



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MJR # 3027

DATE FILMED 6/7/91 CAMERA NO. 4

CAMERA MAN AS

91040843795

90 JAN -2 PM 1:19

December 14, 1989

Lawrence M. Noble  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Mr. Noble:

91040843796  
In mid-August, I received the attached solicitation by mail from the North Dakota Employees Association (NDPEA), an affiliate of the American Federation of Teachers, AFL-CIO. In addition to soliciting me to join the NDPEA, this card also solicits me to authorize a contribution by payroll deduction to NDPEA COPE and states that the money will be used for, among other things "political contributions and expenditures in connection with federal...elections". Under the terms of this solicitation, those being solicited may authorize contributions only in the amount of \$2.00 per month, and are not offered any opportunity to contribute a greater or lesser amount.

The attached solicitation violates the requirements of the Federal Election Campaign Act and the Commission's regulations in at least the following respects:

1. The solicitation fails to inform those being solicited that the \$2.00 per month "guideline" is merely a suggestion or that a solicitee is free to contribute more or less than the



\$2.00 per month or that the NDPEA will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute; and

2. The solicitation fails to inform those being solicited of their right to refuse to contribute without any reprisal.

In failing to contain the disclosures described above, this solicitation violates the requirements of 2 U.S.C.

§ 441b(b)(3)(C) and 11 C.F.R. §§ 114.5(a)(2), (4) and (5).

I swear that the foregoing is true and correct to the best of my knowledge, information and belief.

Sincerely,

Dan H. Callan  
Complainant's Name  
Complainant's Full Address

1002 WPU  
JANESBORO ND  
58401

Steven E. Bossert

Notary Public  
Steven E. Bossert  
Notary Public, Stutsman Co., N. Dak.  
My Commission Expires Feb. 3, 1990

91040843797

# NDPEA

## North Dakota Public Employees Association

3333 EAST BROADWAY AVE, SUITE 1219  
BISMARCK, NORTH DAKOTA 58501  
TOLL FREE 1-800-472-2698  
BISMARCK-MANDAN: 701-223-1964



AFFILIATED  
WITH THE  
FEDERATION  
OF STATE  
EMPLOYEES  
AFT, AFL-CIO

August, 1989

Dear Public Employee:

As public employees, you like most people have a desire to build a better life for yourselves and your families. As Executive Director of NDPEA, I too share that common goal.

But simply hoping for that better life isn't enough. The futures of public employees are threatened by efforts to refer tax increases passed by the 1989 Legislative Assembly and by the state's refusal to release funds for a 2 percent plus \$50 raise promised by the 1987 legislature. All public employees must be willing to fight for their rights and forge a better future for themselves and their families. That's where NDPEA is helping.

### NDPEA: A Strong Voice for Public Employees

NDPEA is the largest public employee association in the state. It exists to promote public service and improve public employee careers in North Dakota. And, to a large extent, NDPEA is achieving those goals.

During the last session of the legislature, NDPEA successfully lobbied for an average 7.1 percent salary increase and for passage of numerous bills benefiting retirees. We also defeated legislation that would have required newly hired employees to pay a substantial portion of their health insurance premiums.

NDPEA also has greatly expanded the services we offer. We've opened a branch office in Fargo and Grafton, and we've hired additional staff to help us better meet the needs of members at the local level.

### The Threat to Your Pay Raises is Real!

As impressive as our recent accomplishments are, much more can and should be done.

The 7.1 percent raise which went into effect last month is threatened by a drive to refer tax increases. If such referrals go unchallenged they will cause drastic cuts in public services and quite possibly the elimination of your 7.1 salary increase.

We've already seen the disastrous effects of a successful referral at the Highway Department, which lost 6.5 million in department funding and another 3.5 million from city and county highway projects.

At NDPEA, we're committed to fighting for improved public services and higher salaries. That means fighting referrals. That means making sure that any tax cuts don't come out of the pockets of public employees. NDPEA has spoken out and told North Dakotans that referral drive leaders aren't being honest about the harm tax rollbacks will cause to the general public services we all depend on. We've urged each and every North Dakotan to refuse to sign referral petitions. But to win the battle, we'll need your help and support. We'll need your membership.

#### BRANCH OFFICES

Fargo: NDPEA, FSE/AFT  
112 N. University Drive  
Suite L138  
Fargo, ND 58102  
701/232-8307  
1-800-422-0236

Grafton: NDPEA, FSE/AFT  
625 Hill Avenue  
Grafton, ND 58237  
701/352-1463  
1-800-422-0075

91040843798



## A Broken Promise to State Employees

The legislature passed a law granting 2 percent plus \$50 raises if a surplus existed at the end for the 1987-89 biennium. Even though the surplus has turned out to be over six times greater than what is needed to fund the raises, the state budget office is refusing to release the money. NDPEA has filed a lawsuit against the state. We won't cease our efforts until the state honors the legislature's decision to allocate these funds to state employee raises.

## NDPEA Means Clout in the Legislature

We're proud of our record in the last legislative session. But, given a political climate that includes tax referrals and poor support for mandated public employee salary increase, we need to redouble our efforts. NDPEA has established a Committee on Political Education (COPE) to do just that. The COPE committee will help elect and re-elect candidates who understand the problems faced by public employees and who are committed to making public employees' compensation comparable to private sector wages and benefits. We also are working to bring collective bargaining rights to public employees and to expand our ability to protect member's rights on the job.

## Your Membership Makes the Difference

The old adage that you can't get something for nothing is true. Over 1,800 of your colleagues have invested in their futures by joining NDPEA. For them, and for the thousands of other public employees who are not members, that investment has paid off. To achieve our long term goals, however, we need more than the dedication of our current members — we need a commitment from every public employee.

Your membership can make the difference in building the political strength we need to defeat the tax referrals and to achieve our other goals.

**Band together with thousands of other public employees and see your contribution bring a tremendous return.**

When we say a tremendous return, we're referring to more than the crucial lobbying and legislative power NDPEA gives public employees. We mean a great **personal** return on your investment, as well. NDPEA membership costs you only \$9.50 a month. Among the benefits you'll receive as a NDPEA member are: \$5,000 accidental death or dismemberment insurance; \$2,000 accident insurance; eligibility for member or dependent scholarships; reduced prices on prescription drugs; up to \$180,000 in optional disability income plan; discounts on travel, hotels and magazine subscriptions; and more.

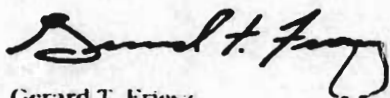
Please take a moment to read the enclosed brochure about the services and benefits of NDPEA membership. If you have any additional questions, please call one of our offices. A staff member will be more than happy to answer your questions.

To join NDPEA and contribute to the COPE committee, simply fill out the enclosed business reply card and drop it in the mail. No postage is necessary.

Remember, NDPEA is **your** organization. With your help and support, we can win the kind of respect, recognition and compensation public employees deserve.

Thank you very much for your support.

Sincerely,



Gerard T. Friesz  
Executive Director

Enc.

91040843799

# Your Membership Counts

If you would like more information about NDPEA, please contact one of our offices.

**Bismarck office:** Toll free 1-800-472-2698,  
or direct at 223-1964

**Fargo office:** Toll free 1-800-422-0236,  
or direct at 232-8307

**Grafton office:** Toll free 1-800-422-0075,  
or direct at 352-1463

Name (Please Print) \_\_\_\_\_  
Home Address \_\_\_\_\_  
City/State \_\_\_\_\_ Zip \_\_\_\_\_  
Agency \_\_\_\_\_ Division \_\_\_\_\_  
Social Security Number \_\_\_\_\_ Classification \_\_\_\_\_

I hereby authorize the State of North Dakota, its Agencies or Political Subdivisions to deduct from my earnings membership dues to the North Dakota Public Employees Association in accordance with its bylaws as carried in writing by the Association Treasurer. The amounts deducted shall be forwarded to the Association. This deduction will begin on the pay period ending \_\_\_\_\_ 19\_\_\_\_ and will continue until written notice to cancel is submitted by me.

Membership referred by \_\_\_\_\_ EMPLOYEE SIGNATURE - DUES DEDUCTION

## \$2.00 PER MONTH COPE CHECKOFF

This endorsement is signed solely and voluntarily with no understanding that the NDPEA COPE is imposed or that third parties will use the AFL-CIO and will use the money collected in that effort to make political contributions and expenditures in connection with federal, state and local elections. The voluntary nature of this may be verified at any time by contacting the NDPEA toll free general office in writing.

NDPEA dues and contributions are not deductible for federal income tax purposes. This document is not money or collectible membership dues received by any other AFL-CIO union.

EMPLOYEE SIGNATURE - COPE DEDUCTION

## NDPEA... representing public employees for over 25 years

Since 1964, the North Dakota Public Employees Association (NDPEA) has been fighting for better wages and benefits and for increased employee rights. But we can't do it alone; we need your help.

Our effectiveness is directly tied to the strength of our membership. By banding together with your fellow employees, you can send a clear signal to legislators and other government officials that public employees are united and that we are serious about gaining more recognition and higher compensation. And your dues — just \$6.00 per month (\$9.50 beginning September 1986) — combined with the dues of thousands of other public employees, can help us strengthen and expand the programs we offer members. Our goal is to build an association that helps develop a

productive relationship between public employees and state government, and one that provides members with the best possible services, support, representation and protection. With your support and membership we can achieve that goal.

By banding together with your fellow employees, you can send a clear signal to legislators and other government officials that public employees are united and that we are serious about gaining more recognition and higher compensation.

91040343

NON-PROFIT ORGANIZATION  
U.S. POSTAGE PAID  
ND PUBLIC EMPLOYEES  
ASSOCIATION

North Dakota Public Employees Association/FSE  
3333 E. Broadway Ave. Suite 1219  
Bismarck, ND 58501-3396

## What can you do to:

Get better wages and benefits  
Make your family's future more secure  
Have a voice on the issues that affect your job  
And add greater protections to your rights as an employee



# NORTH DAKOTA PUBLIC EMPLOYEES ASSOCIATION

## Success in legislation

is lobbying the govern-  
ment the last session alone, we

Thanks to the efforts of our lob-  
bysts, state employees will receive an average 7.1  
percent increase next year with a minimum of \$50 increase.

**HEALTH INSURANCE:** NDPEA was able to defeat legis-  
lation that would have required all newly hired state  
employees to pay a substantial portion of their health  
insurance premiums.

**RETIREMENT BENEFITS:** NDPEA successfully lobbied  
for passage of a number of bills to increase retirement  
benefits for public employees.

**PAY EQUITY:** The legislature appropriated \$1.2 million  
to begin implementation of the recommendations made  
in last year's pay equity study for public employees.

**FAMILY LEAVE:** NDPEA was able to help win passage  
of the Family Leave Act, which provides public employ-  
ees with up to four months of unpaid leave — without

loss of position or seniority — following the birth or  
adoption of a child or in cases of a serious illness of an  
immediate family member.

Although the record of success this session was very  
good, we are not satisfied to rest on these achievements.  
There are many areas in need of legislative improvement.  
NDPEA lobbied for much higher salaries and in the end  
managed to obtain a 7.1-percent increase. Without NDPEA's  
constant involvement, state employees would have received  
much less. Even though NDPEA and the labor coalition were  
able to push a collective bargaining bill for public employees  
farther than ever before, we were still disappointed by its  
eventual defeat on the floor of the House.

Your membership is very important for increasing our  
political clout. Our legislative efforts face stiff competition  
from other groups, and legislators are most likely to side  
with those groups that can demonstrate the most political  
strength. For organizations like NDPEA, political strength is  
demonstrated by membership size and unity.

## Growing bigger to serve you better

At NDPEA, we're taking steps to build a stronger, more effective  
association. The most important change is our recent affiliation with the  
Federation of State Employees (FSE). FSE is one of the largest public  
employee organizations in the country. Through affiliation, we're gaining  
access to the resources and training we need to expand and improve  
membership services.

**MEMBERSHIP RECRUITMENT:** With FSE's help, we're launching  
the most comprehensive membership recruitment program in our  
association's history.

**LOBBYING:** FSE's political, legislative and organizing departments  
were instrumental in helping us put together our lobbying program  
for the last session of the legislature. Although we did not achieve all  
our goals, we can point to many key areas — salaries, health insur-  
ance and retirement benefits — where we were able to make substan-  
tial gains. In addition, we were able to defeat some legislation that  
would have been very harmful to the interests of public employees.

**EXPANDING OFFICES AND STAFF:** NDPEA has opened satellite  
offices in Fargo and Grand Forks and hired additional staff to help us  
better meet the needs of each member.

FSE is providing help with the research we need to back up our  
lobbying effort and with public relations support to help get the word  
out about the important contributions made by state employees.

## No member of NDPEA stands alone

If you're lucky, you'll go through your  
entire career without getting into any dis-  
agreements or trouble with your employer.  
But luck can also work against you. Hun-  
dreds of state employees have found that the  
best protection against unfair treatment is  
NDPEA membership.

- ☐ NDPEA has professional staff trained  
in grievance handling.
- ☐ NDPEA has labor lawyers available to  
handle cases that cannot be solved  
through grievances.
- ☐ NDPEA is building an extensive steward  
structure to help employees solve  
day-to-day problems and concerns.
- ☐ NDPEA sponsors training programs on  
grievance procedures, North Dakota  
labor laws, public employee rights and  
conflict resolution for members,  
stewards, staff and local leaders.

## MEMBERSHIP PAYS

Through our affiliation with the Federa-  
tion of State Employees, NDPEA has negoti-  
ated many unique discounts and services for  
our members.

### Benefits of Membership

- ☐ \$5,000 accidental death or dismem-  
berment insurance.
- ☐ \$2,000 accident insurance.
- ☐ Eligibility for member or dependent  
scholarships.

### Membership discounts

- ☐ Discounts on hundreds of products  
including theater tickets, car repairs,  
hotels, restaurants and much, much more.
- ☐ Reduced prices on prescription drugs
- ☐ Eligibility for low-interest VISA cards
- ☐ Discounts on travel and hotels
- ☐ Reduced subscriptions on hundreds of  
magazines
- ☐ Optional low-cost health plans:
  - Life insurance providing up to \$150,000  
in coverage.
  - Hospital benefits plan that pays cash  
benefits directly to you for every day you  
are hospitalized.
  - Disability income benefits to replace your  
income if you are temporarily out of work.



NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

## BUSINESS REPLY MAIL

FIRST CLASS PERMIT NO. 471 BISMARCK ND  
POSTAGE WILL BE PAID BY ADDRESSEE

NORTH DAKOTA  
PUBLIC EMPLOYEES ASSOCIATION, INC.  
3333 E BROADWAY AVE SUITE 1219  
BISMARCK ND 58501-9941



# NORTH DAKOTA PUBLIC EMPLOYEES ASSOCIATION

## Giving members a voice in legislation

NDPEA's most important activity is lobbying the governor and the state legislature. In the last session alone, we won many important victories:

**HIGHER SALARIES:** Thanks to the efforts of our lobbyists, state employees will receive an average 7.1 percent raise next year with a minimum of \$50 increase.

**HEALTH INSURANCE:** NDPEA was able to defeat legislation that would have required all newly hired state employees to pay a substantial portion of their health insurance premiums.

**RETIREMENT BENEFITS:** NDPEA successfully lobbied for passage of a number of bills to increase retirement benefits for public employees.

**PAY EQUITY:** The legislature appropriated \$1.2 million to begin implementation of the recommendations made in last year's pay equity study for public employees.

**FAMILY LEAVE:** NDPEA was able to help win passage of the Family Leave Act, which provides public employees with up to four months of unpaid leave — without

loss of position or seniority — following the birth or adoption of a child or in cases of a serious illness of an immediate family member.

Although the record of success this session was very good, we are not satisfied to rest on these achievements. There are many areas in need of legislative improvement. NDPEA lobbied for much higher salaries and in the end managed to obtain a 7.1-percent increase. Without NDPEA's constant involvement, state employees would have received much less. Even though NDPEA and the labor coalition were able to push a collective bargaining bill for public employees farther than ever before, we were still disappointed by its eventual defeat on the floor of the House.

Your membership is very important for increasing our political clout. Our legislative efforts face still competition from other groups, and legislators are most likely to side with those groups that can demonstrate the most political strength. For organizations like NDPEA, political strength is demonstrated by membership size and unity.

## Growing bigger to serve you better

At NDPEA, we're taking steps to build a stronger, more effective association. The most important change is our recent affiliation with the Federation of State Employees (FSE). FSE is one of the largest public employee organizations in the country. Through affiliation, we're gaining access to the resources and training we need to expand and improve membership services.

**MEMBERSHIP RECRUITMENT:** With FSE's help, we're launching the most comprehensive membership recruitment program in our association's history.

**LOBBYING:** FSE's political, legislative and organizing departments were instrumental in helping us put together our lobbying program for the last session of the legislature. Although we did not achieve all our goals, we can point to many key areas — salaries, health insurance and retirement benefits — where we were able to make substantial gains. In addition, we were able to defeat some legislation that would have been very harmful to the interests of public employees.

**EXPANDING OFFICES AND STAFF:** NDPEA has opened satellite offices in Fargo and Grafton and hired additional staff to help us better meet the needs of each member.

FSE is providing help with the research we need to back up our lobbying effort and with public relations support to help get the word out about the important contributions made by state employees.

## MEMBERSHIP PAYS

Through our affiliation with the Federation of State Employees, NDPEA has negotiated many unique discounts and services for our members.

### Benefits of Membership

- ❑ \$5,000 accidental death or dismemberment insurance.
- ❑ \$2,000 accident insurance.
- ❑ Eligibility for member or dependent scholarships.

### Membership discounts

- ❑ Discounts on hundreds of products including theater tickets, car repairs, hotels, restaurants and much, much more.
- ❑ Reduced prices on prescription drugs
- ❑ Eligibility for low-interest VISA cards
- ❑ Discounts on travel and hotels
- ❑ Reduced subscriptions on hundreds of magazines
- ❑ Optional low-cost health plans:
  - Life insurance providing up to \$180,000 in coverage.
  - Hospital benefits plan that pays cash benefits directly to you for every day you are hospitalized.
  - Disability income benefits to replace your income if you are temporarily out of work.

## No member of NDPEA stands alone

If you're lucky, you'll go through your entire career without getting into any disagreements or trouble with your employer. But luck can also work against you. Hundreds of state employees have found that the best protection against unfair treatment is NDPEA membership.

- ❑ NDPEA has professional staff trained in grievance handling.
- ❑ NDPEA has labor lawyers available to handle cases that cannot be solved through grievances.
- ❑ NDPEA is building an extensive steward structure to help employees solve day-to-day problems and concerns.
- ❑ NDPEA sponsors training programs on grievance procedures, North Dakota labor laws, public employee rights and conflict resolution for members, stewards, staff and local leaders.



## BUSINESS REPLY MAIL

FIRST CLASS PERMIT NO. 471 BISMARCK ND

POSTAGE WILL BE PAID BY ADDRESSEE

NORTH DAKOTA  
PUBLIC EMPLOYEES ASSOCIATION, INC.  
3333 E BROADWAY AVE SUITE 1219  
BISMARCK ND 58501-9041

NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES







FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 4, 1990

Mr. David H. Calhoon  
1002 WPV  
Jamestown, ND 58401

Dear Mr. Calhoon:

This is to acknowledge receipt of your letter on January 2, 1990. Your letter was not properly sworn to.

You must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. A statement by the notary that the complaint was sworn to and subscribed before [him] [her] will be sufficient. We are sorry for the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

If you have any questions concerning this matter, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

cc: Respondent

91040843802



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 4, 1990

North Dakota Public  
Employees Association/FSE  
3333 E. Broadway Ave. Suite 1219  
Bismarck, ND 58501-3396

Dear Gentlemen:

On January 2, 1990, the Federal Election Commission received a letter alleging that the North Dakota Public Employees Association violated sections of the Federal Election Campaign Act of 1971, as amended. As indicated from the copy of the enclosed letter addressed to the complainant, those allegations do not meet certain specified requirements for the proper filing of a complaint. Thus, no action will be taken on this matter unless the allegations are refiled meeting the requirements for a properly filed complaint. If the matter is refiled, you will be notified at that time.

This matter will remain confidential for 15 days to allow for the correction of the defects. If the defects are not cured and the allegations are not refiled, no additional notification will be provided and the file will be closed.

If you have any questions, please call Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

Enclosures

Copy of Improper Complaint  
Copy of letter to the Complainant

91040843803



# NDPEA

## North Dakota Public Employees Association

3333 EAST BROADWAY AVE., SUITE 1219  
BISMARCK, NORTH DAKOTA 58501-3396  
TOLL FREE: 1-800-472-2698  
BISMARCK-MANDAN: 701-223-1964

AFFILIATED  
WITH THE  
FEDERATION  
OF STATE  
EMPLOYEES  
AFT, AFL-CIO

MUR 3024

January 17, 1990

Mr. Lawrence M. Noble  
General Council  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

90 JAN 22 PM 3:16

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

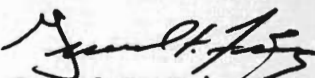
Dear Mr. Noble:

The North Dakota Public Employees Association, FSE/AFT received a letter from you dated January 4, 1990. The letter notified the NDPEA that a complaint had been filed against our organization with regard to our Political Action Committee. Your letter did indicate the complaint was not filed properly and thus no action would be taken until a proper complaint had been filed. I visited with Ms. Retha Dixon, Docket Chief, with regard to corrective action taken by the NDPEA on the complaint. Ms. Dixon suggested that I follow up our conversation with a letter to you explaining our corrective actions.

The NDPEA has ceased using the solicitation material described in the complaint. In addition, we have submitted to our attorneys and have received advice on correcting the language on our COPE authorization card.

If there are questions or you require further documentation, please feel free to call or write.

