



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

OCT - 4 2004

Stanley M. Brand, Esq.  
Brand & Frulla, P.C.  
923 15<sup>th</sup> Street NW  
Washington, DC 20005

Re: MUR 5437

Dear Mr. Brand:

On March 22, 2004, the Federal Election Commission notified your clients, SEIU Local 250, SEIU COPE and Anna Burger, as treasurer, Sal Rosselli, and John Borsos, 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 forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint and information provided by your clients, the Commission, on September 29, 2004, found that there is reason to believe that your clients violated 2 U.S.C. §§ 441b(b)(3), 441e, and 441b(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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 within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred.

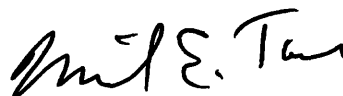
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily 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 Brant Levine, the attorney assigned to this matter, at (202) 694-1572.

Sincerely,



Michael E. Toner  
Commissioner

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

**Respondents:**

SEIU Local 250

Sal Rosselli

John Borsos

SEIU Committee on Political Education and Anna  
Burger, as treasurer

**MUR: 5437**

**I. INTRODUCTION**

This matter was generated by a complaint filed by Timothy Bonifay. *See* 2 U.S.C. § 437g(a)(1). The complaint alleges that a local union coerced its members to contribute to the separate segregated fund of its parent union and forced its employees to work for political campaigns. That union, SEIU Local 250 ("Local 250"), represents approximately 100,000 health care workers in Northern California. According to its filings with the Department of Labor, Local 250 has an annual budget of approximately \$40 million and employs approximately 200 individuals. Local 250 is an affiliate of the Service Employees International Union ("SEIU"), a labor organization representing over one million workers worldwide. SEIU maintains a separate segregated fund, the SEIU Committee on Political Education ("COPE"), which has reported over \$10 million in receipts and over \$3 million in disbursements during the current election cycle.

The complainant in this matter, Timothy Bonifay, was employed by Local 250 for ten years as a field representative. Bonifay states that he resigned earlier this year in part because of "widespread egregious and illegal PAC fundraising." Bonifay singles out Local 250's president, Sal Rosselli, and its administrative vice president, John Borsos, contending that they directed union staff under threat of discipline to increase union members' contributions to COPE.

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Bonifay states that he has seen records indicating that approximately 15,000 members contributed between five and twenty dollars per month to COPE. According to Bonifay, a high percentage of these members are undocumented immigrants who were exploited by union staff into authorizing payroll deductions to COPE. Bonifay also alleges that paid staff members of the union were required to work on political campaigns as part of their official job duties.

In a joint response to the complaint, Local 250, its officers, and COPE (“the SEIU respondents”) deny each of Bonifay’s allegations.<sup>1</sup> The SEIU respondents also provided documents to counter the allegations, including a copy of their contribution authorization form—which states that contributions are voluntary and can only be made by U.S. citizens—and a memo to union employees regarding certain campaign activities. Additionally, the SEIU respondents challenge Bonifay’s credibility, noting that Bonifay filed the complaint just two weeks after they filed a lawsuit against him in California state court regarding his role in forming a new union that would compete with Local 250.<sup>2</sup>

## II. FACTUAL AND LEGAL ANALYSIS

The allegations in this matter raise three primary legal issues.<sup>3</sup> First is whether Local 250 coerced its members to contribute to COPE, the separate segregated fund of SEIU. *See* 2 U.S.C. § 441b; 11 C.F.R. § 114.5. Second is whether the SEIU respondents solicited or accepted contributions from foreign nationals. *See* 2 U.S.C. § 441e; 11 C.F.R. § 110.20. Third is whether

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<sup>1</sup> This response was submitted by counsel and does not contain any sworn statements.

<sup>2</sup> The SEIU respondents also stated that they filed charges with the National Labor Relations Board regarding Bonifay’s alleged misconduct. According to recent media reports, however, the NLRB investigated and found no evidence of wrongdoing, leading the SEIU respondents to withdraw the charges. *See* Rebecca Vesely, *Emergency Workers Want Out of Union*, OAKLAND TRIBUNE, Jul. 27, 2004.

<sup>3</sup> Although the complaint does not provide specific dates, the facts relevant to this matter appear to have occurred primarily after the effective date of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. 107-155, 116 Stat. 81 (2002). All citations to the Federal Election Campaign Act of 1971, as amended (“the Act”), codified at 2 U.S.C. §§ 431 *et seq.*, and all statements of applicable law herein, refer to the Act and the Commission’s implementing regulations as they were amended pursuant to BCRA.

Local 250 made prohibited in-kind contributions by requiring its employees to work directly for political campaigns as part of their official job duties. *See* 2 U.S.C. § 441b.

As discussed below, the available information supports opening an investigation into this matter, notwithstanding the SEIU respondents' denials. First, Bonifay's sworn complaint alleges serious and systemic misconduct within the union. Second, Bonifay was a longtime employee of the union who undisputedly has personal knowledge of the union's activities. Finally, Bonifay has stated that he can provide the Commission with supporting evidence and witnesses.

