



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1652

Date Filmed 7/25/04 Camera No. --- 1

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FEDERAL ELECTION COMMISSION

Routing Slips

Objection Comments

12 - Day Report and comments

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) |
| ☒ (5) Internal Documents | |

Signed James R. Wernecke
date 7/19/84

FEC 9-21-77

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 16, 1984

**Mr. Pietro Mazzai, Treasurer
Pensioners Action Fund
P.O. Box 6120
Baltimore, Maryland**

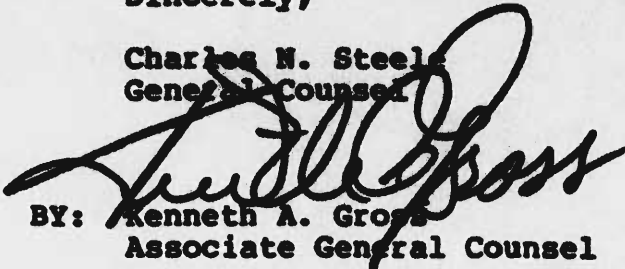
RE: MUR 1652

Dear Mr. Mazzai:

On July 10, 1984, the Federal Election Commission considered certain matters which had been referred to the Office of General Counsel as a result of an audit of the Pensioners Action Fund. The Commission was equally divided on the question of whether to find reason to believe a violation of any statute within its jurisdiction had been committed by your Committee. Accordingly, the Commission has closed the file in this matter. It will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosure
First General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**Mr. Pietro Mazzai, Treasurer
Pensioners Action Fund
P.O. Box 6120
Baltimore, Maryland**

RE: MUR 1652

Dear Mr. Mazzai:

On July 10, 1984, the Federal Election Commission considered certain matters which had been referred to the Office of General Counsel as a result of an audit of the Pensioners Action Fund. The Commission was equally divided on the question of whether to find reason to believe a violation of any statute within its jurisdiction had been committed by your Committee. Accordingly, the Commission has closed the file in this matter. It will become a part of the public record within 30 days.

Sincerely,

**Charles N. Steele
General Counsel**

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

**Enclosure
First General Counsel's Report**

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7/13/84



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 16, 1984

**Mr. Harry Seidman, Treasurer
Masters, Mates and Pilots Political
Contribution Fund
700 Maritime Boulevard
Linthicum, Maryland 21090**

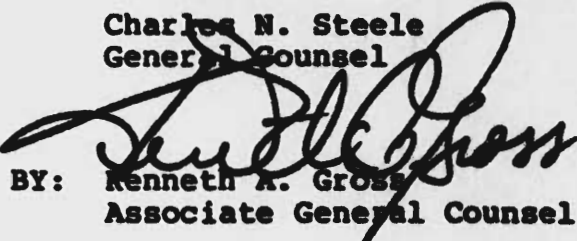
RE: MUR 1652

Dear Mr. Seidman:

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Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Gross
Associate General Counsel

Enclosure
First General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**Mr. Harry Seidman, Treasurer
Masters, Mates and Pilots Political
Contribution Fund
700 Maritime Boulevard
Linthicum, Maryland 21090**

RE: MUR 1652

Dear Mr. Seidman:

On July 10, 1984, the Federal Election Commission considered certain matters which had been referred to the Office of General Counsel as a result of an audit of the Pensioners Action Fund. The Commission was equally divided on the question of whether to find reason to believe a violation of any statute within its jurisdiction had been committed by your Committee. Accordingly, the Commission has closed the file in this matter. It will become a part of the public record within 30 days.

Sincerely,

**Charles N. Steele
General Counsel**

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

**Enclosure
First General Counsel's Report**

ACW
7/13/84

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Pensioners Action Fund) MUR 1652
 Masters, Mates and Pilots)
 Political Contribution Fund)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 10, 1984, do hereby certify that the Commission took the following actions in MUR 1652:

1. Failed by a vote of 3-3 to pass a motion to

- a) find reason to believe that the Pensioners Action Fund and the Masters, Mates and Pilots Political Contribution Fund have violated 2 U.S.C. § 441a(a)(2)(A).
- b) Approve and send the letters and Factual and Legal Analysis attached to the General Counsel's report dated June 29, 1984.

Commissioners Aikens, McDonald, and McGarry voted affirmatively; Commissioners Elliott, Harris, and Reiche dissented.

2. Decided by a vote of 6-0 to close the file.

Commissioners Aikens, Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively.

Attest:

7-12-84

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION

WASHINGTON, D C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/SUSAN M. TEIR *gmt*
DATE: JULY 5, 1984
SUBJECT: ADDITIONAL OBJECTION - MUR 1652, FIRST
GENERAL COUNSEL'S REPORT signed
June 29, 1984

The above-named document was circulated to the
Commission on

Objections have been received from the Commissioners
as indicated by the name(s) checked:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner Harris	_____
Commissioner McDonald	<u> X (COMMENTS) </u>
Commissioner McGarry	_____
Commissioner Reiche	<u> X (COMMENTS) </u>

This matter will be placed on the Executive Session
agenda for Tuesday, July 10, 1984.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/SUSAN M. TEIR *SMTT*
DATE: JULY 5, 1984
SUBJECT: OBJECTION - MUR 1652 - FIRST GENERAL COUNSEL'S
REPORT signed June 29, 1984

The above-named document was circulated to the
Commission on Monday, July 2, 1984 at 4:00.

Objections have been received from the Commissioners
as indicated by the name(s) checked:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner Harris	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Reiche	<u>X (COMMENTS)</u>

This matter will be placed on the Executive Session
agenda for Tuesday, July 10, 1984.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *Cut*
DATE: July 2, 1984
SUBJECT: MUR 1652 - First General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of _____
Open Session _____
Closed Session _____

CIRCULATIONS

48 Hour Tally Vote ☒
Sensitive ☒
Non-Sensitive ☐
24 Hour No Objection ☐
Sensitive ☐
Non-Sensitive ☐
Information ☐
Sensitive ☐
Non-Sensitive ☐
Other ☐

DISTRIBUTION

Compliance ☒
Audit Matters ☐
Litigation ☐
Closed MUR Letters ☐
Status Sheets ☐
Advisory Opinions ☐
Other (see distribution below) ☐

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SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT 84 JUL 2 A 9: 24

DATE AND TIME OF TRANSMITTAL MUR NO. 1652
BY OGC TO THE COMMISSION 7/2/84-9:25 STAFF Anne Weissenborn

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

RESPONDENTS' NAMES: Pensioners Action Fund
Masters, Mates and Pilots Political
Contribution Fund

RELEVANT STATUTE: 2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(a)(5)
11 C.F.R. § 100.5(g)(2)

INTERNAL REPORTS
CHECKED: Final Audit Report of the
Pensioners Action Fund

GENERATION OF MATTER

On March 16, 1984, the Commission referred to this Office certain matters contained in an attachment to the Final Audit Report on the Pensioners Action Fund which covered that committee's activities between January 1, 1981 and December 31, 1982. (See Attachment 1). These matters are:

1) Whether the Pensioners Action Fund is still to be considered affiliated with the Masters, Mates and Pilots Political Contribution Fund ("Political Contribution Fund") by virtue of their common establishment by the International Organization of Masters, Mates and Pilots ("the IOMMP" or "the Union"), despite the assertion of the Pensioners Action Fund, verified by the Audit Division, that it has received no contributions through the Union since December, 1976.

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2) Whether a committee which breaks with the connected organization through which it established multicandidate status maintains that status after the relationship is ended.

3) Whether the Pensioners Action Fund failed to report income of \$3,000 derived from the rental of investment property.

FACTUAL AND LEGAL ANALYSIS

A. Affiliation

2 U.S.C. § 441a(a)(5) states that "all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person . . . shall be considered to have been made by a single political committee. . . ." In the present instance the Pensioners Action Fund, originally the Masters, Mates and Pilots Pensioners Action Fund, registered with the U.S. House of Representatives on April 19, 1973, listing the IOMMP as its connected organization. The committee was funded only by voluntary contributions from retired members of the Union.

In 1976, a dispute arose between the Pensioners Action Fund and the Union, apparently over the Union's desire that the Fund represent and solicit both active seamen and pensioners. On November 19, 1976, the Masters, Mates and Pilots Political Contribution Fund registered with the Commission and also listed the IOMMP as its connected organization.^{1/} In December of

^{1/} In April, 1981, the Commission and the Masters, Mates and Pilots Political Contribution Fund entered into a conciliation agreement in which the committee did not contest the Commission's determination that the committee had violated 2 U.S.C. § 441b(b)(4)(A)(iii) by soliciting pensioners who were not members of the union.

that same year the Pensioners Action Fund filed an amended Statement of Organization changing its name and listing itself as a membership organization with no reported connected organization.

In February and April, 1976, the pension fund administrators in New York and California ceased transferring funds collected from pensioners to the Pensioners Action Fund. These funds were placed instead in special escrow accounts where they accumulated until 1980. In April, 1977, the Pensioners Action Fund filed a lawsuit against the Masters, Mates and Pilots Pension Plan in the United States District Court for the Southern District of New York to secure release of these funds. On June 24, 1980, the parties entered into a joint stipulation in which they agreed that the escrowed funds plus interest, totaling \$219,392.58, would be paid over to the Pensioners Action Fund and that upon receipt of these funds the lawsuit would be settled. The court accepted this settlement on July 22, 1980. The escrowed funds were turned over to the Pensioners Action Fund on June 26, 1980.

The Audit Division has verified that, except for its receipt of the above cited escrowed funds in June, 1980, the Pensioners Action Fund has received no contributions through the Union since December, 1976. Therefore, this committee has not been financed or maintained by the Union, nor has it apparently been controlled since 1976. Its major source of funds since December, 1976, has been interest earned on pre-reorganization contributions.

In 1982, both the Pensioners Action Fund and the Political Contribution Fund made contributions to Citizens for Sarbanes for

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the general election campaign in the amounts respectively of \$5,000 and \$200. If those committees are deemed to be affiliated, they have violated 2 U.S.C. § 441a(a)(2)(A) by exceeding the \$5,000 limit for multicandidate committees.

The issue before the Commission is whether the Pensioners Action Fund and the Masters, Mates and Pilots Political Contribution Fund are to be considered affiliated by virtue of the fact that they were established by the same union, or whether the Pensioners Action Fund's disassociation of itself from the Union in 1976 severed both that connection and also any affiliation with the Union's second separate segregated fund.

In 1978 the Commission addressed this issue in MUR 414 with regard to the National Republican Senatorial Committee ("NRSC") and the Republican Congressional Boosters Club ("Boosters Club"). These Committees had acknowledged affiliation with each other from 1972 until March, 1976, when the Boosters Club amended its statement of organization to terminate its affiliation with the NRSC. This Office, in its General Counsel's Report of February 14, 1978, stated its opinion that, once affiliated, political committees cannot terminate their affiliation. The Commission, however, failed to pass a motion finding a violation of 2 U.S.C. § 441a(a)(2)(A) because of affiliation and the file in this matter was closed.^{2/}

^{2/} The General Counsel's Report also cited indicia of actual continuing affiliation after 1976.

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In early 1979, in MUR 459, the Commission had before it the issue of the effective affiliation date of the North Carolina Congressional Club ("NCCC") and the Helms for Senate Committee (1978 Committee). During the course of the investigation in that matter it was determined that the NCCC had first registered as a political committee in 1973 at which time it had designated itself as a single candidate committee affiliated with the Helms for U.S. Senate Committee (1972 Committee). The Helms for U.S. Senate Committee did not terminate until January, 1976. On November 7, 1974, NCCC notified the Secretary of the Senate that it was changing its status from that of a single candidate committee to that of a multicandidate committee. Apparently the validity of such disaffiliation from the Helms committee was never questioned.

The present instance is the first time the Commission has addressed the issue of the disaffiliation of separate segregated funds. This Office reaffirms the position which it took in MUR 414, namely, that once committees are affiliated they cannot terminate this affiliation. This is especially valid when common establishment is involved as it is with the Pensioners Action Fund and the Political Contribution Fund. As noted above, 2 U.S.C. § 441a(a)(5) states that "all contributions made by political committees established or financed or maintained or controlled by any . . . labor organization . . . shall be considered to have been made by a single political committee. . . ." (Emphasis added). The use of the word "or"

indicates that only one type of specified relationship is enough to render committees affiliated. Having both been established by the International Organization of Masters, Mates and Pilots, the respondents in this matter cannot obliterate that common establishment by fiat. A new committee could be established by persons involved with the Pensioners Action Fund to which that committee could contribute.^{3/} Following disposal of its remaining funds the Pensioners Action Fund could then terminate, leaving the new committee to operate with no connected organization and no affiliated committee with which it shared contribution limitations.

In 1982, both the Pensioners Action Fund and the Political Contribution Fund made contributions to Citizens for Sarbanes for the general election campaign in the amounts respectively of \$5,000 and \$200. Given their affiliated status, these committees have thus violated 2 U.S.C. § 441a(a)(2)(A) by exceeding the \$5,000 limit for multicandidate committees. This Office recommends that the Commission find reason to believe that the Pensioners Action Fund and the Masters, Mates and Pilots Political Action Fund have violated 2 U.S.C. § 441a(a)(2)(A).

B. Multicandidate Status

2 U.S.C. § 441a(a)(4) defines "multicandidate political committee" as a political committee which has been registered for

^{3/} See discussion of multicandidate status in Section B below.

a period of not less than 6 months, which has received contributions from more than 50 persons, and which, except for State political party organizations, has made contributions to five or more federal candidates. Neither the statute nor the Commission's regulations requires a committee to reestablish its multicandidate status upon a change of circumstances regarding the connected organization originally involved, or to meet the statutory criteria during each election cycle. Therefore, it appears that this status is continuous once it has been established.

Whether or not the Pensioners Action Fund retains multicandidate status in its own right, its continuing affiliation with the Political Contribution Fund, also a multicandidate committee, would permit the Action Fund to avail itself of the status of its affiliate. See AO 1980-40.

