have violated 2 U.S.C. §441b(a) by knowingly accepting contributions which violate §441b.

4. Find REASON TO BELIEVE that UAW may have violated 11 C.F.R. §114.5(a)(2) by not informing those solicited that the guideline in the solicitation materials was merely a suggestion, and that they could contribute less or not contribute at all.

(Continued)

CERTIFICATION
MUR 1072
First General Counsel's Report
Dated December 28, 1979



5. Find REASON TO BELIEVE that V-CAP may have violated 11 C.F.R. §114.5(a)(2) by UAW's failure to inform those solicited in V-CAP's behalf that the guideline in the solicitation materials was merely a suggestion, and that they could contribute less or not contribute at all.

6. Approve and send the letters (2) attached to the above-named report.

Voting for this determination were Commissioners Aikens, Friedersdorf, Reiche, and Tiernan.

Attest:

1/3/80
Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Received in Office of the Commission Secretary: 12-28-79, 4:50
Circulated on 48 hour vote basis: 12-31-79, 11:00

December 28, 1979

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1072

Please have the attached First GC Report on MUR 1072 distributed to the Commission on a 48 hour tally basis.

Thank you.

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO COMMISSION 12-28-79

MUR NO. 1072 (79)
STAFF MEMBER(S)

Blessington

SOURCE OF MUR: I N T E R N A L L Y G E N E R A T E D

RESPONDENT'S NAME: United Auto Workers (UAW)
UAW Voluntary Community Action Program ("V-CAP")

RELEVANT STATUTE: 2 U.S.C. §441b(a), 2 U.S.C. §441b(b)(4)(A)(ii)
11 C.F.R. §114.5(a)(2)
11 C.F.R. §114.1(e)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

GENERATION OF MATTER

During an audit of the Voluntary Community Action Program ("V-CAP"), the separate, segregated fund of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"), the auditors noted that regional offices of UAW organized annual dollar drives which included solicitations of retired union members.

The audit staff referred this mater to the Office of General Counsel for legal analysis, noting that more than $250,000 "could have been collected" by V-CAP during the audit period of January 1, 1977 through March 31, 1979 (Attachment I).

PRELIMINARY ANALYSIS

Membership

Section 441b(b)(4)(A)(ii) of the Federal Election Campaign Act of 1971, Section 441b(b)(4)(A)(ii) of the Federal Election Campaign Act of 1971, as amended ("Act") makes it unlawful for a labor organization or its separate segregated fund "to solicit contributions to such fund from any person other than its members and their families." UAW has openly solicited union retirees as part of its annual V-CAP "dollar drives." (See Attachments II and III). In determining whether UAW and V-CAP have violated 2 U.S.C. §441b(b)(4)(A)(ii), the Commission must decide whether or not the solicited retirees are members of the union for the purposes of the Act.

Commission Regulations at 11 C.F.R. §114.1(e) define "member", in the case of a labor organization, as a person "currently satisfying the requirements for membership in a local, national or international labor organization."

The UAW constitution, adopted in May of 1977, specifically addresses the issue of retired members in Article 6, Section 19, which provides that "any member in good standing, who is retired, shall be entitled to a 'retired membership status.'" The section further states that a member in such status, without being required to pay membership dues during the period of retirement, shall be entitled "to all of the privileges of membership" excepting the right to vote on strikes, proposed contracts, and in elections for shop stewards and committeemen. (See Attachment IV).

The constitution document also contains the union's Interpretations of key constitutional provisions. The interpretation dealing with Article 6, Section 19 states that a "retired member has a constitutional right to participate in any and all elections conducted on a local-wide basis" with the aforementioned exceptions. (Attachment V) It further states, (Attachment VI), in reference to Article 6, Section 19:

> Under this Section, retired members are eligible to run for any office in the Local Union except for Steward and Committeeman offices which require the presence of a member elected in the plant ...
>
> A retired member would also be ineligible to run for a Local Union executive office where election to that executive office also automatically made him a member of a Bargaining Committee or any other such office which required seniority in any particular unit, division or department of the plant.

The interpretation also describes limitations in voting rights of retired members in Units of Amalgamated Local Unions. (Attachment VI)

The Commission has considered the general issue of union solicitation of retirees in the past. In MUR 773, the Commission found reasonable cause to believe that the respondent union and its political action committee had violated 2 U.S.C. §441b(b)(4)(A)(ii) when union pensioners were solicited for political contributions. That matter is presently in conciliation. There are facts in the present case, however, which can be distinguished from those in the earlier matter.

In MUR 773, the pensioners were not eligible to vote or hold office in the union. As previously stated, the UAW constitution specifically provides that retirees have voting rights and are eligible to run for and hold union office. While neither the pensioners in the former matter nor the retirees in the present one are required to pay dues, UAW retirees are specifically accorded "retired memberships status" per the UAW constitution which addresses their rights while exempting them from the requirement to pay dues.

The issue of what constitutes membership in an organization for the purposes of solicitation under the Act has in the past centered on the issues of the rights and obligations of members, and the organization's representation of its members.

The Commission has stated that the solicitation of political contributions from members in a membership organization is based on the special relationship that a member has to the organization, as evidenced by the existence of rights and obligations vis-a-vis the organization. (See Advisory Opinion 1977-67) This same opinion also states that the payment of "dues or contributions to the organization at regular intervals" is one of the "indicia" of a membership relationship. 1/ Id.

In Advisory Opinion 1977-17, the Commission concluded that representatives of a commodity exchange could not be solicited by that organization's political action committee, since the representatives in question were less than full members of the organization. The special status of UAW's retired members brings into question whether or not their rights and obligations vis-a-vis the union are of sufficient magnitude to view them as union members for the purposes of including them in the class of solicitees.

In this connection, the Commission may want to consider the requirement of §411(a)(1) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§401, et seq. that "Every member of a labor organization shall have equal rights and privileges ... to vote in elections or referendums of the labor organization ... and to participate in the deliberations and voting ... subject to reasonable rules and regulations in such organization's constitution and bylaws."

