

1 BEFORE THE FEDERAL ELECTION COMMISSION

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3  
4 MUR 6208

5 )  
6 Laborers' International Union of North )  
7 America )

8 National Postal Mail Handlers Union - )  
9 Division of Laborers' Int'l Union of )  
10 North America )

11 National Postal Mail Handlers Union )  
12 Political Action Committee - Division of )  
13 Laborers' Int'l Union of North American )  
14 and Armand E. Sabitoni, in his official )  
15 capacity as treasurer )

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY  
SYSTEM

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FEDERAL ELECTION  
COMMISSION

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17  
18 GENERAL COUNSEL'S REPORT

19 Under the Enforcement Priority System, matters that are low-rated

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21 are forwarded to the Commission with a recommendation for dismissal. The  
22 Commission has determined that pursuing low-rated matters, compared to other higher-rated  
23 matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to  
24 dismiss these cases. The Office of General Counsel scored MUR 6208 as a low-rated matter.

25 In this matter, the complaint filed by Phillip C. Wakeman and the National Right to  
26 Work Legal Defense and Education Foundation, Inc., asserts that respondent, National Postal  
27 Mail Handlers Union ("NPMHU"), a division of respondent Laborers' International Union of  
28 North America ("Laborers' Int'l Union"), illegally used Mr. Wakeman's annual union dues  
29 to make a contribution in his name to the NPMHU Political Action Committee ("NPMHU  
30 PAC"). Specifically, according to the complainants, after a discussion in April 2006 with an  
31 NPMHU representative about joining the union, Mr. Wakeman wrote a check dated April 16,  
32 2006 for "union dues," as indicated on the check's memo line. In an accompanying affidavit,

1 Mr. Wakeman states that, because he was not a member of NPMHU's bargaining unit at that  
2 time, he delayed submitting his check to an official of Local 301 until July 2006.<sup>1</sup>

3 According to Mr. Wakeman, he contacted NPMHU in June 2007 and was informed  
4 that the union had received his check in October of 2006, making the effective date of his  
5 union membership November 6, 2006. Subsequently, Mr. Wakeman avers that "a stranger,"  
6 who contacted him about an "unrelated matter," stated that she had discovered his telephone  
7 number while doing a "Google search," and that he should "'Google' [his] own name  
8 because of some interesting links to [his] name."<sup>2</sup> Upon doing so, Mr. Wakeman states that  
9 he discovered that NPMHU PAC had filed an FEC financial disclosure report indicating that  
10 it had received a \$429.00 contribution from him on January 5, 2007. Mr. Wakeman asserts  
11 that he "never made or consented to any such contribution."

12 The complaint alleges that NPMHU violated 2 U.S.C. § 441b(a), which prohibits  
13 labor unions from making federal contributions. In addition, the complaint notes that the  
14 Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission  
15 regulations, bar a separate segregated fund, like NPMHU PAC, from using dues or fees  
16 obtained as a condition of membership or employment in the connected organization, even if  
17 the dues or fees are refundable upon request. See 2 U.S.C. § 441b(b)(3)(A); 11 C.F.R.  
18 § 114.5(a)(1). The complaint also claims that NPMHU violated 2 U.S.C. § 441f by making a  
19 contribution to NPMHU PAC in the name of Mr. Wakeman without his permission or

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<sup>1</sup> According to the complaint, Mr. Wakeman tendered this check to Local 301 in June, not July, 2006. Complainants do not explain this discrepancy.

<sup>2</sup> Neither the complaint nor Mr. Wakeman's affidavit identifies the individual. On December 28, 2009, this Office received a letter from an individual identified as "Marilyn Jegerlehner" in support of the complaint, which is publicly available on the Internet, see, e.g., <http://www.nrtw.org/en/unc-blog/435?page=7>; however, we have no information concerning any connection between Ms. Jegerlehner and the complainants.

1 knowledge. Finally, because Mr. Wakeman did not officially become a union member until  
2 November 6, 2006, the complaint contends that, "to the extent to which [NPMHU] intended  
3 to use [Mr. Wakeman's union dues] as a contribution, it violated 2 U.S.C.  
4 § 441b(b)(4)(A)(ii) by soliciting a contribution from a nonmember and violated 2 U.S.C.  
5 § 441b(b)(3)(B) by failing to inform Mr. Wakeman of the nature of the solicitation.<sup>3</sup>

6 In a joint response, the Laborers' International Union and NPMHU PAC deny that  
7 they violated any provision of the Act.<sup>4</sup> The response admits that Mr. Wakeman's dues were  
8 deposited into the PAC's account, but asserts this may have resulted from a "technical error."  
9 The response states that in 2006, Mr. Wakeman's \$429.00 check, which represented the  
10 annual dues for membership in NPMHU, was deposited into the general treasury account of  
11 Local 301, whereupon Mr. Wakeman became a member of NPMHU. Although, according to  
12 the response, union procedures then in effect required Local 301 to transmit only \$152.10  
13 from its general treasury to NPMHU, as "a per capita payment reflecting Mr. Wakeman's  
14 dues," allowing the local branch to retain the remaining \$276.90, Local 301 instead  
15 transmitted the full amount of Mr. Wakeman's dues (\$429.00) to NPMHU. The response  
16 acknowledges that NPMHU then "incorrectly" deposited the check into the Committee's  
17 political account on January 5, 2007, rather than into its general treasury account. The  
18 respondents also admit that NPMHU PAC reported a \$429.00 contribution on that date from  
19 Mr. Wakeman on Schedule A of its 2007 M2 disclosure report.

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<sup>3</sup> Attached to the complaint are the following exhibits: a copy of Mr. Wakeman's \$429.00 check to NPMHU and pages from NPMHU PAC's 2007 M2 FEC disclosure report showing that the latter received \$429.00 from Mr. Wakeman on January 5, 2007. In a subsequent letter dated August 6, 2009, the complainants acknowledged that these exhibits should have been attached to Mr. Wakeman's affidavit, instead of the complaint. The August 6<sup>th</sup> letter did not include any additional information.

<sup>4</sup> NPMHU did not file a separate response.

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1 The response states that the "error" with regard to Mr. Wakeman's dues payment was  
2 discovered during a "routine reconciliation of accounts." In March 2007, NPMHU refunded  
3 \$276.90 to Local 301, which represented the portion of the annual dues to which the local  
4 union was entitled. The response also claims that due to an administrative error, NPMHU  
5 did not obtain a refund of the "erroneous deposit" of \$429.00 from the PAC until November  
6 2007, after which NPMHU PAC reported the refund as a disbursement to NPMHU on in its  
7 2007 M12 disclosure report.

8 In light of the remedial action taken by the respondents, and the *de minimis* amount  
9 involved, and in furtherance of the Commission's priorities and resources, relative to other  
10 matters pending on the Enforcement docket, the Office of General Counsel believes that the  
11 Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler*  
12 *v. Chaney*, 470 U.S. 821 (1985).


13 **RECOMMENDATIONS**

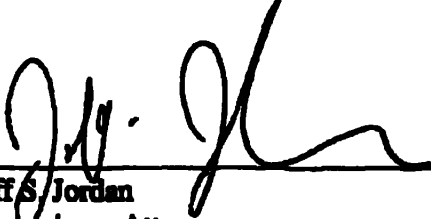
14 The Office of General Counsel recommends that the Commission dismiss  
15 MUR 6208, close the file, and approve the appropriate letters.

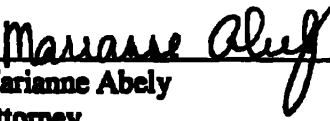
16  
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18 General Counsel  
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22 2/24/12  
23 Date

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