

BEFORE THE FEDERAL ELECTION COMMISSION

2003 JUL 18 P 12 21

MUR 5268

SENSITIVE

1
2 In the Matter of)
3)
4 Kentucky State District Council of Carpenters)
5)
6 Steve Barger)
7)
8 Don Mitchell)
9)
10 Thomas Schulz)

GENERAL COUNSEL'S REPORT #2

11 I. ACTION RECOMMENDED

12 Authorize deposition subpoenas for Steve Barger, Don Mitchell, Thomas Schulz
13
14

15 II. BACKGROUND

16 The central allegation in this matter is that the Kentucky State District Council of
17 Carpenters ("KSDCC"), a labor organization representing carpenters and other crafts persons
18 within the State of Kentucky, and certain of its officers, coerced its field representatives, who are
19 both employed by KSDCC and members of the union, into making political contributions to
20 federal candidates and into working in the campaign offices of federal candidates under threat of
21 job loss and/or other consequences. Representatives who resisted making political contributions
22 were allegedly advised to use the funds from their monthly expense checks issued by KSDCC,
23 and those who worked on campaigns were allegedly instructed to reflect the time for such work
24 on their timesheets as "membership education."

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On May 9, 2002, the Commission found reason to believe that the following parties knowingly and willfully violated 2 U.S.C. §§ 441b and 441f:

- Kentucky State District Council of Carpenters
- Steve Barger, Executive Secretary of KSDCC
- Don Mitchell, Political Director of KSDCC
- Thomas Schulz, General Counsel and Assistant Business Manager of KSDCC

These respondents will be referred to herein collectively as "the KSDCC respondents."¹

The Commission authorized Subpoenas to Produce Documents and Orders to Answer Written Questions upon each of the respondents. This Office has reviewed the discovery submissions by the respondents, requested supplemental information in response to that discovery, and interviewed witnesses.² Information obtained in this investigation supports the Commission's prior findings against the KSDCC respondents. Nonetheless, there are a number of unanswered questions that need to be addressed and a number of additional questions raised

¹ The Commission also found reason to believe that Carpenters Legislative Improvement Committee ("CLIC"), the separate segregated fund of KSDCC's national union, the United Brotherhood of Carpenters and Joiners of America, and Monte Byers, as treasurer, violated 2 U.S.C. §§ 441b and 441f by accepting contributions made with union funds and contributions made in the name of another. The basis for this finding, in part, was information that certain officers and field representatives of KSDCC received contribution refunds from CLIC on April 30, 2001, shortly after KSDCC's alleged activities were reported to the Kentucky Office of Attorney General. CLIC's response states that the "refunds" made by CLIC on April 30, 2001 were not contribution refunds at all. Rather, it appears that a list of credit union remittances from KSDCC employees totaling \$7,652 was mistakenly sent to CLIC with a check in the amount of \$932.06 representing KSDCC employees' contributions to CLIC. CLIC, believing the remittance list belonged with the contribution check, forwarded the remittance list and check to a company who prepared its disclosure reports to the Commission. The company failed to observe the discrepancy between the amount of credit union remittances noted on the list and the amount noted on the contribution check and, instead, reported the \$7,652 in remittances as federal receipts. Once this error was discovered, CLIC reported \$7,652 in refunds in its next report. This Office will make appropriate recommendations regarding this respondent at a later date.

² The discovery submissions by the respondents, as well as reports memorializing certain witness interviews, are available for review in the Office of General Counsel.

by new information.

III. DISCUSSION

The KSDCC respondents submitted a cursory response to the Commission's Subpoena to Produce Documents and Order to Answer Written Questions in which they admit that KSDCC solicited certain KSDCC members for contributions to federal candidates but deny that any member had been terminated for failure to make a federal contribution or that any member had been reimbursed by KSDCC for monetary contributions to federal candidates or political committees.

This Office requested supplemental information from KSDCC concerning the circumstances of each solicitation for a federal contribution, including the date of each solicitation, the amount of each contribution solicited, and the names of the federal candidate, the individuals who made the solicitations, and the individuals solicited. In response, KSDCC stated that field representatives employed by the union were asked by Don Mitchell, either by telephone or face-to-face, to make voluntary individual contributions to the following federal candidates for both the Primary and General Elections in 2000: Scotty Baesler for U.S. Senate, Ken Kucas for U.S. Congress, Brian Roy for U.S. Congress and Eleanor Jordan for U.S. Congress. Following these solicitations, KSDCC officers collected contribution checks

1 earmarked for these candidates and forwarded them directly to the campaigns.⁴ KSDCC
2 provided little or no information for any other election cycle.