Under such a standard, the more limited rights and privileges of UAW retirees might possibly be considered unequal.2/

With respect to representation, Congress indicated its interest in assuring that unions would "only solicit those they represent." H.R. Rep. No. 94-917, 94th Congress, 2d Session 7 (1976). The Supreme Court has determined, in the context of the National Labor Relations Act ("NLRA"), that benefits accorded retirees are not a mandatory subject of collective bargaining, and that unions have "no statutory duty to represent" retirees. Allied Chemical and Alkalai Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157, 181n. 20 (1971).

UAW's Constitution provides that a local union must set aside a portion of each month's dues for a "Retired Members Fund to be used only to promote and support programs benefitting retired members." (Article 16, Section 6). The solicitation letter of September 20, 1977 by UAW's Region I-D states

---

1/ It does not necessarily follow, however, that the absence of a dues-paying requirement in the present case would preclude retirees from being considered union members for the purposes of the Act, as it is only one indication that a membership relationship exists.

2/ Section 411(a)(1) has been interpreted as "no more than a command that members and classes of members shall not be discriminated against is their right to nominate and vote." Calhoon v. Harvey 379 U.S. 134, 139 (1964). This case seems to suggest that limitations on the voting rights of certain union members would be violative of 29 U.S.C. §411 only if such limitations are found to be discriminatory.

that the union will press for legislative action to "amend the National Labor Relations Act to make it mandatory for employers to bargain with Union Representatives over proposals affecting Retirees. (Attachment III)

Whether or not legislative initiatives such as the above and constitutionally mandated dues retention on behalf of retirees constitute sufficient representation for the purposes of allowing solicitation of retirees has as yet not been settled by the Commission.

In Summary:

1. UAW has admittedly and openly solicited its retired members;

2. UAW retirees, although eligible to vote and hold union office, have rights, privileges and obligations which are more limited than those of regular members;

3. UAW retirees, although represented in a limited way by the union, at present are not and cannot be represented to the same extent as "regular" union members; and

4. The Commission, in its only action to date with respect to union solicitation of union retirees, has found reasonable cause to believe that the solicitation of retirees who have rights with some distinguishing characteristics from those in the present case violated 2 U.S.C. §441b(b)(4)(A)(ii).

In order to give UAW and V-CAP an opportunity to respond as to the status of their retirees, and for the Office of General Counsel to further develop the facts, we recommend that the Commission find reason to believe that UAW and V-CAP may have violated 2 U.S.C. §441b(b)(4)(A)(ii). We further recommend that the Commission find reason to believe that V-CAP may have violated 2 U.S.C. §441b(a) which makes it unlawful for a political committee to knowingly accept or receive any contribution prohibited by §441b.

Solicitation

In May of 1979, UAW-Region 8 sent a letter to its retired members in connection with UAW's 1979 annual "CAP Dollar Drive." (Attachment II) The letter states, in part: "Please mail back your dollar or more in the enclosed postpaid envelope ..." While the letter goes on to cite a critical need for "voluntary dollars", it fails to state that less than $1.00 can be contributed and that the "dollar or more" figure is only suggested as a guideline.

This solicitation appears to place UAW and V-CAP in violation of 11 C.F.R. §114.5(a)(2) which requires an organization to inform persons being solicited that contribution guidelines are merely suggestions, and that an individual is free to contribute more or less without favor or disadvantage by reason of the amount contributed or decision not to contribute. The Office of General Counsel therefore recommends that the Commission find reason to believe that UAW and V-CAP may have violated 11 C.F.R. §114.5(a)(2).

## RECOMMENDATION

1. Find reason to believe that UAW may have violated 2 U.S.C. §441b (b)(4)(A)(ii) by soliciting contributions to its V-CAP from non-UAW members.

2. Find reason to believe that V-CAP may have violated 2 U.S.C. §441b(b)(4)(A)(ii) by UAW's solicitation of non-UAW members in its behalf.

3. Find reason to believe that V-CAP may have violated 2 U.S.C. §441b (a) by knowingly accepting contributions which violate §441b.

4. Find reason to believe that UAW may have violated 11 C.F.R. §114.5(a)(2) by not informing those solicited that the guideline in the solicitation materials was merely a suggestion, and that they could contribute less or not contribute at all.

5. Find reason to believe that V-CAP may have violated 11 C.F.R. §114.5 (a)(2) by UAW's failure to inform those solicited in V-CAP's behalf that the guideline in the solicitation materials was merely a suggestion, and that they could contribute less or not contribute at all.

6. Approve and send the attached letters (2).

Attachments:

Audit Report - I
Solicitation Letters - II and III
Constitutional Provisions (UAW) - IV, V, and VI
Letters (2)

A-360

attachment I

To: Marsha
pls. comment

received 9/21/79 MB

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

September 13, 1979

MEMORANDUM

TO: BILL OLDAKER

THROUGH: ORLANDO B. POTTER
STAFF DIRECTOR

FROM: RC BOB COSTA/JOANN MCSORLEY

SUBJECT: SOLICITATION OF RETIREES
BY LABOR UNION SEGREGATED FUND

During the audit of the UAW Voluntary Community Action Program (UAW-V-CAP) ("the Committee"), the separate segregated fund of the International Union, United Automobile Aerospace and Agricultural Implement Workers of America, (UAW), the following matter was noted and is presented for your legal analysis:

Regional offices of the Committee organize annual "dollar drives" to solicit voluntary funds. As part of the drive, each region sends a solicitation letter to all known retirees in their area (see Attachment I and II). We visited regional offices in Grand Rapids, Michigan and Baltimore, Maryland and determined that approximately 20% of their contributions or $52,387.73 had been collected from retirees between 1/1/77 and 3/31/79. We have not obtained data from the other 15 regions, but the percentage indicates that more than $250,000 could have been collected by the Committee during the audit period.

Committee officials advised that the UAW Constitution states that retirees are entitled to membership status. However, they are not required to pay dues, can not participate in contract negotiations or contract votes, can not participate in votes to commence or end strikes, and they can not be shop stewards (appropriate sections of the UAW constitution are attached). If you have any questions regarding this matter, contact Joann McSorley or Steve Sanford on extension 3-4155.

