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BEFORE THE FEDERAL ELECTION COMMISSION

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MUR 5437

SENSITIVE

In the Matter of)
SEIU United Healthcare Workers West)
f/k/a SEIU Local 250;)
Sal Rosselli, President,)
John Borsos, Administrative Vice President;)
SEIU Committee on Political Education and)
Anna Burger, in her official capacity)
as treasurer.)

GENERAL COUNSEL'S REPORT # 3

I. ACTION RECOMMENDED: Take no further action and close the file as to SEIU

United Healthcare Workers West f/k/a SEIU Local 250 ("SEIU Local 250"); Sal Rosselli,
President; John Borsos, Administrative Vice President; and SEIU Committee on Political
Education and Anna Burger. in her official capacity as treasurer ("SEIU COPE").

II. BACKGROUND

Based on a complaint filed by a former employee of SEIU Local 250, responses to the
complaint, and publicly available information, the Commission previously found reason to
believe that SEIU Local 250, Sal Rosselli, and John Borsos violated the Act by improperly
soliciting contributions to a separate segregated fund, soliciting contributions to a separate
segregated fund from foreign nationals, and making contributions or expenditures from union
general treasury funds by paying Local 250 employees to work on federal political campaigns.
See Factual and Legal Analysis. 2 U S C §§ 441b(b)(3), 441e, and 441b(a). The Commission
also found reason to believe that SEIU COPE violated the Act by making contributions or
expenditures using funds obtained through coercion by its local collecting agent and accepting

1 contributions from foreign nationals through its local collecting agent. *See* Factual and Legal
2 Analysis; 2 U.S.C. §§ 441b(b)(3) and 441e.

3 After a thorough investigation, we have determined that there is insufficient evidence to
4 establish the alleged violations for the purpose of pre-probable cause conciliation or
5 recommending probable cause to believe. Therefore, we recommend that the Commission take
6 no further action and close the file as to all Respondents.

7 **III. FACTUAL SUMMARY**

8 The complaint in this matter alleged that a local union coerced its members to contribute
9 to the separate segregated fund of its parent union and forced its employees to work for political
10 campaigns. That union, SEIU Local 250, is an affiliate of the Service Employees International
11 Union ("SEIU"), a labor organization representing over one million workers worldwide. SEIU
12 maintains a separate segregated fund, the SEIU Committee on Political Education ("SEIU
13 COPE").

14 The complaint in this matter was filed by Timothy Bonifay, who was employed by SEIU
15 Local 250 for ten years as a field representative. Mr. Bonifay stated that he resigned from SEIU
16 Local 250 in part because of "widespread egregious and illegal PAC fundraising."¹ Mr. Bonifay
17 singled out SEIU Local 250's president, Sal Rosselli, and its administrative vice president, John
18 Borsos, contending that they directed union staff under threat of discipline to increase union
19 members' contributions to SEIU COPE. According to Mr. Bonifay, a high percentage of
20 members contributing to SEIU COPE were undocumented immigrants, and union staff

¹ Although we had some information suggesting that Mr. Bonifay was "disgruntled" and actually had formed a rival local union, he appeared to have been in a position to have credible firsthand information. On several occasions the complainant in this matter promised to provide the Commission with documentary evidence supporting his allegations. Although he provided copies of blank work and monthly expense reports and e-mails he had sent to various individuals, he was never able to provide any evidence that would actually support his allegations.

1 "exploit[ed] these workers" to authorize payroll deductions to SEIU COPE. Mr. Bonifay also
2 alleged that paid staff members of the union were required to work on political campaigns as part
3 of their official job duties.

4 In a joint response to the complaint, SEIU Local 250, its officers, and SEIU COPE
5 (collectively "Respondents") denied each of Bonifay's allegations. The Respondents also
6 provided documents to counter the allegations, including a copy of their contribution
7 authorization form—which states that contributions to SEIU COPE are voluntary and can only be
8 made by U.S. citizens—and a memo to union employees asking for volunteers to perform
9 campaign activities on their own time. The joint response, however, did not indicate that
10 Respondents had made any effort to investigate the allegations made in the complaint.

11 The results of our investigation, as detailed below, failed to prove any violation of the Act
12 by the Respondents in this matter.