Sincerely,

  
Gerard T. Friesz  
Executive Director

ljr

90 JAN 22 AM 9:59

RECEIVED  
FEDERAL ELECTION COMMISSION  
MAIL ROOM

BRANCH OFFICES  
Fargo: NDPEA, FSE/AFT  
112 N. University Drive, Suite L 138  
Fargo, ND 58102-4644  
701/232-8307  
1-800-422-0236

Grafton: NDPEA, FSE/AFT  
125 East 9th Street  
P.O. Box 642  
Grafton, ND 58237-2321  
701/382-1463  
1-800-422-0075



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION COMMISSION  
MAN ROOM

90 JAN 29 AM 11:00

January 4, 1990

MUR 3024

Mr. David H. Calhoon  
1002 WPV  
Jamestown, ND 58401

Dear Mr. Calhoon:

This is to acknowledge receipt of your letter on January 2, 1990. Your letter was not properly sworn to.

You must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. A statement by the notary that the complaint was sworn to and subscribed before [him] [her] will be sufficient. We are sorry for the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

If you have any questions concerning this matter, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Berner  
Associate General Counsel

cc: Respondent  
January 19, 1990

Attention: Retha Dixon

Please accept this notification that Mr. David H. Calhoon did personally appear before me, a Notary Public of the State of North Dakota, County of Stutsman, and sign his name on the datesworn to as indicated in his letter of complaint to your department you refer to above.

Steven E. Bossert  
Notary Public, Stutsman Co., N. Dak.  
My Commission Expires Feb. 3, 1990

91040343805

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
90 JAN 29 PM 4:09





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 7, 1990

Mr. David H. Calhoun  
1002 WPV  
Jamestown, North Dakota 58401

RE: MUR 3024

Dear Mr. Calhoun:

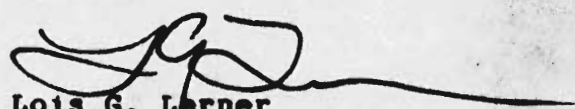
This letter acknowledges receipt on January 29, 1990, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the North Dakota Public Employees Association/FSE. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3024. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints. If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:

  
Lois G. Lerner  
Associate General Counsel

Enclosure

91040843806



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D.C. 20463

February 7, 1990

North Dakota Public  
Employees Association/FSE  
3333 E. Broadway Avenue, Suite 1219  
Bismark, North Dakota 58501-3396

RE: MUR 3024

Dear Sir/Madam:

The Federal Election Commission received a complaint which alleges that the North Dakota Public Employees Association/FSE may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3024. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain 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 matter to be made public. 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 authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Craig Reffner, the attorney assigned to this matter at (202) 376-8200.

91040843807



Page 2  
Letter to North Dakota Public  
Employees Association/FSE

For your information, we have attached a brief description of  
the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:

  
Lois G. Lerner  
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

91040843808

MANATT, PHELPS, ROTHENBERG & PHILLIPS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, N.W.

SUITE 200

WASHINGTON, D.C. 20036

TELEPHONE (202) 463-4300

FAX (202) 463-4364

(202) 463-4366

RECEIVED  
FEDERAL ELECTION COMMISSION  
HAR POCH

90 FEB 22 PM 4:06

LOS ANGELES

1328 WEST OLIVAR BOULEVARD  
LOS ANGELES, CALIFORNIA 90064  
(213) 281-4600

February 22, 1990

Craig Reffner, Esquire  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
6th Floor  
Washington, D.C. 20463

90 FEB 23 PM 1:10

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

Re: MUR 3024; North Dakota Public  
Employees Association

Dear Mr. Reffner:

As we discussed by telephone, I am requesting an extension of time to respond, on behalf of my clients, the North Dakota Public Employees Association, to the complaint in the above-listed MUR. This extension is made necessary because various individuals with knowledge of this matter are currently out-of-town attending the AFL-CIO convention. Accordingly, I am requesting an extension of fifteen days (until March 14, 1990) to file the response.

Sincerely,

  
Eric F. Kleinfeld

91040843809





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 28, 1990

Eric P. Kleinfeld, Esq.  
Manatt, Phelps, Rothenberg & Phillips  
1200 New Hampshire Avenue, N.W.  
Suite 200  
Washington, D.C. 20036

RE: MUR 3024  
North Dakota Public Employees  
Association

Dear Mr. Kleinfeld:

This is in response to your letter dated February 22, 1990, which we received on February 23, 1990, requesting an extension until March 14, 1990 to respond to the complaint in the above referenced matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on March 14, 1990.

If you have any questions, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Larry M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

91040843810

MANATT, PHELPS, ROTHENBERG & PHILLIPS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, N.W.

SUITE 200

WASHINGTON, D.C. 20036

TELEPHONE (202) 463-4300

FAX (202) 463-4394

(202) 463-4395

507-223-7110

LOS ANGELES

1200 WEST BUNKER BOULEVARD  
LOS ANGELES, CALIFORNIA 90064  
(213) 251-4000

February 23, 1990

Craig Reffner, Esquire  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
6th Floor  
Washington, D.C. 20463

Re: MUR 3024; North Dakota  
Public Employees Association

Dear Mr. Reffner:

Please find enclosed a Statement of Designation of Counsel  
in the above-listed MUR.

Should you need any additional information, please do not  
hesitate to contact me.

Sincerely,

*Eric F. Kleinfeld*  
Eric F. Kleinfeld  
Manatt, Phelps, Rothenberg  
& Phillips

Enclosure

91040843811

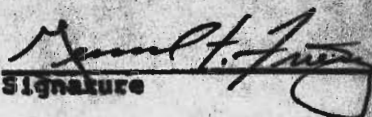


STATEMENT OF DESIGNATION OF COUNSEL

NUR 3024 William C. Oldaker  
NAME OF COUNSEL: Eric F. Kleinfeld  
Lyn Utrecht  
ADDRESS: Manatt, Phelps, Rotherberg & Phillips  
1200 New Hampshire Avenue, N.W.  
Suite 200  
Washington, D.C. 20036  
TELEPHONE: (202) 463-4300

The above-named individual is hereby designated as my  
counsel and is authorized to receive any notifications and other  
communications from the Commission and to act on my behalf before  
the Commission.

2/22/90  
Date

  
Signature

Gerard T. Friesz

RESPONDENT'S NAME: North Dakota Public Employees' Association  
ADDRESS: 3333 East Broadway Avenue  
Suite 1219  
Bismarck, ND 58501  
HOME PHONE: N/A  
BUSINESS PHONE: (701) 223 1964

91040843812

MANATT, PHELPS, ROTHENBERG & PHILLIPS  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, N.W.

SUITE 200

WASHINGTON, D.C. 20036

TELEPHONE (202) 463-4300

FAX (202) 463-4394

(202) 463-4395

LOS ANGELES

1255 WEST OLYMPIC BOULEVARD

LOS ANGELES, CALIFORNIA 90064

(213) 215-4000

March 14, 1990

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
90 MAR 14 PM 12:43

Lawrence M. Noble, General Counsel  
Federal Election Commission  
999 E Street, N.W., 6th Floor  
Washington, D.C. 20463

Re: MUR 3024, North Dakota  
Public Employees Association

Dear Mr. Noble:

This constitutes the response of the North Dakota Public Employees Association ("NDPEA") in Matter Under Review ("MUR") 3024. A complaint was filed against NDPEA by a member of the American Federation of State, County and Municipal Employees alleging that NDPEA committed a violation of the Federal Election Campaign Act of 1971, as amended, ("Act") 2 U.S.C. § 431 et seq. and the Federal Election Commission's ("FEC" or "Commission") regulations. For the reasons stated below, NDPEA respectfully requests that the Commission dismiss this complaint in its entirety, find no reason to believe that any violation of the Act was committed, and close its file in MUR 3024.<sup>1/</sup>

At issue is a joint dues membership and political contribution card utilized by NDPEA. A copy of the card is attached to this response. The card is entitled "NDPEA Payroll Deduction Authorization" and on its face consists of three separate portions. The top third of the card requests information from recipients, such as name, address, telephone number and employment. The middle third consists of the membership authorization which recipients must sign to authorize payroll deductions for membership

<sup>1/</sup> Alternatively, should the Commission determine that there is reason to believe that a violation of the Act occurred, respondent respectfully requests that the Commission take no further action due to its de minimus nature.

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Lawrence M. Noble, General Counsel  
March 14, 1990  
Page 2

dues in the NDPEA. The bottom third consists of a separate authorization for a payroll deduction for contributions. A separate signature is required for the latter deduction. The card also states:

This authorization is signed freely and voluntarily and on the understanding that the NDPEA COPE is engaged in joint fundraising efforts with the AFL-CIO and will use the money contributed to that effort to make political contributions and expenditures in connection with federal, state and local elections. The voluntary authorization may be revoked at any time by notifying the NDPEA and the payroll office in writing.

Complainant alleges that the card is in violation of 2 U.S.C. § 441b(b)(3)(C) and 11 CFR § 114.5(a)(2), (4) and (5). However, it is respondent's contention that the language on its card satisfies, in all material respects, the requirements of the above-listed sections.

Sections 441b(b)(3)(C) of the Act and 114.5(a)(4) of the regulations are similar, providing that a person being solicited be informed of his or her right to contribute without reprisal. Section 114.5(a)(2) of the regulations provides that, where a guideline for contributions is presented in a solicitation, the person being solicited be informed that the guideline is a suggestion, that the person may contribute more or less than the amount suggested, and that the person will not be favored or disadvantaged by a decision not to contribute or the amount of their contribution.

**A. NDPEA's Card Does Not Contain A Guideline; Therefore, 11 CFR § 114.5(a)(2) Is Inapplicable.**

Nowhere does the Act or regulations define what a "guideline" is for purposes of 11 CFR § 114.5(a)(2). Respondent contends that its card does not contain a guideline as meant by that section, and therefore, 11 CFR § 114.5(a)(2) is inapplicable to its solicitation.

Clearly, not all solicitations are guidelines, and the Commission has never treated them as such. For example, an invitation to a fundraiser typically indicates the cost of attending the event, e.g., \$500 per person. Invitees may choose either to pay that amount and attend or not to pay at all. The amount listed on the invitation has never been treated by the Commission as a guideline. Such has been the case even where the

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Lawrence M. Noble, General Counsel  
March 14, 1990  
Page 3

sponsor of the event is a separate segregated fund ("SSF") and the invitees are members of the SSF's solicitable class.

Respondent contends that a solicitation does not contain a guideline where a single amount only is listed, and the recipient has the free choice to participate for that amount or not at all. A guideline, rather, is akin to a policy statement. For example, a corporation may wish to suggest levels of participation in its SSF based on job classifications of its solicitable class. In this sense, a guideline is a scale of hoped-for contributions, and where such a scale is set forth in a solicitation, then the solicitation must comply with 11 CFR § 114.5(a)(2). Where, as here, no policy or scale is set forth, but instead a single amount appears, no guideline is present in the solicitation.

Accordingly, respondent believes that 11 CFR § 114.5(a)(2) is inapplicable to its card. Simply put, the card does not contain, nor was it intended to contain, a guideline. Instead, the card is more akin to a traditional fundraising device, whereby recipients may either participate or not. Provision is made for not participating. Recipients may simply not sign the separate signature line at the bottom of the card. It would be extremely burdensome and wholly unworkable to suggest that every solicitation, by definition, contains a guideline and must comply with 114.5(a)(2).

**B. The Language and Design of NDPEA's Card Complies In All Material Respects With the Act and Regulations and Clearly Conveys the Message that No Reprisals Would Be Taken.**

Unlike other sections of the Act and regulations, the provisions cited by complainant do not mandate the use of actual and specific language. Instead, they simply provide for informing the solicitee of a certain message. This distinction is made clear by comparing the above-cited sections with the language contained in the Act's primary disclaimer provision, that of 2 U.S.C. § 441d. Section 441d mandates that particular communications of express advocacy "shall clearly state" who paid for and authorized the communication. The identical provision in the Commission's regulations, 11 CFR § 110.11 also provides that communications of express advocacy "shall clearly state" certain required information.

Nowhere do the sections of the Act or regulations cited by complainant contain the mandatory language that they shall clearly state certain wording. Instead, they provide for solicitees to be informed. Such is a lesser standard, and in fact has long been recognized and treated as such by the Commission. On several previous occasions, the Commission has examined in its Advisory

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Lawrence M. Noble, General Counsel  
March 14, 1990  
Page 4

Opinion requests combined dues/contribution cards. See, e.g., FEC Advisory Opinions 1980-6, Fed. Election Camp. Fin. Guide, (CCH) ¶5478 (April 9, 1980); 1987-17 (CCH) ¶ 5895 (June 26, 1987). In examining the permissibility of combined dues/contribution cards, the Commission has been quite specific in considering all facts and circumstances including, among others, items such as the card's language, design, labelling, and signature lines. AO 1987-17 (CCH) ¶5895. In essence, the Commission has scrutinized the total effect of the card to determine the message being received by the recipient. Specifically, the Commission, has looked at all of the factors to determine whether such a card conveys a message that could reasonably be interpreted as seeking "voluntary" or "mandatory" participation in political activity.

Such analysis, which considers the voluntary v. mandatory nature of a solicitation is clearly different from that used in determining compliance with section 441d. In the latter case, the Commission merely seeks to determine whether the disclaimer appears or is absent. There is no need for consideration as to how the message may reasonably be interpreted by the recipient.

The message conveyed by NDPEA's dues/contribution card can only be interpreted as seeking voluntary participation in political activity. Nothing in that card could reasonably be construed as requiring mandatory participation in the payroll deduction for political activity. Specifically, when taking into account all of the factors previously considered by the Commission, particularly the card's language and design, the voluntary nature of the message is clear and obvious. The solicitation portion is separate and distinct from the dues statement. The solicitation consists of (1) a separate and distinct heading/label set off by spacing and bold print, (2) a separate and distinct paragraph from the dues paragraph, and (3) a separate and distinct signature line which is labelled differently from the dues signature line. The manner in which this card is arranged emphasizes the voluntary and suggestive nature of the solicitation, identical to the Commission's conclusion in AO 1987-17.

Moreover, the language of the solicitation paragraph begins, "[t]his authorization is signed freely and voluntarily . . . ." The word "voluntary" appears a second time later in the paragraph. This language emphasizes the suggestive nature of the card. Voluntary is commonly defined as activity on one's own free will or in the legal context, acting without external compulsion.<sup>2/</sup>

<sup>2/</sup> Following is a definition of voluntary, as reprinted from The American Heritage Dictionary 1436 (New College Edition (continued...))

Lawrence M. Noble, General Counsel  
March 14, 1990  
Page 5

Thus, the message of NPEA's card is clear and precise. No one is being coerced, and nothing is being required.<sup>3/</sup> Because this is a voluntary solicitation, the amount on the card can be nothing but a "suggestion." More importantly, because respondent's card stresses the voluntary nature of the solicitation, i.e., seeking a response without compulsion, the message of the card can only be reasonably interpreted to mean there would be no reprisals or discrimination against those who did not choose to contribute.

Moreover, in addition to the card's language, the manner in which it is arranged compels the conclusion that the card complies with the Act and regulations. Any recipient can simply choose not to sign the political payroll deduction. Therefore, provision is made for not contributing. The recipient is free to contribute less than the suggested amount, i.e., nothing, by simply not filling in that portion of the card. Had respondent intended to take any reprisals or disadvantage anyone by virtue of their decision not to participate, they would not have so greatly facilitated the recipients' ability not to participate.<sup>4/</sup>

In considering, then, all of the factors outlined above, the clear message conveyed by NDPEA's card is that no contribution is required, and that any participation is the free choice of the recipient, including the choice not to participate at all, or the choice to participate for a limited time and then cease. The suggestion that respondent was, in any way, threatening reprisal

2/(...continued)  
1976):

voluntary adj. 1. Arising from one's own free will; acting on one's own initiative: . . . 2. Acting or serving in a specified capacity willingly and without constraint or guarantee of reward. 3. Normally controlled by or subject to individual volition. 4. Capable of exercising will; volitional. 5. Proceeding from impulse; spontaneous. 6. Law. a. Acting or performed without external persuasion or compulsion. b. Without legal obligations, payment, or valuable consideration: a voluntary conveyance.

3/ Thus, this situation is distinguishable from AO 1980-6 which involved a required billing.

4/ Further, no allegation has been made that any reprisals or discrimination occurred or that anyone was coerced into participating in the payroll deduction.

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Lawrence M. Noble, General Counsel  
March 14, 1990  
Page 6

or discrimination against someone who voluntarily declined to participate is grossly inconsistent with the message conveyed by the card's plain language and design. Respondent submits that a fair reading of this card, in light of Commission precedent, demonstrates that it complies, in all material respects, with the Act and regulations.

For the reasons stated above, the North Dakota Public Employees Association respectfully requests that the Commission close its file in MUR 3024. However, should the Commission determine that the facts support a finding of reason to believe that a violation may have occurred, respondents, for the identical reasons, request that the Commission take no further action.<sup>5/</sup>

Respectfully submitted,

  
Eric P. Kleinfeld  
Manatt, Phelps, Rothenberg  
& Phillips

Attachment

<sup>5/</sup> Respondent believed and intended that the card's language and design were sufficient for compliance the spirit and the letter of the law. Moreover, while 18,000 of these cards were mailed, less than 70 individuals responded to the solicitation in the month following the mailing. Certainly, that response makes this, at worst, a de minimus violation.

91040843818

### NDPEA PAYROLL DEDUCTION AUTHORIZATION

Name: (Mr/Ms) \_\_\_\_\_  
Home Address: \_\_\_\_\_ Home Phone: \_\_\_\_\_  
City/State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Agency: \_\_\_\_\_ Division: \_\_\_\_\_  
Social Security Number: \_\_\_\_\_ Classification: \_\_\_\_\_

I hereby authorize the State of North Dakota, its Agencies or Political Subdivisions to deduct from my earnings membership dues to the North Dakota Public Employees Association in accordance with its bylaws as certified in writing by the Association Treasurer. The amounts deducted shall be forwarded to the Association. This deduction will begin on the pay period starting \_\_\_\_\_ 19\_\_ and will continue until written notice to cancel is submitted by me.

Membership referred by: \_\_\_\_\_

EMPLOYEE SIGNATURE - DUES DEDUCTION

#### \$2.00 PER MONTH COPE CHECKOFF

This authorization is signed freely and voluntarily and on the understanding that the NDPEA COPE is engaged in joint fund raising efforts with the AFL-CIO and will use the money contributed to that effort to make political contributions and expenditures in connection with federal, state and local elections. The voluntary authorization may be revoked at any time by notifying the NDPEA and the payroll office in writing.

NDPEA dues and contributions are not deductible for federal income tax purposes.  
This material is not meant to solicit membership from members of any other AFL-CIO union.

EMPLOYEE SIGNATURE - COPE DEDUCTION



91040843819





JIM KUSLER  
SECRETARY OF STATE  
STATE OF NORTH DAKOTA

MVR 3024

OGC 6674

June 13, 1990

Mr. Craig Reffner  
Federal Election Commission  
999 E Street N.W.  
Washington, D.C. 20463

Dear Mr. Reffner,

This letter is in response to your telephone inquiry June 12, 1990 regarding the filing status of the North Dakota Public Employees Association Political Action Committee.

North Dakota law does not require registration of Political Action Committees. The reporting requirement is outlined in section 16.1-08-02 (3) of the North Dakota Century Code. As of this date there has been no report filed by the NDPEA PAC. It is my understanding the PAC was organized in September 1989 and therefore would not have a filing requirement until October 1990 if conditions of subparagraph (3) are applicable.

Sincerely Yours,

Bob Valeu  
Deputy

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

90 JUN 22 AM 9:56

21040343820

9 1 0 4 0 8 4 3 8 2 1

**CAMPAIGN CONTRIBUTIONS**

**AND**

**REQUIRED STATEMENTS;**

**CORRUPT PRACTICES**



**BY**

**SECRETARY OF STATE**



CHAPTER 16.1-08  
CAMPAIGN CONTRIBUTORS

16.1-08-01. Definitions. As used in this chapter, unless the context otherwise plainly requires:

1. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including, but not limited to, labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. Association shall not include corporations, cooperative corporations, political committees, or political parties.
2. "Candidate" means a person whose name is presented for nomination to public office at any primary election or convention, whether the person is actually nominated or not; a person whose name is printed as a candidate on an official ballot used at any election; or a person who seeks election through write-in votes.
3. "Contribution" means a gift of money or property, subscription, loan, advance, or deposit of money, except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election, of any person to office. Contribution also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes, and includes funds received by a political committee which are transferred to that committee from another political committee or other source.
4. "Cooperative corporations" and "corporations" are as defined in the North Dakota Century Code.
5. "Expenditure" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or property.

except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election, of any person to office. Expenditure also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.

6. "Patron" means a person who owns equity interest in the form of stock, shares, or membership, or maintains similar financial rights in a cooperative corporation.
7. "Person" means an individual, partnership, committee, association, corporation, cooperative corporation, or other organization or group of persons.
8. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes.
9. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions or legislative districts and whose name appears on the election ballot as the candidate of such association, committee, or organization.
10. "Political purpose" or "political purposes" means any activity undertaken in support of or in opposition to the election or nomination of a candidate whether the activity is undertaken by a candidate, a political committee, a political party, or any person.

16.1-08-02. Campaign contributions by corporations, cooperative corporations, and associations prohibited - Violation - Penalty.

1. No corporation, cooperative corporation, or association shall make a direct contribution:
  - a. To aid any political party, political committee, or organization.
  - b. To aid any corporation or association organized or maintained for political purposes.
  - c. To aid any candidate for political office or for nomination to such office.

displayed on fixed permanent billboards, shall not, however, be deemed a violation of this section.