3 Moreover, Mr. Mitchell submitted an affidavit dated April 18, 2003 in which he avers
4 that he solicited contributions from field representatives for Senate and Congressional candidates
5 in the 2000 and 2002 Primary and General Elections but denies that he ever threatened or
6 coerced any individual or suggested that the decision to contribute would affect an individual's
7 employment conditions or tenure. *See* Attachment 2.

8 The denials made by the KSDCC respondents are contradicted by statements made by
9 two former field representatives to an OGC Investigator that union officers advised the
10 representatives that they were required to make contributions to candidates when solicited by the
11 union, including federal candidates, and that they were given monthly expense checks, at least in
12 part, for this purpose. In addition, KSDCC produced copies of check-lists and contribution
13 checks indicating an unusually consistent pattern of individual contributions from all or nearly
14 all field representatives in the same amount of money to the same candidates at the same time.⁵

15 KSDCC acknowledges that it assigned some of its members to assist various federal
16 campaigns throughout the State; however, the union maintains that its members' campaign
17 activities were limited to communications to the membership⁶ and that no member assigned to a
18 federal campaign worked at campaign headquarters or otherwise under the supervision of any
19 candidate or political committee.

⁴ Indeed, Mr. Schulz acknowledged that KSDCC collected all contribution checks, which were made payable to the candidates, at its headquarters and transmitted the checks directly to the candidate in violation of 11 C.F.R. § 114.2(f).

⁵ KSDCC apparently sent copies of the check-lists and contribution checks to CLIC since CLIC produced these materials in response to the Commission's subpoena.

⁶ Mr. Schulz acknowledged that KSDCC has failed to report the costs of membership communications that contained express advocacy and exceeded \$2,000 in accordance with 2 U.S.C. § 431(9)(B)(iii).

1 This information is contradicted by documents produced by KSDCC in this matter,
2 including, but not limited to, timesheets prepared by field representatives in 1998, 2000 and 2002
3 suggesting that at least some representatives posted campaign signs in public places and walked
4 door-to-door in various counties on behalf of federal candidates, received direction from
5 campaign headquarters, and that at least one representative set up an office at the campaign
6 headquarters of a federal candidate. KSDCC also produced copies of letters from Mr. Barger to
7 various federal and state candidates in 2000 stating that a specific field representative "will work
8 directly in your campaign offices and will assist you in any way possible to help you win the
9 election." See Attachment 3. Further, KSDCC produced an internal memorandum from Daniel
10 Forbis to Don Mitchell dated October 10, 2000, in which Forbis provided an update regarding
11 Eleanor Jordan's campaign for U.S. Congress stating that "We currently have a desk and [sic]
12 working within headquarters." See Attachment 4.

13 Importantly, it appears from the timesheets produced by KSDCC that field
14 representatives engaged in federal campaign activity, including activity outside the membership,
15 during union business hours and while being paid by the union. For example, Steven Baird, a
16 field representative assigned to the Congressional campaign of Brian Roy in 2000, noted in his
17 timesheets that he spent over forty (40) hours each week during the final six (6) weeks leading
18 up to the General Election on campaign activity, often times at Brian Roy's campaign
19 headquarters.

20 Most of the timesheets produced by KSDCC are not as descriptive as the time sheets
21 submitted by Mr. Baird in 2000; however, the timesheets do reflect an increase in notations to
22 "membership education" during the weeks leading up to primary and general elections. A
23 former field representative advised an OGC Investigator during an interview that he was

1 instructed to use this term on his timesheets to account for the time he spent on political activity
2 and was further instructed not to identify the candidates' names on his timesheets "so that it
3 could not be traced back."

4 Based upon the foregoing, the KSDCC respondents were offered the opportunity to make
5 a presentation in the Office of General Counsel concerning the full scope of KSDCC's political
6 program and, specifically, the union's federal campaign activities during the last three election
7 cycles. This invitation was made with the expectation that such a presentation would help
8 narrow the issues of the investigation and reduce the number and/or length of interviews and
9 depositions of various KSDCC personnel. KSDCC accepted the invitation, and a meeting was
10 held on March 6, 2003 in the Office of General Counsel. Thomas Schulz, KSDCC's General
11 Counsel and a respondent in this matter, and William Johnson, the KSDCC respondents'
12 attorney of record, attended the meeting on behalf of KSDCC. Shortly into the meeting, it
13 became clear that Mr. Schulz was not the individual most intimately involved in KSDCC's
14 political program and that he had not prepared adequately for the presentation. In addition, he
15 did not appear forthcoming and, instead, appeared generally nervous and, at times, evasive and
16 intransigent. *See Attachment 5.*