13 **IV. RESULTS OF INVESTIGATION**

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5 We reviewed these documents for any evidence of political activity undertaken by union
6 employees during work time. The purpose of reviewing these documents was to determine
7 whether union employees engaged in work directly for federal campaigns as part of their official
8 job duties for the union and whether they were paid by the union for such work. During the
9 course of the review we discovered numerous hours of union-paid political activity that appeared
10 to be related to federal elections, due to references to a federal candidate or a federal political
11 committee, America Coming Together ("ACT") In addition, there was evidence from the
12 monthly expense reports submitted by the employees that made it appear as if the costs of travel
13 and per diem expenses for political activities were reimbursed by the union.

14 In order to determine whether those hours represented impermissible in-kind
15 contributions by SEIU Local 250 to a federal political committee,
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17 ² We also interviewed ten employees of SEIU Local 250 who apparently engaged in
18 political activities.

19 **A. Political Activities by SEIU Local 250 Employees**

20 Our interviews with SEIU Local 250 employees confirmed that the vast majority of the
21 political activities reported by SEIU employees were either limited to SEIU's restricted class

(and thus exempt, *see* 2 U.S.C. § 441b(b)(2)(A)-(B)), or focused on particular state or local candidates or initiatives that were unrelated to federal elections. The only remaining significant amount of federal political activity that might have formed the basis for a violation of 2 U.S.C.

§ 441b would be the potential in-kind contributions to ACT based on the hours worked by SEIU Local 250 employees who volunteered for ACT.

The SEIU Local 250 employees who did volunteer work for ACT were “loaned” to the national union, which had an arrangement (discussed below) with ACT regarding the use of SEIU employees and the allocation of expenses.³ Prior to dispatching these workers, SEIU and ACT entered into a written agreement regarding the use of in-kind contributions from SEIU, and ACT’s obligation to make federal-to-nonfederal account transfers in connection with the use of non-federal SEIU in-kind contributions for allocated federal/non-federal activity.⁴ *See* Attachment 1.

Prior to or upon ACT’s receipt of that month’s SEIU non-federal contribution, ACT agreed to transfer from its federal account to its non-federal account, using its current allocation

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³ The Commission previously considered this arrangement between SEIU and ACT in MUR 5612, and, based on the same rationale set forth below, found no reason to believe that SEIU violated the Act in connection with that arrangement. *See* MUR 5612 Factual and Legal Analysis (SEIU)

⁴ The agreement provides, “SEIU personnel will work under the exclusive supervision and direction of ACT, and SEIU will have no authority to determine their assignments for ACT” and that SEIU will pay their compensation, living expenses and travel expenses through its non-federal political account (“SEIU IPEA”). *Id.* The agreement lists the kinds of activities the parties agree SEIU personnel will be assigned to support, and provides for the treatment of workers assigned to two different categories of assignments. The agreement provides that SEIU IPEA would, at the beginning of each month, estimate the value of the in-kind contribution to be provided to ACT that month. *Id.* Prior to the receipt of that month’s contribution, ACT would have to determine the value of any work SEIU personnel might commit to the different categories of activities for that month. “Category A” activities include public contact involving issue advocacy and non-express advocacy references to federal, state and local candidates in the course of voter identification and registration, and GOTV activities targeted on a geographic, demographic, or issue position basis. *Id.* “Category B” activities involve voter identification registration and GOTV efforts that target party or candidate preferences.

ratio, the appropriate federal funds needed to cover the federal share of in-kind contributions for certain categories of work that SEIU personnel might perform during that month in accordance with the procedures outlined by the Commission in AO 1992-33 (Democratic National Committee).⁵ The purpose of such transfers was to compensate ACT's non-federal account for what it contended to be the federal share of any allocable federal and non-federal activities of the in-kind labor received from SEIU and to offset any benefit to ACT's federal account.⁶ See MUR 5612 Factual and Legal Analysis (SEIU). Although there might still be unsettled issues as to ACT's claimed allocation ratio, SEIU and SEIU IPEA were entitled to rely upon ACT's representation that it would make the transfers required to comply with the FECA *Id.*

The SEIU Local 250 employees who were volunteering for ACT were doing so through SEIU and its agreement with ACT, and SEIU reimbursed the expenses of those SEIU Local 250 employees pursuant to that agreement. Accordingly, the same reasoning that supported the Commission finding no reason to believe that SEIU and SEIU IPEA violated the FECA in MUR 5612 also applies to work performed by SEIU Local 250 employees operating under that same agreement. See note 4, *supra*.