16.1-10-06.1. Paying another person for attendance at polls, transporting persons, registering, and personal services prohibited. No person shall pay another person for:

1. Any loss or damage due to attendance at the polls;
2. Registering;
3. The expense of transportation to or from the polls; or
4. Personal services to be performed on the day of a caucus, primary election, or any election which shall tend in any way, directly or indirectly, to affect the result of such caucus or election.

The provisions of this section shall not apply to the hiring of a person whose sole duty it is to act as a challenger and to watch the count of official ballots.

16.1-10-06.2. Sale or distribution at polling place. No person may approach a person attempting to enter a polling place, or who is in a polling place, for the purpose of selling, soliciting for sale, advertising for sale, or distributing any merchandise, product, literature, or service. This prohibition applies in any polling place or within one hundred feet [30.48 meters] from any entrance leading into a polling place on election day.

16.1-10-07. Candidate guilty of corrupt practice to vacate nomination of office. If any person is found guilty of any corrupt practice he shall be punished by being deprived of his government job, or his nomination or election shall be declared void, as the case may be. This section shall not remove from office a person who is already in office and who has entered upon the discharge of his duties where such office is subject to the impeachment provisions of the Constitution of North Dakota.

16.1-10-08. Penalty for violation of chapter. Any person violating any provision of this chapter, for which another penalty is not specifically provided, shall be guilty of a class A misdemeanor.



falsehoods, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, or constitutional amendment, and whether such publication shall be by radio, television, newspaper, pamphlet, folder, display cards, signs, posters or billboard advertisements, or by any other public means. Any person who shall violate the provisions of this section shall be guilty of a class A misdemeanor.

16.1-10-04.1. Certain political advertisements to disclose name of sponsor. Every political advertisement by newspaper, pamphlet or folder, display card, sign, poster, or billboard, or by any other public means, on behalf of or in opposition to any candidate for public office, designed to assist, injure, or defeat the candidate by reflecting upon the candidate's personal character or political action, must disclose at the bottom of the advertisement the name or names of the sponsor or sponsors of the advertisement, and the name or names of the person, persons, associations, or partnerships paying for the advertisement. If the name of an association or partnership is used, the disclaimer shall also include the name of the chairman or other responsible person from the association or partnership. The name or names of the person, persons, associations, or partnerships paying for any radio or television broadcast containing any advertising announcement for or against any candidate for public office must be announced at the close of the broadcast. If the name of an association or partnership is used, the disclaimer shall also include the name of the chairman or other responsible person from the association or partnership. This section does not apply to campaign buttons.

16.1-10-05. Paying owner, editor, publisher, or agent of newspaper to advocate or oppose candidate editorially prohibited. No person shall pay or give anything of value to the owner, editor, publisher, or agent of any newspaper or other periodical, or radio or television station, to induce him to advocate editorially or to oppose any candidate for nomination or election, and no such owner, editor, publisher, or agent shall accept such inducement.

16.1-10-06. Electioneering on election day - Penalty. Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, shall be guilty of an infraction. The display upon motor vehicles of adhesive signs which are not readily removable and which promote the candidacy of any individual, any political party, or a vote upon any measure, and political advertisements promoting the candidacy of any individual, political party, or a vote upon any measure which are

- d. For any political purpose or the reimbursement or indemnification of any person for money or property so used.
  - e. For the influencing of any measure before the legislative assembly, except in accordance with chapter 54-05.1.
2. Nothing in this section shall be construed to prohibit the establishment, administration, and solicitation of contributions to a separate and segregated fund to be utilized for political purposes by a corporation, cooperative corporation, or association. It shall be unlawful for:
- a. The person or persons controlling such a fund to make contributions or expenditures utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of them; or utilizing money from dues, fees, treasury funds, or other money required as a condition of membership in an association, or as a condition of employment; or utilizing money obtained in any commercial transaction. Moneys from fees, dues, treasury funds, or money obtained in a commercial transaction may, however, be used to pay costs of administration of the fund.
  - b. Any person soliciting an employee, stockholder, patron, or member for a contribution to such a fund to fail to inform the employee or member of the political purposes of the fund at the time of the solicitation, or of the general political philosophy intended to be advanced through committee activities.
  - c. Any person soliciting an employee or member for a contribution to such a fund to fail to inform the employee or member, at the time of the solicitation, of his right to refuse to contribute without any reprisal.
  - d. Any contribution to be accepted without keeping an accurate record of the contributor and amount contributed, and of amounts expended for political purposes.
  - e. Any contribution to be accepted from any person who is not an employee, stockholder, patron, or member of the corporation, cooperative corporation, or association maintaining the political committee.
3. All political committees formed for the purpose of administering the segregated fund provided for herein shall file a statement listing all contributions received

in excess of one hundred dollars in the aggregate from each contributor for the twelve-month period beginning with the first day of October and ending with the thirtieth day of September of the following year, showing the name and mailing address of each contributor of an amount in excess of one hundred dollars in the aggregate for each such twelve-month period, and a listing of all disbursements of an amount in excess of one hundred dollars in the aggregate made for political purposes, no later than October fifteenth following each such twelve-month period with the office of secretary of state. Within thirty days of the close of the calendar year all political committees shall file a supplemental statement in the same form for the last three months of the calendar year.

- a. The form of all statements required by this chapter shall be as prescribed by the secretary of state.
- b. The secretary of state may arrange an audit of any statement filed pursuant to this chapter. The secretary of state shall arrange an audit of any statement that the attorney general requests to be audited. The results of the audit shall be reported to the attorney general.
- c. Records and statements shall be preserved by the secretary of state for a period of four years from the date of filing. The records and statements are public records and shall be open to public inspection.
4. No person shall make a payment of his own money or of another person's money to any other person for a political purpose in any name other than that of the person who supplies such money, and no person knowingly shall receive such payment nor enter nor cause the same to be entered in his account or record in any name other than that of the person by whom it actually was furnished.
5. If an officer, employee, agent, attorney, or other representative of a corporation, cooperative corporation, or association makes any contribution prohibited by this section out of corporate, cooperative corporation, or association funds or otherwise violates the provisions of this section, it shall be prima facie evidence of a violation by the corporation, cooperative corporation, or association.
6. A violation of the provisions of this section may be prosecuted in the county where the contribution is made, or in any county in which it has been paid or distributed.
7. It shall be a class A misdemeanor for an officer, director, stockholder, attorney, agent, or representative

3. is guilty of the use of state services or property for political purposes.

#### 16.1-10-02. Use of state services or property for political purposes.

1. No person shall use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency department, bureau, board, or commission thereof, for any political purpose.
2. The following definitions shall be used for the purpose of this section:
  - a. "Political purpose" means any activity directly undertaken by a candidate for any office in support of his own election to such office; or aid and assistance to any candidate, political party, political committee, or organization, but shall not include activities undertaken in the performance of a duty of state office.
  - b. "Property" includes, but is not limited to, motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section shall be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.
  - c. "Services" includes, but is not limited to, the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.

16.1-10-03. Political badge, button, or insignia at elections. No person shall, on the day of an election, buy, sell, give, or provide any political badge, button, or any insignia to be worn at or about the polls on that day. No such political badge, button, or insignia shall be worn at or about the polls on any election day.

16.1-10-04. Publication of false information in political advertisements - Penalty. No person shall knowingly sponsor any political advertisement or news release containing deliberately calculated



2. Make statements filed available for public inspection and copying during regular office hours. A reasonable fee may be charged to cover the cost of copying. Proceeds from any fees charged shall be deposited in the general fund of the appropriate governmental entity.
3. Preserve statements filed under this chapter for the term of office to which the person making disclosure is elected or appointed or until a new statement is filed, and preserve statements filed pursuant to this chapter by those candidates who are not elected or appointed for a period of one year after the date of receipt.

16.1-09-06. Procedure for enforcement - Investigation by attorney general or state's attorney. Upon a complaint, signed under penalty of perjury, by any person, or upon the motion of the attorney general or a state's attorney, the attorney general or state's attorney shall investigate any alleged violation of this chapter. The investigation and its proceedings shall be confidential until a determination has been reached by the investigating officer that enough incriminating evidence exists to bring an action and such action is commenced in the appropriate district court.

16.1-09-07. Effect of intentional violation of chapter - Penalty. Any person who intentionally violates a provision of this chapter shall be guilty of a class B misdemeanor and his appointment, nomination, or election, as the case may be, shall be declared void. Any vacancy that may result from the intentional violation of this chapter shall be filled in the manner provided by law. This section shall not remove from office a person who is already in office and who has entered upon the discharge of his duties where such office is subject to the impeachment provisions of the Constitution of North Dakota.

#### CHAPTER 16.1-10 CORRUPT PRACTICES

16.1-10-01. Corrupt practice - What constitutes. A person shall be guilty of corrupt practice within the meaning of this chapter, if he willfully engages in any of the following:

1. Expends any money for election purposes contrary to the provisions of this chapter.
2. Engages in any of the practices prohibited by section 12.1-14-02 or 12.1-14-03.

of any corporation, cooperative corporation, or association to violate any of the provisions of this section, or to counsel or consent to any violation. Any person who solicits or knowingly receives any contribution in violation of the provisions of this section shall be guilty of a class A misdemeanor.

8. Any officer, director, stockholder, attorney, agent, or representative who makes, counsels, or consents to the making of a contribution in violation of this section shall be liable to the company, corporation, or association for the amount so contributed.

16.1-08-03. Person not excused from testifying as to violation - Prosecution or penalty waived upon testifying. No person shall be excused from attending and testifying or producing any books, papers, or other documents before any court upon any investigation, proceeding, or trial for a violation of any of the provisions of this chapter, upon the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him. No person shall be prosecuted nor subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him in any criminal investigation or proceeding.

16.1-08-04. Expenditures for other purposes. Nothing in this chapter shall be construed to prohibit the exercise by corporations, cooperative corporations, and associations of the right to make expenditures and contributions for the purpose of promoting passage or defeat of initiated or referred measures, or for promoting any general political philosophy or belief deemed in the best interest of the employees, stockholders, patrons, or members of the corporation, cooperative corporation, or association other than "political purpose" as defined by this chapter.

#### CHAPTER 16.1-08.1 CAMPAIGN CONTRIBUTION STATEMENTS

16.1-08.1-01. Definitions. As used in this chapter, unless the context otherwise plainly requires:

1. "Candidate" means an individual whose name is presented for nomination to public office at any primary election whether the individual is actually nominated or not; an individual whose name is printed as a candidate on an

official ballot used at any election; an individual who seeks election through write-in votes; an individual who is soliciting or accepting campaign contributions for the individual's own political purpose; or an individual who has sought election to office and who is soliciting or accepting contributions to pay off any campaign debt or to raise money for any political purpose.

2. "Contribution" means a gift, subscription, loan, advance, or deposit of money, made for the purpose of influencing the nomination for election, or election, of any person to office, of aiding the circulation of statewide initiative or referendum petitions, or of promoting passage or defeat of a statewide initiated or referred measure. Contribution also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes, and includes funds received by a political committee which are transferred to that committee from another political committee or other source. This definition does not include:
  - a. A loan of money from a bank or other lending institution made in the regular course of business.
  - b. Time spent by volunteer campaign or political party workers.
  - c. Money spent by a candidate on the candidate's own behalf.
  - d. Any money received from a district or state committee of a political party, as established pursuant to sections 16.1-03-06 and 16.1-03-08, except for contributions reported pursuant to section 16.1-08.1-03.
3. "Person" means an individual, partnership, committee, association, corporation, cooperative corporation, or other organization or group of persons.
4. "Political committee" means any committee, club, association, or other group of persons which receives contributions primarily for political purposes.
5. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.

16.1-03-03. Contents of statement of interests. The statement of interests required to be filed under this chapter shall apply to the candidate or appointee and his spouse and shall include:

1. An identification of the principal source of income, defined in the state income tax return as "principal occupation", of both the candidate or appointee and his spouse.
2. The name of each business or trust, not the principal source of income, in which the person making the statement, and that person's spouse, have a financial interest.
3. A list of the associations or institutions with which the person making the statement, and that person's spouse, are closely associated, or for which they serve as a director or officer, and which may be affected by legislative action, in the case of a statement submitted by a legislative candidate, or action by the candidate or appointee in his capacity as an officeholder.
4. The identity by name of all business offices, business directorships, and fiduciary relationships the person making the statement, and that person's spouse, have held in the preceding calendar year.

16.1-03-04. Powers and duties of the secretary of state. The secretary of state shall:

1. Prescribe the form for statements of interests required to be filed under this chapter and furnish such forms, on request, to persons subject to this chapter.
2. Prepare and publish guidelines setting forth recommended uniform methods of reporting for use by persons required to file statements under this chapter.
3. Adopt such rules and regulations, in the manner prescribed by chapter 20-32, as may be appropriate to effectuate the purposes of this chapter.

16.1-03-05. Powers and duties of the secretary of state and county and city auditors. The secretary of state, or the county or city auditor, where appropriate shall:

1. Accept and file any statement submitted pursuant to this chapter.



statement shall be promptly filed upon notice by the secretary of state or county auditor of its nonreceipt.

3. Preserved by the secretary of state or county auditor for a period of four years from the date of filing. The statement is to be considered a part of the public records of his office and shall be open to public inspection.

16.1-08.1-07. Penalty. Any person who shall willfully violate any provision of this chapter shall be guilty of an infraction.

#### CHAPTER 16.1-09 STATEMENT OF INTERESTS

16.1-09-01. Declaration of policy. The legislative assembly declares that public office is a public trust, and in order to continue the faith and confidence of the people of the state in that trust and in their government, the people have a right to be assured that the interest of holders of or candidates for public office present no conflict with the public trust.

16.1-09-02. Statement of interests to be filed. Every candidate for elective office shall file a statement of interests as required by this chapter. A candidate for a statewide elective office shall file the statement of interests with the secretary of state. A candidate for election as a member of the legislative assembly and for offices other than statewide shall file the statement of interests with the county auditor, or the city auditor if the candidate is running for city office, of the candidate's county or city of residence. Candidates for elective office who are required to file such statements shall do so at the time of filing a certificate of nomination, a certificate of endorsement, or a petition of nomination, pursuant to chapter 16.1-11, 16.1-12, or 40-21, as is appropriate; provided, that any person who has filed a statement as the result of candidacy in a primary election need not refile prior to running in the following general election. Every person who is appointed by the governor to a state agency, board, bureau, commission, department, or occupational or professional licensing board shall file a statement of interests as required by this chapter with the secretary of state simultaneously with announcement of the appointment.

6. "Political purpose" or "political purposes" means any activity undertaken in support of or in opposition to the election or nomination of a candidate.
7. "Public office" means every statewide or legislative office to which persons can be elected by vote of the people under the laws of this state.

16.1-08.1-02. Statement required of candidates - Contents - Additional statements. Any candidate for a public office at any general, primary, or special election, or any candidate who sought a public office or is seeking a public office and who is soliciting or accepting contributions for any political purpose, shall make and file a statement in accordance with this section. The statement shall contain a detailed statement of all contributions received from each individual or political committee which exceed one hundred dollars in the aggregate for the calendar year.

The statement shall include the name and mailing address of all contributors listed. All statements filed pursuant to this section shall be consecutive and, taken together, shall cover the entire calendar year's receipts up through the cutoff date for each statement. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period shall be aggregated for the purposes of the statements required by this chapter.

The statement required of a candidate shall be filed with the secretary of state no later than four p.m. on the tenth day prior to the date of the general, primary, or special election in which the candidate's name appears on the ballot or in which the candidate seeks election through write-in votes complete from the beginning of that calendar year through the fifteenth day prior to the date of the general, primary, or special election. A complete statement for the entire calendar year shall be filed no later than four p.m. on the thirtieth day of January of the following calendar year, regardless of whether the candidate's name appeared on the ballot for any office during that calendar year or whether the candidate did not seek election at any election through write-in votes. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the report shall be filed no later than four p.m. on the next business day on which the office of the secretary of state is open.

The form of all statements required by this chapter shall be as prescribed by the secretary of state. Statements of a legislative candidate shall be filed in the office of the county auditor of the candidate's county of residence under the same limitations as apply to the filing of statements with the secretary of state. Statements of state office candidates and any other required statements shall be filed in the office of the secretary of state.

No candidate shall be required to file any statement required by this chapter if the candidate has not received any contributions in excess of one hundred dollars during the calendar year.

**16.1-08.1-03.** Contributions statement required of political parties. Any political party which receives contributions in excess of one hundred dollars and which contributes money to a candidate in excess of one hundred dollars shall, within fifteen days of the close of the calendar year, do one of the following:

1. File a statement listing the total amount contributed to or expended on behalf of a candidate or candidates.
2. File a statement containing a detailed list of all contributions received from an individual or political committee which exceed one hundred dollars in amount. The statement shall include the name and mailing address of all contributors listed.

Any such statement shall be filed with the secretary of state no later than four p.m. on the thirtieth day of January following the close of the calendar year which is the subject of the statement. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the statement shall be filed on the next available day on which the office of the secretary of state is open.

**16.1-08.1-03.1.** Statement required of persons promoting passage or defeat of initiated or referred measure - Contents. Any person who is soliciting or accepting contributions for the purpose of aiding the circulation of statewide initiative or referendum petitions or of promoting passage or defeat of any statewide initiated or referred measure at any primary, general, or special election shall file a statement in accordance with this section if the person has received any contributions from a person in excess of one hundred dollars in the aggregate during the calendar year. The statement must contain a detailed statement of all contributions received from each person which exceed one hundred dollars in the aggregate for the calendar year.

The statement must include the name and mailing address of all contributors listed. All statements filed pursuant to this section must be consecutive and, taken together, must cover the entire calendar year's receipts up through the cutoff date for each statement. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated for the purposes of the statements required by this section.

The statement required of a person must be filed with the secretary of state no later than four p.m. on the tenth day prior to the date of the general, primary, or special election in which the measure appears or would have appeared on the ballot, complete from the beginning of that calendar year through the fifteenth day prior to the date of the general, primary, or special election. A complete statement for the entire calendar year must be filed no later than four p.m. on the thirtieth day of January of the following calendar year. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the report must be filed no later than four p.m. on the next business day on which the office of the secretary of state is open.

The secretary of state shall prescribe the form of all statements required by this section.

**16.1-08.1-04.** Supplemental statement required on large contributions received after original statement - Filing time. If any candidate or person soliciting or accepting contributions for the purpose of aiding the circulation of statewide initiative or referendum petitions or of promoting passage or defeat of a statewide initiated or referred measure receives any contribution of five hundred dollars or more in the fifteen-day period prior to any general, primary, or special election from any individual contributor, that candidate or person shall make and file a supplemental statement in the same form as required by section 16.1-08.1-02 or 16.1-08.1-03.1, stating the name and street address of such contributor and the amount of the contribution, and file the statement in the appropriate office within forty-eight hours of the receipt of the contribution.

**16.1-08.1-05.** Annual audit by secretary of state - Random and requested audits - Reports. The secretary of state may arrange an audit of any statement filed pursuant to this chapter. The secretary of state shall arrange an audit of any statement that the attorney general requests to be audited. The results of the audit shall be reported to the attorney general.

**16.1-08.1-06.** Requirements. A statement required by this chapter to be filed with the secretary of state or county auditor shall be:

1. Verified by the oath or affirmation of the person filing the statement, taken before any officer authorized to administer oaths.
2. Deemed properly filed when deposited in an established post office within the prescribed time, postage affixed, and directed to the secretary of state or county auditor, but in the event it is not received, a duplicate of the



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FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MUR #3024  
DATE COMPLAINT RECEIVED  
BY OGC: 1/29/90  
DATE OF NOTIFICATION TO  
RESPONDENTS: 2/7/90  
STAFF MEMBER: Craig Douglas Reffner

COMPLAINANT: David H. Calhoon

RESPONDENTS: North Dakota Public  
Employees Association/FSE

RELEVANT STATUTES: 2 U.S.C. § 441b(b)(3)(C)  
11 C.F.R. § 114.5(a)(2), (4) and (5)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

**I. GENERATION OF MATTER**

On January 29, 1990, David H. Calhoon filed a complaint with the Federal Election Commission (the "Commission") alleging that the North Dakota Public Employees Association/FSE ("NDPEA") violated Section 441b(b) of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. §§ 114.5(a)(2), (4) and (5) of the Commission's regulations. The complaint focuses on a joint membership dues/contribution solicitation which provides for a \$2.00 per-month NDPEA COPE payroll deduction checkoff.<sup>1</sup> Mr. Calhoon alleges that the solicitation fails to contain any statement informing him that the \$2.00 request is merely a

1. NDPEA is not registered as a political committee with the Commission and, from the information available, it appears that NDPEA may have been acting as an affiliate or a collecting agent for another committee. This Office will clarify NDPEA's status in the course of discovery.

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suggestive amount and that the solicitee is free to contribute a larger or lesser amount. The complainant also contends that the solicitation does not properly inform the recipient that one could refuse to contribute without any reprisal. On March 14, 1990, the NDPEA filed a response to the complaint asserting that the mail solicitation in question complied "in all material respects" with the requirements of the Act and the Commission's regulations.<sup>2</sup>

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. Statement of the Law**

Contributions to a separate segregated fund, including a separate segregated fund established by a labor organization, must be completely voluntary and must not be made out of physical force, job discrimination, or financial reprisal. 2 U.S.C. § 441b(b)(3)(A). In accordance with this provision, the Act and regulations impose numerous informational requirements upon all written solicitations for contributions to a separate segregated fund. First, the solicitation must inform the solicitee, at the time of the solicitation, of the right to refuse to contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a)(4). Second, the solicitation must inform the solicitee

2. The NDPEA joint membership dues/contribution solicitation states as follows:

This authorization is signed freely and voluntarily and on the understanding that the NDPEA COPE is engaged in joint fundraising efforts with the AFL-CIO and will use the money contributed to that effort to make political contributions and expenditures in connection with federal, state and local elections. The voluntary authorization may be revoked at any time by notifying the NDPEA and the payroll office in writing.

