

APR 17 2000

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 99NF-16
DATE ACTIVATED: MARCH 17, 2000

EXPIRATION OF STATUTE OF
LIMITATIONS: MAY 21, 2002¹
STAFF MEMBER: JIM MOYE

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Brotherhood of Railroad Signalmen Political Action Committee and
Walt A. Barrows, as treasurer²

RELEVANT STATUTE: 2 U.S.C. § 434(a)(4)(B)

INTERNAL REPORTS CHECKED: Referral Materials
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The Reports Analysis Division ("RAD") referred Brotherhood of Railroad Signalmen Political Action Committee and its treasurer ("the Respondents"), to the Office of General Counsel on July 22, 1999.³ The basis of the RAD referral is the failure of the Respondents to timely file their 1997 May, 1997 June, 1997 September, 1997 November, 1998 February, and

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¹ The statute of limitations date for the earliest violative activity in this matter is May 21, 2002 for the Committee's first report which it failed to timely file by its May 20, 1997 due date. In addition to this report, the Committee filed seven more reports late. The statute of limitations date for the last report filed late in this matter is January 31, 2004.

² At the time this case was referred to the Office of General Counsel, R.R. Foley was the treasurer of record. The Committee filed an amendment to the Statement of Organization dated September 28, 1999 and received by the FEC on October 12, 1999, substituting Mr. Barrows as treasurer.

³ The Committee was referred on July 31, 1997, for a possible 2 U.S.C. § 438(b) audit covering the 1995-96 election cycle. On August 5, 1997, the Commission voted not to audit the Committee.

1998 April Monthly Reports, as well as the 1998 30 Day Post-General and 1998 Year End Reports.⁴

II. FACTUAL AND LEGAL ANALYSIS

Based on the Factual and Legal Analysis, see Attachment 1, this Office recommends the Commission find reason to believe the Respondents violated 2 U.S.C. § 434(a)(4)(B).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

This Office also recommends that the Commission offer to enter into conciliation with the Respondents prior to a finding of probable cause to believe. Attached for the Commission's approval is a proposed conciliation agreement. See Attachment 2.

⁴ The Act requires monthly filers, like Respondents, in lieu of filing the monthly reports otherwise due in November and December of any year in which a regularly scheduled general election is held, to file a pre-election report in accordance with 2 U.S.C. § 434(a)(2)(A)(i), a post-general election report in accordance with 2 U.S.C. § 434(a)(2)(A)(ii) and a year end report no later than January 31 of the following calendar year. 2 U.S.C. § 434(a)(4)(B).

Here, the Respondents incorrectly continued to file monthly reports, and therefore filed two reports covering the period normally reported on the 30 Day Post-General Report (October 16 - November 23). The first report, covering October 1-31, 1998 was filed on November 27, 1998. Since the 1998 Post-General Report was not due until December 3, 1998, RAD treated this report as "timely." The second report, covering November 1-30, 1998, was not filed until December 28, 1998, or 18 days after the 1998 30 Day Post-General Report was due. RAD treated this report as late by 18 days. Similarly, Respondents filed two monthly reports covering the period that should have been reported on the Year End Report (November 24 - December 31, 1998) which was due on January 31, 1999. Again, RAD treated the report covering November 1-30, 1998, filed on December 21, 1998, as "timely," and the report covering December 1-31, 1998, filed on February 11, 1999, as 11 days late. While noting in the Factual and Legal Analysis the correct way for monthly filers to report, the staff has used this same analysis in describing the violations and calculating the civil penalties.

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IV. RECOMMENDATIONS


1. Open a MUR.
2. Find reason to believe Brotherhood of Railroad Signalmen Political Action Committee and Walt A. Barrows, as treasurer, violated 2 U.S.C. § 434(a)(4)(B) and enter into conciliation prior to a finding of probable cause to believe.
3. Approve the attached Factual and Legal Analysis and conciliation agreement, and the appropriate letter.

Lawrence M. Noble
General Counsel

Date

4/14/00

BY:


Lois G. Lerner
Associate General Counsel

Attachments:

1. Factual and Legal Analysis
2. Proposed conciliation agreement



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *RD*
DATE: April 18, 2000
SUBJECT: RAD Referral 99NF-16- First General Counsel's Report

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

Open Session _____

Closed Session _____

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