C. Income From Lease of Rental Property

In August, 1982, the Pensioners Action Fund reported the purchase for \$240,000 of real estate property as an investment. Although the property was not rented during the period of the Commission's audit, counsel for this committee informed the auditors that it was to be rented during June, July and August, 1983, at \$1,000 per month. The only documentation produced was an unexecuted copy of the lease showing that the intended lessee was the individual and his wife from whom the property was originally purchased. The committee's 1983 and 1984 reports do not cite receipts of rent payments; rather, they show payments to

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the person named in the unexecuted copy of the lease for "upkeep of investment property" and for "maintenance fees for real property investment" as well as payments for other committee-related activities such as travel. The payee's reported address is that of the real estate property in question.

Information presently in hand does not provide a sufficient basis for finding reason to believe that the Committee has failed to report \$3,000 in rental income in 1983. Indeed, it seems that the lease was never entered into but rather that the former owners are now caretakers.

Questions also arise as to whether the Pensioners Action Fund's leasing or eventual sale of its real estate property would place it in violation of 2 U.S.C. § 441b(b)(3)(A) or of 2 U.S.C. § 441a(f).^{4/} 2 U.S.C. § 441b(b)(3)(A) prohibits separate segregated funds from making contributions or expenditures "by moneys obtained in any commercial transaction." Yet 11 C.F.R. § 103.3 permits the transfer of funds from a registered depository for investment purposes, provided they are returned to the depository before expenditures are made. Thus, income received from the sale or leasing of real estate owned by a separate segregated fund could be deemed to fall within the definition of commercial transactions and thus be unavailable for contributions or expenditures, or it could be treated in the same manner as investment income derived from transfers into an

^{4/} Counsel also informed the Audit Division that this real estate has been put up for sale.

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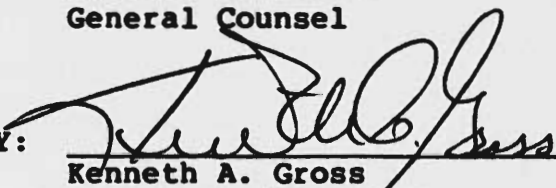
interest-bearing savings account or investment in Government treasury notes (AO 1975-41), investment in a savings and loan association (AO 1976-25), or investment in an investment trust (AO 1980-39), i.e., as available for expenditures. The leasing or, especially, the sale of the property could also be viewed as a contribution from the lessee or purchaser. However, this respondent has not reported income from either the leasing or the sale of the real estate in question, nor has it reported contributions to federal candidates in 1983 or 1984. Therefore, we do not recommend pursuing this matter at this time.

RECOMMENDATIONS

1. That the Commission find reason to believe that the Pensioners Action Fund and the Masters, Mates and Pilots Political Contribution Fund have violated 2 U.S.C. § 441a(a)(2)(A).
2. That the attached letters and General Counsel's Factual and Legal analysis be approved and sent.

Charles N. Steele
General Counsel

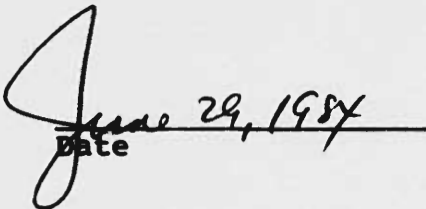
BY:


Kenneth A. Gross
Associate General Counsel

Attachments

1. Audit Report
2. Letters to Respondents (2)
3. General Counsel's Factual and Legal Analysis

34040464262


Date



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

A63-77

REPORT OF THE AUDIT DIVISION
ON
THE PENSIONERS ACTION FUND

I. Background

A. Overview

This report is based on an audit of the Pensioners Action Fund ("the Committee"), undertaken by the Audit Division of the Federal Election Commission in accordance with the Commission's audit policy to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this section, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

The Committee registered with the U.S. House of Representatives on April 19, 1973, as the Masters, Mates and Pilots Pensioners Action Fund reporting the International Organization of Masters, Mates and Pilots as its connected organization. On December 14, 1976, the Committee amended its Statement of Organization changing its name to the Pensioners Action Fund. The Committee maintains its headquarters in Baltimore, Maryland.

The audit covered the period January 1, 1981 through December 31, 1982. The Committee reported a cash balance on January 1, 1981 of \$339,887.23; total receipts of \$84,731.87; total expenditures of \$108,453.30; and a cash balance on December 31, 1982 of \$316,165.80.

This audit report is based on documents and work papers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in this report and were available to the Commissioners and appropriate staff for review.

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B. Key Personnel

The Treasurer of the Committee during the period covered by the Audit was Mr. Pietro Mazzai.

C. Scope

The audit included such tests as verification of total reported receipts and disbursements and individual transactions; review of required supporting documentation; analysis of debts and obligations and such other audit procedures as deemed necessary under the circumstances.

II. Matters Referred to the Office of General Counsel

Matters noted during the audit were referred to the Office of General Counsel on March 16, 1984.

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2



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1984

MEMORANDUM TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Charles N. Steele *CS*
General Counsel

SUBJECT: Report of the Audit Division on the
Pensioners Action Fund

The Office of General Counsel has reviewed the Report of the Audit Division on the Pensioners Action Fund and the accompanying memorandum addressed to this office. Based upon our review of these documents, we make the following comments.

The Audit Division has raised the question of whether the Pensioners Action Fund ("PAF") is "affiliated" (11 C.F.R. § 100.5 (g)(2)) with the Masters, Mates and Pilots Political Contribution Fund ("PCF"). The PAF was established by the International Organization of Masters, Mates and Pilots ("Union") in April 1973, and the PCF was established by the Union in November 1976. 1/

1/ Following a dispute between the Union and the PAF during 1976, the International Union Pension Trust Fund withheld contributions (pension deductions) to the PAF. (See MUR 773 which was generated by an audit of the PAF pursuant to former 2 U.S.C. § 438(a)(8).) In April 1977 the PAF filed a lawsuit premised on federal pension law in the district court of the Southern District of New York to secure the release of the withheld funds. Because of concern that a possible violation of 2 U.S.C. § 441b(a) could occur when and if the withheld PAF funds were eventually transferred to the PAF and used in federal elections, the Commission determined on March 9, 1979, to have the auditors request that the Pension Fund administrator segregate all authorized political monies into an escrow account in order to avoid any possible violations of the Act in the future. The Pension Fund administrator informed the auditors that (continued on next page)

Pursuant to 11 C.F.R. § 100.5(g)(2), all committees (including a separate segregated fund) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. Furthermore, as set forth at 2 U.S.C. § 441a(a)(5), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee.

The Audit Division's memorandum contains the information that on December 14, 1976, the PAF filed an amended Statement of Organization which changed the committee's name by dropping the prefix "Masters, Mates, and Pilots." This office's review of the amendment, which asks that only changes in previous statements be provided, reveals that the PAF provides no information concerning its connected organization other than that its connected organization is a membership organization. 2/ Audit's memorandum also states that according to counsel for the PAF, the PAF has not been affiliated with the Union since the dispute and has not received any funds through the Union other than those described in footnote 1 supra. The auditor's review of the reports filed by the PAF has verified that the PAF has not received any contributions through the Union since December 1976 and that since December 1976, the PAF's major source of funds has been interest earned on pre-reorganization contributions. 3/

1/ (continued)

the funds had been in a separate, segregated account since January 1979. On August 16, 1979, the Commission determined to take no further action against the PAF and the Pension Fund concerning any past commingling of pension funds and PAF authorized funds. On June 26, 1980, the Pension Trust Fund turned over to the PAF the withheld contributions plus the interest thereon (\$219,392.58).

2/ Accordingly, it is the view of this office that the phrase "... and deleting the Masters, Mates and Pilots as a connected organization" should be omitted from the second paragraph of the first page of the audit report.

3/ Although the PAF's amended Statement of Organization states that its connected organization is a membership organization, there is no information which indicates the identity or existence of the organization.

In the course of MUR 773 (see footnote 1 supra) the question of affiliation between the PAF and the PCF arose. This office advised the Commission that in light of the facts of the matter it appeared that the PAF and the PCF are "affiliated" by virtue of their respective establishment by a common connected organization, the Union. (See General Counsel's Report, Part A, March 1, 1979.) 4/ However, since at that time the PAF and the PCF had not contributed, in the aggregate, more than \$5,000 to a federal election campaign, the Commission determined to have the auditors inform the PAF, PCF, and the Union that they may be deemed affiliated for purposes of the contribution limitations in 2 U.S.C. § 441a(a)(2)(A). 5/

Because the instant audit of the PAF revealed that the PAF contributed \$5,000 to Citizens for Sarbanes for the 1982 general election and that the PCF contributed \$200 to the same committee for the same election, the Audit Division again raises the issue of affiliation between the two committees. 6/ In view of the facts that the contribution limitations have now been exceeded 7/ and that the PAF apparently intends to become more active in future elections according to Audit, we believe that this issue

4/ The General Counsel's Report in MUR 773 reasoned that both the PAF and the PCF were established by the Union and that the solicitation of contributions to the PAF and the PCF were made under the Union letterhead and signed by the Union President. The General Counsel recognized that the PAF claimed in the then pending lawsuit to be completely separate from the Union, but argued that the PAF never amended its Statement of Organization to reflect that it was no longer connected to the Union. The General Counsel further argued that although the PAF relied, as evidence of its independence, on the fact that none of the present officers of the PAF were officers of the Union, non-commonalty of officers is not a determinative factor in deciding whether the organizations are affiliated.

5/ Subsequently, on August 16, 1979, the Commission determined to "take no action against the PCF and the PAF concerning their possible affiliation at this time."

6/ As affiliated committees the PAF and the PCF are limited to contributing \$5,000 in the aggregate to Citizens for Sarbanes for the general election. 2 U.S.C. § 441a(a)(5) and 2 U.S.C. § 441a(a)(2)(A).

7/ Audit's accompanying memorandum to this office notes that "[t]hough outside of the period audited, a similar problem occurred during the 1980 election."

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should be referred to this office. 8/ Not only have the PAF and PCF been on notice since 1979 that the two committees may be viewed as affiliated by the Commission, but a Commission determination with respect to their affiliation and the PAF's connection to the Union will serve to provide guidance to the PAF and PCF in future operations.

With respect to Audit's question concerning the multicandidate status of the PAF, your memorandum states that "it is unclear whether a committee which breaks with the connected organization through which it establishes multicandidate status maintains that status if that connection is ended." It is our view that the issue of the PAF's connection to the Union is directly tied in with its above relationship (affiliation) with the PCF. Hence, we recommend that these issues be considered jointly in a referral to this office.

A final issue raised in Audit's memorandum concerns the PAF's reported purchase of real estate property as an investment on August 18, 1982. 9/ According to Audit, the property was not rented during the period covered by the audit. However, the PAF's counsel stated that the property was rented to a PAF consultant for \$1,000 a month during the months of June, July, and August 1983. Audit obtained from the PAF an unexecuted copy of a lease that stated that the property was to be used by the tenant as a private domicile and for no other purpose. Audit's memorandum also states that the property has been put up for sale and that the PAF did not report the receipt of rental income on its 1983 Mid-Year Report.

8/ Audit notes that because the amount in excess of the contribution limitation is only \$200 this matter will not be included as a finding in the audit report since the materiality threshold for excessive contributions has not been exceeded, unless the PAF "is determined not to be a multicandidate committee."

9/ The PAF reported a disbursement of \$240,000 on August 18, 1982, to Thomas F. O'Callaghan for the "investment purchase of real estate land" (\$64,025), a building (\$135,975), and furniture and fixtures (\$40,000).

From the information provided by Audit it does not appear that a violation of 2 U.S.C. § 441b(b)(3) 10/ occurred during the period audited with respect to the investment property, assuming the PAF is the separate segregated fund of the Union. In the view of this office, the purchase of real estate property by the PAF is not in itself a violation of the Act. In that both the rental of the investment property and the apparent failure to report rental income occurred outside the scope of the audit, the audit report should not reflect this activity. 11/ Moreover, because the PAF's 1983 reports do not indicate that the PAF has made a "contribution" or an "expenditure" since the property was rented, it is this office's view that this matter concerning 2 U.S.C. § 441b(b)(3) need not be addressed at this time. As to the PAF's failure to report rental income of \$3,000, however, we recommend that this issue be included in a referral to this office separate from the audit report.

cc: The Commission

10/ Pursuant to 2 U.S.C. § 441b(b)(3) the separate segregated fund of a labor organization may not make a contribution or expenditure with moneys obtained in any commercial transaction.

11/ In the future we ask that Audit prepare a separate memorandum with respect to matters occurring outside the scope of the audit.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 9, 1983

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: BOB COSTA *[Signature]*

SUBJECT: AUDIT OF THE PENSIONERS ACTION
FUND A83-77

During the audit of the Pensioners Action Fund ("the Committee"), several questions regarding the nature of the Committee and its activities arose. The questions relate to the Committee's connection with the International Organization of Masters, Mates and Pilots, qualifications for multi-candidate status, and the conduct of apparent commercial activity. A general review of the Committee's history, along with a discussion of each of the areas noted above follows.

The Masters, Mates and Pilots Pensioners Action Fund registered with the U.S. House of Representatives on April 19, 1973. On October 7, 1974, the Committee and the International Organization of Masters, Mates and Pilots ("the Union") executed an Agreement and Declaration of Trust to broaden the purposes and basis of the Committee in order to further the political and general interests of Union pensioners. The Committee was funded solely by voluntary contributions from retired members of the Union.

During 1976, a dispute arose between the Committee and the Union, and the International Union Pension Trust Fund withheld from the Committee and deposited to an escrow account, contributions (pension deductions) to the Committee. ^{1/}

On November 19, 1976, the Union registered a second committee named the Masters, Mates and Pilots Political Contribution Fund ("MMP-PCF").

^{1/} According to the Committee's counsel the dispute revolved around an attempt by the Union to increase its control over Committee decisions.

On December 14, 1976, the Committee filed an amended Statement of Organization changing the Committee name to the Pensioners Action Fund, and listing itself as a membership organization, with no connected organization.

The Committee sued the Union, and received the escrowed funds from the Union by check dated June 26, 1980.

According to the Committee's counsel, since the dispute, the Committee has not been affiliated with the Union, and other than the litigation funds, has not received any funds through the Union.

