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March 15, 2004

Lawrence H. Norton
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RE: MUR 5268

Dear Mr. Norton:

Enclosed herewith are three copies of the Respondents' brief in the above matter.

Sincerely yours,

JOHNSON, TRUE & GUARNIERI, LLP



William E. Johnson

WEJ:ds
Enclosures (3)
c: Kentucky State District Council of Carpenters

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COUNSEL

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I. COUNTER-STATEMENT OF THE CASE

It is suspected that disgruntled former employees caused the beginning of this investigation. In addition to certain former field representatives being terminated because of their failure of performance certain office staff were likewise terminated and left with openly hostile feelings. The Respondents early recognized that the Federal Election Commission ("Commission") staff had been given misinformation which led to the investigation being commenced and reliance being placed upon statements by persons unnamed in the General Counsel's brief hostile to Respondents. The General Counsel's brief ("brief") is replete with misinformation. For instance on page 6 references were made to field representatives receiving a weekly expense allowance of \$75.00, which later is referred to as having been paid to the field representatives to compensate them for making political contributions. The Kentucky State District Council of Carpenters ("KSDCC or Union") stopped the weekly expense allowances in early May, 1999, as a result of a report prepared by Thomas Havey, LLP, certified public accountants and consultants. It is further apparent that those persons giving misleading information failed to explain that the term "membership education" was a general term adopted by the United Brotherhood of Carpenters ("UBC") years ago and is a term meaning different things to different people. However, it generally reflects Union supervisory personnel's contacts and education of Union members.

Not one Union representative who testified under oath said he knowingly and willfully violated the law or directed employees to engage in political activities in violation

of law.

The Respondents take great umbrage in being accused of engaging in activity during the discovery process designed to mislead and obstruct the Commission's investigation. KSDCC personnel in the Frankfort headquarters diligently searched the records and shipped loads of materials to counsel for the Commission. The Respondents regret that one of the disgruntled ex-employees may have maintained the files in an order that did not allow the district office to immediately locate them, but such was the case. She further authorized shredding of documents without authority from Messrs., Barger, Schulz, Landers or Mitchell. This shredding occurred on 2/24/2000 by Off Site Records Management. The files, as located, were shipped to Commission counsel. Further, the local headquarters had things to do other than search for records. It is a small office serving more than 4,000 carpenters, millwrights and other crafts persons within the Commonwealth of Kentucky.

Union employees did participate in partisan elections but the intent was for Union leadership to work with Union members, which is a right guaranteed by the United States Constitution and not made contrary by statutory law. 2 USC section 441b(a)(2)(A). The overview section of the General Counsel's brief and the bulk of the brief focuses on allegations made by unnamed persons. It is true that the Union did collect at its central office voluntary contribution checks to candidates so that the checks could be collectively delivered to the candidate. The federal statutory law does not specifically prohibit such activity. However, 11 C.F.R., section 110.6(b)(2)(ii) appears to prohibit a labor organization from being a conduit. If there was a violation it was because the Union relied

on the advice of counsel in believing that simply sending the checks to the candidate did not violate existing law.

On page 8 of the brief a statement is made about advice being "contradicted by a later instructions." However, neither in the text or the footnotes are we told of the contradictions.

Respondents thought that they understood the relevant law. However, they disagree with the interpretations placed upon the law as set forth in the General Counsel's brief. For Instance, Respondents believe that union employees, including field representatives, are not prohibited from participating in federal election simply because they are Union employees. They recognize that certain activities are limited to contacts with Union members and their families. They further recognize that some activities may need to take place on their own time and not on Union time. This information has been made available through the District Council and other labor communications.

II. ARGUMENT

A. LABOR ORGANIZATIONS MEMBERS AND THEIR FAMILIES MAY ENGAGE IN EXPRESS ADVOCACY FOR CANDIDATES.

It is true that KSDCC, acting through its District Council, will frequently endorse a candidate in an election. It has every right to do so. It is true that field representatives and others in the Union will communicate with other Union members the fact that an endorsement has been made. This frequently will be set out in the Union newsletter. This is not contrary to law. It is true that Union members will be contacted and asked to contribute to endorsed candidates. This is not contrary to law. It is true that field

representatives in the 1998, 2000 and 2002 elections made voluntary contributions to endorsed candidates. If the contributions were voluntary then there is nothing illegal about them.