Attachments as stated

attachment II

E. T. MICHAEL
DIRECTOR, REGION 8

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA • UAW



May, 1979

REGIONAL OFFICE
7124 AMBASSADOR ROAD
BALTIMORE, MARYLAND 21207
PHONE: AREA CODE 301-265-0800

TO: ALL RETIRED UAW MEMBERS RESIDING IN REGION 8

Greetings:

The year 1979 will be a critical period for our Union with major agreements open for negotiations with certain corporations.

A great deal of our Union's energy and time will, therefore, be spent trying to secure justice and equity for our members - including retired members who worked for such corporations. However, we must not forget that what we gain at the bargaining table can be jeopardized, or taken away, in the legislative halls of government.

Moreover, the problems of inflation, ever-increasing medical costs, skyrocketing gas and oil prices and the unfair burden of taxation - both federal and state, cannot be solved at bargaining tables. It will require our maximum participation in the legislative halls of government. Strong lobbying efforts will be needed - both in the legislature and before regulatory agencies, to promote and protect the interest of our members.

We are, therefore, officially commencing our 1979 CAP Dollar Drive in an effort to adequately finance the UAW's Political Action Program. Please mail back your dollar or more in the enclosed postpaid envelope, along with the gold card stub filled in completely. If you send a check, please make it out to "UAW V-CAP Region 8". The stub will be used in the retiree prize program. Last year's winners are listed on the program enclosure.

The need for voluntary dollars was never more critical. Astronomical amounts of money are being raised by reactionary big business and the anti-labor right wing. They are embarked on an unholy crusade to weaken and destroy any legislation designed to help workers and retirees.

However, with your help, along with that of the membership in the plants, we hope to prevent any government "take aways" of benefits now enjoyed and lobby for passage of legislation beneficial to all UAW members.

Commending you for your past contributions, we are

Fraternally yours,

E. T. Michael
E. T. Michael
Director - Region 8

W. D. Haynes
W. D. Haynes, Chairman
Region 8 Retired Workers Council

Enclosure

MAILING ADDRESS
Region 1-D, UAW
Box H
Grand Rapids, Michigan 49501

OWEN BIEBER, DIRECTOR
REGION 1-D, UAW
844 EAST BELTLINE AVENUE, N.E.
GRAND RAPIDS
PHONE 949-4100

9

attachment III p. 1 of 2

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW



September 20, 1977

Greetings:

The 1976 Region 1-D Dollar Drive was an outstanding success. The response and contributions from Retirees of $12,113.42 was of great significance. A total of $86,012.45 was raised. At all Regional meetings since the 1976 Dollar Drive I have recognized the achievements of the UAW Retirees in the Dollar Drive.

In Michigan in 1978 we will elect a Governor, Secretary of State, Attorney General, all U. S. Congressmen, a U. S. Senator, and the State Legislature, both House and Senate. Campaigns are costly. As you know federal law prohibits the use of union dues for candidates for federal office. To aid progressive candidates we must raise money via the dollar drive for this purpose. I am again asking your help in this year's CAP Dollar Drive.

Retirees have many concerns and needs that can only be solved by intelligent legislation in the U. S. Congress.

The UAW fully endorses President Carter's proposals to make social security fiscally sound - higher benefits and correcting inequities.

The skyrocketing cost of health care and all medical costs are of great concern to all Americans. We can enact the National Health Security Plan, which will relieve all of us of this heavy financial burden.

Other legislative items that must be enacted to help Retirees include

- real consumer protection
- better housing
- mass transit systems that work
- tax reform-federal-state and local-lift the burden from Retirees.
- control of utility cost with relief for the elderly
- there is a need to amend the National Labor Relations Act to make it mandatory for employers to bargain with Union Representatives over proposals affecting Retirees.

In addition to the first prize award of a 1978 Oldsmobile Cutlass, two 19-inch color TV sets, cash awards ranging from $50.00 to $500.00 will be awarded.

Also, because of your tremendous support in last year's Dollar Drive, ten $50.00 cash awards will be given to Retirees only.

Will you help with your contribution? All you need do is this:

(1) Put your dollars in the enclosed mail-back envelope.

(2) Fill out the enclosed stubs of the enclosed CAP tickets and place them in the mail-back envelope too.

(3) Seal and mail the envelope to us - and please note it is self-addressed, and does require postage.

Keep the large portion of the CAP ticket. This will entitle you to a chance to win any of the above listed prizes. The drawing will be held at the Region 1-D Headquarters, 844 East Beltline, NE, Grand Rapids, Michigan, on November 19, 1977, at 11:00 AM. You need not be present to win. If you send in more than a dollar we will make out extra tickets and put them in the drawing in your name.

I look forward to your continued support and favorable reply.

Fraternally,

Owen Bieber

Owen Bieber
Director, Region 1-D, UAW

OB/bh opeiu494 #1403

c: All Regional Staff

enclosures

attachment IV



ject to the orders, rulings and decisions of this International Union and the properly constituted authorities of the same.

**Section 15.** The International Union and the Local Union to which the member belongs shall be his exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and for the negotiation and execution of contracts with employers covering all such matters, including contracts requiring his membership or the continuance of his membership in the Union as a condition of his employment or continued employment, and contracts requiring the employer to deduct, collect, or assist in collecting from his wages any dues, initiation fees, reinstatement fees or fines, payable to the International Union or his Local Union.

**Section 16.** The International Union and the Local Union to which the member belongs, and each of them, are by him irrevocably designated, authorized and empowered exclusively to appear and act for him and in his behalf before any board, court, committee or other tribunal in any matter affecting his status as an employe or as a member of his Local Union or the International Union, and exclusively to act as his agent to represent and bind him in the presentation, prosecution, adjustment and settlement of all grievances, complaints or disputes of any kind or character arising out of the employer-employe relationship, as fully and to all intents and purposes as he might or could do if personally present.