The Audit staff's review of Committee reports verified the Committee's counsel's statement, and showed that the Committee has not received any contributions (other than the escrow transfer) since the amended Statement of Organization. Since December of 1976, the Committee's major source of funds has been interest earned on pre-reorganization contributions.

Multi-Candidate Status

The Masters, Mates and Pilots Pensioners Action Fund is a qualified multi-candidate committee. However, it is unclear whether a committee which breaks with the connected organization through which it established multi-candidate status maintains that status if that connection is ended. In a sense, the reorganization of the Committee can be seen as a termination of one form of committee, and the subsequent formation of a different type of committee. In this case, the Committee continued to operate as a multi-candidate committee, making contributions up to the \$5,000 limit to candidate committees.

Since the reorganization, the Committee has supported only 4 federal candidates, and would not qualify as a multi-candidate committee. During the period of audit, the Committee contributed \$5,000 to Citizens For Sarbanes on October 7, 1982.

Affiliation

Both the MMP-PCF and the Committee were established by the Union. In accordance with 11 C.F.R. 100.5(c)(2), committees established by the same labor organization are affiliated. However, since the Committees dispute with the Union, the Pensioners Action Fund has acted independent of the Union and the MMP-PCF.

In 1982, the Committee and the MMP-PCF both gave contributions to Citizens For Sarbanes. 2/ MMP-PCF contributed

2/ Though outside of the audit period, a similar problem occurred during the 1980 election.

\$3,000 to Citizens For Sarbanes during the primary, and on September 30, 1982 contributed \$200.00 for the general election. The Pensioners Action Fund contributed \$5,000 to Citizens For Sarbanes for the general election on October 7, 1982. 3/

The Committee's counsel stated that the Committee intends to become more active in future elections.

Apparent Commercial Activity

On August 18, 1982, the Committee reported the purchase of real estate property as an investment. The Reports Analysis Division contacted the Committee, and required that the purchase price of the property be included in cash-on-hand.

According to the Committee counsel for the months of June, July and August of 1983, the property was rented to a Committee consultant for \$1,000 per month. An unexecuted copy of the lease, provided by the Committee, stated that the property was to be used by the tenant as a private domicile, residence and for no other purposes. The property has been put up for sale.

During the period covered by the audit, the property was not rented. A report filed by the Committee covering part of the period in which the property was rented (1/1/83 - 7/30/83) fails to show the receipt of rental income.

The affiliation question also affects this issue in that 2 U.S.C. 441b(b)(3) (the commercial transaction prohibition) would seem to be relevant only if the Committee is still connected with the Union.

The attached audit report is being forwarded with no findings pending your analysis of the above issues. In addition, you will also find attached a memorandum relating to the affiliation question. The question was previously forwarded to the Office of General Counsel as a result of the audit of the Pensioners Action Fund conducted in 1978. If you have any questions, please do not hesitate to call Glen Buco or Russ Bruner at 523-4155.

3/ This matter would not be included as a finding in the Audit report because it did not exceed the materiality threshold for excessive contributions unless the committee is determined not to be a multicandidate committee.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mr. Harry Seidman, Treasurer
Masters, Mates and Pilots Political
Contribution Fund
700 Maritime Boulevard
Linthicum, Maryland 21090

RE: MUR 1652

Dear Mr. Seidman:

On , 1984, the Federal Election Commission determined that the Masters, Mates and Pilots Political Contribution Fund and you, as treasurer, have violated 2 U.S.C. § 441a(a)(2)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the committee and you as treasurer. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials, along with your answers to the enclosed questions, within ten days of your receipt of this letter. Statements should be submitted under oath.

In the absence of any additional information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if so desired. See 11 C.F.R. § 111.18(d).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

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Mr. Harry Seidman, Treasurer
Page 2

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Enclosures

General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Mr. Pietro Mazzai, Treasurer
Pensioners Action Fund
P.O. Box 6120
Baltimore, Maryland

RE: MUR 1652

Dear Mr. Mazzai:

On , 1984, the Federal Election Commission determined that the Pensioners Action Fund and you, as treasurer, have violated 2 U.S.C. § 441a(a)(2)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

Mr. Pietro Mazzai, Treasurer
Page 2

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Enclosures

General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement

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GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1652

RESPONDENT Pensioners Action Fund

SUMMARY OF ALLEGATIONS

On March 16, 1984, the Commission referred to this Office certain matters contained in an attachment to the Final Audit Report on the Pensioners Action Fund which covered that committee's activities between January 1, 1981 and December 31, 1982. These matters are:

- 1) Whether the Pensioners Action Fund is still to be considered affiliated with the Masters, Mates and Pilots Political Contribution Fund ("Political Contribution Fund") by virtue of their common establishment by the International Organization of Masters, Mates and Pilots ("the IOMMP" or "the Union"), despite the assertion of the Pensioners Action Fund, verified by the Audit Division, that it has received no contributions through the Union since December, 1976.
- 2) Whether a committee which breaks with the connected organization through which it established multicandidate status maintains that status after the relationship is ended.
- 3) Whether the Pensioners Action Fund failed to report income of \$3,000 derived from the rental of investment property.

FACTUAL BASIS AND LEGAL ANALYSIS

A. Affiliation

2 U.S.C. § 441a(a)(5) states that "all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other

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person . . . shall be considered to have been made by a single political committee. . . ." In the present instance the Pensioners Action Fund, originally the Masters, Mates and Pilots Pensioners Action Fund, registered with the U.S. House of Representatives on April 19, 1973, listing the IOMMP as its connected organization. The committee was funded only by voluntary contributions from retired members of the Union.

In 1976, a dispute arose between the Pensioners Action Fund and the Union, apparently over the Union's desire that the Fund represent and solicit both active seamen and pensioners. On November 19, 1976, the Masters, Mates and Pilots Political Contribution Fund registered with the Commission and also listed the IOMMP as its connected organization.^{1/} In December of that same year the Pensioners Action Fund filed an amended Statement of Organization changing its name and listing itself as a membership organization with no reported connected organization.

In February and April, 1976, the pension fund administrators in New York and California ceased transferring funds collected from pensioners to the Pensioners Action Fund. These funds were placed instead in special escrow accounts where they accumulated until 1980. In April, 1977, the Pensioners Action Fund filed a lawsuit against the Political Contribution Fund in the United

^{1/} In April, 1981, the Commission and the Masters, Mates and Pilots Political Contribution Fund entered into a conciliation agreement in which the committee did not contest the Commission's determination that the committee had violated 2 U.S.C. § 441b(b)(4)(A)(iii) by soliciting pensioners who were not members of the union.

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States District Court for the Southern District of New York to secure release of these funds. On June 24, 1980, the parties entered into a joint stipulation in which they agreed that the escrowed funds plus interest, totaling \$219,392.58, would be paid over to the Pensioners Action Fund and that upon receipt of these funds the lawsuit would be settled. The court accepted this settlement on July 22, 1980. The escrowed funds were turned over to the Pensioners Action Fund on June 26, 1980.

The Audit Division has verified that, except for its receipt of the above cited escrowed funds in June, 1980, the Pensioners Action Fund has received no contributions through the Union since December, 1976. Therefore, this committee has not been financed or maintained by the Union, nor has it apparently been controlled since 1976. Its major source of funds since December, 1976, has been interest earned on pre-reorganization contributions.

In 1982, both the Pensioners Action Fund and the Political Contribution Fund made contributions to Citizens for Sarbanes for the general election campaign in the amounts respectively of \$5,000 and \$200. If those committees are deemed to be affiliated, they have violated 2 U.S.C. § 441a(a)(2)(A) by exceeding the \$5,000 limit for multicandidate committees.

The issue before the Commission is whether the Pensioners Action Fund and the Masters, Mates and Pilots Political Contribution Fund are to be considered affiliated by virtue of the fact that they were established by the same union, or whether the Pensioners Action Fund's disassociation of itself from the

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Union in 1976 severed both that connection and also any affiliation with the Union's second separate segregated fund.

In 1978 the Commission addressed this issue in MUR 414 with regard to the National Republican Senatorial Committee ("NRSC") and the Republican Congressional Boosters Club ("Boosters Club"). These Committees had acknowledged affiliation with each other from 1972 until March, 1976, when the Boosters Club amended its statement of organization to terminate its affiliation with the NRSC. This Office, in its General Counsel's Report of February 14, 1978, stated its opinion that, once affiliated, political committees cannot terminate their affiliation. The Commission, however, failed to pass a motion finding a violation of 2 U.S.C. § 441a(a)(2)(A) because of affiliation and the file in this matter was closed.^{2/}

In early 1979, in MUR 459, the Commission had before it the issue of the effective affiliation date of the North Carolina Congressional Club ("NCCC") and the Helms for Senate Committee (1978 Committee). During the course of the investigation in that matter it was determined that the NCCC had first registered as a political committee in 1973 at which time it had designated itself as a single candidate committee affiliated with the Helms for U.S. Senate Committee (1972 Committee). The Helms for U.S. Senate Committee did not terminate until January, 1976. On November 7, 1974, NCCC notified the Secretary of the Senate that

^{2/} The General Counsel's Report also cited indicia of actual continuing affiliation after 1976.

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it was changing its status from that of a single candidate committee to that of a multicandidate committee. Apparently the validity of such disaffiliation from the Helms committee was never questioned.

The present instance is the first time the Commission has addressed the issue of the disaffiliation of separate segregated funds. This Office reaffirms the position which it took in MUR 414, namely, that once committees are affiliated they cannot terminate this affiliation. This is especially valid when common establishment is involved as it is with the Pensioners Action Fund and the Political Contribution Fund. As noted above, 2 U.S.C. § 441a(a)(5) states that "all contributions made by political committees established or financed or maintained or controlled by any . . . labor organization . . . shall be considered to have been made by a single political committee. . . ." (Emphasis added). The use of the word "or" indicates that only one type of specified relationship is enough to render committees affiliated. Having both been established by the International Organization of Masters, Mates and Pilots, the respondents in this matter cannot obliterate that common establishment by fiat. A new, affiliated and therefore multicandidate committee could be established by persons involved with the Pensioners Action Fund to which that committee could contribute \$5,000.^{3/} Following disposal of its remaining funds

^{3/} See discussion of multicandidate status in Section B below.

the Pensioners Action Fund could then terminate, leaving the new committee to operate as a multicandidate committee with no connected organization and no affiliated committee with which it shared contribution limitations.

In 1982, both the Pensioners Action Fund and the Political Contribution Fund made contributions to Citizens for Sarbanes for the general election campaign in the amounts respectively of \$5,000 and \$200. Given their affiliated status, these committees have thus violated 2 U.S.C. § 441a(a)(2)(A) by exceeding the \$5,000 limit for multicandidate committees. This Office recommends that the Commission find reason to believe that the Pensioners Action Fund and the Masters, Mates and Pilots Political Action Fund have violated 2 U.S.C. § 441a(a)(2)(A).

B. Multicandidate Status

2 U.S.C. § 441a(a)(4) defines "multicandidate political committee" as a political committee which has been registered for a period of not less than 6 months, which has received contributions from more than 50 persons, and which, except for State political party organizations, has made contributions to five or more federal candidates. Neither the statute nor the Commission's regulations requires a committee to reestablish its multicandidate status upon a change of circumstances regarding the connected organization originally involved, or to meet the statutory criteria during each election cycle. Therefore, it appears that this status is continuous once it has been established.

Whether or not the Pensioners Action Fund retains multi-candidate status in its own right, its continuing affiliation with the Political Contribution Fund, also a multicandidate committee, would permit the Action Fund to avail itself of the status of its affiliate. See AO 1980-40.

C. Income From Lease of Rental Property

In August, 1982, the Pensioners Action Fund reported the purchase for \$240,000 of real estate property as an investment. Although the property was not rented during the period of the Commission's audit, counsel for this committee informed the auditors that it was to be rented during June, July and August, 1983, at \$1,000 per month. The only documentation produced was an unexecuted copy of the lease showing that the intended lessee was the individual and his wife from whom the property was originally purchased. The committee's 1983 and 1984 reports do not cite receipts of rent payments; rather, they show payments to the person named in the unexecuted copy of the lease for "upkeep of investment property" and for "maintenance fees for real property investment" as well as payments for other committee-related activities such as travel. The payee's reported address is that of the real estate property in question.

Information presently in hand does not provide a sufficient basis for finding reason to believe that the Committee has failed to report \$3,000 in rental income in 1983. Indeed, it seems that the lease was never entered into but rather that the former owners are now caretakers.

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Questions also arise as to whether the Pensioners Action Fund's leasing or eventual sale of its real estate property would place it in violation of 2 U.S.C. § 441b(b)(3)(A) or of 2 U.S.C. § 441a(f).^{4/} 2 U.S.C. § 441b(b)(3)(A) prohibits separate segregated funds from making contributions or expenditures "by moneys obtained in any commercial transaction." Yet 11 C.F.R. § 103.3 permits the transfer of funds from a registered depository for investment purposes, provided they are returned to the depository before expenditures are made. Thus, income received from the sale or leasing of real estate owned by a separate segregated fund could be deemed to fall within the definition of commercial transactions and thus be unavailable for contributions or expenditures, or it could be treated in the same manner as investment income derived from transfers into an interest-bearing savings account or investment in Government treasury notes (AO 1975-41), investment in a savings and loan association (AO 1976-25), or investment in an investment trust (AO 1980-39), i.e., as available for expenditures. The leasing or, especially, the sale of the property could also be viewed as a contribution from the lessee or purchaser. However, this respondent has not reported income from either the leasing or the sale of the real estate in question, nor has it reported contributions to federal candidates in 1983 or 1984. Therefore,

^{4/} Counsel also informed the Audit Division that this real estate has been put up for sale.