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of the political purposes of the fund that will be receiving the contribution. 2 U.S.C. § 441b(b)(3)(B); 11 C.F.R. § 114.5(a)(3). Third, if the solicitation specifies a certain dollar amount to be contributed, then it must contain a statement indicating that the proposed amount is merely a guideline and that the solicitee is free to contribute a larger or lesser amount without any fear that he or she will be disadvantaged based on the amount contributed or a decision not to contribute. 11 C.F.R. § 114.5(a)(2).

Additionally, contribution guidelines may not be enforced by the soliciting labor organization or its separate segregated fund.

Id. Finally, any written contribution solicitation addressed to employees or members must contain the required disclosures.

11 C.F.R. § 114.5(a)(5).

**B. Analysis**

In defense of its solicitation, NDPEA makes two arguments. First, NDPEA asserts that its solicitation does not contain a "guideline" as that term is used in the regulations, and as such, the requirements of 11 C.F.R. § 114.5(a)(2) are inapplicable. Second, NDPEA argues that the solicitation, when read in its entirety, clearly conveys the message that participation is voluntary and that no reprisals will result from a refusal to contribute. As discussed below, neither of NDPEA's arguments is availing here.

NDPEA asserts that "a solicitation does not contain a guideline where a single amount only is listed, and the recipient has the free choice to participate for that amount or not at all." See Attachment 1, at 3. However, the Commission,

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in its Advisory Opinions, has consistently treated solicitations that specify a sum certain amount to be contributed as containing a guideline for purposes of 11 C.F.R. § 114.5(a)(2). In AO 1986-7, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5848, for example, the Commission determined, inter alia, that an agricultural cooperative's proposed solicitation, which requested shareholders to contribute \$1.00 annually, per share, was permissible because, as the Commission stated: "the [\$1.00] guideline contained in the combined solicitation and authorization form meets the requirements of §114.5(a) . . . ." (emphasis added). See also AO 1987-6, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5887 (contribution amount of \$100.00 identified as a contribution guideline); AO 1982-11, 1 Fed. Election Camp. Fin. Guide ¶ 5650 (suggested quarterly contribution of \$25.00 identified as a contribution guideline).<sup>3</sup> Thus, NDPEA's inclusion of the specified amount of \$2.00-per-month in its mail solicitation creates, under the provisions of 11 C.F.R. § 114.5(a)(2), a contribution guideline. As such, NDPEA should have notified the solicitee that the \$2.00 guideline was a suggested amount and that the solicitee would be free to contribute a greater or lesser sum, and that NDPEA would not favor or disadvantage anyone by reason of the amount of

3. The Random House Dictionary of the English Language (2d ed. 1987) defines the word "guideline" as "any guide or indication of a future course of action." This definition undercuts Respondent's position that multiple contribution amounts must be listed in order for the requirements of 11 C.F.R. § 114.5(a)(2) to apply.



their contribution or their decision not to contribute.<sup>4</sup>

NDPEA also argues that its solicitation, when considered in its entirety, clearly establishes that participation in the payroll deduction checkoff program is voluntary. NDPEA's argument is without merit because the requirement that a solicitee be informed of the right to refuse to contribute without any reprisal is separate and distinct from the requirement that contributions be made voluntarily.<sup>5</sup> Under 11 C.F.R. § 114.5(a)(1), contributions to a separate segregated fund must be made voluntarily, without force or threat of force. In addition, Section 114.5(a)(4) requires a solicitee to be informed of the right to refuse a contribution without any reprisal.

There is nothing in the regulations that supports NDPEA's

4. NDPEA equates its payroll checkoff plan to fundraiser invitations, which often specify how much it will cost to attend the event and which the invitees either accept or reject. NDPEA argues that those solicited to contribute through the payroll checkoff plan are similarly situated: the solicitees may opt to have their \$2.00 contribution deducted from their paycheck or may elect not to participate at all. See Attachment 1 at 2. Given the ongoing nature of a payroll checkoff plan and the concern that such contributions be voluntary, see Pipefitters Local Union No. 562 v. United States, 407 U.S. 385 (1971), NDPEA's analogy is inappropriate.

5. The Commission has examined the overall appearance of a solicitation to determine if the contribution guideline is being enforced in violation of 11 C.F.R. § 114.5(a)(2). While not raised as an issue here, the manner in which NDPEA's solicitation is arranged appears to satisfy this aspect of Section 114.5(a)(2). NDPEA's form contains separate signature blocks, one for authorizing the deduction of membership dues and the other for the deduction of the contribution. Under this arrangement, NDPEA's solicitation form conveys a clear distinction between the membership dues portion and the contribution portion. See AO 1987-17, 2 Fed. Election Camp. Fin. Guide ¶ 5895.

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suggestion that the disclosure requirement of Section 114.5(a)(4) may be inferred if the requirement for voluntariness is satisfied. Thus, even if a contribution appears to have been made voluntarily in accordance with Section 441b(b) of the Act and Section 114.5(a)(1) of the regulations, the solicitee must still be informed of the right to refuse the contribution without any reprisal under the provisions of 11 C.F.R.

§ 114.5(a)(4). In this regard, a comparison between NDPEA's mail solicitation and the proposed mail solicitation in AO 1987-17, 2 Fed. Election Camp. Fin. Guide ¶ 5895, cited by Respondent, reveals that the latter solicitation clearly stated that the collecting organization "will not favor, disadvantage, retaliate, or take reprisal against any person by reason of the amount of that person's contribution to, or that person's decision not to contribute . . . ." NDPEA's solicitation fails to contain any such language and is factually distinguishable from the proposed solicitation approved by the Commission in AO 1987-17.

Based on the above considerations, this Office recommends that the Commission reject the Respondent's request to dismiss the complaint or in the alternative to take no further action. This Office further recommends that the Commission find reason to believe that the North Dakota Public Employees Association violated 2 U.S.C. § 441b and 11 C.F.R. § 114.5(a).

### III. RECOMMENDATIONS

1. Reject the Respondent's request to dismiss the complaint or in the alternative to take no further action.
2. Find reason to believe that the North Dakota Public

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Employees Association violated 2 U.S.C. § 441b and 11 C.F.R. § 114.5(a).

3. Approve the attached Factual and Legal Analysis and the appropriate letter.

Lawrence M. Noble  
General Counsel

*June 15, 1990*  
Date

BY:

*Lois G. Lerner*  
Lois G. Lerner

Associate General Counsel

Attachments

1. Response of NDPEA
2. Proposed Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3024  
North Dakota Public )  
Employees Association/FSE )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 20, 1990, the Commission decided by a vote of 4-0 to take the following actions in MUR 3024:

1. Reject the Respondent's request to dismiss the complaint or in the alternative to take no further action.
2. Find reason to believe that the North Dakota Public Employees Association violated 2 U.S.C. § 441b and 11 C.F.R. § 114.5(a).
3. Approve the Factual and Legal Analysis and the appropriate letter, as recommended in the General Counsel's Report dated June 15, 1990.

Commissioners Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioners Aikens and Thomas did not cast votes.

Attest:

June 20, 1990

Date

Marjorie W. Emmons

Marjorie W. Emmons  
Secretary of the Commission

Received in the Secretariat: Monday, June 18, 1990 8:53 a.m.  
Circulated to the Commission: Monday, June 18, 1990 11:00 a.m.  
Deadline for vote: Wednesday, June 20, 1990 11:00 a.m.

dh

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 26, 1990

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Eric F. Kleinfeld, Esq.  
Manatt, Phelps, Rothenberg & Phillips  
1200 New Hampshire Avenue, N.W.  
Suite 200  
Washington, D.C. 20036

RE: MUR 3024  
North Dakota Public Employees  
Association/FSE

Dear Mr. Kleinfeld:

On February 7, 1990, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was enclosed with that notification.

Upon further review of the allegations contained in the complaint, and information supplied by you on behalf of your client, the Commission, on June 20, 1990, found that there is reason to believe the North Dakota Public Employees Association violated 2 U.S.C. § 441b, a provision of the Act, and 11 C.F.R. § 114.5(a), a provision of the Commission's regulations. By same date, the Commission rejected your client's request to dismiss the complaint or in the alternative to take no further action. The 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 your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with your response to the enclosed interrogatories and request for production of documents within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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Eric F. Kleinfeld, Esq.  
Page 2

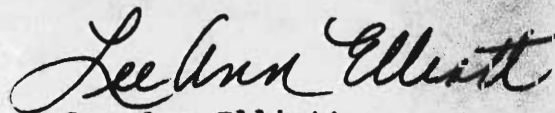
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain 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 matter to be made public.

If you have any questions, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,



Lee Ann Elliott  
Chairman

Enclosures

1. Interrogatories and Request for Production of Documents
2. Factual & Legal Analysis

91040843839



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
)  
)  
)

MUR 3024

INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS

TO: North Dakota Public Employees  
Association/FSE  
c/o Eric F. Kleinfeld, Esq.  
Manatt, Phelps, Rothenberg & Phillips  
1200 New Hampshire Avenue, N.W.  
Suite 200  
Washington, D.C. 20036

91040843840

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 15 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1989 to December 31, 1989.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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**INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS**

1. With regard to the North Dakota Public Employee Association's (NDPEA) payroll deduction authorization form (the "form"), which was the basis for the complaint in this matter:
  - a) state the total cost incurred in the production, distribution, and processing of the form, including the costs for designing, printing and mailing, and all other related costs;
  - b) identify the time period (specifying both the earliest and latest dates) in which the form was used and state the number of forms distributed during that period;
  - c) state the total dollar amount of contributions received by NDPEA in response to the form; and
  - d) state whether NDPEA was acting as an affiliate or a collecting agent for any person in connection with the payroll deduction plan and, if so, identify such person.
2. Describe in detail how NDPEA used the contributions received from payroll deductions and identify all persons who received a portion of the funds raised.
3. State whether NDPEA or a separate segregated fund of NDPEA has ever made contributions or expenditures in connection with any federal election. For each such contribution or expenditure, identify the recipient, the amount involved and the date the contribution or expenditure was made.
4. Explain NDPEA's relationship, if any, to labor organizations at the state and federal level and identify such organizations.
5. Produce all documents that support or relate to your responses in the above questions.

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FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: North Dakota Public  
Employees Association/FSE

MUR: 3024

I. FACTUAL BACKGROUND

On January 29, 1990, David H. Calhoon filed a complaint with the Federal Election Commission (the "Commission") alleging that the North Dakota Public Employees Association/FSE ("NDPEA") violated Section 441b(b) of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. §§ 114.5(a)(2), (4) and (5) of the Commission's regulations. The complaint focuses on a joint membership dues/contribution solicitation which provides for a \$2.00 per-month NDPEA COPE payroll deduction checkoff. Mr. Calhoon alleges that the solicitation fails to contain any statement informing him that the \$2.00 request is merely a suggestive amount and that the solicitee is free to contribute a larger or lesser amount. The complainant also contends that the solicitation does not properly inform the recipient that one could refuse to contribute without any reprisal. On March 14, 1990, the NDPEA filed a response to the complaint asserting that the mail solicitation in question complied "in all material respects" with the requirements of the Act and the Commission's regulations.<sup>1</sup>

1. The NDPEA joint membership dues/contribution solicitation states as follows:

This authorization is signed freely and voluntarily and on the understanding that the NDPEA COPE is engaged in joint fundraising efforts with the AFL-CIO and will use the money contributed to that

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## II. LEGAL ANALYSIS

Contributions to a separate segregated fund, including a separate segregated fund established by a labor organization, must be completely voluntary and must not be made out of physical force, job discrimination, or financial reprisal. 2 U.S.C. § 441b(b)(3)(A). In accordance with this provision, the Act and regulations impose numerous informational requirements upon all written solicitations for contributions to a separate segregated fund. First, the solicitation must inform the solicitee, at the time of the solicitation, of the right to refuse to contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a)(4). Second, the solicitation must inform the solicitee of the political purposes of the fund that will be receiving the contribution. 2 U.S.C. § 441b(b)(3)(B); 11 C.F.R. § 114.5(a)(3). Third, if the solicitation specifies a certain dollar amount to be contributed, then it must contain a statement indicating that the proposed amount is merely a guideline and that the solicitee is free to contribute a larger or lesser amount without any fear that he or she will be disadvantaged based on the amount contributed or a decision not to contribute. 11 C.F.R. § 114.5(a)(2). Additionally, contribution guidelines may not be enforced by the soliciting labor organization or its separate segregated fund. Id. Finally, any written contribution solicitation addressed to

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(Footnote 1 continued from previous page)  
effort to make political contributions and expenditures in connection with federal, state and local elections. The voluntary authorization may be revoked at any time by notifying the NDPEA and the payroll office in writing.

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employees or members must contain the required disclosures.  
11 C.F.R. § 114.5(a)(5).

In defense of its solicitation, NDPEA makes two arguments. First, NDPEA asserts that its solicitation does not contain a "guideline" as that term is used in the regulations, and as such, the requirements of 11 C.F.R. § 114.5(a)(2) are inapplicable. Second, NDPEA argues that the solicitation, when read in its entirety, clearly conveys the message that participation is voluntary and that no reprisals will result from a refusal to contribute. As discussed below, neither of NDPEA's arguments is availing here.

NDPEA asserts that "a solicitation does not contain a guideline where a single amount only is listed, and the recipient has the free choice to participate for that amount or not at all." See Attachment 1, at 3. However, the Commission, in its Advisory Opinions, has consistently treated solicitations that specify a sum certain amount to be contributed as containing a guideline for purposes of 11 C.F.R. § 114.5(a)(2). In AO 1986-7, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5848, for example, the Commission determined, inter alia, that an agricultural cooperative's proposed solicitation, which requested shareholders to contribute \$1.00 annually, per share, was permissible because, as the Commission stated: "the [\$1.00] guideline contained in the combined solicitation and authorization form meets the requirements of §114.5(a) . . . ." (emphasis added). See also AO 1987-6, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5887 (contribution amount of \$100.00 identified as a contribution

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91040843847 guideline); AO 1982-11, 1 Fed. Election Camp. Fin. Guide ¶ 5650 (suggested quarterly contribution of \$25.00 identified as a contribution guideline).<sup>2</sup> Thus, NDPEA's inclusion of the specified amount of \$2.00-per-month in its mail solicitation creates, under the provisions of 11 C.F.R. § 114.5(a)(2), a contribution guideline. As such, NDPEA should have notified the solicitee that the \$2.00 guideline was a suggested amount and that the solicitee would be free to contribute a greater or lesser sum, and that NDPEA would not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.<sup>3</sup>

NDPEA also argues that its solicitation, when considered in its entirety, clearly establishes that participation in the payroll deduction checkoff program is voluntary. NDPEA's argument is without merit because the requirement that a solicitee be informed of the right to refuse to contribute without any reprisal is separate and distinct from the requirement that contributions

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2. The Random House Dictionary of the English Language (2d ed. 1987) defines the word "guideline" as "any guide or indication of a future course of action." This definition undercuts Respondent's position that multiple contribution amounts must be listed in order for the requirements of 11 C.F.R. § 114.5(a)(2) to apply.

3. NDPEA equates its payroll checkoff plan to fundraiser invitations, which often specify how much it will cost to attend the event and which the invitees either accept or reject. NDPEA argues that those solicited to contribute through the payroll checkoff plan are similarly situated: the solicitees may opt to have their \$2.00 contribution deducted from their paycheck or may elect not to participate at all. See Attachment 1 at 2. Given the ongoing nature of a payroll checkoff plan and the concern that such contributions be voluntary, see Pipefitters Local Union No. 562 v. United States, 407 U.S. 385 (1971), NDPEA's analogy is inappropriate.



be made voluntarily.<sup>4</sup> Under 11 C.F.R. § 114.5(a)(1), contributions to a separate segregated fund must be made voluntarily, without force or threat of force. In addition, Section 114.5(a)(4) requires a solicitee to be informed of the right to refuse a contribution without any reprisal.

There is nothing in the regulations that supports NDPEA's suggestion that the disclosure requirement of Section 114.5(a)(4) may be inferred if the requirement for voluntariness is satisfied. Thus, even if a contribution appears to have been made voluntarily in accordance with Section 441b(b) of the Act and Section 114.5(a)(1) of the regulations, the solicitee must still be informed of the right to refuse the contribution without any reprisal under the provisions of 11 C.F.R. § 114.5(a)(4). In this regard, a comparison between NDPEA's mail solicitation and the proposed mail solicitation in AO 1987-17, 2 Fed. Election Camp. Fin. Guide ¶ 5895, cited by Respondent, reveals that the latter solicitation clearly stated that the collecting organization "will not favor, disadvantage, retaliate, or take reprisal against any person by reason of the amount of that person's contribution to, or that person's decision not to contribute . . . ." NDPEA's

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4. The Commission has examined the overall appearance of a solicitation to determine if the contribution guideline is being enforced in violation of 11 C.F.R. § 114.5(a)(2). While not raised as an issue here, the manner in which NDPEA's solicitation is arranged appears to satisfy this aspect of Section 114.5(a)(2). NDPEA's form contains separate signature blocks, one for authorizing the deduction of membership dues and the other for the deduction of the contribution. Under this arrangement, NDPEA's solicitation form conveys a clear distinction between the membership dues portion and the contribution portion. See AO 1987-17, 2 Fed. Election Camp. Fin. Guide ¶ 5895.

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solicitation fails to contain any such language and is factually distinguishable from the proposed solicitation approved by the Commission in AO 1987-17. Therefore, there is reason to believe that the North Dakota Public Employees Association violated 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.5(a)(2), (4) and (5).

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**MANATT, PHELPS, ROTHENBERG & PHILLIPS**

A PARTNERSHIP (ILLINOIS PROFESSIONAL CORPORATION)

ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, N.W.

SUITE 900

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LOS ANGELES

1329 WEST OLYMPIC BOULEVARD

LOS ANGELES, CALIFORNIA 90004

TEL 318-4000

July 11, 1990

Craig Douglas Reffner, Esquire  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
6th Floor  
Washington, D.C. 20463

Re: MUR 3024, North Dakota  
Public Employees Association

Dear Mr. Reffner:

As we discussed by telephone on July 11, 1990, we are hereby requesting an extension of time to respond to the Commission's reason to believe determination, interrogatories and request for production of documents, on behalf of our client in the above-captioned MUR. Specifically, we are seeking an additional twenty (20) days until August 13, 1990 to respond in this matter. This time is essential to prepare an adequate response, because one of the individuals with necessary and detailed information is out of the country for the remainder of the month.

Your consideration of this matter is appreciated.

Sincerely,

*Eric P. Kleinfeld*

Eric P. Kleinfeld  
Manatt, Phelps, Rothenberg  
& Phillips

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FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 13, 1990

Eric P. Kleinfeld, Esq.  
Manatt, Phelps, Rothenberg & Phillips  
1200 New Hampshire, N.W.  
Suite 200  
Washington, D.C. 20036

RE: MUR 3024  
North Dakota Public Employees  
Association/FSE

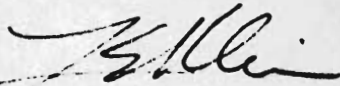
Dear Mr. Kleinfeld:

This is in response to your letter dated July 11, 1990, which we received on July 11, 1990, requesting an extension of twenty (20) days to respond to the reason to believe finding against your client and to answer the Commission's interrogatories and request for production of documents. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on August 13, 1990.

If you have any questions, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble  
General Counsel

  
BY: Lisa E. Klein  
Assistant General Counsel

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MANATT, PHELPS, ROTHENBERG & PHILLIPS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

1200 NEW HAMPSHIRE AVENUE, N.W.

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WASHINGTON, D.C. 20036

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LOS ANGELES

1225 WEST OLYMPIC BOULEVARD

LOS ANGELES, CALIFORNIA 90084

213 321-4000

August 13, 1990

Craig Douglas Reffner, Esquire  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
6th Floor  
Washington, D.C. 20463

Re: MUR 3024; North Dakota Public  
Employees Association

Dear Mr. Reffner:

Enclosed please find the response of my client, the North Dakota Public Employees Association, to the Commission's reason to believe finding in MUR 3024. After you have reviewed this response and the attached documentation, I would appreciate the opportunity of discussing it with you, as well as answering any questions which you may have.

Sincerely,

*Eric F. Kleinfeld*  
Eric F. Kleinfeld  
Manatt, Phelps & Phillips

Enclosure

cc: Rachelle Horowitz  
Gerard Friesz

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FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
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Before the Federal Election Commission

In the Matter of

MUR 3024

North Dakota Public  
Employees Association

Response

Introduction

This constitutes the response of the North Dakota Public Employees Association ("NDPEA") in Matter Under Review ("MUR") 3024. The Federal Election Commission ("FEC" or "Commission") found reason to believe that NDPEA violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended ("Act"), and 11 CFR § 114.5(a) of the Commission's regulations. In addition, the Commission requested responses to interrogatories and document production. NDPEA's answers and documents are attached hereto. For the reasons stated below, NDPEA respectfully requests that the Commission take no further action in this matter and close the file.

Discussion

A. Factual Background.

The focus of this MUR is a payroll deduction form produced by NDPEA. Sometime in mid-1989, NDPEA desired to begin raising funds for political activities through payroll deductions from its members. NDPEA represents public employees in North Dakota and is affiliated with the American Federation of Teachers ("AFT"),

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as well as with the American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO").

To implement its fundraising, NDPEA developed a payroll deduction form and distributed that form via the U.S. mail in September, 1989. The form was mailed on four separate dates: September 6, September 13, September 15, and September 18. Some 17,784 forms were mailed on those dates. See Response to FEC Interrogatories 1(b).