17 Thus, a number of important questions remain unanswered or are subject to conflicting
18 evidence. These questions include, but are not limited to, the following:

- 19 • Whether KSDCC officers coerced the field representatives into making
20 contributions to federal candidates and whether KSDCC reimbursed the
21 representatives for those contributions;
22
- 23 • How KSDCC responded to field representatives who expressed reluctance or
24 chose not to make solicited contributions;
25
- 26 • Which field representatives assisted federal campaigns at the request or direction
27 of KSDCC and how much federal campaign activity conducted by field
28 representatives was on union time;

- What was (is) the scope of federal campaign activities conducted by field representatives and union officers, including, as to each field representative or officer, the name(s) of the candidate(s) assisted, the election cycle, the dates and types of activities, whether the activities were limited to contacting union members or whether they were aimed at the general public (such as the distribution of candidate material door-to-door, phone banks that were not limited to union members, or assistance with the preparation of campaign fundraisers or rallies) and an estimate of the number of hours expended on each type of activity;
- Whether or not union funds were expended for campaign brochures and advertisements, telephone banks, or campaign events in connection with any federal election during the 1998, 2000 and 2002 election cycles;
- Whether or not KSDCC or its officers provided the field representatives with any type of training, guidance or instruction regarding federal political activities; and
- Whether KSDCC officers instructed field representatives to conceal federal campaign activity by using the term "membership education" on their timesheets.

At the March 6, 2003 meeting, KSDCC agreed to submit affidavits from current and former field representatives, as well as the officers responsible for their supervision, concerning the specific details of their federal campaign activities in 1998, 2000 and 2002. As in the case of the face-to-face presentation, it was anticipated that these affidavits would reduce the number and length of depositions and witness interviews in this matter. To date, however, no affidavits from field representatives concerning these activities have been produced.⁷

Therefore, based upon all the reasons stated, this Office recommends that the Commission authorize deposition subpoenas

⁷ Counsel for the KSDCC respondents initially advised that the union requested the affidavits from its field representatives, that these requests were met with some reluctance from certain individuals, and that, consequently, KSDCC collected some, but not all, of the requested affidavits. After considerable delay on the part of KSDCC, it now appears that the union is unwilling or unable to produce any affidavits other than a cursory affidavit from Political Director Don Mitchell concerning his solicitations of contributions from field representatives. See Attachment 2.

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12 **IV. RECOMMENDATIONS**

13 1. Authorize deposition subpoenas for Steve Barger, Don Mitchell, Thomas Schulz.

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16 2. Approve the appropriate letters.

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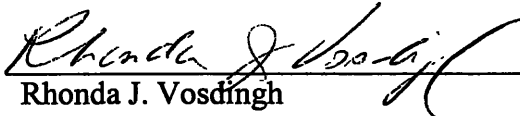
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Lawrence H. Norton
General Counsel


Date

7/17/03

By:


Rhonda J. Vosdingh
Associate General Counsel


Mark D. Shonkwiler
Assistant General Counsel


Ann Marie Terzaken
Attorney

Attachments:

1. Deposition subpoenas for Steve Barger, Don Mitchell, Thomas Schulz.
2. Affidavit of Donald Mitchell dated April 18, 2003.
3. Letters from Steve Barger to Scotty Baesler, Eleanor Jordan, and Brian Roy dated September 20, 2000.
4. Memorandum from Daniel Forbis to Don Mitchell dated October 10, 2000.
5. Memorandum dated March 11, 2003 regarding KSDCC presentation on March 6, 2003.

AFFIDAVIT

Comes now the Affiant, Donald Mitchell, and for his affidavit deposes and states as follows:

1. I am Political Director of the Kentucky State District Council of Carpenters, an appointment I have held since approximately August, 1999. Prior to my appointment the Kentucky State District Council of Carpenters did not have the designation of Political Director. The Political Director designation is in addition to my position as Senior Field Representative. I have been Senior Field Representative since January 11, 1999. I have been employed as a Field Representative since July 31, 1989.
2. Beginning with the 2000 primary election cycle, I advised Field Representatives that they could consider making a contribution to endorsed Federal candidates for Senate and U.S. House of Representatives for the primary and general elections in 2002 and 2002.
3. Contacts about contributions were made for both primary and general elections in 2000 and 2002.
4. Contacts were made by telephone or in person at various times.
5. Without representing a verbatim recitation of the specific conversations, I told each individual generally they were offered the opportunity to voluntarily contribute to a specific candidate or candidates a suggested amount and that contributions payable in the name of the specific campaign should be sent to the District council office by a specific date and that others were giving and that the field representatives were being asked to contribute.
6. Not all field representatives were contacted; specifically, Richard Clayton, David Houtchins, Leroy Meador and Brenda Steele during the 2000 campaigns and Scott Metcalf during the 2002 primary campaign. These individuals were relatively new hires at those times.
7. If a particular field representative had not made a contribution by the date specified, I would contact that particular field representative and inquire whether he or she intended to contribute and if so to get it in.
8. I never threatened or coerced any individual nor did I state, suggest or imply that the decision to contribute would affect their employment conditions or tenure.