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Questions also arise as to whether the Pensioners Action Fund's leasing or eventual sale of its real estate property would place it in violation of 2 U.S.C. § 441b(b)(3)(A) or of 2 U.S.C. § 441a(f).^{4/} 2 U.S.C. § 441b(b)(3)(A) prohibits separate segregated funds from making contributions or expenditures "by moneys obtained in any commercial transaction." Yet 11 C.F.R. § 103.3 permits the transfer of funds from a registered depository for investment purposes, provided they are returned to the depository before expenditures are made. Thus, income received from the sale or leasing of real estate owned by a separate segregated fund could be deemed to fall within the definition of commercial transactions and thus be unavailable for contributions or expenditures, or it could be treated in the same manner as investment income derived from transfers into an interest-bearing savings account or investment in Government treasury notes (AO 1975-41), investment in a savings and loan association (AO 1976-25), or investment in an investment trust (AO 1980-39), i.e., as available for expenditures. The leasing or, especially, the sale of the property could also be viewed as a contribution from the lessee or purchaser. However, this respondent has not reported income from either the leasing or the sale of the real estate in question, nor has it reported contributions to federal candidates in 1983 or 1984. Therefore, we do not recommend pursuing this matter at this time.

^{4/} Counsel also informed the Audit Division that this real estate has been put up for sale.

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1652

RESPONDENT Masters, Mates and Pilots
Political Contribution Fund

SUMMARY OF ALLEGATIONS

On March 16, 1984, the Commission referred to this Office certain matters contained in an attachment to the Final Audit Report on the Pensioners Action Fund which covered that committee's activities between January 1, 1981 and December 31, 1982. These matters are:

1) Whether the Pensioners Action Fund is still to be considered affiliated with the Masters, Mates and Pilots Political Contribution Fund ("Political Contribution Fund") by virtue of their common establishment by the International Organization of Masters, Mates and Pilots ("the IOMMP" or "the Union"), despite the assertion of the Pensioners Action Fund, verified by the Audit Division, that it has received no contributions through the Union since December, 1976.

2) Whether a committee which breaks with the connected organization through which it established multicandidate status maintains that status after the relationship is ended.

FACTUAL BASIS AND LEGAL ANALYSIS

A. Affiliation

2 U.S.C. § 441a(a)(5) states that "all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other

person . . . shall be considered to have been made by a single political committee. . . ." In the present instance the Pensioners Action Fund, originally the Masters, Mates and Pilots Pensioners Action Fund, was registered with the U.S. House of Representatives on April 19, 1973, listing the IOMMP as its connected organization. The committee was funded only by voluntary contributions from retired members of the Union.

In 1976, a dispute arose between the Pensioners Action Fund and the Union, apparently over the Union's desire that the Fund represent and solicit both active seamen and pensioners. On November 19, 1976, the Union registered with the Commission and also listed the IOMMP as its connected organization.^{1/} In December of that same year the Pensioners Action Fund filed an amended Statement of Organization changing its name and listing itself as a membership organization with no reported connected organization.

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States District Court for the Southern District of New York to secure release of these funds. On June 24, 1980, the parties entered into a joint stipulation in which they agreed that the escrowed funds plus interest, totaling \$219,392.58, would be paid over to the Pensioners Action Fund and that upon receipt of these funds the lawsuit would be settled. The court accepted this settlement on July 22, 1980. The escrowed funds were turned over to the Pensioners Action Fund on June 26, 1980.

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Union in 1976 severed both that connection and also any affiliation with the Union's second separate segregated fund.

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it was changing its status from that of a single candidate committee to that of a multicandidate committee. Apparently the validity of such disaffiliation from the Helms committee was never questioned.

The present instance is the first time the Commission has addressed the issue of the disaffiliation of separate segregated funds. This Office reaffirms the position which it took in MUR 414, namely, that once committees are affiliated they cannot terminate this affiliation. This is especially valid when common establishment is involved as it is with the Pensioners Action Fund and the Political Contribution Fund. As noted above, 2 U.S.C. § 441a(a)(5) states that "all contributions made by political committees established or financed or maintained or controlled by any . . . labor organization . . . shall be considered to have been made by a single political committee. . . ." (Emphasis added). The use of the word "or" indicates that only one type of specified relationship is enough to render committees affiliated. Having both been established by the International Organization of Masters, Mates and Pilots, the respondents in this matter cannot obliterate that common establishment by fiat. A new, affiliated and therefore multicandidate committee could be established by persons involved with the Pensioners Action Fund to which that committee could contribute \$5,000.^{3/} Following disposal of its remaining funds

^{3/} See discussion of multicandidate status in Section B below.

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the Pensioners Action Fund could then terminate, leaving the new committee to operate as a multicandidate committee with no connected organization and no affiliated committee with which it shared contribution limitations.

In 1982, both the Pensioners Action Fund and the Political Contribution Fund made contributions to Citizens for Sarbanes for the general election campaign in the amounts respectively of \$5,000 and \$200. Given their affiliated status, these committees have thus violated 2 U.S.C. § 441a(a)(2)(A) by exceeding the \$5,000 limit for multicandidate committees. This Office recommends that the Commission find reason to believe that the Pensioners Action Fund and the Masters, Mates and Pilots Political Action Fund have violated 2 U.S.C. § 441a(a)(2)(A).

B. Multicandidate Status

2 U.S.C. § 441a(a)(4) defines "multicandidate political committee" as a political committee which has been registered for a period of not less than 6 months, which has received contributions from more than 50 persons, and which, except for State political party organizations, has made contributions to five or more federal candidates. Neither the statute nor the Commission's regulations requires a committee to reestablish its multicandidate status upon a change of circumstances regarding the connected organization originally involved, or to meet the statutory criteria during each election cycle. Therefore, it appears that this status is continuous once it has been established.

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Whether or not the Pensioners Action Fund retains multi-candidate status in its own right, its continuing affiliation with the Political Contribution Fund, also a multicandidate committee, would permit the Action Fund to avail itself of the status of its affiliate. See AO 1980-40.

84040464292



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM.

TO: Office of the Commission Secretary
FROM: Office of General Counsel *AK*
DATE: March 29, 1984
SUBJECT: MUR 1652 - Memorandum to The Commission

The attached is submitted as an Agenda document
for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

48 Hour Tally Vote	[]
Sensitive	[]
Non-Sensitive	[]
24 Hour No Objection	[]
Sensitive	[]
Non-Sensitive	[]
Information	[X]
Sensitive	[X]
Non-Sensitive	[]

Other []

DISTRIBUTION

Compliance	[X]
Audit Matters	[]
Litigation	[]
Closed MUR Letters	[]
Status Sheets	[]
Advisory Opinions	[]
Other (see distribution below)	[]

3 9 2 4 6 4 0 4 0 4 8



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

84 MAR 29 A 9: 50

March 28, 1984

SENSITIVE

MEMORANDUM TO: The Commission
FROM: Charles N. Steele
General Counsel
By: Kenneth A. Gross
Associate General Counsel
SUBJECT: Audit Referral

On March 16, 1984 the Commission decided that a part of the Final Audit Report on the Pensioners Action Fund should be referred to the Office of General Counsel and should become a MUR. Therefore, all documents which had previously been contained in the Audit file for the Pensioners Action Fund should now become MUR 1652.

Attachment
Copy of Certification

84040464294

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Final Audit Report on the)
Pensioners Action Fund)

A83-77

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 16, 1984, the Commission decided by a vote of 4-0 to take the following actions in the above-captioned matter:

1. Approve the Audit Report on the Pensioners Action Fund as attached to the Audit Division's March 12, 1984 Memorandum to the Commissioners.
2. Refer the matters contained in Attachment 2 of the Final Audit Report to the Office of General Counsel for further consideration.

Commissioners Aikens, Elliott, McGarry and Reiche voted affirmatively in this matter; Commissioners Harris and McDonald did not cast a vote.

Attest:

3-16-84

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

84040464295



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

A83-77

March 28, 1984

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: BOB COSTA

SUBJECT: FINAL AUDIT REPORT ON THE PENSIONERS
ACTION FUND

On March 16, 1984, the Commission approved the final audit report (see Attachment I) of the above named committee. This final audit report includes matters which are referred to your office as a result of the approval by the Commission (see Attachments II and III).

Should you have any questions regarding this memorandum, please contact Russ Bruner at 523-4155.

Attachments as stated

84040454296



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

A83-77

REPORT OF THE AUDIT DIVISION
ON
THE PENSIONERS ACTION FUND

I. Background

A. Overview

This report is based on an audit of the Pensioners Action Fund ("the Committee"), undertaken by the Audit Division of the Federal Election Commission in accordance with the Commission's audit policy to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this section, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

The Committee registered with the U.S. House of Representatives on April 19, 1973, as the Masters, Mates and Pilots Pensioners Action Fund reporting the International Organization of Masters, Mates and Pilots as its connected organization. On December 14, 1976, the Committee amended its Statement of Organization changing its name to the Pensioners Action Fund. The Committee maintains its headquarters in Baltimore, Maryland.

The audit covered the period January 1, 1981 through December 31, 1982. The Committee reported a cash balance on January 1, 1981 of \$339,887.23; total receipts of \$84,731.87; total expenditures of \$108,453.30; and a cash balance on December 31, 1982 of \$316,165.80.

This audit report is based on documents and work papers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in this report and were available to the Commissioners and appropriate staff for review.

84040464297

B. Key Personnel

The Treasurer of the Committee during the period covered by the Audit was Mr. Pietro Mazzai.

C. Scope

The audit included such tests as verification of total reported receipts and disbursements and individual transactions; review of required supporting documentation; analysis of debts and obligations and such other audit procedures as deemed necessary under the circumstances.

II. Matters Referred to the Office of General Counsel

Matters noted during the audit were referred to the Office of General Counsel on March 16, 1984.

84040464298



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 8, 1984

MEMORANDUM TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Charles N. Steele *CS*
General Counsel

SUBJECT: Report of the Audit Division on the
Pensioners Action Fund

The Office of General Counsel has reviewed the Report of the Audit Division on the Pensioners Action Fund and the accompanying memorandum addressed to this office. Based upon our review of these documents, we make the following comments.

The Audit Division has raised the question of whether the Pensioners Action Fund ("PAF") is "affiliated" (11 C.F.R. § 100.5 (g)(2)) with the Masters, Mates and Pilots Political Contribution Fund ("PCF"). The PAF was established by the International Organization of Masters, Mates and Pilots ("Union") in April 1973, and the PCF was established by the Union in November 1976. 1/

1/ Following a dispute between the Union and the PAF during 1976, the International Union Pension Trust Fund withheld contributions (pension deductions) to the PAF. (See MUR 773 which was generated by an audit of the PAF pursuant to former 2 U.S.C. § 438(a)(8).) In April 1977 the PAF filed a lawsuit premised on federal pension law in the district court of the Southern District of New York to secure the release of the withheld funds. Because of concern that a possible violation of 2 U.S.C. § 441b(a) could occur when and if the withheld PAF funds were eventually transferred to the PAF and used in federal elections, the Commission determined on March 9, 1979, to have the auditors request that the Pension Fund administrator segregate all authorized political monies into an escrow account in order to avoid any possible violations of the Act in the future. The Pension Fund administrator informed the auditors that (continued on next page)

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Pursuant to 11 C.F.R. § 100.5(g)(2), all committees (including a separate segregated fund) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. Furthermore, as set forth at 2 U.S.C. § 441a(a)(5), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee.

The Audit Division's memorandum contains the information that on December 14, 1976, the PAF filed an amended Statement of Organization which changed the committee's name by dropping the prefix "Masters, Mates, and Pilots." This office's review of the amendment, which asks that only changes in previous statements be provided, reveals that the PAF provides no information concerning its connected organization other than that its connected organization is a membership organization. 2/ Audit's memorandum also states that according to counsel for the PAF, the PAF has not been affiliated with the Union since the dispute and has not received any funds through the Union other than those described in footnote 1 supra. The auditor's review of the reports filed by the PAF has verified that the PAF has not received any contributions through the Union since December 1976 and that since December 1976, the PAF's major source of funds has been interest earned on pre-reorganization contributions. 3/

1/ (continued)

the funds had been in a separate, segregated account since January 1979. On August 16, 1979, the Commission determined to take no further action against the PAF and the Pension Fund concerning any past commingling of pension funds and PAF authorized funds. On June 26, 1980, the Pension Trust Fund turned over to the PAF the withheld contributions plus the interest thereon (\$219,392.58).

2/ Accordingly, it is the view of this office that the phrase "... and deleting the Masters, Mates and Pilots as a connected organization" should be omitted from the second paragraph of the first page of the audit report.

3/ Although the PAF's amended Statement of Organization states that its connected organization is a membership organization, there is no information which indicates the identity or existence of the organization.

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In the course of MUR 773 (see footnote 1 supra) the question of affiliation between the PAF and the PCF arose. This office advised the Commission that in light of the facts of the matter it appeared that the PAF and the PCF are "affiliated" by virtue of their respective establishment by a common connected organization, the Union. (See General Counsel's Report, Part A, March 1, 1979.) 4/ However, since at that time the PAF and the PCF had not contributed, in the aggregate, more than \$5,000 to a federal election campaign, the Commission determined to have the auditors inform the PAF, PCF, and the Union that they may be deemed affiliated for purposes of the contribution limitations in 2 U.S.C. § 441a(a) (2) (A). 5/

Because the instant audit of the PAF revealed that the PAF contributed \$5,000 to Citizens for Sarbanes for the 1982 general election and that the PCF contributed \$200 to the same committee for the same election, the Audit Division again raises the issue of affiliation between the two committees. 6/ In view of the facts that the contribution limitations have now been exceeded 7/ and that the PAF apparently intends to become more active in future elections according to Audit, we believe that this issue

4/ The General Counsel's Report in MUR 773 reasoned that both the PAF and the PCF were established by the Union and that the solicitation of contributions to the PAF and the PCF were made under the Union letterhead and signed by the Union President. The General Counsel recognized that the PAF claimed in the then pending lawsuit to be completely separate from the Union, but argued that the PAF never amended its Statement of Organization to reflect that it was no longer connected to the Union. The General Counsel further argued that although the PAF relied, as evidence of its independence, on the fact that none of the present officers of the PAF were officers of the Union, non-commonalty of officers is not a determinative factor in deciding whether the organizations are affiliated.

5/ Subsequently, on August 16, 1979, the Commission determined to "take no action against the PCF and the PAF concerning their possible affiliation at this time."