**Section 17.** A member may resign or terminate his membership only if he is in good standing, is not in arrears or delinquent in the payment of any dues or other financial obligation to the International Union or to his Local Union and there are no charges filed and pending against him. Such resignation or termination shall be effective only if by written communication, signed by the member, and sent by registered or certified mail, return receipt requested, to the Financial Secretary of the Local Union within the ten (10) day period prior to the end of the fiscal year of the Local Union as fixed by this Constitution, whereupon it shall become effective sixty (60) days after the end of such fiscal year; provided, that if the employer of such member has been authorized either by such member individually or by the Collective Bargaining Agreement between the employer and the Union to check off the membership dues of such member, then such resignation shall become effective upon the effective termination of such authorization, or upon the expiration of such sixty (60) day period, whichever is later.

**Section 18.** A member who resigns or terminates his membership shall have no right or interest in any property of the Local Union or of the International Union, including any dues or other financial obligations paid by him in advance of the effective date of such resignation or termination.

**Section 19.** Any member in good standing who is retired, shall be entitled to a "retired membership status" which, without being required to pay membership dues during the period of such retirement, shall entitle him to all of the privileges of membership except the right to vote in elections conducted pursuant to Article 19, Section 3; Article





45, Section 2; and Article 50, Sections 1 and 5. Appropriate cards denoting such membership status shall be prepared by the International Union and furnished to Local Unions upon request and at cost. The regular withdrawal-transfer provisions of this Constitution shall be applicable if such retired member returns to active employment.

**Section 20.** Non-members covered by an agency shop clause in a UAW contract shall receive all the material benefits to which members are entitled but shall not be allowed other membership participation in the affairs of the Union.

Membership in the Union shall be at all times available to such non-members on the same terms and conditions applicable to other members.

## ARTICLE 7

### Powers of Administration

**Section 1.** The International Union shall be governed by its membership in the following manner:

(a) The highest tribunal shall be the International Convention composed of delegates democratically elected by the membership of Local Unions.

(b) Between conventions the highest authority shall be the International Executive Board. The Board shall hold regular quarterly meetings and such special meetings as are required.

(c) Between meetings of the International Executive Board the administrative authority of the International Union shall be vested in the International President. The International President shall be responsible to the International Executive Board for the administration of the Union between International Executive Board meetings, according to the Constitution, the actions of the International Convention and the decisions of the International Executive Board. On all matters of major importance he shall consult the other International Executive Officers. He shall report his actions to the International Executive Board for its approval or rejection.

(d) In case of the absence or incapacity of the International President his powers and duties shall be assumed by the International Secretary-Treasurer.

**Section 2.** To achieve the objectives and purposes of this organization as set forth in this Constitution, the funds of this organization are authorized to be managed, invested, expended or used under this Article and Constitution not only for the purposes and objectives expressly set forth in Article 2 and otherwise in this Constitution but also for any additional purposes and objectives not inconsistent therewith as may be contained at any time in the resolutions and programs adopted and/or ratified by any International Convention or which the International Executive Board believes will further the general interest and welfare of the membership of this organization, or any substantial part thereof.

attachment V



# INTERPRETATIONS OF THE CONSTITUTION

of the

# INTERNATIONAL UNION

United Automobile, Aerospace

and

Agricultural Implement Workers of America (UAW)

## ARTICLE 6
## Membership

### SECTION 2

**(1) Honorary Membership**

The Constitution makes no provision for honorary membership. However, Local Unions can vote such memberships to persons who have rendered exceptional service either to the trade union movement generally or to that particular Local Union, provided that the persons granted such honorary memberships are not already members of the UAW by holding membership in some other UAW Local Union.

Any cards or letters which are issued to commemorate the issuance of the honorary membership card shall be for a stated term and that term shall not exceed two years and such honorary membership can then be renewed by specific action; otherwise it expires.

Before such honorary membership becomes effective and it is presented to the individual so honored, it must be approved by the Local Union membership and the International Executive Board. (3/9/54, Page 14.)

### SECTION 3

**(1) Refund of Checked-Off Initiation Fee and Dues**

An employee who has joined a Local Union by having paid or having had deducted his initiation fee and dues within thirty (30) days of his employment and is subsequently terminated, laid off or quits within that period would be entitled upon request made within sixty (60) days, to a refund of all monies paid for initiation fee and dues following termination of such employment. Where such member does not request a refund of his dues and initiation fee, he may upon proper request be issued an honorable withdrawal card. (Detroit, 1/15/73)

### SECTION 19

**(1) Voting Rights of Retired Members in Local Unions**

A retired member has a constitutional right to participate in any and all elections conducted on a local-wide basis except elections of the type specifically exempted under this Section. Under this Section, a retired member would not, however, be eligible to vote for a Steward or Committeeman even though that attachment VI



Steward or Committeeman might, by virtue of his election, also hold office as a member of a Local Union policy making group such as the Executive Board. (Detroit, 1/21/60.)

**(2) Voting Rights of Retired Members in Units of Amalgamated Local Unions**

Retired members are eligible to vote for officers of units as such. If a unit has a substantial complement of officers set up by its bylaws, and these officers generally correspond to the executive officers of a Local Union as set forth in Article 38, Section 1, the retired member would be eligible to vote for such officers even though these officers also constitute the Local Union Shop Committee. In units where the bylaws do not provide for a substantial complement of officers (i.e., where the Chairman and Recording Secretary of the Shop Committee are also the Chairman and Recording Secretary of the unit) the retired member would not be entitled to vote for such unit Chairman and Secretary since the primary function of these individuals is to serve as officials of the Shop Committee and they are only incidentally charged with the responsibilities of unit officers.

Even though a unit does not have a substantially complete complement of officers, if the members of the Shop Committee are also designated by the unit bylaws to be the Executive Board of the unit with powers equivalent to the Executive Board of a Local Union pursuant to Article 38, Section 8, retired members would be entitled to vote for those members of the Shop Committee who are also members of the Executive Board.

Units shall be entitled to apply this Section in the first instance by membership action subject to review by the International Executive Board if any member objects. However, once the unit determines how this Section shall be applied in its elections, the unit decision cannot be changed unless the bylaws are changed in order to sufficiently modify the structure as to make a different application of this Section proper. (Detroit, 1/21/60.)