It is true that on a two occasions the Union had a desk for Union use in the campaign headquarters of a federal candidate. It believed this was not contrary to law. However, upon being advised that this was questionable the activity was terminated.

B. THE ACTIVITIES OF UNION MEMBERS WERE NOT CONTRARY TO LAW.

Whether KSDCC wanted lengthy descriptions written about membership education should not be a concern of anyone except KSDCC. It is not the length of the narrative that is important. The sole issue should be whether lawful activities are being conducted by the field representative. A sentence on page 10 of the brief states: "A few other field representatives stated that they believed or had suspicions that the Union wanted to hide the extent of their work on campaigns." This sentence is indicative of the entire investigation. "A few" ... "believed or had suspicions" hardly seems to be credible evidence. The fact membership education may mean different things to different people is not evidence of wrong doing.

The fact field representatives would post candidate signs or even work on campaigns on their own time is not in violation of the law. Even field representatives have some free time.

Respondents seriously question the statement in footnote 11 on page 12. However, if sign building took place after normal hours and was performed by volunteers

this would not constitute a violation.

Much is made of the vice presidential debate held in Danville, Kentucky. The citizens of Kentucky were proud to have the debate in our State. The debate was between the republican and democratic candidates for the office of Vice President of the United States. Volunteers were sought from many groups including KSDCC. The candidates and their staffs needed transportation, food, security, lodging, etc. Many corporations were involved in furnishing the same type of services during this historical event. It is difficult to imagine any one contending this was a partisan event and that anything done constituted a violation of election laws.

Beginning on page 14 is the heading "Close interaction between Union employees and campaign staff".

It is not unlawful for persons belonging to, or working for an union, to have a preference for a candidate in an election, or support a candidate. The testimony of Political Director Don Mitchell is consistent with statements of KSDCC that there was never any intent to have Union representatives work in any candidate's office, once a question of legality was raised by individual members of the Council and Mr. Schulz, the legal counsel. It is not unusual in life for one to first believe a certain course of action is appropriate but then have to change that course based upon legal advice. Neither is there anything unlawful in a Union wanting to be recognized by a candidate as having members who are supportive of the candidate. KSDCC continues to believe that no member assigned to coordinate Union membership for any campaign ever worked directly in a candidate's

headquarters under the supervision of any candidate or committee.

C. THE GENERAL COUNSEL'S BRIEF IS PREMISED ON UNSUPPORTED AND SPECULATIVE INFORMATION.

Beginning on page 17 there is a section that seeks to give the impression that field representatives were reprimanded because of their failure to participate in campaign activities. There was no sworn testimony of any field representative being reprimanded because of failure to participate in campaign activities. Neither do the personnel files contain any such reprimands. It appears that the investigators relied upon information which came to them from persons no longer employed by KSDCC. The fact field representatives recorded "this purported personal time" on their time sheets and weekly activity reports shows there were no attempt to hide the campaign work they performed on their own time. Neither is there any significance in the fact that field representatives reported doing more political work as the election approached. The rule of political interest tells us that more political work occurs closer to the election. Field representatives have frequent contacts with Union members as election day approaches. One does not lose rights of citizenship through employment as a field representative.

On page 21 of the brief there is the unsupported conclusory statement that between September and November, 2000, KSDCC provided as much as \$92,000.00 in free labor to the Union's endorsed candidates. If the field representatives exercised their rights as citizens on their own time, or performed their duties while working with Union members then it does not matter how much time was used.

Don Mitchell testified that he has occasionally "put out" yard signs during the day.

(Mitchell dep., pp. 468-469). This testimony does not demonstrate that this was a regular occurrence nor does it indicate whether the signs were placed in Union members' yards.

On page 24 there is a discussion of hiring additional staff to work solely on campaigns. If the employees who worked as membership education interns limited their activities to campaigning with labor personnel for the purpose of getting out the vote or endorsed candidates on election days then this would not constitute a violation of the federal law. 11 C.F.R. section 114.5(g)(2). The Union had every right to employ personnel during the period preceding the general election in 2000.