6/ As affiliated committees the PAF and the PCF are limited to contributing \$5,000 in the aggregate to Citizens for Sarbanes for the general election. 2 U.S.C. § 441a(a) (5) and 2 U.S.C. § 441a(a) (2) (A).

7/ Audit's accompanying memorandum to this office notes that "[t]hough outside of the period audited, a similar problem occurred during the 1980 election."

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should be referred to this office. 8/ Not only have the PAF and PCF been on notice since 1979 that the two committees may be viewed as affiliated by the Commission, but a Commission determination with respect to their affiliation and the PAF's connection to the Union will serve to provide guidance to the PAF and PCF in future operations.

With respect to Audit's question concerning the multicandidate status of the PAF, your memorandum states that "it is unclear whether a committee which breaks with the connected organization through which it establishes multicandidate status maintains that status if that connection is ended." It is our view that the issue of the PAF's connection to the Union is directly tied in with its above relationship (affiliation) with the PCF. Hence, we recommend that these issues be considered jointly in a referral to this office.

A final issue raised in Audit's memorandum concerns the PAF's reported purchase of real estate property as an investment on August 18, 1982. 9/ According to Audit, the property was not rented during the period covered by the audit. However, the PAF's counsel stated that the property was rented to a PAF consultant for \$1,000 a month during the months of June, July, and August 1983. Audit obtained from the PAF an unexecuted copy of a lease that stated that the property was to be used by the tenant as a private domicile and for no other purpose. Audit's memorandum also states that the property has been put up for sale and that the PAF did not report the receipt of rental income on its 1983 Mid-Year Report.

8/ Audit notes that because the amount in excess of the contribution limitation is only \$200 this matter will not be included as a finding in the audit report since the materiality threshold for excessive contributions has not been exceeded, unless the PAF "is determined not to be a multicandidate committee."

9/ The PAF reported a disbursement of \$240,000 on August 18, 1982, to Thomas F. O'Callaghan for the "investment purchase of real estate land" (\$64,025), a building (\$135,975), and furniture and fixtures (\$40,000).

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From the information provided by Audit it does not appear that a violation of 2 U.S.C. § 441b(b)(3) 10/ occurred during the period audited with respect to the investment property, assuming the PAF is the separate segregated fund of the Union. In the view of this office, the purchase of real estate property by the PAF is not in itself a violation of the Act. In that both the rental of the investment property and the apparent failure to report rental income occurred outside the scope of the audit, the audit report should not reflect this activity. 11/ Moreover, because the PAF's 1983 reports do not indicate that the PAF has made a "contribution" or an "expenditure" since the property was rented, it is this office's view that this matter concerning 2 U.S.C. § 441b(b)(3) need not be addressed at this time. As to the PAF's failure to report rental income of \$3,000, however, we recommend that this issue be included in a referral to this office separate from the audit report.

cc: The Commission

10/ Pursuant to 2 U.S.C. § 441b(b)(3) the separate segregated fund of a labor organization may not make a contribution or expenditure with moneys obtained in any commercial transaction.

11/ In the future we ask that Audit prepare a separate memorandum with respect to matters occurring outside the scope of the audit.

84040464303



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 9, 1983

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: BOB COSTA *[Signature]*

SUBJECT: AUDIT OF THE PENSIONERS ACTION
FUND A83-77

During the audit of the Pensioners Action Fund ("the Committee"), several questions regarding the nature of the Committee and its activities arose. The questions relate to the Committee's connection with the International Organization of Masters, Mates and Pilots, qualifications for multi-candidate status, and the conduct of apparent commercial activity. A general review of the Committee's history, along with a discussion of each of the areas noted above follows.

The Masters, Mates and Pilots Pensioners Action Fund registered with the U.S. House of Representatives on April 19, 1973. On October 7, 1974, the Committee and the International Organization of Masters, Mates and Pilots ("the Union") executed an Agreement and Declaration of Trust to broaden the purposes and basis of the Committee in order to further the political and general interests of Union pensioners. The Committee was funded solely by voluntary contributions from retired members of the Union.

During 1976, a dispute arose between the Committee and the Union, and the International Union Pension Trust Fund withheld from the Committee and deposited to an escrow account, contributions (pension deductions) to the Committee. 1/

On November 19, 1976, the Union registered a second committee named the Masters, Mates and Pilots Political Contribution Fund ("MMP-PCF").

1/ According to the Committee's counsel the dispute revolved around an attempt by the Union to increase its control over Committee decisions.

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On December 14, 1976, the Committee filed an amended Statement of Organization changing the Committee name to the Pensioners Action Fund, and listing itself as a membership organization, with no connected organization.

The Committee sued the Union, and received the escrowed funds from the Union by check dated June 26, 1980.

According to the Committee's counsel, since the dispute, the Committee has not been affiliated with the Union, and other than the litigation funds, has not received any funds through the Union.

The Audit staff's review of Committee reports verified the Committee's counsel's statement, and showed that the Committee has not received any contributions (other than the escrow transfer) since the amended Statement of Organization. Since December of 1976, the Committee's major source of funds has been interest earned on pre-reorganization contributions.

Multi-Candidate Status

The Masters, Mates and Pilots Pensioners Action Fund is a qualified multi-candidate committee. However, it is unclear whether a committee which breaks with the connected organization through which it established multi-candidate status maintains that status if that connection is ended. In a sense, the reorganization of the Committee can be seen as a termination of one form of committee, and the subsequent formation of a different type of committee. In this case, the Committee continued to operate as a multi-candidate committee, making contributions up to the \$5,000 limit to candidate committees.

Since the reorganization, the Committee has supported only 4 federal candidates, and would not qualify as a multi-candidate committee. During the period of audit, the Committee contributed \$5,000 to Citizens For Sarbanes on October 7, 1982.

Affiliation

Both the MMP-PCF and the Committee were established by the Union. In accordance with 11 C.F.R. 100.5(g)(2), committees established by the same labor organization are affiliated. However, since the Committees dispute with the Union, the Pensioners Action Fund has acted independent of the Union and the MMP-PCF.

In 1982, the Committee and the MMP-PCF both gave contributions to Citizens For Sarbanes. ^{2/} MMP-PCF contributed

^{2/} Though outside of the audit period, a similar problem occurred during the 1980 election.

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\$3,000 to Citizens For Sarbanes during the primary, and on September 30, 1982 contributed \$200.00 for the general election. The Pensioners Action Fund contributed \$5,000 to Citizens For Sarbanes for the general election on October 7, 1982. 3/

The Committee's counsel stated that the Committee intends to become more active in future elections.

Apparent Commercial Activity

On August 18, 1982, the Committee reported the purchase of real estate property as an investment. The Reports Analysis Division contacted the Committee, and required that the purchase price of the property be included in cash-on-hand.

According to the Committee counsel for the months of June, July and August of 1983, the property was rented to a Committee consultant for \$1,000 per month. An unexecuted copy of the lease, provided by the Committee, stated that the property was to be used by the tenant as a private domicile, residence and for no other purposes. The property has been put up for sale.

During the period covered by the audit, the property was not rented. A report filed by the Committee covering part of the period in which the property was rented (1/1/83 - 7/30/83) fails to show the receipt of rental income.

The affiliation question also affects this issue in that 2 U.S.C. 441b(b) (3) (the commercial transaction prohibition) would seem to be relevant only if the Committee is still connected with the Union.

The attached audit report is being forwarded with no findings pending your analysis of the above issues. In addition, you will also find attached a memorandum relating to the affiliation question. The question was previously forwarded to the Office of General Counsel as a result of the audit of the Pensioners Action Fund conducted in 1978. If you have any questions, please do not hesitate to call Glen Buco or Russ Bruner at 523-4155.

3/ This matter would not be included as a finding in the Audit report because it did not exceed the materiality threshold for excessive contributions unless the committee is determined not to be a multicandidate committee.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO:

ROBERT J. COSTA *mwc*

FROM:

MARJORIE W. EMMONS/JODY C. RANSOM *JCR*

DATE:

MARCH 16, 1984

SUBJECT:

COMMENTS RE: FINAL AUDIT REPORT ON THE
PENSIONERS ACTION FUND, Memorandum
to the Commissioners dated March 12,
1984

Attached is a copy of Commissioner Aikens' vote sheet
with comments regarding the above-captioned matter.

84040464307

✓cc: General Counsel Steele



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSIONER

84 MAR 13

P2:56

REPORT OF THE AUDIT DIVISION
A83-77
MARCH 12, 1984

MEMORANDUM

TO: THE COMMISSIONERS

FROM: JOHN C. SURINA
STAFF DIRECTOR

FROM: BOB COSTA

SUBJECT: FINAL AUDIT REPORT ON THE
PENSIONERS ACTION FUND

Attached for your approval is the subject audit report (Attachment 1). Attachment 2 contains the Counsel's analysis of matters noted during the audit. Counsel recommends that these matters be referred for further consideration. Finally, Attachment 3 contains our memorandum to Counsel.

A formal referral will be forwarded to the Office of General Counsel after approval of the audit report.

This final report is being circulated to the Commission for a tally vote. If an objection is received, I recommend that the matter be placed on the next regularly scheduled Executive Session agenda.

If you have any questions, please contact Russ Bruner at 523-4155.

Attachments as stated

SENSITIVE

84040464308



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

81 MAR 18

WASHINGTON, D.C. 20463



A83-77

REPORT OF THE AUDIT DIVISION

ON
THE PENSIONERS ACTION FUND

March 12, 1984

I. BackgroundA. Overview

This report is based on an audit of the Pensioners Action Fund ("the Committee"), undertaken by the Audit Division of the Federal Election Commission in accordance with the Commission's audit policy to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this section, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

The Committee registered with the U.S. House of Representatives on April 19, 1973, as the Masters, Mates and Pilots Pensioners Action Fund reporting the International Organization of Masters, Mates and Pilots as its connected organization. On December 14, 1976, the Committee amended its Statement of Organization changing its name to the Pensioners Action Fund. The Committee maintains its headquarters in Baltimore, Maryland.

The audit covered the period January 1, 1981 through December 31, 1982. The Committee reported a cash balance on January 1, 1981 of \$339,887.23; total receipts of \$84,731.87; total expenditures of \$108,453.30; and a cash balance on December 31, 1982 of \$316,165.80.

This audit report is based on documents and work papers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in this report and were available to the Commissioners and appropriate staff for review.

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The Treasurer of the Committee during the period covered by the Audit was Mr. Pietro Mazzai.

The audit included such tests as verification of total reported receipts and disbursements and individual transactions; review of required supporting documentation; analysis of debts and obligations and such other audit procedures as deemed necessary under the circumstances.

Matters noted during the audit were referred to the Office of General Counsel on _____.

The Office of General Counsel has reviewed the report on the Audit Division's investigation of this matter. It is noted that the report on the investigation of this matter was dated 10/1/78.

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY
5708 S. DICKINSON AVE.
CHICAGO, ILL. 60637



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Rev. Personnel

MEMORANDUM TO: Robert J. Costa
 Assistant Staff Director
 Audit Division

THROUGH: John C. Surina
 Staff Director

FROM: Charles N. Steele
 General Counsel

SUBJECT: Report of the Audit Division on the Pensioners Action Fund

The Office of General Counsel has reviewed the Report of the Audit Division on the Pensioners Action Fund and the accompanying memorandum addressed to this office. Based upon our review of these documents, we make the following comments.

The Audit Division has raised the question of whether the Pensioners Action Fund ("PAF") is "affiliated" (11 C.F.R. § 100.5 (g)(2)) with the Masters, Mates and Pilots Political Contribution Fund ("PCF"). The PAF was established by the International Organization of Masters, Mates and Pilots ("Union") in April 1973, and the PCF was established by the Union in November 1976. 1/

1/ Following a dispute between the Union and the PAF during 1976, the International Union Pension Trust Fund withheld contributions (pension deductions) to the PAF. (See MUR 773 which was generated by an audit of the PAF pursuant to former 2 U.S.C. § 438(a)(8).) In April 1977 the PAF filed a lawsuit premised on federal pension law in the district court of the Southern District of New York to secure the release of the withheld funds. Because of concern that a possible violation of 2 U.S.C. § 441b(a) could occur when and if the withheld PAF funds were eventually transferred to the PAF and used in federal elections, the Commission determined on March 9, 1979, to have the auditors request that the Pension Fund administrator segregate all authorized political monies into an escrow account in order to avoid any possible violations of the Act in the future. The Pension Fund administrator informed the auditors that (continued on next page)

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Pursuant to 11 C.F.R. § 100.5(g)(2), all committees (including a segregated fund) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated. Furthermore, as set forth at 2 U.S.C. § 441a(a)(5), all funds to contributions made by political committees established or in any financial or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee.

The Audit Division's memorandum contains the information that on December 14, 1976, the PAF filed an amended Statement of Organization which changed the committee's name by dropping the prefix "Masters, Mates, and Pilots." This office's review of the amendment, which asks that only changes in previous statements be provided, reveals that the PAF provides no information concerning its connected organization other than that its connected organization is a membership organization. 2/ Audit's memorandum also states that according to counsel for the PAF, the PAF has not been affiliated with the Union since the dispute and has not received any funds through the Union other than those described in footnote 1 supra. The auditor's review of the reports filed by the PAF has verified that the PAF has not received any contributions through the Union since December 1976 and that since December 1976, the PAF's major source of funds has been interest earned on pre-reorganization contributions. 3/

1/ (continued)

the funds had been in a separate, segregated account since January 1979. On August 16, 1979, the Commission determined to take no further action against the PAF and the Pension Fund concerning any past commingling of pension funds and PAF authorized funds. On June 26, 1980, the Pension Trust Fund turned over to the PAF the withheld contributions plus the interest thereon (\$219,392.58).

2/ Accordingly, it is the view of this office that the phrase "... and deleting the Masters, Mates and Pilots as a connected organization" should be omitted from the second paragraph of the first page of the audit report.

3/ Although the PAF's amended Statement of Organization states that its connected organization is a membership organization, there is no information which indicates the identity or existence of the organization.