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Given that this was NDPEA's initial attempt at enrolling persons into such a payroll deduction plan, to characterize the response to the mailing as not overwhelming is an understatement. By NDPEA's records, at most forty-one (41) persons enrolled in the payroll deduction plan subsequent to this mailing. See Response to FEC Interrogatories 1(c).<sup>1/</sup> Thus, the rate of return on the mailing for enlistees into the payroll deduction plan was far less than 1%.

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<sup>1/</sup> NDPEA is unable to precisely determine the number of persons who signed up for the payroll deduction plan as a result of the mailing. The figure 41 includes all individuals who enrolled for a reasonable period subsequent to the mailing and up until NDPEA's next major fundraising event. NDPEA believes the 41 figure is high because it may include individuals who enrolled in the plan without receiving the form in question.

B. Because NDPEA's account is for state and local political activity, and all monies raised will be used solely for contributions to state and local candidates, the Act does not apply to NDPEA's solicitation.

Initially, when the idea for the payroll deduction plan was conceived and the payroll deduction form was produced, NDPEA contemplated raising the funds as a "collecting agent." The funds were to have been collected for the AFT Committee on Political Education ("AFT-COPE"). See Response to FEC Interrogatories 1(d). A separate bank account was opened for this purpose. While the initial funds were collected from the contributors, none were transmitted to AFT-COPE. No expenditures under the Act, or any other disbursements, have been made from this account. See Response to FEC Interrogatories 2.

Sometime after the filing of the complaint in this MUR, NDPEA began to assess its potential political activities for 1990. See Affidavit of Gerard T. Friesz, ¶ 5. This assessment included, inter alia, talking with labor leaders in and outside North Dakota, examining candidate positions with respect to issues of concern to NDPEA at the federal, state and local levels, and realistically looking, on a cost effective basis, at the amount of funds NDPEA could raise for political activities and where that money could most wisely be spent. After undertaking this examination, NDPEA determined that it was not able to play an effective role at both the federal and the state and local levels, due to the limited amount of available resources. For that reason, NDPEA, on its own accord, decided not to engage in any political



activity with respect to federal elections. See Affidavit of Gerard T. Friesz, ¶ 6. No contributions will be made to federal candidates, and no other expenditures will be made in connection with a federal election.

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Instead, NDPEA will engage in political activity with respect to candidates in North Dakota at the state and local levels. All funds raised through NDPEA's payroll deduction plan, and specifically, those funds attributable to the payroll deduction form in question, will be used for state and local activity. In essence, the payroll deduction account is a state and local account. Moreover, NDPEA cannot be said to have altered the purpose of its solicitation, since the payroll deduction form states that the money raised will be used "to make political contribution and expenditures in connection with federal, state and local elections."

Accordingly, the Commission lacks jurisdiction over NDPEA's payroll deduction account.<sup>2/</sup> The form in question was used to raise money which will not be spent in connection with any federal elections. Therefore, the form need not contain the disclaimer language of 11 CFR § 114.5(a). NDPEA's form need not comply with 11 CFR § 114.5(a), because NDPEA's account is not a "separate segregated fund" under the Act, and NDPEA is not raising

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<sup>2/</sup> NDPEA, however, is willing to comply with the Commission's discovery requests.

"contributions" under the Act. Simply put 11 CFR § 114.5(a) is inapplicable to this activity.

- C. The amount of money raised through NDPEA's solicitation was minimal, and therefore, any violation was de minimis.

Should the Commission choose to pursue this further, NDPEA's answers to the interrogatories establish unquestionably that any violation is de minimis. The card was used in one solicitation in September, 1989. The return rate of that mailing, to the best NDPEA can ascertain, was far less than 1%. According to respondent's records, only 41 of the 17,784 individuals who were mailed a card actually enrolled in the payroll deduction plan. This response rate alone is enough to establish the de minimis nature of the activity.

Additionally, the funds raised through the mailing in question were nominal. Forty-one persons at \$2.00 per month is only \$82.00 per month. For 1989, the total, at most, was \$246.<sup>3/</sup> Thus, assuming arguendo that NDPEA's form contained a defective disclaimer, it still resulted in less than \$250 in contributions. In light of these results, it is fair to suggest that this mailing was not a success.

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<sup>3/</sup> Individuals who enlisted in September began having deductions taken in October.



**Conclusion**

For the foregoing reasons, specifically that (1) the Act is inapplicable to NDPEA's state and local account, and (2) NDPEA's form raised a minimal sum of money, NDPEA respectfully requests that the Commission take no further action and close the file in MUR 3024.

Respectfully submitted,

August 13, 1990  
Date

Eric F. Kleinfeld  
Eric F. Kleinfeld  
Manatt, Phelps & Phillips

**Attachments**

91040843858

Before the Federal Election Commission

In the Matter of

MUR 3024

North Dakota Public  
Employees Association

Response to Interrogatories  
and Request for Production  
of Documents

1. With regard to the North Dakota Public Employee Association's (NDPEA) payroll deduction authorization form (the "form"), which was the basis for the complaint in this matter:

- a. state the total cost incurred in the production, distribution, and processing of the form, including the costs for designing, printing and mailing, and all other related costs;

Response

The total cost incurred in the production, distribution and processing of the form was \$4,804.83. Of this sum, \$3,435.51 was production and printing cost, and the remainder was postage.

- b. identify the time period (specifying both the earliest and latest dates) in which the form was used and state the number of forms distributed during that period;

Response

The payroll deduction authorization form was mailed via the U.S. Postal Service on four dates in September 1989: September 6, September 13, September 15 and September 18. A total of 17,784 forms were mailed on those dates. NDPEA has no record of other distribution of the form.

- c. state the total dollar amount of contributions received by NDPEA in response to the form; and

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Response

No money was received in "response" to the payroll deduction form; instead, individuals were enrolled in the payroll deduction plan. No more than 41 persons enrolled as a result of the September mailings. Deductions for those individuals were begun in October 1989. At \$2.00 per month, the resulting money raised was \$246.

- d. state whether NDPEA was acting as an affiliate or a collecting agent for any person in connection with the payroll deduction plan and, if so, identify such person.

Response

When NDPEA mailed the forms it intended to act as a collecting agent for the American Federation of Teachers Committee on Political Education ("AFT-COPE"). However, after subsequent consultation with individuals in North Dakota and review of the North Dakota state law, NDPEA determined that it would not have sufficient funds for its state and local activities and decided, accordingly, to use this account, and all funds collected, for state and local elections, rather than transfer them to any affiliated entity.

2. Describe in detail how NDPEA used the contributions received from payroll deductions and identify all persons who received a portion of the funds raised.

Response

NDPEA has not used any of the funds received, i.e., no expenditures have been made from these funds. NDPEA intends to use these funds in connection with state and local elections.

3. State whether NDPEA or a separate segregated fund of NDPEA has ever made contributions or expenditures in connection with any federal election. For each such contribution or expenditure, identify the recipient, the amount involved and the date the contribution or expenditure was made.

Response

Neither NDPEA nor a separate segregated fund of NDPEA has ever made a contribution or expenditure in connection with a federal election.

4. Explain NDPEA's relationship, if any, to labor organizations at the state and federal level and identify such organizations.

Response

NDPEA is affiliated with the American Federation of Teachers. NDPEA is also affiliated with the American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO").

5. Produce all documents that support or relate to your responses in the above questions.

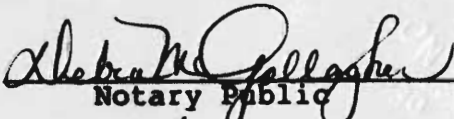
Response

See attached.

I declare under penalty of perjury, that, to the best of my knowledge and belief, the foregoing is accurate and true.

  
Gerard T. Friesz  
Executive Director, NDPEA

I, Debra Gallagher, a Notary Public, hereby certify that on the 10<sup>th</sup> day of August, 1990, there appeared before me GERARD T. FRIESZ, who acknowledged signing the foregoing document and that the statements contained therein are true.

  
Notary Public

My Commission expires: June 27, 1995.



Before the Federal Election Commission

In the Matter of

MUR 3024

North Dakota Public  
Employees Association

Affidavit of  
Gerard T. Priesz

I, GERARD T. FRIESZ, DECLARE AS FOLLOWS:

1. I am Executive Director of the North Dakota Public Employees Association ("NDPEA"), located at 3333 East Broadway Avenue, Suite 1219, Bismarck, North Dakota 58501-3396. I served as Executive Director during 1989, the year referenced in the Federal Election Commission's ("Commission") discovery request.

2. NDPEA is affiliated with the American Federation of Teachers ("AFT") and the American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO").

3. With regard to the payroll deduction form which is the subject of MUR 3024, I state as follows: this form was used in a mailing in September 1989, through which NDPEA intended to raise money as a collecting agent for the AFT Committee on Political Education. A separate bank account was opened to receive the funds for that purpose.

91040843862

4. Prior to the mailing referenced in Paragraph 3, NDPEA did not raise any contributions or make any expenditures in connection with federal elections.

5. Subsequent to the filing of the complaint in this MUR, I consulted with several labor union officials in North Dakota concerning NDPEA's need to play an active role relative to state and local candidates in North Dakota, and specifically, concerning the desire to have NDPEA make contributions to state and local candidates in North Dakota in 1990.

6. I determined that NDPEA did not and does not have sufficient funds to contribute at both the federal and the state and local levels. Because NDPEA's priority is assisting state and local candidates, and because those candidates are more responsive to NDPEA's policy goals, I decided that NDPEA's payroll deduction account would be used solely for state and local elections.

7. NDPEA is not planning to make any contributions or expenditures in connection with federal elections. Specifically,



NDPEA does not intend to use any of the money received through the payroll deduction form at issue in MUR 3024 in connection with federal elections.

I declare under penalty of perjury that, to the best of my knowledge and belief, the foregoing is accurate and true.

  
Gerard T. Friesz  
Executive Director, NDPEA

I, Debra Gallagher, a Notary Public, hereby certify that on the 10<sup>th</sup> day of August, 1990, there appeared before me GERARD T. FRIESZ, who acknowledged signing the foregoing document and that the statements contained therein are true.

  
Notary Public

My Commission expires: June 27, 1995.

91040843864

THE PIERCE CO.

1018 FIRST AVENUE NORTH  
BOX 2887  
FARGO, NORTH DAKOTA 58108-2887  
701-235-5588

20

(107)

SOLD TO: FEDERATION STATE EMPLOYEE  
112 N. UNIVERSITY DRIVE  
SUITE L138  
FARGO, ND

SHIP TO:

58102

| DATE                                                                                                                                                                                                                                              | INVOICE NO.                             | CUSTOMER P.O. | CUSTOMER NO. | TERMS                       |          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|---------------|--------------|-----------------------------|----------|
| 8/17/89                                                                                                                                                                                                                                           | P47067                                  |               | 1002409      | Net 10th of Following Month |          |
| QUANTITY                                                                                                                                                                                                                                          | DESCRIPTION                             |               |              | UNIT PRICE                  | AMOUNT   |
| 21200                                                                                                                                                                                                                                             | MEMBERSHIP BROCHURES                    |               |              |                             | 3,229.25 |
| 43865                                                                                                                                                                                                                                             | <div>Paid 8-23-89<br/>Check #1173</div> |               |              |                             |          |
|                                                                                                                                                                                                                                                   |                                         |               |              |                             |          |
|                                                                                                                                                                                                                                                   |                                         |               |              |                             |          |
|                                                                                                                                                                                                                                                   |                                         |               |              |                             |          |
| A FINANCE CHARGE, computed on a periodic rate of 1½% per month which is an ANNUAL PERCENTAGE RATE of 18%, will be added to all accounts with a previous month's balance which has not been paid within 30 days. Minimum finance charge is \$1.00. |                                         |               |              | FREIGHT                     | 193.76   |
|                                                                                                                                                                                                                                                   |                                         |               |              | STATE TAX                   | 12.50    |
|                                                                                                                                                                                                                                                   |                                         |               |              | CITY TAX                    |          |
|                                                                                                                                                                                                                                                   |                                         |               |              | TOTAL                       | 3,435.51 |

910043865



| U.S. Postal Service<br><b>STATEMENT OF MAILING WITH PERMIT IMPRINTS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                 | U.S. PS: Contains all forms by government, post or telegraph mail. Prepare in duplicate if necessary. Check for instructions from your postmaster regarding this form.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                     | Permit No.<br><b>169</b>                |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-----------------------------------------|---------------------|--|--|--|--|------------|------------------------------|------------|------------|---------|-------------|-------------------|------------------|----------------|---------|------------------|------------------|----------------|---------|----------------|------------------|----------------|---------|------------------|------------------|----------------|---------|------------|------------------|----------------|---------|----------|------------------|----------------|---------|------------------|---------------|----------------|---------|---------------------------------|--|--|--|---------|
| Post Office of Mailing<br><b>FARGO, ND</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Date<br><b>9-6-89</b>           | Receipt No.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Fed. Agency Subcode | Mailing Statement Sequence No.          |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
| Check applicable box<br><input type="checkbox"/> International<br><input type="checkbox"/> 3rd Class<br><input type="checkbox"/> Carrier Route<br><input type="checkbox"/> Basic ZIP+4<br><input type="checkbox"/> 5-Digit ZIP+4<br><input type="checkbox"/> ZIP+4 Barcoded<br><input checked="" type="checkbox"/> 5-Digit<br><input type="checkbox"/> Basic<br><input type="checkbox"/> Single Piece<br><input type="checkbox"/> 4th Class<br><input type="checkbox"/> Library Rate<br><input type="checkbox"/> Special 4th Class Single Piece<br><input type="checkbox"/> Presort Special 4th Class                                                                                                                                                                                               |                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |                                         |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
| Processing Category (See DMM 128)<br><input checked="" type="checkbox"/> Letters<br><input type="checkbox"/> Flat<br><input type="checkbox"/> Machineable Parcels<br><input type="checkbox"/> Irregular Parcels<br><input type="checkbox"/> Outside Parcels                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                 | Weight of a single piece _____ lbs.<br><b>TOTAL IN MAILING</b><br>Pieces <b>1731</b> Pounds _____      Sacks <b>675</b> Trays _____      Pallets _____      Other Containers _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                     | Mailing Identification Code: _____      |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
| Name and Address of Permit Holder (Include ZIP Code)<br><b>NDPEA</b><br><b>112 N. University Ave. #4138</b><br><b>Fargo, ND 58102</b><br><br><input checked="" type="checkbox"/> Check if nonprofit under DMM 623*<br>Name and Address of Individual or Organization for which mailing is prepared (if other than permit holder)<br><br><input type="checkbox"/> Check if nonprofit under DMM 623*<br>Name and Address of Mailing Agent (if other than permit holder)<br><br>                                                                                                                                                                                                                                                                                                                       |                                 | Telephone No. <b>232-8307</b><br><br><table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th colspan="5">POSTAGE COMPUTATION</th> </tr> <tr> <th>Pound Rate</th> <th>1. Pound Rate Postage Charge</th> <th>No. Pounds</th> <th>Rate/Pound</th> <th>Postage</th> </tr> <tr> <td rowspan="8" style="writing-mode: vertical-rl; transform: rotate(180deg);">Place Rates</td> <td>2. ZIP+4 Barcoded</td> <td>No. Qual. Pieces</td> <td>Rate Per Piece</td> <td>Postage</td> </tr> <tr> <td>3. 5-digit ZIP+4</td> <td>No. Qual. Pieces</td> <td>Rate Per Piece</td> <td>Postage</td> </tr> <tr> <td>4. Basic ZIP+4</td> <td>No. Qual. Pieces</td> <td>Rate Per Piece</td> <td>Postage</td> </tr> <tr> <td>5. Carrier Route</td> <td>No. Qual. Pieces</td> <td>Rate Per Piece</td> <td>Postage</td> </tr> <tr> <td>6. 5-digit</td> <td>No. Qual. Pieces</td> <td>Rate Per Piece</td> <td>Postage</td> </tr> <tr> <td>7. Basic</td> <td>No. Qual. Pieces</td> <td>Rate Per Piece</td> <td>Postage</td> </tr> <tr> <td>8. Rate Category</td> <td>No. of Pieces</td> <td>Rate Per Piece</td> <td>Postage</td> </tr> <tr> <td colspan="4" style="text-align: right;"><b>SUBTOTAL (1 through 8) ►</b></td> <td>Postage</td> </tr> </table> |                     |                                         | POSTAGE COMPUTATION |  |  |  |  | Pound Rate | 1. Pound Rate Postage Charge | No. Pounds | Rate/Pound | Postage | Place Rates | 2. ZIP+4 Barcoded | No. Qual. Pieces | Rate Per Piece | Postage | 3. 5-digit ZIP+4 | No. Qual. Pieces | Rate Per Piece | Postage | 4. Basic ZIP+4 | No. Qual. Pieces | Rate Per Piece | Postage | 5. Carrier Route | No. Qual. Pieces | Rate Per Piece | Postage | 6. 5-digit | No. Qual. Pieces | Rate Per Piece | Postage | 7. Basic | No. Qual. Pieces | Rate Per Piece | Postage | 8. Rate Category | No. of Pieces | Rate Per Piece | Postage | <b>SUBTOTAL (1 through 8) ►</b> |  |  |  | Postage |
| POSTAGE COMPUTATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |                                         |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
| Pound Rate                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 1. Pound Rate Postage Charge    | No. Pounds                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Rate/Pound          | Postage                                 |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
| Place Rates                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 2. ZIP+4 Barcoded               | No. Qual. Pieces                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Rate Per Piece      | Postage                                 |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 3. 5-digit ZIP+4                | No. Qual. Pieces                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Rate Per Piece      | Postage                                 |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4. Basic ZIP+4                  | No. Qual. Pieces                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Rate Per Piece      | Postage                                 |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 5. Carrier Route                | No. Qual. Pieces                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Rate Per Piece      | Postage                                 |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 6. 5-digit                      | No. Qual. Pieces                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Rate Per Piece      | Postage                                 |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 7. Basic                        | No. Qual. Pieces                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Rate Per Piece      | Postage                                 |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 8. Rate Category                | No. of Pieces                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Rate Per Piece      | Postage                                 |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>SUBTOTAL (1 through 8) ►</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |                                         | Postage             |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
| 10. Additional Postage Payment (State reasons for additional postage payment on reverse side under "Comments")<br><input checked="" type="checkbox"/> See reverse side                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                 | No. of Pieces      Rate/Piece      Postage                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     |                                         |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
| 11. <input type="checkbox"/> Check if applicable third-class bulk piece rate is affixed to each piece. (Form 3602-PC required)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |                                         |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
| 12. <b>TOTAL POSTAGE (plus 10) where applicable</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     | <b>Total Postage</b><br><b>\$131.56</b> |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
| • The signature of a nonprofit mailer certifies that: (1) The mailing does not violate section 623.5 DMM; and (2) Only the mailer's matter is being mailed; and (3) This is not a cooperative mailing with other persons or organizations that are not entitled to special bulk mailing privileges; and (4) This mailing has not been undertaken by the mailer on behalf of or produced for another person or organization that is not entitled to special bulk mailing privileges.<br><br>The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to \$10,000. (18 U.S.C. 1001) In addition, a civil penalty of up to \$5,000 and an additional assessment of twice the amount falsely claimed may be imposed. (31 U.S.C. 3802) |                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |                                         |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
| I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     |                                         |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |
| Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred)<br><b>Eileen S. Appersbach</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                     | Telephone No.<br><b>232-8307</b>        |                     |  |  |  |  |            |                              |            |            |         |             |                   |                  |                |         |                  |                  |                |         |                |                  |                |         |                  |                  |                |         |            |                  |                |         |          |                  |                |         |                  |               |                |         |                                 |  |  |  |         |