**(3) Eligibility of Retired Members to Run for Local Union Offices**

Under this Section, retired members are eligible to run for any office in the Local Union except for Steward and Committeemen offices which require the presence of the member elected in the plant. A retired member would be ineligible to run for a Steward or Committeeman office even though election to such office would automatically entitle the member elected to a second position in the Local Union such as membership on the Local Union Executive Board. A retired member would also be ineligible to run for a Local Union executive office where election to that executive office also automatically made him a member of a Bargaining Committee or any other such office which required seniority in any particular unit, division or department of the plant. (Detroit, 1/21/60.)

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald J. Moll, Treasurer
United Auto Workers Voluntary
  Community Action Program
8000 East Jefferson Avenue
Detroit, Michigan 48214

Re: MUR 1072 (79)

Dear Mr. Moll:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission has found reason to believe that the Voluntary Community Action Program ("V-CAP") of the International Union, United Automobile Aerospace and Agricultural Implement Workers of America ("UAW") may have violated 2 U.S.C. §441b(b)(4)(A)(ii) of the Federal Election Campaign Act of 1971, as amended ("Act"). This section of the Act makes it unlawful for a labor organization, or its separate segregated fund, to solicit contributions to such fund from any person other than its members and their families.

Specifically, UAW Regions 1-D and 8, in letters to its retirees in September of 1977 and May of 1979, respectively, solicited those retirees for UAW's Voluntary Community Action Program's annual "Dollar Drives." The reason to believe finding is based on the Commission's view that retirees are not union members for the purposes of solicitation under the Act. In addition, the Commission has found reason to believe that V-CAP may have violated 2 U.S.C. §441b(a) which makes it unlawful for a political committee to knowingly accept or receive any contributions in violation of §441b.

The Commission has also found reason to believe that UAW may have violated Commission Regulations at 11 C.F.R. §114.5(a)(2) which requires an organization to inform persons being solicited that contribution guidelines are merely suggestions, and that an individual is free to contribute more or less without favor or disadvantage by reason of the amount contributed or

decision not to contribute. Specifically, the aforementioned letters proposed guidelines without meeting the requirements of the above-cited regulations.

This matter has been numbered MUR 1072. Please refer to it in all future correspondence.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you or your committee. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be made under oath.

The Commission has a responsibility to investigate this matter and requests your response to be submitted within ten days after your receipt of this notification. If no response is received, the Commission may take further action based on information from other sources.

This matter will remain confidential in accordance with 2 U.S.C. §437g(a)(3)(B) unless you notify the Commission in writing of your consent that it be made public.

If you intend to be represented by counsel, please have such counsel so notify us in writing.

Should you have any questions, please contact Daniel J. Blessington, Jr., the attorney assigned to this matter, at (202) 523-4039.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Donald Fraser
International President
United Auto Workers
8000 East Jefferson Avenue
Detroit, Michigan 48214

Re: MUR 1072 (79)

Dear Mr. Fraser:

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Sincerely,

Charles N. Steele
General Counsel

A-560

# FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON D.C. 20463

September 13, 1979

MEMORANDUM

TO: BILL OLDAKER

THROUGH: ORLANDO B. POTTER
STAFF DIRECTOR
O.B.P.

FROM: BOB COSTA/JOANN MCSORLEY

SUBJECT: SOLICITATION OF RETIREES
BY LABOR UNION SEGREGATED FUND

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Attachments as stated

E. T. MICHAEL
DIRECTOR, REGION 8

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA • UAW**

DOUGLAS A. FRASER, PRESIDENT

EMIL MAZEY, SECRETARY-TREASURER

VICE-PRESIDENTS

PAT GREATHOUSE • KEN BANNON • DENNIS MC DERMOTT • IRVING BLUESTONE
ODESSA KOMER • MARCELLUS STEPP • MARTIN GERBER

May, 1979

REGIONAL OFFICE
7124 AMBASSADOR ROAD
BALTIMORE, MARYLAND 21207
PHONE: AREA CODE 301.265.8800

TO: ALL RETIRED UAW MEMBERS RESIDING IN REGION 8

Greetings:

The year 1979 will be a critical period for our Union with major agreements open for negotiations with certain corporations.

A great deal of our Union's energy and time will, therefore, be spent trying to secure justice and equity for our members - including retired members who worked for such corporations. However, we must not forget that what we gain at the bargaining table can be jeopardized, or taken away, in the legislative halls of government.

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Fraternally yours,

E. T. Michael
E. T. Michael
Director - Region 8

W. D. Haynes
W. D. Haynes, Chairman
Region 8 Retired Workers Council

Enclosure

opeiu-2

820403770

MAILING ADDRESS
Region 1-D, UAW
Box H
Grand Rapids, Michigan 49501

OWEN BIEBER, DIRECTOR
REGION 1-D, UAW
844 EAST BELTLINE AVENUE, N.E.
GRAND RAPIDS
PHONE 949-4100

9

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - UAW



September 20, 1977

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DOUGLAS FRASER,
*International President.*

CONSTITUTION

of the

INTERNATIONAL UNION

*United Automobile,*

*Aerospace and*

*Agricultural Implement*

*Workers of America,*

UAW

UAW

Adopted at
Los Angeles, California
May, 1977

PRINTED IN U.S.A.

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**Section 18.** A member who resigns or terminates his membership shall have no right or interest in any property of the Local Union or of the International Union, including any dues or other financial obligations paid by him in advance of the effective date of such resignation or termination.

~~**Section 19.** Any member in good standing who is retired, shall be entitled to a "retired membership status" which, without being required to pay membership dues during the period of such retirement, shall entitle him to all of the privileges of membership except the right to vote in elections conducted pursuant to Article 19, Section 3; Article 45, Section 2; and Article 50, Sections 1 and 5. Appropriate cards denoting such membership status shall be prepared by the International Union and furnished to Local Unions upon request and at cost. The regular withdrawal-transfer provisions of this Constitution shall be applicable if such retired member returns to active employment.~~





**Section 20.** Non-members covered by an agency shop clause in a UAW contract shall receive all the material benefits to which members are entitled but shall not be allowed other membership participation in the affairs of the Union.

Membership in the Union shall be at all times available to such non-members on the same terms and conditions applicable to other members.