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In the course of MUR 773 (see footnote 1 supra), the question of affiliation between the PAF and the PCF arose. This office advised the Commission that in light of the facts of the matter, it appeared that the PAF and the PCF are "affiliated" by virtue of their respective establishment by a common connected organization, the Union. (See General Counsel's Report, Part A, March 1, 1979.) 4/ However, since at that time the PAF and the PCF had not contributed, in the aggregate, more than \$5,000 to a federal election campaign, the Commission determined to have the auditors inform the PAF, PCF, and the Union that they may be deemed affiliated for purposes of the contribution limitations in 2 U.S.C. § 441a(a)(2)(A). 5/

Because the instant audit of the PAF revealed that the PAF contributed \$5,000 to Citizens for Sarbanes for the 1982 general election and that the PCF contributed \$200 to the same committee for the same election, the Audit Division again raises the issue of affiliation between the two committees. 6/ In view of the facts that the contribution limitations have now been exceeded 7/ and that the PAF apparently intends to become more active in future elections according to Audit, we believe that this issue

4/ The General Counsel's Report in MUR 773 reasoned that both the PAF and the PCF were established by the Union and that the solicitation of contributions to the PAF and the PCF were made under the Union letterhead and signed by the Union President. The General Counsel recognized that the PAF claimed in the then pending lawsuit to be completely separate from the Union, but argued that the PAF never amended its Statement of Organization to reflect that it was no longer connected to the Union. The General Counsel further argued that although the PAF relied, as evidence of its independence, on the fact that none of the present officers of the PAF were officers of the Union, non-commonality of officers is not a determinative factor in deciding whether the organizations are affiliated.

5/ Subsequently, on August 16, 1979, the Commission determined to "take no action against the PCF and the PAF concerning their possible affiliation at this time."

6/ As affiliated committees the PAF and the PCF are limited to contributing \$5,000 in the aggregate to Citizens for Sarbanes for the general election. 2 U.S.C. § 441a(a)(5) and 2 U.S.C. § 441a(a)(2)(A).

7/ Audit's accompanying memorandum to this office notes that "[t]hough outside of the period audited, a similar problem occurred during the 1980 election."

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should be referred to this office. 8/ Not only have the PAF and PCF been on notice since 1979 that the two committees may be viewed as affiliated by the Commission, but a Commission determination with respect to their affiliation and the PAF's connection to the Union will serve to provide guidance to the PAF and PCF in future operations.

With respect to Audit's question concerning the multicandidate status of the PAF, your memorandum states that "it is unclear whether a committee which breaks with the connected organization through which it establishes multicandidate status maintains that status if that connection is ended." It is our view that the issue of the PAF's connection to the Union is directly tied in with its above relationship (affiliation) with the PCF. Hence, we recommend that these issues be considered jointly in a referral to this office.

A final issue raised in Audit's memorandum concerns the PAF's reported purchase of real estate property as an investment on August 18, 1982. 9/ According to Audit, the property was not rented during the period covered by the audit. However, the PAF's counsel stated that the property was rented to a PAF consultant for \$1,000 a month during the months of June, July, and August 1983. Audit obtained from the PAF an unexecuted copy of a lease that stated that the property was to be used by the tenant as a private domicile and for no other purpose. Audit's memorandum also states that the property has been put up for sale and that the PAF did not report the receipt of rental income on its 1983 Mid-Year Report.

8/ Audit notes that because the amount in excess of the contribution limitation is only \$200 this matter will not be included as a finding in the audit report since the materiality threshold for excessive contributions has not been exceeded, unless the PAF "is determined not to be a multicandidate committee."

9/ The PAF reported a disbursement of \$240,000 on August 18, 1982, to Thomas F. O'Callaghan for the "investment purchase of real estate land" (\$64,025), a building (\$135,975), and furniture and fixtures (\$40,000).

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From the information provided by Audit it does not appear that a violation of 2 U.S.C. § 441b(b)(3) 10/ occurred during the period audited with respect to the investment property, assuming that the PAF is the separate segregated fund of the Union. In the view of this office, the purchase of real estate property by the PAF is not in itself a violation of the Act. In that both the rental of the investment property and the apparent failure to report rental income occurred outside the scope of the audit, the audit report should not reflect this activity. 11/ Moreover, because the PAF's 1983 reports do not indicate that the PAF had made a "contribution" or an "expenditure" since the property was rented, it is this office's view that this matter concerning 2 U.S.C. § 441b(b)(3) need not be addressed at this time. As to the PAF's failure to report rental income of \$3,000, however, we recommend that this issue be included in a referral to this office separate from the audit report.

cc: The Commission

10/ Pursuant to 2 U.S.C. § 441b(b)(3) the separate segregated fund of a labor organization may not make a contribution or expenditure with moneys obtained in any commercial transaction.

11/ In the future we ask that Audit prepare a separate memorandum with respect to matters occurring outside the scope of the audit.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 9, 1983

MEMORANDUM

TO: **CHARLES N. STEELE**
GENERAL COUNSEL

THROUGH: **JOHN C. SURINA**
STAFF DIRECTOR

FROM: **BOB COSTA**

SUBJECT: **AUDIT OF THE PENSIONERS ACTION
FUND A83-77**

During the audit of the Pensioners Action Fund ("the Committee"), several questions regarding the nature of the Committee and its activities arose. The questions relate to the Committee's connection with the International Organization of Masters, Mates and Pilots, qualifications for multi-candidate status, and the conduct of apparent commercial activity. A general review of the Committee's history, along with a discussion of each of the areas noted above follows.

The Masters, Mates and Pilots Pensioners Action Fund registered with the U.S. House of Representatives on April 19, 1973. On October 7, 1974, the Committee and the International Organization of Masters, Mates and Pilots ("the Union") executed an Agreement and Declaration of Trust to broaden the purposes and basis of the Committee in order to further the political and general interests of Union pensioners. The Committee was funded solely by voluntary contributions from retired members of the Union.

During 1976, a dispute arose between the Committee and the Union, and the International Union Pension Trust Fund withheld from the Committee and deposited to an escrow account, contributions (pension deductions) to the Committee. ^{1/}

On November 19, 1976, the Union registered a second committee named the Masters, Mates and Pilots Political Contribution Fund ("MMP-PCF").

^{1/} According to the Committee's counsel the dispute revolved around an attempt by the Union to increase its control over Committee decisions.

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to the
ship
crowd

According to the Committee's counsel, since the dispute, the Committee has not been affiliated with the Union, and other than the litigation funds, has not received any funds through the Union.

The Audit Staff's review of Committee reports verified the Committee's counsel's statement, and showed that the Committee has not received any contributions (other than the escrow transfer) since the amended Statement of Organization. Since December of 1976, the Committee's major source of funds has been interest earned on pre-reorganization contributions.

The Masters, Mates and Pilots Pensioners Action Fund is a qualified multi-candidate committee. However, it is unclear whether a committee which breaks with the connected organization through which it established multi-candidate status maintains that status if that connection is ended. In a sense, the reorganization of the Committee can be seen as a termination of one form of committee, and the subsequent formation of a different type of committee. In this case, the Committee continued to operate as a multi-candidate committee, making contributions up to the \$5,000 limit to candidate committees.

Since the reorganization, the Committee has supported only 4 federal candidates, and would not qualify as a multi-candidate committee. During the period of audit, the Committee contributed \$5,000 to Citizens For Sarbanes on October 7, 1982.

Both the MMP-PCF and the Committee were established by the Union. In accordance with 11 C.F.R. 100.5(g)(2), committees established by the same labor organization are affiliated. However, since the Committees dispute with the Union, the Pensioners Action Fund has acted independent of the Union and the MMP-PCF.

In 1982, the Committee and the MMP-PCF both gave contributions to Citizens For Sarbanes. 2/ MMP-PCF contributed

2/ Though outside of the audit period, a similar problem occurred during the 1980 election.

\$3,000 to Citizens For Sarbanes during the primary, and on September 30, 1982 contributed \$200.00 for the general election. The Pensioners Action Fund contributed \$5,000 to Citizens For Sarbanes for the general election on October 7, 1982. 3/

The Committee's counsel stated that the Committee intends to become more active in future elections.

Apparent Commercial Activity

On August 18, 1982, the Committee reported the purchase of real estate property as an investment. The Reports Analysis Division contacted the Committee, and required that the purchase price of the property be included in cash-on-hand.

According to the Committee counsel for the months of June, July and August of 1983, the property was rented to a Committee consultant for \$1,000 per month. An unexecuted copy of the lease, provided by the Committee, stated that the property was to be used by the tenant as a private domicile, residence and for no other purposes. The property has been put up for sale.

During the period covered by the audit, the property was not rented. A report filed by the Committee covering part of the period in which the property was rented (1/1/83 - 7/30/83) fails to show the receipt of rental income.

The affiliation question also affects this issue in that 2 U.S.C. 441b(b) (3) (the commercial transaction prohibition) would seem to be relevant only if the Committee is still connected with the Union.

The attached audit report is being forwarded with no findings pending your analysis of the above issues. In addition, you will also find attached a memorandum relating to the affiliation question. The question was previously forwarded to the Office of General Counsel as a result of the audit of the Pensioners Action Fund conducted in 1978. If you have any questions, please do not hesitate to call Glen Buco or Russ Bruner at 523-4155.

- 3/ This matter would not be included as a finding in the Audit report because it did not exceed the materiality threshold for excessive contributions unless the committee is determined not to be a multicandidate committee.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20541

REPORT OF THE AUDIT DIVISION

ON THE PENSIONERS ACTION FUND

1. Background

A. Overview

This report is based on an audit of the Pensioners Action Fund ("the Committee"), undertaken by the Audit Division of the Federal Election Commission in accordance with the Commission's audit policy to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this section, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

The Committee registered with the U.S. House of Representatives on April 19, 1973, as the Masters, Mates and Pilots Pensioners Action Fund reporting the International Organization of Masters, Mates and Pilots as its connected organization. On December 14, 1976, the Committee amended its Statement of Organization changing its name to the Pensioners Action Fund, and deleting the Masters Mates and Pilots as a connected organization. The Committee maintains its headquarters in Baltimore, Maryland.

The audit covered the period January 1, 1981 through December 31, 1982. The Committee reported a cash balance on January 1, 1981 of \$339,887.23; total receipts of \$84,731.87; total expenditures of \$108,453.30; and a cash balance on December 31, 1982 of \$316,165.80.

This audit report is based on documents and work papers which support each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in this report and were available to the Commissioners and appropriate staff for review.

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WASHINGTON, D.C. 20543
JULY 1, 1978



B. Key Personnel

The Treasurer of the Committee during the period covered by the Audit was Mr. Pietro Mazzai.

C. Scope

The audit included such tests as verification of total reported receipts and disbursements and individual transactions; review of required supporting documentation; analysis of debts and obligations and such other audit procedures as deemed necessary under the circumstances.

II. Finding and Recommendation

Based on an examination of the reports, statements, and the records provided by the Committee, no material problems in complying with the Federal Election Campaign Act were discovered during the course of the audit.

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FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20543

October 20, 1978

MEMORANDUM

TO : WILLIAM OLDAKER

THROUGH : ORLANDO B. POTTER
STAFF DIRECTOR

FROM : BOB COSTA, CRAIG RUSSELL

SUBJECT : MASTERS, MATES AND PILOTS PENSIONERS
ACTION FUND

During recent audit fieldwork done on the Masters, Mates and Pilots Pensioners Action Fund (PAF) we became aware of information which prompts this memo requesting guidance on certain policy questions.

Introduction

Beginning in 1970, the International Organization of Masters, Mates and Pilots (IOMMP) began soliciting voluntary contributions from its retired pensioners for a political fund. These solicitations requested the pensioners to authorize, via a reply card, the IOMMP Pension Fund to withhold a uniform rate of 3% from their monthly pension benefit checks for collection and transmittal to the political fund. This political fund formally established itself and registered with the U.S. House of Representatives on April 19, 1973, as the Masters, Mates and Pilots Pensioners Action Fund (PAF). The PAF statement of organization discloses the International Organization of Masters, Mates and Pilots (IOMMP) as its affiliated or connected organization and indicates its members are retired members of the IOMMP. The PAF proceeded through most of 1975 on this basis, receiving by that time approximately \$10,000 per month of voluntary 3% check off monies from IOMMP pensioners, administered and transmitted by the IOMMP pension plans. 1/

1/ Actually, the IOMMP had two (2) Pension Funds, one (1) for East and Gulf Coast pensioners based in New York, the other representing West Coast pensioners, headquartered in San Francisco.



In late 1975 or early 1976 during union elections, a political dispute arose between factions in the union (IOMMP) leadership, resulting in the election of new IOMMP officers. As far as we are able to deduce from available information, the dispute centered around the desire of the new President of IOMMP to transform the PAF into a PAC representing both active seamen and pensioners. In contrast the former IOMMP President, responsible for forming the PAF, felt that the interests of pensioners under such a fund would not be given adequate consideration. This resulted, after the switch in IOMMP officers, in a campaign for a new political fund which was to be more broadly based in its solicitation of voluntary political contributions from active seamen/members of IOMMP, as well as pensioners. This fund registered with the Federal Election Commission on November 19, 1976, as the Masters, Mates and Pilots Political Contribution Fund (PCF), listing its connected organization as the IOMMP and indicating that "voluntary contributions are received from current and retired members of the Union."

The new IOMMP leadership instituted a uniform 2% check-off system (in contrast to PAF 3%) in an apparent attempt to persuade pensioners previously contributing to PAF to switch to PCF. The IOMMP solicited PAF pensioners to this effect, in addition to active seamen and more recently retired pensioners. The IOMMP/PCF efforts were at least partially successful and many former PAF pensioners switched their authorization over to PCF, commencing in January of 1977. The PCF has filed reports of receipts and expenditures with the Commission since that time. The PAF has also continued to file.

Apparently as a result of instructions from IOMMP officers, commencing in February of 1976 for the New York-based Pension Fund and in April for the San Francisco-based Pension Fund, all 3% monthly withholdings from PAF pensioners were retained by the Pension funds and not transmitted on to the PAF. These funds have been accumulating in accounts at both Pension funds since that time and as of June 30, 1978, the balances of PAF-withheld funds totaled \$140,360.83 and \$18,904.56 for the New York and San Francisco-based pension plans, respectively. In mid-1977, the PAF filed suit against the Pension Funds (now merged as of 6/30/78) for the release of all 3% voluntary deductions withheld from the PAF by the Pension Funds since 1976. As of the end of the initial audit fieldwork, the law suit remains pending.