BULK MAIL DISCOUNT

ZIP CODE

DISCOUNT

56560

256

56721

263

58072

231

58075

362

58078

314

580

305

MIXED 5 DIGIT

58005 14

58012 23

58041 18

58042 31

58045 50

58047 34

58051 17

58054 93

58059 15

58074 10

TOTAL DISCOUNTED PIECES 1,731

91040843867



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                                                                                                                                                                                                                               |                              |                                  |                               |                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|----------------------------------|-------------------------------|--------------------------|
| U.S. Postal Service<br><b>STATEMENT OF MAILING WITH PERMIT PRINTS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                        | MAILING. Complete all items by typewriter, pen or indelible pencil. Prepare in duplicate if airmail. Check for instructions from your postmaster in "Mailing Instructions." Permit No. <span style="float: right;">169</span> |                              |                                  |                               |                          |
| Post Office of Mailing<br><b>Fargo, ND</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Date<br><b>9-13-89</b> | Receipt No.                                                                                                                                                                                                                   | Fed. Agency Subcode          |                                  |                               |                          |
| Check applicable box<br><input type="checkbox"/> International<br><input type="checkbox"/> 3rd Class<br><input type="checkbox"/> Carrier Route<br><input type="checkbox"/> Basic ZIP+4<br><input type="checkbox"/> 5-Digit ZIP+4<br><input type="checkbox"/> ZIP+4 Barcoded<br><input checked="" type="checkbox"/> 5-Digit<br><input type="checkbox"/> Basic<br><input type="checkbox"/> Single Piece                                                                                                                                                                                                                                                                                                                                                                                               |                        | <input type="checkbox"/> 4th Class<br><input type="checkbox"/> Library Rate<br><input type="checkbox"/> Special 4th Class Single Piece<br><input type="checkbox"/> Presort Special 4th Class                                  |                              |                                  |                               |                          |
| Processing Category (See DMM 128)<br><input checked="" type="checkbox"/> Letters<br><input type="checkbox"/> Flat<br><input type="checkbox"/> Machineable Parcel<br><input type="checkbox"/> Irregular Parcel<br><input type="checkbox"/> Outside Parcel                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                        | Weight of a single piece _____ lbs.<br>Mailing Identification Code: _____                                                                                                                                                     |                              |                                  |                               |                          |
| Name and Address of Permit Holder (Include ZIP Code)<br><b>NDPEA<br/>112 N. University Ave. # L138<br/>Fargo, ND 58102</b><br><br>Telephone No.<br><b>232-8307</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                        | TOTAL IN MAILING                                                                                                                                                                                                              |                              |                                  |                               |                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        | Pieces<br><b>4,386</b>                                                                                                                                                                                                        | Pounds                       | Sacks<br><b>10 #3</b>            |                               |                          |
| Name and Address of Individual or Organization for which mailing is prepared (if other than permit holder)<br><br><br>Check if nonprofit under DMM 623*<br>Name and Address of Mailing Agent (if other than permit holder)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                        | NUMBER OF                                                                                                                                                                                                                     |                              |                                  |                               |                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        | Trays                                                                                                                                                                                                                         | Pallets                      | Other Containers                 |                               |                          |
| Check if nonprofit under DMM 623*<br>Name and Address of Mailing Agent (if other than permit holder)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                        | POSTAGE COMPUTATION                                                                                                                                                                                                           |                              |                                  |                               |                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        | Pound Rate                                                                                                                                                                                                                    | 1. Pound Rate Postage Charge | No. Pounds                       | Rate/Pound                    | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        | Piece Rates                                                                                                                                                                                                                   | 2. ZIP+4 Barcoded            | No. Qual. Pieces                 | Rate Per Piece                | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                                                                                                                                                                                                                               | 3. 5-digit ZIP+4             | No. Qual. Pieces                 | Rate Per Piece                | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                                                                                                                                                                                                                               | 4. Basic ZIP+4               | No. Qual. Pieces                 | Rate Per Piece                | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                                                                                                                                                                                                                               | 5. Carrier Route             | No. Qual. Pieces                 | Rate Per Piece                | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                                                                                                                                                                                                                               | 6. 5-digit                   | No. Qual. Pieces<br><b>4,051</b> | Rate Per Piece<br><b>.076</b> | Postage<br><b>307.86</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                                                                                                                                                                                                                               | 7. Basic                     | No. Qual. Pieces<br><b>335</b>   | Rate Per Piece<br><b>.084</b> | Postage<br><b>28.14</b>  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                                                                                                                                                                                                                               | 8. Rate Category             | No. of Pieces                    | Rate Per Piece                | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |                                                                                                                                                                                                                               | SUBTOTAL (1 through 8) ▶     |                                  |                               | Postage<br><b>336.02</b> |
| 10. Additional Postage Payment (State reasons for additional postage payment on reverse side under "Comments")<br>See reverse side                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                        | No. of Pieces                                                                                                                                                                                                                 | Rate/Piece                   | Postage                          |                               |                          |
| 11. Check if applicable third-class bulk piece rate is affixed to each piece. (Form 3602-PC required)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                        |                                                                                                                                                                                                                               |                              |                                  |                               |                          |
| 12. TOTAL POSTAGE (plus 10) where applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                        |                                                                                                                                                                                                                               |                              | Total Postage<br><b>336.02</b>   |                               |                          |
| * The signature of a nonprofit mailer certifies that: (1) The mailing does not violate section 623.5 DMM; and (2) Only the mailer's matter is being mailed; and (3) This is not a cooperative mailing with other persons or organizations that are not entitled to special bulk mailing privileges; and (4) This mailing has not been undertaken by the mailer on behalf of or produced for another person or organization that is not entitled to special bulk mailing privileges.<br><br>The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to \$10,000. (18 U.S.C. 1001) In addition, a civil penalty of up to \$5,000 and an additional assessment of twice the amount falsely claimed may be imposed. (31 U.S.C. 3802) |                        |                                                                                                                                                                                                                               |                              |                                  |                               |                          |
| I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                        |                                                                                                                                                                                                                               |                              |                                  |                               |                          |
| Signature of Permit Holder or Agent (both principal and agent are liable for any postage deficiency incurred)<br><b>William S. Appenpach</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                        |                                                                                                                                                                                                                               |                              | Telephone No.<br><b>232-8307</b> |                               |                          |
| I CERTIFY that this mailing is properly prepared and meets the basic postage requirements.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                        |                                                                                                                                                                                                                               |                              |                                  |                               |                          |
| Signature of Witness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                        |                                                                                                                                                                                                                               |                              |                                  |                               |                          |

# BULK MAIL DISCOUNT

ZIP CODE  
58102  
58103  
58201

DISCOUNT  
1,059  
817  
2,050

565

125

MIXED 5 DIGIT

|       |    |
|-------|----|
| 56501 | 13 |
| 56514 | 10 |
| 56520 | 46 |
| 56529 | 22 |
| 56547 | 10 |
| 56549 | 13 |
| 56580 | 11 |

91040843869



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                       |                             |                                                                      |                                                                 |                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|----------------------------------------------------------------------|-----------------------------------------------------------------|--------------------------|
| U.S. POST SERVICE<br><b>STATEMENT OF MAILING WITH PERMIT PRINTS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | MAILING PERMIT: All items by transmitter, post or indicia permit. Prepare & duplicate if necessary. Check for instructions from your postmaster regarding box labeled "BULK MAILING". |                             | Permit No.<br><span style="font-size: 2em; float: right;">169</span> |                                                                 |                          |
| Post Office of Mailing<br><b>FARGO, ND</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | Date<br><b>9-15-89</b>                                                                                                                                                                | Receipt No.                 | Fed. Agency Subcode                                                  | Mailing Statement Sequence No.                                  |                          |
| Check applicable box<br><input type="checkbox"/> International<br><input type="checkbox"/> 3rd Class<br><input type="checkbox"/> Carrier Route<br><input type="checkbox"/> Basic ZIP+4<br><input type="checkbox"/> 5-Digit ZIP+4<br><input type="checkbox"/> ZIP+4 Barcoded<br><input checked="" type="checkbox"/> 5-Digit<br><input type="checkbox"/> Basic<br><input type="checkbox"/> Single Piece<br><input type="checkbox"/> 4th Class<br><input type="checkbox"/> Library Rate<br><input type="checkbox"/> Special 4th Class Single Piece<br><input type="checkbox"/> Presort Special 4th Class                                                                                                                                                                                               |  |                                                                                                                                                                                       |                             |                                                                      |                                                                 |                          |
| Processing Category (See DMM 128)<br><input checked="" type="checkbox"/> Letters<br><input type="checkbox"/> Flat<br><input type="checkbox"/> Machineable Parcels<br><input type="checkbox"/> Irregular Parcels<br><input type="checkbox"/> Outside Parcels                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  | Weight of a single piece<br>No. _____                                                                                                                                                 |                             | Mailing Identification Code:                                         |                                                                 |                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | TOTAL IN MAILING                                                                                                                                                                      |                             | NUMBER OF                                                            |                                                                 |                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | Pieces<br><b>4.046</b>                                                                                                                                                                | Pounds                      | Sacks<br><b>1143</b>                                                 | Trays<br>_____<br>Pallets<br>_____<br>Other Containers<br>_____ |                          |
| Name and Address of Permit Holder (Include ZIP Code)<br><br><b>NDPEA<br/>112 N. University Dr. # L138<br/>Fargo, ND 58102</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  | Telephone No.<br><b>232-8307</b>                                                                                                                                                      |                             | POSTAGE COMPUTATION                                                  |                                                                 |                          |
| Check if nonprofit under DMM 623*<br>Name and Address of Individual or Organization for which mailing is prepared (if other than permit holder)<br>_____<br>Check if nonprofit under DMM 623*<br>Name and Address of Mailing Agent (if other than permit holder)<br>_____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  | Piece Rates                                                                                                                                                                           | 1. Pound Rate               | No. Pounds                                                           | Rate/Pound                                                      | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                       | 2. ZIP+4 Barcoded           | No. Qual. Pieces                                                     | Rate Per Piece                                                  | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                       | 3. 5-digit ZIP+4            | No. Qual. Pieces                                                     | Rate Per Piece                                                  | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                       | 4. Basic ZIP+4              | No. Qual. Pieces                                                     | Rate Per Piece                                                  | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                       | 5. Carrier Route            | No. Qual. Pieces                                                     | Rate Per Piece                                                  | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                       | 6. 5-digit                  | No. Qual. Pieces<br><b>4.046</b>                                     | Rate Per Piece<br><b>.076</b>                                   | Postage<br><b>307.50</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                       | 7. Basic                    | No. Qual. Pieces                                                     | Rate Per Piece                                                  | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                       | 8. Rate Category            | No. of Pieces                                                        | Rate Per Piece                                                  | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                       | 9. SUBTOTAL (1 through 8) ▶ |                                                                      |                                                                 |                          |
| 10. Additional Postage Payment (State reasons for additional postage payment on reverse side under "Comments")<br><input checked="" type="checkbox"/> See reverse side                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | No. of Pieces                                                                                                                                                                         | Rate/Piece                  | Postage                                                              |                                                                 |                          |
| 11. <input type="checkbox"/> Check if applicable third-class bulk piece rate is affixed to each piece. (Form 3602-PC required)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                       |                             |                                                                      |                                                                 |                          |
| 12. TOTAL POSTAGE (\$ plus 10) where applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                       |                             |                                                                      | Total Postage<br><b>\$ 307.50</b>                               |                          |
| * The signature of a nonprofit mailer certifies that: (1) The mailing does not violate section 623.5 DMM; and (2) Only the mailer's matter is being mailed; and (3) This is not a cooperative mailing with other persons or organizations that are not entitled to special bulk mailing privileges; and (4) This mailing has not been undertaken by the mailer on behalf of or produced for another person or organization that is not entitled to special bulk mailing privileges.<br><br>The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to \$10,000. (18 U.S.C. 1001) In addition, a civil penalty of up to \$5,000 and an additional assessment of twice the amount falsely claimed may be imposed. (31 U.S.C. 3802) |  |                                                                                                                                                                                       |                             |                                                                      |                                                                 |                          |
| I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                                                                                                       |                             |                                                                      |                                                                 |                          |
| Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred)<br><b>William S. Clinnerbach</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                       |                             |                                                                      | Telephone No.<br><b>232-8307</b>                                |                          |
| I CERTIFY that this mailing is properly prepared and paid for by the mailer.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                                                                                                                       |                             |                                                                      |                                                                 |                          |
| Signature of Weigher                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |                                                                                                                                                                                       |                             |                                                                      |                                                                 |                          |

# BULK MAIL DISCOUNT

| <u>ZIP CODE</u>               | <u>DISCOUNT</u> |                      |
|-------------------------------|-----------------|----------------------|
| 58201                         | 362             |                      |
| 58203                         | 229             |                      |
| 58237                         | 727             |                      |
| 582                           | 1,082           | <u>MIXED 5 DIGIT</u> |
|                               |                 | 58202 49             |
|                               |                 | 58204 23             |
|                               |                 | 58205 12             |
|                               |                 | 58206 28             |
|                               |                 | 58210 16             |
|                               |                 | 58214 11             |
|                               |                 | 58220 81             |
|                               |                 | 58225 71             |
|                               |                 | 58228 18             |
|                               |                 | 58230 21             |
|                               |                 | 58231 25             |
|                               |                 | 58233 11             |
|                               |                 | 58235 19             |
|                               |                 | 58240 13             |
|                               |                 | 58243 12             |
|                               |                 | 58244 17             |
|                               |                 | 58249 53             |
|                               |                 | 58251 36             |
|                               |                 | 58254 15             |
|                               |                 | 58256 30             |
|                               |                 | 58257 99             |
|                               |                 | 58261 61             |
|                               |                 | 58270 119            |
|                               |                 | 58273 10             |
|                               |                 | 58274 22             |
|                               |                 | 58275 25             |
|                               |                 | 58276 59             |
|                               |                 | 58278 87             |
|                               |                 | 58282 39             |
| 58301                         | 399             |                      |
| 583                           | 365             | <u>MIXED 5 DIGIT</u> |
|                               |                 | 58316 64             |
|                               |                 | 58318 117            |
|                               |                 | 58327 10             |
|                               |                 | 58329 31             |
|                               |                 | 58341 38             |
|                               |                 | 58344 29             |
|                               |                 | 58367 38             |
|                               |                 | 58368 26             |
|                               |                 | 58370 12             |
| 58401                         | 882             |                      |
| TOTAL DISCOUNTED PIECES 4,046 |                 |                      |

91040843871



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                   |                              |                                  |                                                                 |                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|----------------------------------|-----------------------------------------------------------------|--------------------------|
| U.S. Postal Service<br><b>STATEMENT OF MAILING WITH PERMIT IMPRINTS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  | MAILER: Complete this form by typewriter, pen or indelible pencil. Prepare duplicate if required. Check for instructions from your postmaster regarding box labeled "RCA Orders." |                              | Permit No.<br><b>169</b>         |                                                                 |                          |
| Post Office of Mailing<br><b>Fargo, ND</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | Date<br><b>9/18/89</b>                                                                                                                                                            | Receipt No.                  | Fed. Agency Subcode              | Mailing Statement Sequence No.                                  |                          |
| Check applicable box<br><input type="checkbox"/> International<br><input type="checkbox"/> 3rd Class<br><input type="checkbox"/> Carrier Route<br><input type="checkbox"/> Basic ZIP+4<br><input type="checkbox"/> 5-Digit ZIP+4<br><input type="checkbox"/> ZIP+4 Barcoded<br><input checked="" type="checkbox"/> 5-Digit<br><input checked="" type="checkbox"/> Basic<br><input type="checkbox"/> Single Piece<br><input type="checkbox"/> 4th Class<br><input type="checkbox"/> Library Rate<br><input type="checkbox"/> Special 4th Class Single Piece<br><input type="checkbox"/> Presort Special 4th Class                                                                                                                                                                                    |  |                                                                                                                                                                                   |                              |                                  |                                                                 |                          |
| Processing Category (See DMM 128)<br><input checked="" type="checkbox"/> Letters<br><input type="checkbox"/> Flats<br><input type="checkbox"/> Machinable Parcels<br><input type="checkbox"/> Irregular Parcels<br><input type="checkbox"/> Outside Parcels                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  | Weight of a single piece<br>_____ lbs.                                                                                                                                            |                              | Mailing Identification Code:     |                                                                 |                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | TOTAL IN MAILING                                                                                                                                                                  |                              | NUMBER OF                        |                                                                 |                          |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | Pieces<br><b>7621</b>                                                                                                                                                             | Pounds                       | Sacks<br><b>19 #3</b>            | Trays<br>_____<br>Pallets<br>_____<br>Other Containers<br>_____ |                          |
| Name and Address of Permit Holder (Include ZIP Code)<br><b>NDPSA<br/>112 N. University Dr. # L138<br/>Fargo, ND 58102</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  | Telephone No.<br><b>232-8307</b>                                                                                                                                                  |                              | POSTAGE COMPUTATION              |                                                                 |                          |
| 8<br>3<br>0<br>4<br>0<br>1<br><input checked="" type="checkbox"/> Check if nonprofit under DMM 623*<br>Name and Address of Individual or Organization for which mailing is prepared (if other than permit holder)<br><br><input checked="" type="checkbox"/> Check if nonprofit under DMM 623*<br>Name and Address of Mailing Agent (if other than permit holder)<br><br>0<br>4<br>0<br>1                                                                                                                                                                                                                                                                                                                                                                                                           |  | Piece Rates                                                                                                                                                                       | 1. Pound Rate Postage Charge | No. Pounds                       | Rate/Pound \$                                                   | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                   | 2. ZIP+4 Barcoded            | No. Qual. Pieces                 | Rate Per Piece \$                                               | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                   | 3. 5-digit ZIP+4             | No. Qual. Pieces                 | Rate Per Piece \$                                               | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                   | 4. Basic ZIP+4               | No. Qual. Pieces                 | Rate Per Piece \$                                               | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                   | 5. Carrier Route             | No. Qual. Pieces                 | Rate Per Piece \$                                               | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                   | 6. 5-digit                   | No. Qual. Pieces<br><b>6.766</b> | Rate Per Piece \$<br><b>.076</b>                                | Postage<br><b>514.22</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                   | 7. Basic                     | No. Qual. Pieces<br><b>855</b>   | Rate Per Piece \$<br><b>.084</b>                                | Postage<br><b>71.82</b>  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                   | 8. Rate Category             | No. of Pieces                    | Rate Per Piece \$                                               | Postage                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                   | 9. SUBTOTAL (1 through 8) ▶  |                                  |                                                                 |                          |
| 10. Additional Postage Payment (State reasons for additional postage payment on reverse side under "Comments")<br><input type="checkbox"/> See reverse side                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                                                                                                                                   | No. of Pieces                | Rate/Piece \$                    | Postage                                                         |                          |
| 11. <input type="checkbox"/> Check if applicable third-class bulk piece rate is affixed to each piece. (Form 3602-PC required)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                   |                              |                                  |                                                                 |                          |
| 12. TOTAL POSTAGE (plus 10) where applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                                                                                                                   |                              |                                  | Total Postage<br><b>586.04</b>                                  |                          |
| * The signature of a nonprofit mailer certifies that: (1) The mailing does not violate section 623.5 DMM; and (2) Only the mailer's matter is being mailed; and (3) This is not a cooperative mailing with other persons or organizations that are not entitled to special bulk mailing privileges; and (4) This mailing has not been undertaken by the mailer on behalf of or produced for another person or organization that is not entitled to special bulk mailing privileges.<br><br>The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to \$10,000. (18 U.S.C. 1001) In addition, a civil penalty of up to \$5,000 and an additional assessment of twice the amount falsely claimed may be imposed. (31 U.S.C. 3802) |  |                                                                                                                                                                                   |                              |                                  |                                                                 |                          |
| I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                                                                                                   |                              |                                  |                                                                 |                          |
| Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred)<br><b>Eileen L. Dispersbach</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                                   |                              |                                  | Telephone No.<br><b>232-8307</b>                                |                          |

# BULK MAILING DISCOUNT

ZIP CODE  
584

DISCOUNT  
332

## MIXED 5 DIGIT

|       |    |
|-------|----|
| 58402 | 77 |
| 58421 | 43 |
| 58424 | 18 |
| 58425 | 33 |
| 58433 | 20 |
| 58436 | 35 |
| 58438 | 24 |
| 58458 | 51 |
| 58474 | 21 |
| 58483 | 10 |

58501  
58504  
58554

2,481  
772  
652

585

319

## MIXED 5 DIGIT

|       |    |
|-------|----|
| 58502 | 80 |
| 58521 | 12 |
| 58523 | 35 |
| 58530 | 11 |
| 58533 | 10 |
| 58540 | 19 |
| 58552 | 13 |
| 58558 | 22 |
| 58561 | 22 |
| 58563 | 13 |
| 58570 | 11 |
| 58576 | 10 |
| 58577 | 42 |
| 58579 | 19 |

58601

505

586

295

## MIXED 5 DIGIT

|       |    |
|-------|----|
| 58602 | 12 |
| 58620 | 12 |
| 58621 | 13 |
| 58622 | 16 |
| 58623 | 47 |
| 58630 | 17 |
| 58636 | 24 |
| 58639 | 45 |
| 58640 | 24 |
| 58642 | 18 |
| 58646 | 37 |
| 58647 | 13 |
| 58652 | 17 |

91040843873



ZIP CODE  
58701

DISCOUNT  
748

587

296

MIXED 5 DIGIT

|       |    |
|-------|----|
| 58702 | 21 |
| 58704 | 14 |
| 58721 | 10 |
| 58722 | 28 |
| 58730 | 47 |
| 58740 | 22 |
| 58746 | 13 |
| 58759 | 10 |
| 58761 | 25 |
| 58763 | 13 |
| 58784 | 39 |
| 58785 | 29 |
| 58788 | 15 |
| 58793 | 10 |

58801

366

TOTAL DISCOUNTED PIECES 6,766

91040843874

LIST OF CGPE MEMBERS FOR THE MONTH OF SEPTEMBER 1989

|                        |    |
|------------------------|----|
| Anderson, Marlys J.    | 42 |
| Beck, Michael R.       | 4  |
| Borgen, Carol          | 23 |
| Demester, John D.      | 23 |
| Donek, L. Fay          | 22 |
| Eastburn, Robert R.    | 43 |
| Eng, Mike              | 23 |
| Fischer, JoAnne P.     | 3  |
| Fisk, Gordon E.        | 40 |
| Gallup-Millner, Tamara | 4  |
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# **BYLAWS**

## **NORTH DAKOTA PUBLIC EMPLOYEES ASSOCIATION, INC.**

**Bismarck, North Dakota**

**(As amended December 1989)**

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**BYLAWS  
OF THE NORTH DAKOTA PUBLIC EMPLOYEES ASSOCIATION, INC.**

**PREAMBLE**

We, the employees of the State, Counties, and Municipalities of North Dakota, in order to form an association for the promotion of our common welfare, to ensure our constitutional rights, promote and sustain merit principles in public employment, and to protect ourselves and our successors against economic and political fear, with full acceptance of the obligations imposed on us as citizens of the State of North Dakota and of the United States of America, hereby establish these Bylaws for the governing of the Association.

**ARTICLE I**

**LIMITATIONS**

**Section 1. Partisan Political Activity.**

Neither the Association nor any of its chapters nor any individual member may endorse any political party or any candidate for public office in the name of the Association or any of its chapters except as provided for by policies and procedures established by the Board of Directors, and which are ratified by the chapters.

**Section 2. Indebtedness.**

- A. The Association may not incur any indebtedness, other than provided in (B), which can not be paid during the current fiscal year unless the indebtedness is approved by a two-thirds vote of the Delegate Assembly.
- B. The Association with the approval of the Board of Directors may acquire real property provided that the annual debt service for the acquisition of real property may not exceed 25 percent of the Association's gross income during the preceding fiscal year.
- C. The Association's annual budget, with the approval of the Board of Directors, may be exceeded, by not more than 10 percent.