## ARTICLE 7

### Powers of Administration

**Section 1.** The International Union shall be governed by its membership in the following manner:

(a) The highest tribunal shall be the International Convention composed of delegates democratically elected by the membership of Local Unions.

(b) Between conventions the highest authority shall be the International Executive Board. The Board shall hold regular quarterly meetings and such special meetings as are required.

(c) Between meetings of the International Executive Board the administrative authority of the International Union shall be vested in the International President. The International President shall be responsible to the International Executive Board for the administration of the Union between International Executive Board meetings, according to the Constitution, the actions of the International Convention and the decisions of the International Executive Board. On all matters of major importance he shall consult the other International Executive Officers. He shall report his actions to the International Executive Board for its approval or rejection.

(d) In case of the absence or incapacity of the International President his powers and duties shall be assumed by the International Secretary-Treasurer.

Section 2. To achieve the objectives and purposes of this organization as set forth in this Constitution, the funds of this organization are authorized to be managed, invested, expended or used under this Article and Constitution not only for the purposes and objectives expressly set forth in Article 2 and otherwise in this Constitution but also for any additional purposes and objectives not inconsistent therewith as may be contained at any time in the resolutions and programs adopted and/or ratified by any International Convention or which the International Executive Board believes will further the general interest and welfare of the membership of this organization, or any substantial part thereof.

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA - UAW



September 20, 1977

Greetings:

The 1976 Region 1-D Dollar Drive was an outstanding success. The response and contributions from Retirees of $12,113.42 was of great significance. A total of $86,012.45 was raised. At all Regional meetings since the 1976 Dollar Drive I have recognized the achievements of the UAW Retirees in the Dollar Drive.

In Michigan in 1978 we will elect a Governor, Secretary of State, Attorney General, all U. S. Congressmen, a U. S. Senator, and the State Legislature, both House and Senate. Campaigns are costly. As you know federal law prohibits the use of union dues for candidates for federal office. To aid progressive candidates we must raise money via the dollar drive for this purpose. I am again asking your help in this year's CAP Dollar Drive.

Retirees have many concerns and needs that can only be solved by intelligent legislation in the U. S. Congress.

The UAW fully endorses President Carter's proposals to make social security fiscally sound - higher benefits and correcting inequities.

The skyrocketing cost of health care and all medical costs are of great concern to all Americans. We can enact the National Health Security Plan, which will relieve all of us of this heavy financial burden.

Other legislative items that must be enacted to help Retirees include

- real consumer protection
- better housing
- mass transit systems that work
- tax reform-federal-state and local-lift the burden from Retirees.
- control of utility cost with relief for the elderly
- there is a need to amend the National Labor Relations Act to make it mandatory for employers to bargain with Union Representatives over proposals affecting Retirees.

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## ARTICLE 19

### Contracts and Negotiations

**Section 1.** It shall be the established policy of the International Union to recognize the spirit, the intent and the terms of all contractual relations developed and existing between Local Unions and employers, concluded out of conferences between the Local Unions and the employers, as binding upon them. Each Local Union shall be required to carry out the provisions of its contracts. No officer, member, representative or agent of the International Union or of any Local Union or of any subordinate body of the International Union shall have the power or authority to counsel, cause, initiate, participate in or ratify any action which constitutes a breach of any contract entered into by a Local Union or by the International Union or a subordinate body thereof. Whenever a Local Union or a manufacturing unit of an Amalgamated Local Union becomes a party to an agreement on wages, hours or working conditions, it shall cause such agreement to be reduced to writing and properly signed by the authorized representatives of all the parties to the agreement.

Section 2. When a grievance exists between a Local Union and management and negotiations are in progress, and an International Union officer or representative is participating by request of the Local Union involved, a committee selected by the Local Union shall participate in all conferences and negotiations. Copies of all contracts shall be filed with the International Secretary-Treasurer.

Section 3. No Local Union Officer, International Officer or International Representative shall have the authority to negotiate the terms of a contract or any supplement thereof with any employer without first obtaining the approval of the Local Union. After negotiations have been concluded with the employer, the proposed contract or supplement shall be submitted to the vote of the Local Union membership or Manufacturing Unit membership in the case of an Amalgamated Local Union at a meeting called especially for such purpose; should the proposed contract or supplement be approved by a majority vote of the Local Union or unit members present at the meeting, it shall be referred to the Regional Director for his recommendation to the International Executive Board for its approval or rejection. In case the regional Board Member recommends approval, the contract becomes operative until the final action is taken by the International Executive Board.

Upon application to and approval of the International Executive Board, a ratification procedure may be adopted wherein apprenticeable skilled trades and related workers, production workers, office workers, engineers, and technicians would vote separately on contractual matters common to all and, in the same vote, on those matters which relate exclusively to their group.

Before contract or supplement demands affecting skilled workers are submitted to the employer, they shall be submitted to the Skilled Trades Department in order to effectuate an industry-wide standardization of agreements on wages, hours, apprenticeship programs, journeyman standards and working conditions.





**Section 4.** Nation[illegible]reements and supplements thereof shall be ra[illegible] by the Local Unions involved.

**Section 5.** The general meeting of the Local Union members of a manufacturing establishment under the jurisdiction of an Amalgamated Local Union shall be the highest authority for handling problems within the manufacturing establishment, in conformity with the bylaws of the Local Union and this International Constitution.

**Section 6.** The International Executive Board shall protect all Local Unions who have succeeded in establishing higher wages and favorable conditions and have superior agreements, so that no infringement by Local Unions with inferior agreements in plants doing similar work may be committed against the Local Union with advanced agreements.

Section 7. Each Local Union or unit of an Amalgamated Local Union shall be required to maintain a complete and up-to-date schedule of job classifications and wage rates; a copy of which must be attached to each contract submitted to the International Union.

## ARTICLE 20

### National and Corporation Bargaining Councils

Section 1. In cases where there are a number of Local Unions involved in negotiations and bargaining with a major corporation or an association of corporations, the International Executive Board shall set up an Intra-Corporation Council. Such an Intra-Corporation Council shall be an administrative arm of the International Union and not a subordinate body. Such Local Unions so involved shall be members and shall participate through duly elected delegates. When the large corporation or National Association has widely scattered branches, the Intra-Corporation Council shall set up Sub-Corporation Councils.