Further, the Affiant sayeth naught.

Donald R. Mitchell

Subscribed, sworn to and acknowledged before me by Donald R. Mitchell this 18th
day of April, 2003.

Patty L. Crawford

Notary Public, State at Large

My Commission expires: 06.25.06

\\schulz\mitchell affidavit 4-10-03

Attachment 2

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Kentucky State District Council of Carpenters



AFL-CIO

STEVE BARGER
Secretary-Treasurer
Business Manager

September 20, 2000

Mr. Scotty Baesler
450 Canebreak Drive
Lexington, Kentucky 40509

Dear Mr. Baesler:

I am pleased to recommend to you Linville Hopper who has volunteered to work directly with your campaign on behalf of UBC Campaign 2000/Labor 2000.

Mr. Hopper will work directly in your campaign offices and will assist you in any way possible to help you win the election.

We look forward to working with you in a successful campaign.

Sincerely,

Steve Barger

SB/ceh

pc: Linville Hopper

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Attachment 3
Page 1 of 3

Kentucky State District Council of Carpenters



AFL-CIO

STEVE BARGER
Secretary-Treasurer/
Business Manager

September 20, 2000

Ms. Eleanor Jordan
P. O. Box 21151
Louisville, Kentucky 40221

Eleanor
Dear Ms. Jordan:

I am pleased to recommend to you Dan Forbis who has volunteered to work directly with your campaign on behalf of UBC Campaign 2000/Labor 2000.

Mr. Forbis will work directly in your campaign offices and will assist you in any way possible to help you win the election.

We look forward to working with you in a successful campaign.

Sincerely,

Steve Barger
Steve Barger

SB/ceh

pc: Dan Forbis

to: laborers union; subject: barger's campaign endorsement; FROM: Jordan

Kentucky State District Council of Carpenters



AFL-CIO

STEVE BARGER
Secretary-Treasurer/
Business Manager

September 20, 2000

Mr. Brian Roy
P. O. Box 685
Benton, Kentucky 42025

Dear Mr. Roy: *Brian*

I am pleased to recommend to you Steve Baird who has volunteered to work directly with your campaign on behalf of UBC Campaign 2000/Labor 2000.

Mr. Baird will work directly in your campaign offices and will assist you in any way possible to help you win the election.

We look forward to working with you in a successful campaign.

Sincerely,

Steve Barger

SB/ceh

pc: Steve Baird

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Attachment 3
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Kentucky State District Council of Carpenters



AFL-CIO

STEVE BARGER
Secretary-Treasurer
Business Manager

MEMORANDUM

TO: Don Mitchell
FROM: Dan Forbis *D.F.*
DATE: October 10, 2000
RE: UBC Campaign Labor 2000 Activities Update
Eleanor Jordan Campaign-KY 3

1. The development of a recruitment plan continues day to day as additional volunteers get activated. Currently 12 members of Local 64 and 2501 have been active. These members have attended rallies, put up yard signs and have volunteered to man phone banks, and voter registrations continue to put up signs and do phone banks.
2. I have been in daily contact with the campaign coordinator. We currently have a desk and working within headquarters.
3. We have made phone calls for volunteers and have at regular union meetings recruited help
4. Yes, we have had discussions at regular union meetings on what framing the future means to our cause and to the rights of everyone.
5. We are doing letters to membership for our candidates and distributing AFL-CIO leaflets to jobsites and shops.
6. We have been recruiting volunteers to do Get Out The Vote and have not finalized a date to call our membership but tentatively the end of October. Currently we are not involved in candidates Get Out The Vote.
7. I have asked for an itinerary of upcoming events so that we can coordinate with our membership to attend.

Attachment 4
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UBC Campaign Labor 2000
Page 2

8. Currently no press, TV, or radio coverage and have not and will not attempt to get coverage.
9. Currently we are calling other labor organizations for volunteers and also attending local or Central Labor Council meetings to spread the message and for assistance.
10. The Council has taken the lead in community or political races and has and will lead in membership involvement and to make sure people are registered to vote and get out to vote.

DF/fsc