**Section 3. Solicitation of Contributions.**

Neither the Association, nor any of its chapters, nor any individual member shall solicit contributions in the name of the Association or any of its Chapters for any activity other than an activity of the Association or an activity approved by the Board of Directors.



ARTICLE II  
MEMBERSHIP

Section 1. Regular Membership.

All persons employed by the State of North Dakota or by any of its political subdivisions shall be eligible for membership in the Association. Any person so employed whose employment has been terminated and who has a grievance pending concerning the termination, shall continue to be eligible for membership in the Association.

Section 2. Retired Membership.

Retired members are persons who have retired from employment by the State of North Dakota or any of its political subdivisions. Retired members may not hold office or vote, except for the position of Director at Large whom they shall elect as their direct representative on the Board.

Section 3. Associate Membership.

All interested persons who are neither public employees nor retired public employees but who are approved for membership by the Board of Directors, shall be associate members. Associate members shall not be eligible to vote or hold office in the Association.

Section 4. Honorary Membership.

Honorary membership may be conferred on any person by a majority vote of the Board of Directors. Honorary members shall not be subject to payment of dues, nor shall they be eligible to vote or hold office in the Association.

Section 5. Non-Discrimination.

Membership eligibility shall be determined without regard to sex, race, religious creed, color, national origin, ancestry, age, position in public employment, or political affiliation.

Section 6. Application for Membership.

Application for membership shall be made in writing on a form approved by the Board of Directors. The application shall include such items as the Board shall determine.

Section 7. Member Grievance.

Any member claiming to be aggrieved by the Association, any of its chapters or any member of the Association may submit the claim to the Board of Directors, which shall investigate the claim and take appropriate action. The decision of the Board shall be final.

Section 8. Expulsion of Members.

- A. A member may be expelled from the organization upon the bringing of written and signed charge(s) by two or more members, who shall present such charge(s) and documentation to the Board. An expulsion hearing shall be held at which the accused member shall have the

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right to examine questions and respond to the charges(s) and be represented by a person of the accused member's choice at the accused member's own expense. At the conclusion of the hearing a three-fourths vote of the Board shall be required for expulsion. A person, who has been expelled from the organization, may appeal the decision of the Board to the membership by requesting a vote at the next Delegate Assembly. A majority of the members voting shall be sufficient to over-rule the decision of the Board to expel.

- B. A member shall automatically be dropped from the rolls of the organization upon being two months in arrears in the payment of his dues.

#### Section 9. Dues.

The primary source of revenue of the Association shall be the dues paid by its members.

- A. The amount of the regular, retired and associate dues which includes the per capita payments to each of the organizations with which the NDPEA is affiliated, shall be established by a three-fourths vote of the entire membership of the Board of Directors.
- B. Official notice of any change in dues assessment shall be mailed to the address of record of all members sixty days prior to the effective date of such change.
- C. Dues shall not be refundable.
- D. A member shall automatically be dropped from the rolls of the organization upon being two months in arrears in the payment of dues.

### ARTICLE III

#### OFFICERS

##### Section 1. Officers.

The elected officers shall be elected from the membership and shall be President, Vice President, Secretary, Treasurer, five Regional Directors, Director at Large and the Immediate Past President.

##### Section 2. Election and Terms of Office.

- A. The President, Vice President, Secretary, Treasurer are elected in the odd numbered years for two year terms at the Delegate Assembly or until their successors have been elected.
- B. The Director at Large is elected for a three year term or until their successor has been elected.
  - 1. The retired membership shall elect the Director at Large by mail in September of the appropriate year.



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2. Candidates for Director at Large shall be nominated by petitions signed by twenty retired members. All nominations must be received at the State Office on or before June 1 of the year of the election.
  3. Retired members shall be mailed an election ballot.
  4. The Board of Directors shall be responsible for collecting and tabulating the ballots and shall report this tabulation to the Delegate Assembly for certification.
- C. The Regional Directors shall be elected for a three year term or until their successors are elected.
1. Each region as established by the Board of Directors, shall elect one Director by mail in September of the appropriate year.
  2. Candidates for Regional Director shall be nominated by any chapter or by thirty members of the Association from the respective region. All nominations must be received at the State Office on or before June 1 of the year of the election.
  3. Members shall vote in the region in which their chapters are located.
  4. The Board of Directors shall be responsible for collecting and tabulating the ballots, and shall report this tabulation to the Delegate Assembly for certification.
- D. The Immediate Past President's term shall not be interrupted by the resignation or recall of the incumbent President.
- E. Newly elected officers assume office immediately following the close of the Delegate Assembly at which elected.
- F. Newly elected officers shall be sworn into office by the Past President as the last item of business at the Delegate Assembly.

### Section 3. Restrictions.

- A. No officer shall be elected to the same office for more than two consecutive terms.
- B. Retired and Associate members, elected officials and department heads appointed by the Governor, as defined in the North Dakota Century Code, shall not be eligible for office in the Association unless otherwise provided for in the Bylaws.
- C. No NDPEA member can hold a membership of a competing labor organization and at the same time hold an office or serve on a standing committee in NDPEA.

**Section 4. Vacancies.**

In the event there is a vacancy in the office of President, the Vice President shall assume the office. If the office of Vice President, Secretary, Treasurer, Regional Director or Director at Large shall be vacated, the vacancy shall be filled by a majority vote of the Board of Directors and the appointment shall be effective until the next regularly scheduled election.

**Section 5. Removal of an Officer.**

**A. Written Petition From the Membership.**

1. A written petition in a form prescribed by the Board of Directors and signed by at least ten percent of the total membership of the Association shall be required to initiate a recall vote of any state officer. The recall petition shall be filed with the Executive Director of the Association.
2. The Executive Director shall be responsible for mailing true copies of the recall petition charge(s) along with the total number of the members signing the petition sheets to the members of the Board and the item shall be placed on the agenda for the next regularly scheduled Board meeting as the first item of business. The original copy of the petition charge(s) and signatures shall be kept in the State Office and may be viewed by members at the State Office upon request.
3. A hearing shall be held at which the accused officer shall have the right to examine, question and respond to the charge(s) and be represented by a person of the officer's choice at the officer's own expense. At the conclusion of the hearing, a three-fourths vote of the Board shall be required for recall. An officer, who has been recalled, may appeal the decision of the Board to the membership by requesting a vote at the next Delegate Assembly. A majority of the members voting shall be sufficient to over-rule the decision of the Board to recall.

**B. Instead of Section 5-A.2.**

1. Or the Executive Director shall be responsible for mailing said true copies to Chapter Presidents for dissemination to the delegates to the Delegate Assembly at least thirty days prior to the convening of that Assembly.
2. At the Delegate Assembly, the accused officer shall have the right to examine, question and respond to the charge(s) and be represented by a person of the officer's choice at the



officer's offense. After the officer has sufficient opportunity to answer any charge(s), a two-thirds vote of the delegates present and voting at the Delegate Assembly shall be required to recall said officer.

**C. Unexcused Absences.**

The President, with the approval of the Board, shall remove any officer for unexcused absences from three consecutive Board meetings.

**ARTICLE IV  
DUTIES OF OFFICERS**

**Section 1. The President.**

- A. Shall supervise the affairs of NDPEA, subject to the control of the Board of Directors;
- B. Shall preside at all meetings of the Delegate Assembly, the Board of Directors, and the Executive Committee;
- C. Shall appoint all standing and special committees with the approval of the Board unless otherwise provided for in the Bylaws;
- D. Shall perform any other duties as designated by the Board of Directors or the Executive Committee and exercise such powers as are incidental to this office.

**Section 2. Vice President.**

- A. Shall perform all duties of the President in the absence of the President;
- B. Shall have such other powers and perform such duties as may be prescribed by the President, the Board of Directors or Executive Committee;
- C. Shall coordinate leadership training sessions throughout the state.

**Section 3. Secretary.**

- A. Shall take accurate minutes of all business meetings of the Delegate Assembly, the Board of Directors, and the Executive Committee;
- B. Shall perform all such other duties as may be prescribed by the President, the Board of Directors, the Executive Committee, or that are incidental to the office.

**Section 4. Treasurer.**

- A. Shall serve as the chief financial officer of the Association;
- B. Shall have general supervision over the financial concerns of the Association;
- C. Shall have general supervision over the custody of the funds, securities, and papers of the Association, except his own bond, if any;

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- D. Shall have the power to execute all financial transactions on behalf of the Association;
  - E. Shall maintain accurate financial records and report the same to the Delegate Assembly;
  - F. Shall perform all such other duties as may be prescribed by the President, the Board of Directors, the Executive Committee, or are incidental to the office.

**Section 5. The Director at Large.**

- A. Shall maintain active communication with the retired members of NDPEA;
- B. Shall serve as an active resource person to the retired members of NDPEA;
- C. Shall provide leadership assistance and guidance in matters affecting retired members of NDPEA.

**Section 6. The Regional Director.**

- A. Shall participate in all meetings of the Board of Directors;
- B. Shall maintain active communication with the chapters within the region;
- C. Shall serve as an active resource person to the chapters in the region;
- D. Shall provide leadership, assistance, and guidance in matters affecting the region;
- E. Shall coordinate regional legislative forums and assist in regional leadership training conferences and membership recruitment.

**Section 7. The Immediate Past President.**

- A. Shall serve as advisor to the President and the Board of Directors;
- B. Shall perform all duties in accordance with provisions made in these Bylaws.

**ARTICLE V**

**BOARD OF DIRECTORS**

**Section 1. Composition.**

The Board of Directors shall be composed of the officers of the Association. The Board shall derive all of its power from the Delegate Assembly.

**Section 2. Duties.**

It shall be the duty of the Board of Directors:

- A. To implement policies and resolutions adopted by the Delegate Assembly at its annual session;
- B. To develop policies and procedures as directed by the Delegate Assembly or required by the Bylaws.



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- C. To administer the business affairs of the Association between sessions of the Delegate Assembly in keeping with the Articles of Incorporation and these Bylaws;
  - D. To establish and review personnel standards and policies for staff;
  - E. To employ qualified persons to help the Association achieve its objectives;
  - F. To discharge any staff member from duty because of misappropriation of funds, deliberate misrepresentation of the Association, consistent failure to fulfill responsibilities, lack of funding, or other just cause;
  - G. To serve as the body to whom the Executive Director shall be responsible;
  - H. To serve as liaison between the Delegate Assembly and the Executive Director;
  - I. To determine persons to be bonded and to establish amount of such bonds;
  - J. To make recommendations to the Association;
  - K. To authorize and direct the appropriate officers to execute on behalf of the Association any legal papers, documents, or instruments;
  - L. To perform such other duties as are specified in these Bylaws;
  - M. To appoint the Nominating Committee at the annual meeting of the Delegate Assembly;
  - N. To retain a qualified accountant who is not a member of the Association to perform an annual audit;
  - O. To approve all rights, privileges, and benefits of membership.

### Section 3. Meetings.

Unless otherwise ordered by the Board of Directors, the Board shall meet bimonthly at a time and place to be decided by its own body. Special meetings of the Board, which may be conducted by conference call, can be called by the President, or upon written request of three members of the Board.

### Section 4. Quorum.

A majority of the Board of Directors shall constitute a quorum for its meetings. No business of the Association shall be transacted in the absence of a quorum. Proxies shall not be allowed.

### Section 5. Member Grievances.

The Board of Directors shall be responsible for reviewing member grievances. As a part of a review of a dispute, the grieved member's chapter shall be contacted to determine whether all appropriate action has been taken at the chapter level.

The Board of Directors shall determine the extent and manner of involvement by the Association on behalf of a grieved member. If the Board determines that the nature of

the grievance merits such support, it may provide Association-funded legal counsel for the member. The extent of such financial support shall be within the discretion of the Board and all legal actions funded by the Association shall be reviewed at appropriate intervals by the Board to determine whether the Association should continue its financial support.

## **ARTICLE VI**

### **EXECUTIVE COMMITTEE**

#### **Section 1. Composition.**

The Executive Committee shall be composed of the President, Vice President, Secretary and Treasurer.

#### **Section 2. Duties.**

When deemed necessary or urgent by the President, the Executive Committee shall conduct the business affairs of the Association between meetings of the Board of Directors. The Executive Committee shall assume responsibilities delegated to it by the Board and shall in all cases be responsible to the Board.

#### **Section 3. Meetings.**

In consultation with other members of the Committee, the President shall determine the time and place for meetings of the Executive Committee.

#### **Section 4. Quorum.**

Three members shall constitute a quorum.

## **ARTICLE VII**

### **DELEGATE ASSEMBLY**

#### **Section 1. Annual Meeting.**

The Delegate Assembly shall be the governing body of the Association.

The Association shall hold an annual Delegate Assembly to conduct its official business on a Friday and Saturday in the month or months of September and/or October, unless otherwise ordered by the Delegate Assembly or by the Board of Directors.

#### **Section 2. Composition.**

The Delegate Assembly shall have proportionate representation from the chapters, based on the chapter membership in the manner prescribed by the Board of Directors. The Delegate Assembly shall consist of chapter delegates duly registered at the Delegate Assembly and all members of the Board, duly registered. Each member of the Delegate Assembly shall be allowed one vote. Proxies shall not be allowed.

#### **Section 3. Special Meetings.**

Special meetings of the Association may be called by the Delegate Assembly; by the President, with the approval of the Board of Directors; by a majority of the members of the Board; or by written request of a least five chapters of the Association.



Section 4. Quorum.

A quorum shall consist of 51 percent of the total number of delegates and members of the Board of Directors duly registered at the Delegate Assembly. No business of the Association shall be legally transacted by the Delegate Assembly in the absence of a quorum.

ARTICLE VIII

CHAPTERS

Section 1. Legal Authorization.

The Association shall be composed of constituent units which shall be known as chapters. Each chapter shall be identified by a distinct number. Each chapter shall be autonomous but shall take no action that is in conflict with the Articles of Incorporation and these Bylaws or Association policies.

Section 2. Membership.

Membership in the Association shall be a prerequisite for membership in any chapter. Subject to approval by the Board of Directors, the Executive Director, shall assign all members to a recognized chapter. Each chapter shall maintain a minimum membership of ten members. Upon the recommendations of the Executive Director, this requirement may be waived by the Board for a particular chapter.

Section 3. Establishment of a New Chapter.

A. Petition

At least ten members of the Association may submit a petition to the Board of Directors to establish a new chapter. The petition shall contain such information as may be required by the Board.

B. Bylaws

Following approval of a petition by the Board of Directors a new chapter shall submit a proposed set of bylaws for approval by the Executive Director. The Chapter Bylaws shall in no way conflict with the bylaws of the Association. To the extent that any article or section of Chapter Bylaws is in conflict with that of the Association, that particular article and section shall be considered void. Each chapter shall have the freedom to specify its own offices, committees, and the administrative structure.

C. Charter.

After the Board has approved the Bylaws of a chapter it shall issue a charter signed by the President and Executive Director under the official seal of the Association as an official declaration that the chapter is a lawful unit of the Association.

**Section 4. Revocation of Charter.**

The charter of any chapter may be revoked by a three fourths vote of the entire membership of the Board of Directors or a two thirds vote of the Delegate Assembly for good cause and after notice and an opportunity to be heard. All assets, properties, and other material in the possession of a chapter that have been revoked shall revert to the Association. The members of a dissolved chapter may petition to establish a new chapter in the manner provided in Section 3 of this Article. Otherwise members of a dissolved chapter will be assigned to a recognized chapter as provided in Section 1 of this Article.

**ARTICLE IX  
COMMITTEES**

**Section 1. Standing Committees.**

Standing committees of the Association shall be Delegate Assembly, Finance, Nominating, Membership, Legislative Action, Political Education and Grievance.

**Section 2. Responsibilities of Standing Committees.**

**A. Delegate Assembly.**

1. The Delegate Assembly Committee, with the cooperation and assistance of the Executive Director, shall be responsible for the overall planning and execution of the annual Association Delegate Assembly and other special meetings of the Association.

2. The Delegate Assembly Chair shall appoint, with the approval of the Board, the following Delegate Assembly subcommittees:

**a. Credentials.**

The Credentials Subcommittee shall verify the credentials of all delegates and alternates at the registration desk for the Delegate Assembly and submit its report when requested.

**b. Delegate Assembly Rules.**

The Delegate Assembly Rules Subcommittee shall prepare a proposed set of standing rules to be submitted to the Delegate Assembly for approval. These rules may contain ordinary standing rules and special rules of order that differ from those in the parliamentary authority.

**c. Program and Arrangements.**

The Program and Arrangements Subcommittee, with the cooperation and assistance of the Executive Director, shall have the following duties:



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1. To select the headquarters location for the annual meeting of the Delegate Assembly, which shall include registration facilities and meeting rooms.
  2. To arrange room accommodations for the chapter delegates and others expected to be attending the annual meeting.
  3. To plan and arrange the program and other events for the annual meeting.
  4. To arrange for all equipment and supplies needed for the annual meeting.
  5. To prepare a tentative program to be provided to all chapters well in advance of the annual meeting and a printed program for distribution at the annual meeting.

d. Bylaws.

The Bylaws Subcommittee shall be responsible for reviewing the Articles of Incorporation and Bylaws as currently amended and shall recommend amendments if deemed necessary.

The Subcommittee shall review all amendments submitted to it and shall adopt (a) no recommendation, (b) recommendation for passage, or (c) recommendation for rejection.

e. Resolutions.

The Resolutions Subcommittee shall screen all resolutions submitted to it by chapters of the Association or by the Board of Directors, putting them in proper form and logical sequence. If duplication exists, it shall contact the sponsors and combine the resolutions. If the thought and content are not altered, it shall have the power to reword a particular resolution to bring about more clarity and effectiveness.

Resolutions shall be submitted and received by the Subcommittee at least sixty days prior to the Delegate Assembly. Resolutions received after that date or submitted by a delegate on the floor of the Delegate Assembly, shall require a two-thirds vote for their consideration.

In no case shall the Subcommittee withhold any resolution submitted on schedule from consideration by the Delegate Assembly. It shall present all such resolutions with (a) no recommendation, (b) recommendation for passage, (c) recommendation for rejection, or (d) recommendation for amendment.

**B. Finance.**

In cooperation with the Treasurer and Executive Director, the Finance Committee shall prepare an annual budget for the fiscal year July 1 through June 30; said budget shall be subject to the approval of the Board of Directors. The Committee shall also review the financial affairs of the Association at least quarterly and submit an adjusted or amended budget if necessary. Any changes in the budget shall be subject to the approval of the Board.

The Committee shall review fund raising programs and make recommendations to the Board of Directors.

**C. Nominating**

The Nominating Committee shall nominate one or more candidate for each office scheduled for election. After its report to the Delegate Assembly, nominations from the floor shall be called. Prior to submission of any member's name as a candidate, the Committee shall obtain the consent of the person involved and determine the member's eligibility.

**D. Membership**

The Membership Committee shall be responsible for motivating all chapters to increase their membership.

**E. Legislative Action Committee**

The Legislative Action Committee, in consultation with the President and the Executive Director and in keeping with the legislative goals of the Association, shall develop and arrange for the introduction of appropriate legislation.

The Executive Director with the advice and consent of the President and the Committee, shall have the authority to determine the level of support to be given proposed legislation including the authority to determine that legislation should not be introduced or should be withdrawn.

The Committee shall maintain a file, for a period of six (6) years, concerning resolutions from the Delegate Assembly; they will give the highest priority to the most recent resolution concerning any one topic.



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The Committee Executive Director may take whatever action is necessary and appropriate, consistent with the policies adopted by the Delegate Assembly and the Board of Directors.

**F. Political Education.**

The Committee on Political Education shall secure voluntary contributions to support the political work of the organization; screen and recommend endorsement of candidates for local, state and federal office to the Board of Directors; and develop programs to promote voting and to support the election of candidates endorsed by the Board of Directors.

**G. Grievance.**

The Grievance Committee shall serve in accordance with procedures as developed by the Board of Directors.

**Section 3. Special Committees.**

Either the Delegate Assembly, or the Board of Directors may authorize special committees deemed necessary to carry out the work of the Association. The President may initiate the formation of special committees with the approval of the Board.

**Section 4. Appointment of Standing and Special Committees.**

Unless otherwise specified in the Bylaws, the President, with approval of the Board, shall appoint the chair and members of all standing and special committees. The Board may allow the chair of each committee to select the members. The President shall serve as ex officio member of all standing and special committees, except the Nominating Committee. The Board of Directors shall appoint the chair and members of the Nominating Committee.

**ARTICLE X**

**EXPENDITURES**

**Section 1. Fiscal Policy.**

Expenditures of money shall be in accordance with the annual budget or amended version thereof. The Executive Director and two members of the Board of Directors to be selected by the President shall be authorized to sign checks.

**Section 2. Reimbursements.**

Any member required to attend an official function of this Association shall be entitled to expenses as determined by the Board of Directors.

**\* ARTICLE XI**

**AFFILIATIONS**

NDPEA shall maintain affiliation with the following organizations:

- A. The Federation of State Employees/American Federation of Teachers, AFL-CIO.

B. The State American Federation of Labor-Congress Industrial Organizations.

C. The appropriate Central Labor Councils of the American Federation of Labor-Congress of Industrial Organizations.

The NDPEA will, whenever possible, send delegates to the conventions of the organizations listed above. Delegates to said conventions shall be elected by procedures established by the Board.

\*Proviso: Article XI becomes null and void if the affiliation with FSE/AFT is not ratified by the Regular Membership.

#### ARTICLE XII

##### PARLIAMENTARY AUTHORITY

The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the Association in all cases to which they are applicable and in which they are not in conflict with the Articles of Incorporation or the Bylaws, or any special rules of order which may be adopted by the Association.