**A. Alleged Coercion of Contributions to COPE**

Contributions to separate segregated funds established by labor organizations must be voluntary, and union members must be informed at the time of solicitation that they may refuse without any reprisal. *See* 2 U.S.C. § 441b(b)(3)(C). Similarly, separate segregated funds are prohibited from making contributions or expenditures that utilize dues required as a condition of employment or from anything of value secured by physical force, job discrimination, or financial reprisal. *See* 2 U.S.C. § 441b(b)(3)(A).

Here, Bonifay states that Local 250 told its members that contributions to COPE were needed to help them keep their jobs. In response, the SEIU respondents deny Bonifay's allegations, and they produced their check-off authorization form by which members make contributions. This form clearly states that one may contribute more or less than the guidelines without reprisal, as required by the Commission's regulations. *See* 11 C.F.R. § 114.5(a)(2). Nonetheless, given the factual dispute here, further investigation is needed to determine whether union members were coerced into signing this form, as Bonifay alleges.

If Bonifay's allegations are true, then Local 250 and its officers may have violated the Act by improperly soliciting contributions to a separate segregated fund. *See* 2 U.S.C. § 441b(b)(3)(C); 11 C.F.R. § 114.5(a). Likewise, although the complaint does not specifically

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allege that COPE knew of the alleged coercion, COPE may nonetheless have violated the Act if it made contributions or expenditures using funds obtained through coercion by its local collecting agent. *See* 2 U.S.C. § 441b(b)(3)(A). Therefore, there is reason to believe that Local 250, Sal Rosselli, John Borsos, and COPE violated 2 U.S.C. § 441b(b)(3).

**B. Alleged Solicitation of Contributions from Foreign Nationals**

Not only did Local 250 coerce its members to contribute to COPE, Bonifay alleges, but the union did so knowing that an “extremely high percentage” of its home health care division members are undocumented immigrants. Bonifay also asserts that one union officer, John Borsos, was specifically asked about the legality of collecting COPE contributions from undocumented immigrants and responded, “Don’t ask, don’t tell.” The SEIU respondents, however, deny that Borsos made this comment, and they further state that to their knowledge, all contributors to COPE are citizens or legal residents of the United States. According to the SEIU respondents, the union may reasonably infer that its members are citizens because the Immigration Reform and Control Act requires all employers in the United States to verify employment eligibility.

If Bonifay’s allegations are true, then the SEIU respondents may have violated the Act because undocumented immigrants—foreign nationals—are prohibited from making contributions or donations in connection with federal, state, or local elections. *See* 2 U.S.C. § 441e. Likewise, no person may solicit or accept a contribution from a foreign national. *See id.* A person knowingly accepts a prohibited contribution if that person has actual knowledge that funds originated from a foreign national or, alternatively, if that person is aware of facts that:

- (1) would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited is a foreign national; or
- (2) would lead a reasonable person to inquire whether the source of funds is from a foreign national but failed to conduct a reasonable inquiry.

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See 11 C.F.R. § 110.20(a)(4). Here, the SEIU respondents have not claimed to have undertaken any independent inquiry into whether contributions to COPE were made by foreign nationals.

Given Bonifay's specific allegation that union officials were aware that a high percentage of certain union members are undocumented immigrants who contributed to COPE, an investigation is needed to determine whether in fact the SEIU respondents knowingly solicited or accepted contributions from foreign nationals. Although Bonifay's allegations are targeted primarily against Local 250 and its officers, COPE may nevertheless have violated the Act if it accepted contributions from foreign nationals through its local collecting agent. Therefore, there is reason to believe that Local 250, Sal Rosselli, John Borsos, and COPE violated 2 U.S.C. § 441e.

**C. Alleged In-Kind Contributions to Federal Campaigns**

In addition to alleging that the SEIU respondents improperly solicited and accepted contributions, Bonifay asserts that Local 250 assigned paid field staff to work directly for political campaigns. These campaign assignments, Bonifay asserts, "are mandatory under threat of discipline if not done." If these allegations are true, then Local 250 may have violated the Act because labor organizations are prohibited from making contributions or expenditures from their general treasury funds in connection with any federal election. See 2 U.S.C. § 441b(a). Likewise, the Act prohibits any officer or director of any labor organization from consenting to such contributions or expenditures. See *id.* A contribution includes any direct or indirect payment, or any services, or anything of value made to a candidate, including in-kind contributions. See 2 U.S.C. § 441b(b)(2) and 11 C.F.R. § 100.7(a)(1)(iii)(B).

Local 250 and its officers dispute Bonifay's allegations, stating that participation in political activities is "*completely voluntary*." (emphasis original). In support, the SEIU respondents submitted a memo to Local 250 employees regarding campaign activity. This

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memo, from president Sal Rosselli, is indeed titled with the phrase “volunteer shifts.” Yet the language used in the body of the memo can be construed to support Bonifay’s claims. For example, the memo notes that the union has “committed” to involvement in the election, states that “staff will complete” specified volunteer activity, and provides a deadline by which staff should turn in their sign up sheets.

As with Bonifay’s other allegations, the factual dispute here provides a sufficient basis to investigate whether the union and its officers required staff to work directly for federal campaigns as part of their official job duties for the union. If so, then Local 250 and its officers may have made or consented to prohibited contributions to federal campaigns. Therefore, there is reason to believe that Local 250, Sal Rosselli, and John Borsos violated 2 U.S.C. § 441b(a).

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