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Affiliation Issue

Within the described factual situation, the question of affiliation between the PAF and PCF arises.

As previously stated both funds have reported the IOMMP for their affiliated connected organization. In addition, to the extent that the IOMMP solicited PAF donating pensioners on behalf of the newly formed PCF, some pensioners have donated to both funds, although not at the same time, as confirmed by our partial review of PAF and PCF reports. In contrast, certain information has been made available to us which leads us to conclude that for practical purposes the PAF and PCF are not affiliated. Representatives of the New York-based Pension Fund have stated that there is no connection between the PAF and the PCF, as evidenced by the fact there are no members common to both Boards of Trustees. In addition, whereas there is an obvious connection between the PCF and present union leaders, and between present union leaders and the IOMMP Pension Fund, the PAF has claimed its independence from both the present union leadership and appears to be administratively separate from the Pension Fund which administers its check-off plan. During our audit fieldwork, as yet uncompleted, we found no evidence of transfers of funds between the PAF and the PCF.

If both PAC's are deemed affiliated by their common connected organization and overlapping membership fields (described above), then we question the propriety of our advising the committee during the completion of audit fieldwork to guard against contributions to Federal candidates, which when aggregated with contributions by PCF to the same candidates, are in excess of the joint limitation of 2 U.S.C. 441a(a)(2)(A).

On the other hand, if it is the opinion of the Office of General Counsel that the two (2) Committees are not affiliated, to what extent would an eventual termination of PAF and transmittal of surplus funds to PCF in excess of \$5,000 be seen as a violation of 2 U.S.C. 441a(a)(2)(C)?

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PAF Pension Fund Check-Off Processing System

As indicated earlier, both pension funds served as authorized agents in the withholding of 3% PAF contributions from pension benefit payments and the transmittal of monthly totals to PAF. The basic procedure was as follows: 2/ General payments were received by the Pension Funds from the Steamship Companies as negotiated in collective bargaining agreements, and deposited into a general treasury "Reserve Account". From this account, several weeks prior to anticipated use, sufficient funds were transferred to the "Pension Benefit" savings account, for the maximization of interest income. From this account, several days prior to planned expenditures, sufficient funds to cover those expenditures were transferred to two (2) accounts: 1) the Operating Account, and 2) the Pension Benefits Account. As the account titles indicate, the Operating Account is used to fund Pension Fund operating expenditures, while the Pension Benefits Account funds the actual benefit checks to pensioners. The Administrator of the Pension Fund has informed us that the benefit checks for the PAF contributing pensioners were drawn on the Pension Benefits Account, while the check for the total of the month's 3% PAF withholdings, based on that month's computer run, was drawn from the Operating Account and forwarded on to PAF up until February, 1976, usually the following month.

This procedure remained in effect until February, 1976, when as indicated previously, the Pension Fund stopped forwarding PAF monies and instead transferred the monthly total back to the Pension Benefits savings account mentioned above. During the initial phase of our fieldwork, we were able to trace monthly 3% PAF totals from the computer runs to the Pension Benefits savings account statements without material discrepancy. However, our question arises because of the fact that PAF contributions have been accumulating in that account since February, 1976, and that the same account has served as a temporary repository for other Pension Fund general treasury funds. Therefore, whether or not the PAF is successful in its suit to have the funds released, the monies (totaling \$140,360.83 as of 6/30/78) will eventually go to the PAF or the PCF which, in our opinion, will be receiving contributions commingled with funds prohibited under the Act. We request your review of this issue so that we may advise the Committee accordingly.

2/ Applies only to New York-based Pension Fund, the records of which were the only ones available during the initial phase of fieldwork (see Attachment I).

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C. Membership Issue

We have been informed by the Administrator of the New York-based Pension Fund that the Pension Fund itself is considered independent from the IOMMP and that the Pension Trust arose out of past collective bargaining agreements between the Steamship Companies and the IOMMP. He added, however, that both parties had representation on the Pension Fund Board of Trustees and that present IOMMP officers serve on the Board of Trustees.

Within the factual situation described in this memo, we question whether the PAF would be considered the separate segregated fund of the IOMMP, or would the PAF be considered the separate segregated fund of a separate membership organization; namely, the Pension Fund. If the Pension Fund is considered as merely an agent of the IOMMP and an integral part thereof, then it would seem to follow that all contributors to the PAF would have to fall within the membership field of the IOMMP, itself.

However, there is a question whether retired members (pensioners) of the Union are still considered "members" within the intent of 2 U.S.C. 441b(b)(4)(A)(ii) (see also 11 CFR 114.1 (e)). We have been informed by the Administrator of the Pension Fund that all retirees are given the option of continuing to pay their annual union dues in order to retain their "membership" in the IOMMP, subject to certain restrictions. Our question for your consideration is whether or not this condition (the continuance of the payment of dues to the IOMMP by the retired pensioner), also has to be met in order for the PAF Pensioner to be considered a union member for purposes of the FECA. Depending on your response, we would intend to raise the issue with PAF officials upon resumption of the Audit.

D. Solicitation Issue

As indicated previously, the IOMMP solicited pensioners for check-off authorization on behalf of the PAF, from 1970 to 1975, at a flat 3% rate. We have retained a copy of said solicitation letter and reply card which does not explicitly provide potential contributors the option of giving more or less than the 3% as presently required by 11 CFR 114.5(a)(2) (see Attachment II). Because of the effective date of the Commission's Regulations (April 11, 1977), we do not feel that this section can be applied to PAF, in any case. However, available information suggests that

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contributors have been and are being solicited for the PCF on the same basis at a 24 rate. Although actual PCF solicitations have not been reviewed. Our question is: To what extent does a solicitation for contributions to a separate segregated fund which has a uniform guideline have to indicate to the potential contributor his ability to give more or less than the guideline suggests?

If you have any questions on the matters contained herein, please contact Craig Russell on extension 3-4155.

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ATTACHMENT I

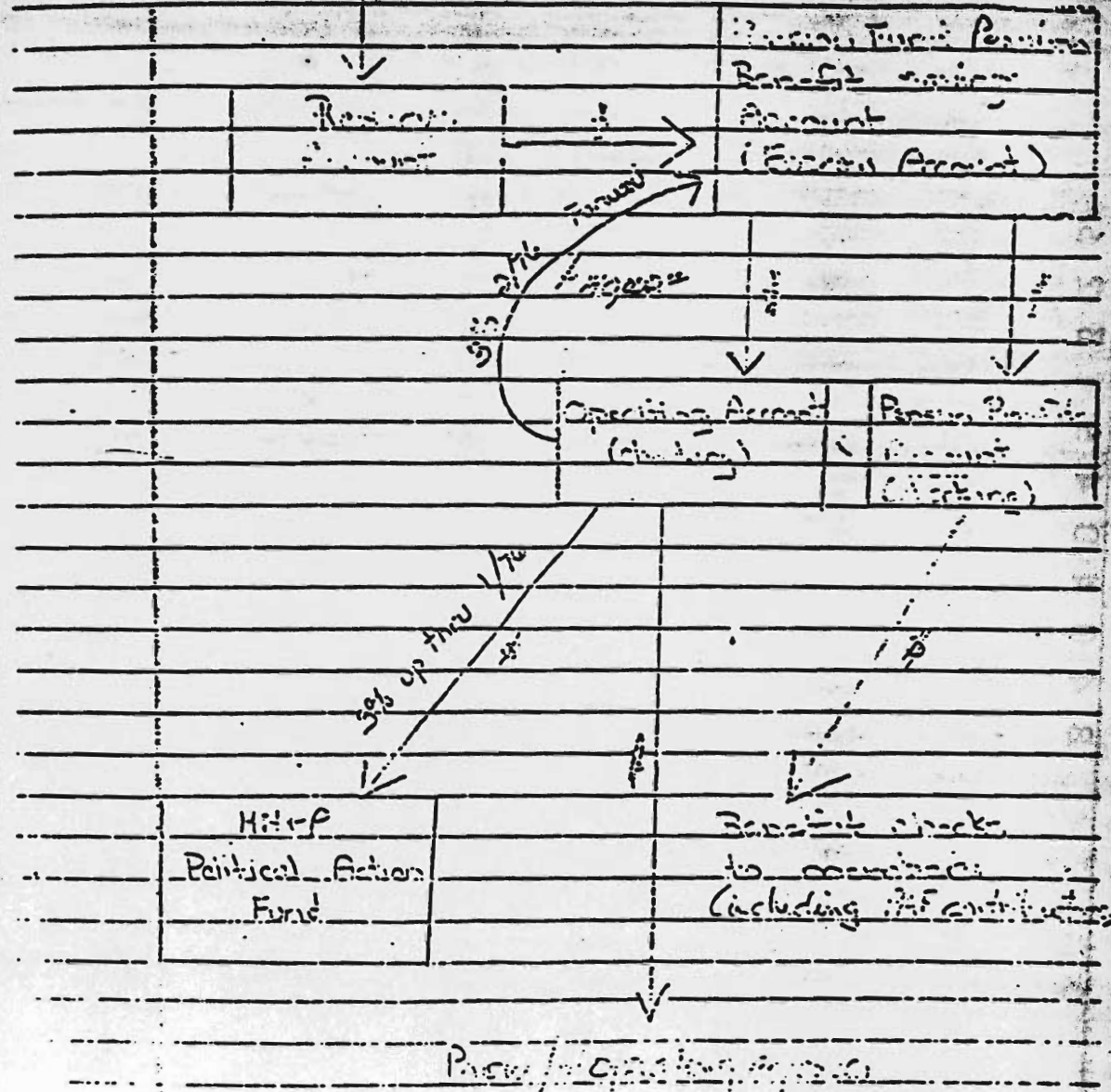
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Internal Control

11/1/70

EXT. CONTROL

Funds Flow Diagram



SOURCE: [illegible]
PURPOSE: [illegible]



Masters, Mates & Pilots

22 Broadway, New York, N.Y. 10003 (212) 944-0505 / Cable: CM:235DECCN / Telex No.: 12-2039

THOMAS J. O'NEILL
International President
WILLIAM W. LAMBERT
International Shipping Line President
ROBERT J. SPINER
International Secretary

ATTACHMENT II

Dear Brother:

Through the efforts of Collective Bargaining we have negotiated expanded welfare benefits for our pensioners and their dependents.

A conservative estimate concluded that similar benefits provided by a private insurance company would come to an out-of-pocket cost of \$450.00 per year.

The Masters, Mates and Pilots is gratified to inform you of this notable achievement in behalf of all our pensioners as a continuing proof of the dedication of our Organization in your behalf; our way of demonstrating we recognize and appreciate the contributions of the pensioners in the development and progress of the Organization. This latest improvement adds to the benefits obtained in recent years:

- Plan pays Medicare premium for pensioners and dependents over age 65.
- Optical benefits paid to pensioners and dependents up to \$42 per person per year.
- Pensioners and dependents younger than age 65 are eligible for benefits similar to those provided for active employees and their dependents, which is paid entirely by the Welfare Plan.

In the face of the clear and unmistakable threats to the economy of the country, the danger of unrestrained rise in living costs, mounting fears of increased taxation on those least able to pay, a strong effort is urgently needed simply to protect our hard won accomplishments; and an even greater challenge faces us all to expand and increase our material welfare levels.

(1)

Our friends and supporters in Congress carry on an uphill fight in support of our legislative programs. They have earned the right to our full moral and financial support. They must know that we back them up by deeds, by contributions, by the will and the means to back up words with action. Our Organization intends to verify our commitments to friendly and helpful Congressmen, to act and speak with purpose and purse.

We have established the new Independent IOMM & P Offshore Division Pensioners' Action Fund to meet urgent needs: to move legislatively and politically in behalf of our pensioners and their immediate and long-term interests; to provide improved and new services to pensioners directly by the Organization; to speak for pensioners and their interests at the bargaining table.

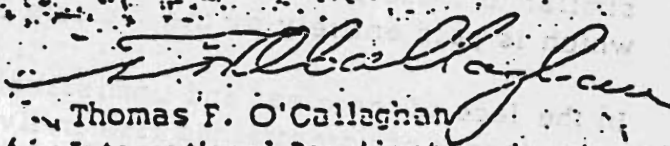
Each individual pensioner has the unequivocal right to voluntarily contribute. We urge your participation in this necessary and crucial effort.

Your signature on the enclosed pension deduction authorization card will record your individual approval of the action campaign we must launch without delay. The Administrator will accept your signed card as authorization to automatically deduct 3% of your pension monthly and forward it to the Fund for the purposes outlined.

Your voluntary contribution is a practical and responsible response to a present clear need, and your personal recognition of the Organization's effort to advance your overall interests in strong and clear action.

I urge you to approve the program and join with all of the pensioners in a united campaign to protect and improve the security and benefits now enjoyed by MM&P members. Please sign now.

Fraternally yours,


Thomas F. O'Callaghan
International President

TOC/mr
Encl.
Rev. 2/73

(2)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Masters, Mates, and Pilots
Political Contribution Fund,
et al

MR 773

GENERAL COUNSEL'S REPORTBackground and Summary of Commission Action

This matter stems from an audit for cause of the Masters, Mates, and Pilots Pensioners Action Fund ("PAF").

In 1970, the International Association of Masters, Mates and Pilots ("IOMMP") began to solicit contributions to a political fund from pensioners who had been members of the IOMMP before retiring. This fund registered with the Clerk of the House of Representatives in April, 1973, as the PAF, listing the IOMMP as its connected organization. Solicitation of pensioners continued, in the form of a request to authorize a 3% deduction from each pensioner's monthly pension benefit check, to be transferred by the Masters, Mates and Pilots Pension Fund ("Pension Fund") administrator to the PAF.