Much is made of contributions to federal candidates. All testifying field representatives stated their contributions were voluntary. Contrary to the statement in the brief, all field representatives did not contribute the same amount to all candidates. Close scrutiny of chart 2 on page 27 will show that Ed Reliford did not contribute to the Lucas campaign in the 2002 general election. Chart 3 on page 28 shows that Steve Barger did not contribute to the Baesler or Lucas committees during the 2000 primary election. Steve Barger did not make contributions to federal candidates in the 2002 general election. The Respondents do not believe that even the unnamed disgruntled former field representatives and employees will say that they were terminated because of their failure to contribute to a campaign.

It is worthy of note that none of the field representatives who testified under oath in this matter said contributing to candidates "was a required part of the job." (Writer's emphasis). As previously stated the record shows that not all field representatives

contributed to all candidates. Neither is there any indication that disciplinary action was taken against them because of a failure to contribute.

The Respondents continued to believe the law does not prohibit KSDCC from endorsing candidates and by oral or written communications advising its members of the endorsements.

The Respondents deny that free labor to federal candidates was provided by KSDCC during the 1998, 2000 and 2002 election cycles. The work alleged for federal campaigns was nothing more than field representatives and staff working with Union members in encouraging participation in the election process and support for endorsed candidates. Those field representatives who testified under oath generally testified that the work they did in the election was for the purpose of serving the restricted class consisting of Union members, working for the campaigns after hours, and on weekends. Field representatives are the persons who engage in day to day contact with Union members. So long as the contacts relate to Union matters, even though political, such activities are not subject to election laws. It is also only logical that a political director might request political reports regarding the election activities. Don Mitchell was KSDCC's political director. Footnote 35 is misleading and fails to set out complete information about the so called "political reports". First, the reports were not in KSDCC files maintained at the Frankfort, Kentucky office. Initially, Mr. Mitchell had indicated to the Frankfort office personnel that the reports were generally given to him by telephone and that he had none in his possession. Because the Frankfort office had not found any political reports when it shipped boxes of material

to the Commission staff and based on Mr. Mitchell's initial statement, it was believed there were no written political reports available for production to Commission staff. However, when Mr. Mitchell testified that he had requested written reports but indicated he had discarded them, such information was promptly communicated to the Frankfort KSDCC office. Mr. Barger and Mr. Schulz then directed all field representatives to search their personal files to see if they retained copies of any documents that could fall within the category of political reports. Some copies were found and these were promptly sent to the Commission staff conducting the investigation. Mr. Mitchell testified that after an election cycle was over it was his practice to dispose of records relating to campaign-related activity. (Mitchell dep., p. 233). There is no showing that any of the other respondents authorized the destruction of any records. It appears a former employee allowed some documents to be shredded in 2000 without proper authorization.

It is difficult to understand how the writer of the General Counsel's brief could make the statement that there were "threats and intimidation to force employees to make contributions". The testimony of all persons, under oath, was that there were neither threats or intimidation by anyone connected with the Union. Footnote 36 is another of the misleading statements. There was never an insistence by Mr. Barger or Mr. Schulz that they attend the depositions of various KSDCC personnel. There was simply an inquiry as to whether they were permitted to attend in view of the fact that on May 9, 2002, the Commission had stated that it found reason to believe that they had knowingly and willfully violated federal law. Normally persons having allegations made against them have the

right to be present during the testimony of witnesses relating to such allegations. Upon being advised that the Commission staff did not want either to be present nothing more was said about the matter. Further, there was no conflict in having the same counsel represent all respondents. There was no testimony indicating a violation of the law on the part of any of the Respondents.

The General Counsel's brief claims KSDCC failed to report the costs of membership communications containing express advocacy. The law is clear on this point. Payment for such communications must be reported to the Commission only when the payments exceed \$2,000 for all candidates running in the same election. The payments are not considered contributions. 11 C.F.R. section 104.6(a). Here again the brief speculates that because KSDCC "failed to submit documentation regarding the costs" that "these costs likely exceed the \$2,000 threshold". (General Counsel's brief, p. 42). KSDCC did not submit documentation regarding costs because it did not find that the costs exceeded the threshold amount.

The brief writer's speculation is not credible evidence.

III. CONCLUSION

In summary, it is obvious that persons no longer connected with KSDCC have made statements with the intention of causing harm to the Respondents. They have been successful in that this investigation has cost the Union thousands of dollars in legal expenses and time. However, when one considers the evidence taken under oath there

is no basis for the General Counsel's recommendations and this investigation should be concluded by a dismissal of the proceedings.

Respectfully submitted,



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