Section 2. The International Executive Board shall determine the geographical districts or occupational or manufacturing groupings in which Sub-Corporation Councils shall be established. The Intra-Corporation Council shall be composed of delegates from the Sub-Corporation Council.

Section 3. Directors to work with such Councils shall be appointed by the President subject to the approval of the International Executive Board.

Section 4. Voting at National Intra-Corporation Council meetings shall be based on per capita tax paid to the International Union by the various Local Unions participating.

Section 5. The purpose of the Intra-Corporation Council shall be to coordinate the demands of the separate members and to formulate policies in dealing with their common employer. The Intra-Corporation Council shall be convened not later than thirty (30) days prior to the opening of negotiations for a new National Corporation agreement to formulate new contract demands. The Council shall deal only with matters pertaining to problems arising in their immediate corporations. It shall be understood that such Intra-Corporation Council is not a legislative body of the International Union and shall not deal with policies of the International Union other than those concerning their own immediate corporation problems.

Label, Education, Conservation and Recreation, Community Services, Fair Practices and Anti-Discrimination, Citizenship and Legislative, Consumer Affairs, a Local Union Women's Committee where such membership exists, and such other committees as they deem necessary. All committees should be appointed or elected, subject to the discretion of the Local Union or shop organization in the case of an Amalgamated Local Union.

## ARTICLE 45

### Shop Stewards and Shop Committeemen

Section 1. The Bargaining Committee may, but does not necessarily have to consist of the members of the Executive Board of the Local Union.

Section 2. (a) Following this 24th Constitutional Convention all Shop Stewards and/or Committeemen shall be democratically elected for three (3) year terms, provided that a Local Union or unit of an Amalgamated Local Union may petition the International Executive Board to have a shorter term, by affirmative membership action. Stewards and Committeemen shall be required to take the oath of office as provided in Article 39.

(b) Local Unions or units of an Amalgamated Local Union who have held their regular Stewards and Committeemen elections for 1974 may, by affirmative action of the membership of the Local Union or unit, apply the three (3) year term to such elections by taking action at a meeting. Members must be notified at least seven (7) days in advance of the time, place and purpose of any meeting at which action is to be taken on this matter. Action shall be by majority vote of members present and voting and must be taken prior to October 1, 1974.

Section 3. A Shop Steward or Committeeman may be recalled by the members he represents for failure to perform the duties of his office. A valid petition setting forth specific complaints of the Shop Steward's or Committeeman's failure to perform the duties of his office shall be signed by the members he represents. The Shop Steward or Committeeman so complained against shall receive notification of the specific complaints. Upon the filing of such a petition with the Local Union, a special meeting for recall shall be held, of which due notification shall be given. A two-thirds (⅔) vote of the members present at such special meeting shall be required to recall. Each Local Union or unit of an Amalgamated Local Union shall establish in its bylaws the number of petitioners required for a recall and the quorum necessary to establish such recall meeting.

Section 4. Upon application to and approval of the International Executive Board, Stewards and/or Committeemen may be elected exclusively by and from appropriate groups (as specified in Article 19, Section 3) in keeping with the policy resolution adopted by the Sixteenth (16th) Constitutional Convention.

Section 5. If a new election for Committeeman or Steward is ordered as the result of a protest and this order is appealed, no such election shall be held until the matter has been submitted to, and an order thereon received from, the International President.

ber has made full restitution. Any member so suspended, whose appeal has been denied by the International Executive Board may further appeal the suspension either to the Public Review Board or the Convention Appeals Committee as provided for in Article 33 of this Constitution.

(f) The procedure provided in this Section shall be in addition to, and exclusive of, any other action which may be taken against such member. Under no circumstances shall a sum found to have been improperly received or spent be written off the books of a Local Union or a final settlement of same be made without the approval of the International Secretary-Treasurer.

Section 6. If it is claimed that a member owes non-dues money to his Local Union, the International Union or the International Strike Insurance Fund, other than a fine, and that he has failed to meet the obligation, a fair hearing shall be held to determine if he owes the obligation. The member shall receive written notice of the hearing setting forth the Union's claim as to the nature of the obligation and the amount owed. If, as a result of the hearing, a determination is made that the member owes the money, the member shall be so notified in writing and given thirty (30) days to pay the money owed. If the member fails to meet his obligation to pay the amount owed within the thirty (30) days, the determination and documentation shall then be forwarded to the International President. If the foregoing provisions have been complied with, the International President shall advise the member and his Local Union that the member is not eligible to participate in the affairs of the Union until the obligation is paid. In the event the member disagrees with the decision of the International President, the member shall have the right to appeal under Article 33, of this Constitution.

## ARTICLE 49
### Fraud in Local Union Elections

Any member convicted of misrepresenting returns, altering, mutilating, or destroying deposited ballots, voting fraudulently or of intimidating others by threats or otherwise interfering with a member in the exercise of his right to cast his ballot in Local Union elections and strike balloting, shall be punished in accordance with the Trial Procedure outlined in this Constitution. In no case shall the penalty be less than a fine of ten dollars ($10.00), and the member so convicted shall be disqualified for either elective or appointive office within the jurisdiction of the International Union for a period of not less than two (2) years or more than five (5) years.

## ARTICLE 50
### Strikes

Section 1. (a) When a dispute exists between an employer and a Local Union concerning the negotiation of a collective bargaining agreement or any other strikeable issue, the Local Union or the International Executive Board may issue a call for a strike vote. All members must be given due notice of the vote to be taken and it shall require a two-thirds ($\frac{2}{3}$) majority vote, by secret ballot, of those voting to request strike authorization from the International Executive Board. Only members in good standing shall be entitled to vote.





(b) Where a different ratification procedure for a Local Union or an Intra-Corporation Council has been properly applied for under terms of Article 19, Section 3, and after the International Executive Board has approved such ratification procedure, the method for accepting or rejecting contract changes and the taking of strike votes shall be governed by the terms of the procedure approved by the International Executive Board for that Local Union or Intra-Corporation Council.