Following an internal dispute, new officers of the IOMMP were elected in early 1976. The new IOMMP leadership determined that its political fund should represent actively employed members of the union as well as pensioners, and so a new political fund, the Masters, Mates and Pilots Political Contribution Fund ("PCF") was established. The PCF registered with the Commission on November 19, 1976,

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listing the IOMMP as its connected organization.

letter was sent to pensioners requesting that they switch authorization of a deduction from their pension benefit checks from the PAF to the PCF, offering a 2% deduction in lieu of the PAF 3% deduction.

In February of 1976, allegedly upon instructions from IOMMP officers^{1/}, the Pensioner Fund administrator ceased transferring to PAF the funds "collected" pursuant to the pensioners' authorizations of 3% PAF deductions. These funds have been accumulating in a Pension Fund account. In April 1977, the PAF filed a lawsuit in the district court of the Southern District of New York to secure release of these funds. The lawsuit is premised on federal pension law and is pending.

On March 8, 1979, the Commission found reason to believe the IOMMP and the PCF violated 2 U.S.C. §441b(b)(4)(A) (ii) by soliciting contributions to the PCF from those who were not members of the union. The Commission also found reason to believe the IOMMP and PCF violated 11 CFR 114.5(a) (2) by not informing those solicited that they could contribute more or less than the guidelines suggested in their solicitations.

^{1/} This allegation is one that is in dispute in the pending lawsuit between the PAF and the Pension Fund Administrator. Fields v. Masters, Mates & Pilots Pension Plan, et al, No. 77-2077 (S.D.N.Y.).

LEGAL ANALYSISA. Affiliation

Upon referring this matter to the General Counsel's Office, the auditors sought advice on whether the PAF and PCF are to be considered affiliated committees under 2 U.S.C. § 441a(a)(5) and 11 CFR 100.14(c)(2). This question is significant because if these committees are not affiliated and the PAF loses the lawsuit concerning the Pension Fund deductions, any of these funds in excess of \$5,000 that are transferred to the PCF would be in violation of 2 U.S.C. § 441a(a)(2)(C).

This office advised the Commission that in light of the facts of this matter, it appears the PAF and PCF are affiliated under 11 CFR 100.14(c)(2) by virtue of the fact that they were established by a common connected organization, the IOHMP. See General Counsel's Report, MUR 773, Part A, March 1, 1979. However, a determination that certain committees are affiliated only has relevance in the context of possible violations of 2 U.S.C. § 441a. There are no federal election campaigns to which the PAF and PCF have contributed a total of more than \$5,000. See Attachment I. Since no violation of the Act's contribution limitations has yet occurred, even if the PAF and PCF are affiliated, the Commission could not make a determination as to affiliation. The Commission, aware of this problem, determined that the auditors should inform the PAF, PCF and IOHMP that they may be deemed affiliated for purposes of the limitations in § 441a(a)(2)(A), and that an advisory opinion request be submitted if an official determination of this issue was desired.

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An audit division staff member carried out the Commission's instructions in advising the treasurer of the PCF, the Secretary-treasurer of the IOMMP, and the PAF attorney of the possible affiliation of the PAF and PCF and availability of the advisory opinion procedure. The PAF attorney, after speaking with a staff attorney, decided not to submit an advisory opinion request because the PAF intends to cease involvement in federal election campaigns. The IOMMP and PCF, who are being represented in this matter by the same attorney, have also apparently decided not to submit an advisory opinion request. As no violation of 2 U.S.C. § 441a(a)(2)(A) has occurred even if the PAF and PCF are deemed affiliated, the General Counsel's Office recommends no further action be taken against the PCF and PAF concerning their possible affiliation.

B. Commingling

Because the PAF authorized funds have not been transferred since February, 1976, but rather are accumulating in a Pension Fund account, the auditors expressed concern that political monies were being commingled with pension funds. If such were the case, a possible violation of 2 U.S.C. § 441b(a) could occur when and if the political funds were eventually transferred to the PAF or PCF and used in federal elections, in that the pension monies might be considered to be corporate and/or union funds. See General Counsel's Report, MUR 773, Part D, March 1, 1979. The Commission determined that the

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auditors should request the Pension Fund administrator to segregate all authorized political monies into an escrow account in order to avoid any possible violations of the Clean Water Act in the future. An audit division staff member contacted the Pension Fund administrator and was informed that these funds have in fact been in a separate, segregated account since January, 1979. The attorney for PAF, the opposing party to the Pension Fund administrator in the lawsuit concerning these funds, confirmed to a staff attorney that the authorized political monies are in a separate account from other Pension Fund monies. The General Counsel's Office therefore recommends the Commission take no further action concerning commingling of PAF authorized and Pension Fund monies.

C. Membership

The PCF admittedly solicits pensioners as well as actively employed members of the IOMMP for contributions to the political fund. 2 U.S.C. § 441b(b)(4)(A)(ii) requires that a union solicit only its members for contributions to the union political action arm. Thus, if pensioners/retirees are not members of the IOMMP, § 441b(b)(4)(A)(ii) has been violated by the PCF and the IOMMP.

11 CFR 114.1(e) defines a "member" of a labor organization as one who currently satisfies the requirements for membership in the local, national, or international organization. The constitution of the IOMMP ("the constitution") (Attachment IV)

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The Board of Directors, adopted October 14, 1977, does not include within its jurisdiction retirees or those not presently employed or engaged in the navigation, piloting, and movement of merchant vessels or handling of waterborne cargo. Article II, § 2; Article III, § 1(a). Nor are pensioners included in any of the membership groups listed in the constitution. Article III § 1(h). Article III, § 2(f) of the constitution, entitled "Duties and Responsibilities of Members to the Organization" requires that the IOMMP member keep himself in "good standing." To be a "member in good standing" the individual must have paid the union dues for the current quarter. Article III § 5(a). Pensioners do not pay dues to the IOMMP, and therefore do not meet a key requirement for membership in the organization. Article VIII. See also, Advisory Opinion 1977-67 (non-stock corporation permitted to solicit as "members" those who regularly paid dues or had them specifically waived).

The PCF, through its attorney, argues that pensioners who were members in good standing prior to retirement have not lost their membership status for non-payment of dues since as "honorary members" they are not required to pay dues. 2/ In Advisory Opinion 1977-67, a showing of a

2/ In determining whether an individual or group of individuals qualify as "members" of an organization, the fact that the organization considers the individuals in question to be members and denominates them as members, should not be persuasive. Otherwise, a labor organization could designate the whole world as "members" and thus avoid any limitations on whom it could properly solicit.

specific waiver of payment of dues, not a broad general waiver, was required to establish a non dues paying individual could be a member of the organization. In addition, IOMMP constitution Article III § 5(a) and (e) sets the standards under which a waiver of dues may be sought; however, retirees and pensioners do not come within the scope of this standard.

The Commission has stated that the solicitation of political contributions from members is based on the special relationship a member has to the organization, as evidenced "by the existence of rights and obligations vis a vis the [organization]." Advisory Opinion 1977-67 at 5. In reviewing the rights and obligations of IOMMP members as set out in the constitution, it appears that pensioners lack such rights and obligations in certain critical areas. The IOMMP constitution provides that members have the right to institute petitions for and vote on referenda, Article III, § 4(a) and (h)(5), to vote on the ratification of a collective bargaining agreement, Article III § 4(h)(4), to vote on constitutional amendments, Article X, and to observe and attend IOMMP convention sessions and committee meetings. Article IV, § 6(d). Pensioners do not have any of these rights. Article III, § 7, Article 4, § 6(d). See also Response from PCF/IOMMP attorney, at 5 (Attachment II).

Nor do pensioners have an effective voice in the IOMMP, or the ability to participate in the policy making process of the union. Unlike actively employed members of the IOMMP, i.e., those in "good standing", pensioners are not eligible to become IOMMP officers or delegates to IOMMP conventions. Article V, § 4; Article IV, § 4(a)(iv); Article III, § 7. Pensioners cannot vote in elections of IOMMP officers. Article V, § III, Article III § 7. The absence of the right to vote in elections, the inability to serve as officers, and the lack of the same status in the organization as "full members" were considered "significant" factors in the Commission's determination in Advisory Opinion 1977-17 that certain individuals were not "members" within the meaning of 11 CFR 114.1(e).

In enacting 2 U.S.C. § 441b(b)(4)(A)(ii), Congress was interested in assuring that unions would "only solicit those they represent." H.R. Rep. No. 94-917, 94th Congress, 2nd Session 7 (1976). The Supreme Court has determined, in the context of the National Labor Relations Act ("NLRA") that a union is not entitled to act as a retiree's representative for collective bargaining purposes, and in fact has no statutory duty to represent retirees. 3/ Allied Chemical

3/ Neither does the IOMMP have a constitutional duty to represent retirees, as nothing in the IOMMP constitution confers such a responsibility on the union.

and Alkali Workers v. Pittsburgh Plate Glass Co., 404 U.S.

157, 181 n.20 (1971). The Court found that retirees do not have a "mutuality of interest" with those actively employed, but rather may often have conflicting interests. Id. at 172-73.

The IOMMP and PCF, through their attorney, argue that the IOMMP represents retirees in negotiations concerning pension benefits. To the extent such negotiations do not implicate the future pension benefits of active employees, under the NLRA, the negotiations need not be initiated or pursued by either the IOMMP or the employer organization. Id. at 181. Therefore, the decision by the IOMMP (and the employer) to bargain over pension benefits is purely a gratuitous one, and the union could withdraw from such practices or adopt a conflicting course of action at anytime, making the alleged representation illusory. Retirees have no recourse if IOMMP bargaining efforts on their behalf cease, and they lack the ability to direct the course of such "representation," since they have no enforceable rights in the IOMMP in terms of a voice in IOMMP policy matters, collective bargaining contracts, or the election of representatives."

It seems apparent that the IOMMP also recognizes pensioners are not accorded actual membership status in the union. Section 411 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401, et seq., entitled "Bill of Rights of

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Members of Labor Organizations", requires that "every member" 4/ of a labor organization shall have equal rights and privileges in the organization with respect to nomination and election of officers, and votes on referenda. 29 U.S.C. § 411(a)(1). However, pensioners do not have equal rights in these areas to those of IOMMP members in "good standing." Presumably, this is because the IOMMP considers pensioners as not having true membership status in the organization, as it does not seem likely the IOMMP would blatantly violate 2 U.S.C. § 411 in this manner by the very terms of its constitution.

The PCF/IOMMP attorney refers to various sections of the IOMMP constitution to show that pensioners have certain enforceable rights in the organization. See Attachment II, at 5. Every section of the constitution cited refers to such rights as the rights of "members", and not pensioners. See Attachment IV. Yet, the precise question in issue is which individuals are members. Thus, the evidence cited is not persuasive.

4/ 29 U.S.C. § 402(o) defines "member" as:

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.

This definition incorporates basically the same standard as 11 CFR 114.1(e) -- that a member is one who has fulfilled the requirement for membership in the organization.

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Under the foregoing facts, it appears that pensioners do not enjoy the same status as actively employed members of the IOMMP in terms of the organization's responsibilities to those individuals, the individual's eligibility to participate in IOMMP policy making, and other rights vis a vis the organization. Pensioners likewise do not share in the concurrent responsibilities to the IOMMP, such as the payments of dues, that members in good standing must meet. In light of this, the Office of General Counsel recommends the Commission find that pensioners are not members of the IOMMP and that there is reasonable cause to believe the IOMMP and PCF violated 2 U.S.C. § 441b

(b)(4)(A)(ii) by soliciting PCF contributions from pensioners. 5/

The PAF, which is still registered as an IOMMP connected organization, also solicited pensioners for contributions. However, no funds thus solicited have been received by the PAF since February, 1976. 2 U.S.C. § 441b(b)(4)(A)(ii) did not go into effect until June, 1976. As no political fund within the jurisdiction of the Federal Election Campaign Act has yet received these monies solicited from an allegedly improper class, the Office of General Counsel recommends the Commission take no further action against the PAF concerning the solicitation of pensioners until such time, if ever, as the PAF receives those funds.

5/ The attached proposed conciliation agreement does not require return of all monies contributed as a result of the improper solicitation. The issue of whether pensioners are "members" of the IOMMP is a close one, and the action by the union in soliciting this class was not invidious. The proposed conciliation agreement, therefore, seeks a civil penalty and "declaratory" or prospective relief and does not seek retroactive relief.

D. Solicitation

The PCF used the affirmative check-off procedure to collect contributions from pensioners and those participating in the Masters, Mates and Pilots Vacation Plan. One of the authorization forms used by the PCF and IOMMP provides for a 2% deduction, but does not inform the contributor of the option to contribute more or less than this amount. In fact, this form, as well as a letter accompanying it sent to some individuals, uses the 2% figure to entice individuals to switch their authorization from the PAF to the PCF. Attachment III. Presented in such a manner, many individuals thus solicited may have believed that less than 2% could not be contributed. Two other forms used listed different amounts and instructed the individual solicited to check one amount, but nowhere informed the individual that more or less could be contributed. Attachment III. The General Counsel's Office therefore recommends that the Commission find reasonable cause to believe the PCF and IOMMP violated 11 CFR 114.5(a)(2) by not informing those solicited that more or less than the guidelines suggested could be collected.

RECOMMENDATIONS

1. Take no ~~further~~ ^{at this time} action against the PCF and PAF concerning their possible affiliation.
2. Take no ~~further~~ ^{at this time} action against the PAF and the IOMMP Pension Fund concerning any past commingling of pension funds and PAF authorized funds.

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to read

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3. Find reasonable cause to believe the IOMMP and PCF violated 2 U.S.C. § 441b(b)(4)(A)(ii) by soliciting contributions to the PCF from those who are not IOMMP members.
4. Find reasonable cause to believe the IOMMP and PCF violated 11 CFR 114.5(a)(2) by not informing those solicited of their option to contribute more or less than the amount suggested in the solicitation.
5. Approve and send the attached conciliation agreements.

Date

William C. Oldaker
General Counsel

Attachments:

- List of PAF and PCF 77-78 federal contributions - I
- Response from IOMMP/PCF attorney - II
- Letter from IOMMP and PCF authorization forms - III
- IOMMP constitution - IV
- Conciliation Agreements (2) and letters (2)

*Amend. 6.0 to
increase Civil
penalties to \$500 each
for PCF + IOMMP
passed as amended 6.0
8/16/79
CPR*

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