⁵ At the end of the month, ACT was required to inform SEIU of the actual amount of its total in-kind contribution and the actual amount of activities performed in each category, so that the parties could both make the appropriate adjustments for their records. Similarly, the agreement requires ACT to deposit any monetary contributions it might receive from SEIU IPEA into its non-federal account and use the contributions only for certain categories of activities.

⁶ In AO 1992-33 the Commission advised the Democratic National Committee and Republican National Committee that the way to ensure that a prohibited donor does not "pay for" the federal portion of an allocable expense is for the committee to transfer from its federal account to its non-federal account the dollar amount that would be attributed to the federal portion of the allocated activities for which the in-kind contribution of goods or services were used. Where contributions may be used for both federal and non-federal activities during an election cycle, the committee must allocate a fixed percentage of its administrative expenses during the reporting period to its federal and non-federal activities, and the funds for the portion that accounts for the federal share must be transferred either before or contemporaneously with the receipt of the goods or services.

B. Coercion and Solicitation of Contributions to SEIU COPE from Foreign Nationals

A review of relevant documents did not produce any further evidence as to the coercion allegations or the allegation that foreign nationals were solicited to contribute to SEIU COPE. During the interviews of SEIU employees, in addition to asking questions about the employee's or former employee's knowledge of political activities that occurred on "work time" as discussed above, we asked a series of questions to attempt to determine whether employees were coerced to engage in political activities or contribute to SEIU COPE and about the solicitation of contributions to SEIU COPE from foreign nationals. The responses to these questions in each interview were fairly uniform. Each witness stated that he or she had not been coerced and had not witnessed anyone else being coerced into engaging in federal political activities as part of his/her duties for SEIU Local 250. The witnesses' answers to other questions asked during the course of the interview to attempt to solicit any evidence of coercion also led us to the conclusion that there was no evidence of coercion on which to follow up. Their responses to questions in the interviews seemed to confirm the voluntary nature of political activity conducted by SEIU Local 250 employees. Each witness also denied ever soliciting foreign nationals to contribute to SEIU COPE or ever witnessing such solicitations. All the witnesses seemed to understand that SEIU Local 250's policy was not to solicit contributions to SEIU COPE from foreign nationals.

In addition to interviewing several non-respondent witnesses, we also interviewed respondents Sal Rosselli and John Borsos, President and Administrative Vice President respectively of SEIU Local 250. Mr. Rosselli and Mr. Borsos unequivocally stated that it was not SEIU Local 250's policy to coerce employees into engaging in federal political activity, contributing to SEIU COPE, or to solicit contributions to SEIU COPE from foreign nationals.

Both also stated that based on their knowledge of employees that did engage in political activities (including the employees that volunteered for ACT as discussed above), those employees either took leave time to volunteer and their expenses were not reimbursed by the union, or all expenses associated with such activities were reimbursed through the appropriate accounts of SEIU

Mr. Rosselli and Mr. Borsos both signed affidavits confirming what they stated in their interviews. See Attachments 2 and 3 (Rosselli and Borsos Affidavits).

C. Conclusion

Therefore, based on the lack of any new leads to follow in this investigation and a lack of evidence to substantiate or quantify any potential violations of the Act, we recommend that the Commission take no further action and close the file as to SEIU United Healthcare Workers West f/k/a SEIU Local 250: Sal Rosselli, President, John Borsos, Administrative Vice President; and SEIU Committee on Political Education and Anna Burger, in her official capacity as treasurer.

V. RECOMMENDATIONS


1. Take no further action as to SEIU United Healthcare Workers West f/k/a SEIU Local 250: Sal Rosselli, President; John Borsos, Administrative Vice President; and SEIU Committee on Political Education and Anna Burger, in her official capacity as treasurer;
2. Close the file; and

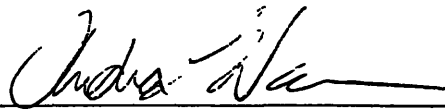
3. Approve the appropriate letters.

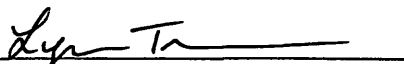
Thomaseia P. Duncan
Acting General Counsel

Ann Marie Terzaken
Acting Associate General Counsel

4/18/07
Date

BY: 
Mark Shonkwiler
Assistant General Counsel


Audra L. Wassom
Attorney


Lynn Y. Tran
Attorney

Attachments:

- 1.
2. Sal Rosselli Affidavit
3. John Borsos Affidavit