#### ARTICLE XIII

##### AMENDMENT TO BYLAWS

The Bylaws may be amended in the following manner:

- A. An amendment to the Bylaws may be proposed by a chapter, the Board of Directors, or a Standing Committee. A proposed amendment shall be submitted in writing, along with the Article or Section to be amended, to the Bylaws Committee for its review and recommendation not less than seventy-five days prior to the annual Delegate Assembly. July 21
- B. Copies of a proposed amendment, together with the recommendation of the Bylaws Committee, shall be submitted to the chapters for their review not less than thirty days prior to the annual Delegate Assembly. Sept. 11
- C. The Delegate Assembly may adopt an amendment proposed in compliance with this article by a two-thirds vote at the annual Delegate Assembly.
- D. Amendments adopted by the Delegate Assembly shall be submitted to the chapters by the State Office of the Association within fourteen days after the close of the annual Delegate Assembly. An amendment adopted by the Delegate Assembly must be ratified by a majority of the chapters within sixty days after the close of the Delegate Assembly before it shall take effect. Failure by a chapter to reject an amendment within the time allowed shall constitute ratification.

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An amendment proposed by a majority of the chapters shall be effective on the sixty-first day after the close of the annual Delegate Assembly unless ratifications are received from a majority of the chapters before that date, in which event the amendment shall become effective on the day the last requisite ratification is received at the principal office of the Association.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of )  
 )  
North Dakota Public )  
Employees Association )  
 )

MUR 3024

**SENSITIVE**

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On June 20, 1990, the Commission found reason to believe that the North Dakota Public Employees Association ("NDPEA") violated 2 U.S.C. § 441b and 11 C.F.R. § 114.5(a) in connection with NDPEA's use of a joint membership dues/contribution solicitation which provided for a \$2.00 per month payroll deduction checkoff. The solicitation in question failed to contain the proper informational disclosures informing the solicitee that the \$2.00 amount was suggestive and that the solicitee could refuse the solicitation without any fear of reprisal. NDPEA has since responded to the Commission's Interrogatories and Requests for Production of Documents and requested that the Commission take no further action and close the file. Attachment (Committee's Response).

II. DISCUSSION

In its latest response, NDPEA argues that while it originally intended to solicit contributions for local, state and federal elections, none of the contributions received in response to its payroll deduction form were ever used to

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influence any federal elections. Attachment at 4-6.<sup>1</sup> NDPEA confirms that sometime in mid-1989, it produced a payroll deduction form to solicit contributions from its members and established a separate bank account for this purpose. Id. at 2-4.<sup>2</sup> However, after the complaint in this matter was filed, the Executive Director of NDPEA, Gerald T. Friesz, reassessed NDPEA's political involvement for 1990 and determined that NDPEA could not play a role at the federal election level due to limited resources. Id. 4-5 and 12.<sup>3</sup> NDPEA states that "[n]o expenditures under the Act, or any other disbursements, have

1. In contrast to its earlier arguments, NDPEA, in its latest response, does not deny that its payroll deduction form failed to contain the appropriate informational disclosures required by the Act and the Commission's regulations. In its earlier response to the complaint, NDPEA had argued that its solicitation did not contain a "guideline" as that term is used in the Commission's regulations, and as such, the requirements of 11 C.F.R. § 114.5(a)(2) did not apply. See First General Counsel's Report dated June 15, 1990. Respondent also advanced the theory that its solicitation satisfied the statutory and regulatory requirements because the solicitation conveyed the message that participation was "voluntary." Id.

2. NDPEA represents public employees in North Dakota and is affiliated with both the American Federation of Teachers ("AFT") and the American Federation of Labor-Congress of Industrial Organization ("AFL-CIO"). Attachment at 2-3 and 10. NDPEA asserts that "[i]nitially, when the idea for the payroll deduction plan was conceived and the payroll deduction form was produced, NDPEA contemplated raising funds as a 'collecting agent' for the AFT's separate segregated fund, the Committee on Political Education ("AFT-COPE"). Id. at 4.

3. In response to the Commission's discovery requests, NDPEA states that it mailed a total of 17,748 cards on four separate dates: September 6, September 13, September 15 and September 18, 1989, and that a total of 41 individuals participated in the plan. Attachment at 8. The total amount of money received from the solicitation amounted to \$246. Id. at 9. NDPEA further states that the total cost incurred in the production, distribution, and processing of the solicitation form in question was \$4,804.83. Id. at 8.

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been made" from the separate bank account it established and that all funds it receives in response to the solicitation will be used for state and local activity only. Id. at 4. In this regard, NDPEA asserts that the Commission lacks jurisdiction over NDPEA's payroll deduction account and as such, the requirements concerning disclaimers for solicitations, 11 C.F.R. § 114.5, are not applicable in the matter at hand. Id. at 5-6. NDPEA further argues that if the Commission pursues this matter, then any violation that may have occurred was de minimis. Id. at 6-7.

NDPEA's reliance on the ultimate use of the contributions solicited through its payroll deduction form is irrelevant to the violation in the matter at hand. The Act and the Commission's regulations provide that written solicitations must contain certain informational requirements and that these informational notices must be disclosed at the time of the solicitation. See Explanation and Justification for Part 114, H. Doc. No. 95-44, 101-118 at 107 (January 12, 1977)(since "the Act requires the disclosures to be made at the time of the solicitation . . . all written solicitations" must contain the required disclosures (emphasis in original)). Since the payroll deduction form used by NDPEA stated that the funds received would be used "to make political contributions and expenditures in connection with federal, state and local elections," the appropriate informational disclosures should have been included at the time the form was being used. NDPEA's subsequent decision to restrict the use of the contributions it collected

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to local and state election activity does not vitiate its violation of 2 U.S.C. § 441b and 11 C.F.R. § 114.5(a).

Additionally, NDPEA's argument that its violation, if any, was de minimis because of a low response rate to its solicitation must also fail. The violation involved in this matter focuses on NDPEA's failure to disclose required information on nearly 18,000 written solicitation forms. In this regard, the level of response to the defective solicitation is irrelevant. In light of the foregoing, this Office recommends that the Commission deny the Respondent's request to take no further action and close the file. Accordingly, this Office is proceeding to the next stage of the enforcement process.

### III. RECOMMENDATIONS

1. Deny the request of the North Dakota Public Employees Association to take no further action and the request to close the file.
2. Approve the appropriate letter.

Lawrence M. Noble  
General Counsel

Date

1/25/11

BY:

  
Lois G. Lerner  
Associate General Counsel

Attachments  
Committee's Response

Staff Person: Craig Douglas Reffner

91040843896

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of  
North Dakota Public  
Employees Association.

)  
) MUR 3024  
)  
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 31, 1991, the Commission decided by a vote of 4-0 to take the following actions in MUR 3024:

1. Deny the request of the North Dakota Public Employees Association to take no further action and the request to close the file.
2. Approve the appropriate letter, as recommended in the General Counsel's Report dated January 25, 1991.

Commissioners Aikens, Elliott, Josefiak and McGarry voted affirmatively for the decision; Commissioners McDonald and Thomas did not cast votes.

Attest:

Jan. 31, 1991  
Date

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

Received in the Secretariat: Monday, Jan. 28, 1991 2:48 p.m.  
Circulated to the Commission: Tuesday, Jan. 29, 1991 11:00 a.m.  
Deadline for vote: Thursday, Jan. 31, 1991 11:00 a.m.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 5, 1991

Eric F. Kleinfeld, Esq.  
Manatt, Phelps, Rothenberg & Phillips  
1200 New Hampshire, N.W.  
Suite 200  
Washington, D.C. 20036

RE: MUR 3024  
North Dakota Public Employees  
Association

Dear Mr. Kleinfeld:

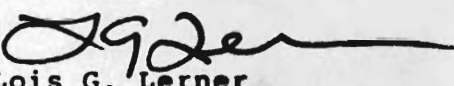
On June 26, 1990, you were notified that the Federal Election Commission found reason to believe that your client, the North Dakota Public Employees Association, violated 2 U.S.C. § 441b and 11 C.F.R. § 114.5(a).

On August 13, 1990, you submitted a response to the Commission's finding of reason to believe and requested that the Commission take no further action and close the file in this matter. On January 31, 1991, the Commission considered your request and determined to deny it. Therefore, the Commission is moving to the next stage of the enforcement process.

If you have any question, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

91040843898

000 0040

RECEIVED  
FEDERAL ELECTION COMMISSION  
MAIL ROOM

LAW OFFICES

MANATT, PHELPS & PHILLIPS

91 FEB -8 AM 9:35

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

TELEPHONE (202) 462-4300  
FAX (202) 462-4394  
(202) 462-4398

1800 NEW HAMPSHIRE AVENUE, N.W.

SUITE 200

WASHINGTON, D.C. 20036

LOS ANGELES

1335 WEST OLYMPIC BOULEVARD  
LOS ANGELES, CALIFORNIA 90064  
(213) 312-4000

February 7, 1991

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
91 FEB -8 AM 8:00

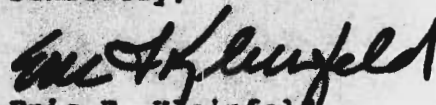
Lisa Klein, Assistant General Counsel  
Craig Douglas Reffner, Esquire  
Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
6th Floor  
Washington, D.C. 20463

MUR 3024, North Dakota Public  
Employees Association

Dear Ms. Klein and Mr. Reffner:

In order to expedite the resolution of this matter, our client, the North Dakota Public Employees Association, hereby requests the opportunity to conciliate this matter prior to a determination of probable cause by the Commission.

Sincerely,



Eric F. Kleinfeld  
Manatt, Phelps & Phillips

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CRAYERS CREST



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FEDERAL ELECTION COMMISSION

91 MAR -7 11 9:53

BEFORE THE FEDERAL ELECTION COMMISSION

**SENSITIVE**

In the matter of )  
North Dakota Public ) MUR 3024  
Employees Association )

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On June 20, 1990, the Commission found reason to believe that the North Dakota Public Employees Association ("NDPEA") violated 2 U.S.C. § 441b and 11 C.F.R. § 114.5(a). The basis for the Commission's determination concerned NDPEA's use of a joint membership dues/contribution solicitation which failed to contain the proper informational disclosures informing the solicitee that the requested amount was suggestive and that the solicitee could refuse the solicitation without any fear of reprisal. At the time NDPEA responded to the Commission's discovery requests, it also requested that the Commission take no further action and close the file. The Commission, on January 31, 1991, rejected this request. NDPEA was notified of the Commission's determination on February 5, 1991, and on February 7, 1991, NDPEA submitted a request to enter into pre-probable cause conciliation. Attachment A.

II. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

91040843900

**III. RECOMMENDATIONS**

1. Enter into conciliation with the North Dakota Public Employees Association prior to a finding or probable cause to believe.
2. Approve the attached proposed conciliation agreement and the appropriate letter.

Lawrence M. Noble  
General Counsel

Date

3/6/91

BY:

[Signature]

Lois G. Lerner  
Associate General Counsel

**Attachments**

1. Request for conciliation
2. Proposed conciliation agreement

**Staff assigned: Craig Douglas Reffner**

91040843901



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
North Dakota Public ) MUR 3024  
Employees Association )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 11, 1991, the Commission decided by a vote of 6-0 to take the following actions in MUR 3024:

1. Enter into conciliation with the North Dakota Public Employees Association prior to a finding of probable cause to believe.
2. Approve the proposed conciliation agreement and the appropriate letter, as recommended in the General Counsel's Report dated March 6, 1991.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

March 12, 1991  
Date

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

Received in the Secretariat: Thurs., March 7, 1991 9:53 a.m.  
Circulated to the Commission: Thurs., March 7, 1991 4:00 p.m.  
Deadline for vote: Mon., March 11, 1991 4:00 p.m.

dr

91040843902



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 18, 1991

Lyn Utrecht, Esq.  
Manatt, Phelps & Phillips  
1200 New Hampshire Avenue, N.W.  
Suite 200  
Washington, D.C. 20036

RE: MUR 3024  
North Dakota Public Employees  
Association

Dear Ms. Utrecht:

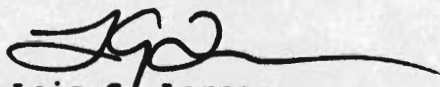
On June 20, 1990, the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441b and 11 C.F.R. § 114.5(a). At your client's request, on March 11, 1991, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble  
General Counsel

  
BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Conciliation Agreement

91040843903



OGC 0015

LAW OFFICES  
**MANATT, PHELPS & PHILLIPS**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

TELEPHONE (202) 463-4300  
FAX (202) 463-4394  
(202) 463-4395

1200 NEW HAMPSHIRE AVENUE, N.W.

SUITE 300

WASHINGTON, D.C. 20036

LOS ANGELES

1388 WEST OLYMPIC BOULEVARD  
LOS ANGELES, CALIFORNIA 90064  
(313) 312-4000

May 6, 1991

Craig Douglas Reffner, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 3024

Dear Mr. Reffner:

Enclosed per your request is a signed copy of the proposed conciliation agreement in the above-referenced matter.

Sincerely,



Lyn Utrecht  
Manatt, Phelps & Phillips

Enclosure

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
91 MAY -6 PM 3:00

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91 MAY 23 AM 11:37

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

North Dakota Public  
Employees Association

)  
) MUR 3024  
)  
)

**SENSITIVE**

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by counsel for Respondent, North Dakota Public Employees Association.

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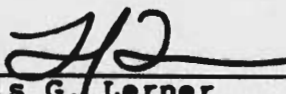
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II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with North Dakota Public Employees Association.
2. Close the file.
3. Approve the appropriate letters.

Lawrence M. Noble  
General Counsel

Date 5/22/91

BY:   
Lois G. Lerner  
Associate General Counsel

Attachment  
Conciliation Agreement

Staff Assigned: Craig Douglas Reffner

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
North Dakota Public ) MUR 3024  
Employees Association. )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 28, 1991, the Commission decided by a vote of 4-0 to take the following actions in MUR 3024:

1. Accept the conciliation agreement with North Dakota Public Employees Association, as recommended in the General Counsel's Report dated May 22, 1991.
2. Close the file.
3. Approve the appropriate letters, as recommended in the General Counsel's Report dated May 22, 1991.

Commissioners Aikens, Elliott, Josefiak, and Thomas voted affirmatively for the decision; Commissioners McDonald and McGarry did not cast votes.

Attest:

5-29-91  
Date

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

Received in the Secretariat: Thurs., May 23, 1991 11:37 a.m.  
Circulated to the Commission: Thurs., May 23, 1991 4:00 p.m.  
Deadline for vote: Tues., May 28, 1991 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 3, 1991

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. David H. Calhoon  
1002 WPV  
Jamestown, North Dakota 58401

RE: MUR 3024  
North Dakota Public Employees  
Association

Dear Mr. Calhoon:

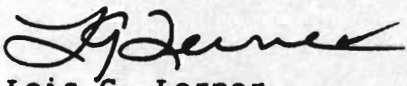
This is in reference to the complaint you filed with the Federal Election Commission on January 29, 1990, concerning the North Dakota Public Employees Association.

The Commission found that there was reason to believe the North Dakota Public Employees Association violated 2 U.S.C. § 441b a provision of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 114.5(a), a provision of the Commission's regulations, and conducted an investigation in this matter. On May 28, 1991, a conciliation agreement signed by the respondent was accepted by the Commission. Accordingly, the Commission closed the file in this matter on May 28, 1991. A copy of this agreement is enclosed for your information.

If you have any questions, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble  
General Counsel

  
BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Conciliation Agreement

91040843908



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 3, 1991

Lyn Utrecht, Esq.  
Manatt, Phelps & Phillips  
1200 New Hampshire, N.W.  
Suite 200  
Washington, D.C. 20036

RE: MUR 3024  
North Dakota Public  
Employees Association

Dear Ms. Utrecht:

On May 28, 1991, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441b, a provisions of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 114.5(a), a provision of the Commission's regulations. Accordingly, the file has been closed in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact Craig Douglas Reffner, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner  
Associate General Counsel

Enclosure  
Conciliation Agreement

91040843909



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3024  
North Dakota Public )  
Employees Association )

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by David H. Calhoon. The Federal Election Commission ("Commission") found reason to believe that the North Dakota Public Employees Association ("Respondent") violated 2 U.S.C. § 441b and 11 C.F.R. § 114.5(a).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Pursuant to 2 U.S.C. § 441b(b)(3)(A), contributions to a separate segregated fund, including a separate segregated fund established by a labor organization, must be completely voluntary and must not be made out of physical force, job discrimination, or financial reprisal. Any person soliciting an employee for a contribution to a separate segregated fund must

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inform the solicitee at the time of the solicitation, of the right to refuse to contribute without any reprisal. 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a)(4).

2. If the solicitation contains a guideline for contributions, then the solicitee must be informed that the guideline is merely suggestive and that the solicitee is free to contribute more or less than the suggested amount and that the labor organization will not favor or disadvantage anyone by reason of their contribution or their decision not to contribute.

11 C.F.R. § 114.5(a)(2). For purposes of 11 C.F.R. § 114.5(a)(2), a solicitation which specifies a certain amount to be contributed contains a guideline. See Advisory Opinion 1986-7, 2 Fed. Election Camp. fin. Guide (CCH) ¶ 5848.

3. Respondent North Dakota Public Employees Association is a labor organization within the meaning of 2 U.S.C. § 441b(b)(1) and represents public employees of the state of North Dakota.

4. In 1989, Respondent printed twenty-one thousand and two hundred (21,200) payroll deduction forms for the purpose of jointly collecting membership dues and soliciting contributions from its members.

5. The payroll deduction form included a contribution guideline in the amount of two dollars (\$2.00) per month and stated as follows:

This authorization is signed freely and voluntarily and on the understanding that the NDPEA COPE is engaged in joint fundraising efforts with the AFL-CIO and will use the money contributed to the effort to make political contributions and expenditures in connection with federal, state and local elections. The voluntary authorization may be revoked at any time by notifying the NDPEA and the payroll office in writing.



6. On September 6, September 13, September 15 and September 18, 1989, Respondent mailed 17,784 copies of this payroll deduction solicitation form to its members. The cost for printing and mailing the membership brochures which included the solicitation at issue here totaled \$4,804.83.

7. Respondent received forty-one (41) completed payroll deduction authorizations, which generated approximately \$246 in contributions in 1989.

V. 1. Respondent solicited contributions from its members for use in connection with Federal elections, but failed to inform the solicitees that they had the right to refuse to contribute without any reprisal in violation of 2 U.S.C. § 441b.

2. Respondent solicited contributions from its members for use in connection with Federal elections, using a written payroll deduction solicitation form which contained a \$2.00 per month guideline but which failed to inform the solicitee that the guideline amount was suggestive, that the solicitee had the right to refuse to contribute and that the solicitee was free to contribute more or less than the suggested amount without any fear that he or she would be disadvantaged based on the amount contributed or a decision not to contribute in violation of 11 C.F.R. § 114.5(a).

3. Respondent contends that at the time of the solicitation, it intended to use some of the contributions received in connection with Federal elections. Thereafter, Respondent determined that none of the funds raised would be used in

connection with Federal elections, and none in fact were used for federal activity.

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of five hundred dollars (\$500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or



oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble  
General Counsel

BY:

*Lois G. Lerner*  
Lois G. Lerner  
Associate General Counsel

Date

*10/3/91*

FOR THE RESPONDENT:

*Lyn Uprecht*  
Lyn Uprecht  
Manatt, Phelps & Phillips  
Attorneys for North Dakota  
Public Employees Association

Date

*5/6/91*

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20543

THIS IS THE END OF MUR # 3081

DATE FILMED 6/7/91 CAMERA NO. 4

CAMERAMAN AS

91040843915





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3024.  
6/28/91

21040350218

100-1594  
RECEIVED  
FEDERAL ELECTION COMMISSION  
MAIL ROOM

91 JUN 17 AM 10:37

LAW OFFICES  
**MANATT, PHELPS & PHILLIPS**  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS  
1800 NEW HAMPSHIRE AVENUE, N.W.  
SUITE 200  
WASHINGTON, D.C. 20036

TELEPHONE (202) 463-4300  
FAX (202) 463-4394  
(202) 463-4395

LOS ANGELES  
11355 WEST OLYMPIC BOULEVARD  
LOS ANGELES, CALIFORNIA 90064  
(213) 318-4000

June 13, 1991

**CLOSED**

91 JUN 18 PM 3:27

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF LEGAL COUNSEL

Lawrence M. Noble, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 3024  
North Dakota Public  
Employees Association

Dear Mr. Noble:

Enclosed is a check for \$500 in payment of the civil penalty  
in settlement of the above-referenced matter.

Sincerely,

*Lyn Utrecht*

Lyn Utrecht  
Manatt, Phelps & Phillips

21040350219





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 18, 1991

TWO WAY MEMORANDUM

TO: Fabrae Brunson  
OGC, Docket

FROM: Philomena Brooks *PB*  
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from North Dakota  
Public Employees Assoc., check number 23854, dated  
June 10, 1991, and in the amount of \$ 500.00.  
Attached is a copy of the check and any correspondence that  
was forwarded. Please indicate below the account into which  
it should be deposited, and the MUR number and name.

TO: Philomena Brooks  
Accounting Technician

FROM: Fabrae Brunson *FOB*  
OGC, Docket

In reference to the above check in the amount of  
\$ 500.00, the MUR number is 3024 and in the name of  
North Dakota Public Employees. The account into  
which it should be deposited is indicated below:

- ☐ Budget Clearing Account (OGC), 95F3875.16  
☒ Civil Penalties Account, 95-1099.160  
☐ Other: \_\_\_\_\_

Fabrae D. Brunson  
Signature

6/18/91  
Date

21040350220

9 1 0 4 0 3 5 0 2 2 1

23854

06/10/91 023854 \$500.00\*\*

\*FIVE HUNDRED AND NO/100\*\*\*\*\*DOLLARS

FEDERAL ELECTION COMMISSION

*Barbara M. White*

023854 0540000431 3 565 222