Section 2. If the Local Union involved is unable to reach an agreement with the employer without strike action, the Recording Secretary of the Local Union shall prepare a full statement of the matters in controversy and forward the same to the Regional Director and International President. The Regional Director or his assigned representative in conjunction with the Local Union Committee shall attempt to effect a settlement. Upon failure to effect a settlement he shall send the International President his recommendation of approval or disapproval of a strike. Upon receipt of the statement of matters in controversy from the Regional Director, the International President shall prepare and forward a copy thereof to each member of the International Executive Board together with a request for their vote upon the question of approving a strike of those involved to enforce their decision in relation thereto. Upon receipt of the vote of the members of the International Executive Board, the International President shall forthwith notify in writing the Regional Director and the Local Union of the decision of the International Executive Board.

Section 3. In case of an emergency where delay would seriously jeopardize the welfare of those involved, the International President, after consultation with the other International Officers, may approve a strike pending the submission to, and securing the approval of, the International Executive Board, providing such authorization shall be in writing.

Section 4. Neither the International Union nor any Local Union, nor any subordinate body of the International Union, nor any officer, member, representative or agent of the International Union, Local Union or subordinate body shall have the power or authority to instigate, call, lead or engage in any strike or work stoppage, or to induce or encourage employes of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, except as authorized by the International Executive Board or the International President in conformity with the provisions of this Constitution. Such power and authority resides exclusively in the International Executive Board and the International President, and may be exercised only by collective action of the International Executive Board as provided in Section 2 of this Article or by emergency action of the International President as provided in Section 3 of this Article.

Section 5. Before a strike shall be called off, a special meeting of the Local Union shall be called for that purpose, and it shall require a majority vote by secret ballot of all members present to decide the question either way. Wherever the International Executive Board decides that it is unwise to longer continue an existing strike, it will order all members of Local Unions who have ceased work in connection therewith to resume work and thereupon and thereafter all assistance from the International Union shall cease.

Section 6. Any Local Union engaging in a strike which is called in violation of this Constitution and without authorization of the International President and/or the International Executive Board shall have no claim for financial or organizational assistance from the International Union or any affiliated Local Union.

Section 7. The International President, with the approval of the International Executive Board, shall be empowered to revoke the charter of any Local Union engaging in such unauthorized strike action, thereby annulling all privileges, powers and rights of such Local Union under this Constitution.

Section 8. In cases of great emergency, when the existence of the International Union is involved, together with the economic and social standing of our membership, the International President and the International Executive Board shall have authority to declare a general strike within the industry by a two-thirds (⅔) vote of the International Executive Board whenever in their good judgment it shall be deemed proper for the purpose of preserving and perpetuating the rights and living standards of the general membership of our International Union, provided, under no circumstances shall it call such a strike until approved by a referendum vote of the membership.

Section 9. In case of a general strike, it shall require a majority vote of the International Executive Board before the strike is officially called off.

## ARTICLE 51

### Board of International Trustees

Section 1. A three (3) member International Board of Trustees shall be created, charged with the duty of safeguarding all funds and property of the International Union by causing the books and accounts of the International Secretary-Treasurer to be audited semi-annually. The Board of Trustees shall designate a Certified Public Accountant to make such audits, and shall incorporate same in their report to the International Officers, Board Members, and all affiliated Local Unions as soon as completed. The Board of Trustees shall report its activities semi-annually to the International Executive Board and to the International Convention. It shall make recommendations to the Board and to the Convention for improving the handling of the finances of the International Union and for safeguarding its funds and property.

Section 2. Members of the Board of Trustees, shall devote the time necessary to the performance of their duties, not to exceed a maximum of thirty (30) days in any six (6) months. Members of the Board of Trustees shall be compensated on the basis of maximum International Representative's salary, and expenses.

Section 3. Nominations and elections of Trustees shall take place in the regular order of business



of the International Convention. Candidates shall be nominated and elected in one election. The candidates shall be nominated for a three (3) term trusteeship, for a two (2) term trusteeship, and for a one (1) term trusteeship. The candidate receiving the highest number of votes for each of these three (3) positions, respectively, shall be declared elected. At each Constitutional Convention, a Trustee shall be elected for a three (3) term period.

Section 4. No member shall be nominated or elected as a Trustee who is sixty-five (65) years of age or over as of the date of nomination. A Trustee who becomes sixty-five (65) years of age during his term of office may continue to serve until the next Constitutional Convention, when a new Trustee shall be elected to serve out the remainder of the retiring Trustee's term.

Section 5. A member of the Board of Trustees shall not, while holding such position, be employed by the International Union as an International Representative or in any other capacity whatsoever. Such member shall become eligible as a candidate for office in, or as an employe of, the International Union only subsequent to an International Convention which follows his resignation from the Board of Trustees.

## ARTICLE 52

### Women's Auxiliaries

Section 1. Where there is a strong desire on the part of the wives, mothers, sisters and daughters of the members of any Local Union of the International Union to elevate the conditions, maintain and protect the interests of the UAW, a charter for a Women's Auxiliary shall be granted when application is made upon a blank furnished by the International Secretary-Treasurer of this International Union.

Section 2. The charter fee shall be ten dollars ($10.00) for charter and initial supplies.

Section 3. Dues to maintain such Auxiliary shall not be more than fifty cents (.50) per month. No per capita tax shall be charged by this International Union from dues so collected.

Section 4. The Auxiliary shall establish such laws as do not conflict with the bylaws of their Local Union and this Constitution and shall submit same to the International Executive Board for ratification.

Section 5. So long as the Auxiliary adheres to the provisions of this Constitution and the Local Union bylaws and does not adopt a policy contrary to that of the International or Local Union and adheres to the conditions of its charter, it shall remain in full force, but upon infraction thereof or upon request of the Local Union, the International Executive Board may revoke the charter, thereby annulling all privileges secured thereunder.

Section 6. Women's Auxiliaries shall be coordinated through an International Women's Auxiliaries Department.

Section 7. The President of the International Union shall appoint the director to direct, coordinate and supervise the activities of the Women's Auxiliaries.

FEDERAL ELECTION COMMISSION
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