



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MUR 6344  
United Public Workers, *et al.* )

**STATEMENT OF REASONS**  
**Chair CAROLINE C. HUNTER and**  
**Commissioners DONALD F. McGAHN II and MATTHEW S. PETERSEN**

In this matter, United Public Workers, AFSCME Local 646, AFL-CIO (“UPW” or “the union”) signed a conciliation agreement and agreed to pay \$5,500 a civil penalty for violating 2 U.S.C. § 434(g) of the Federal Election Campaign Act of 1971, as amended (“the Act”), by failing to report independent expenditures in support of a federal candidate. The Office of the General Counsel (“OGC”) had further recommended an additional finding that UPW violated 2 U.S.C. § 441b(a) when it required employees to participate in UPW’s independent activities in support of a federal candidate. We could not approve that recommendation because it had no basis in the Act or Commission regulations.

The complainant, a former UPW employee, alleged that UPW coerced her and other union employees to provide support for Hawaii First Congressional District candidate Colleen Hanabusa’s candidacy in a special congressional election on May 22, 2010.<sup>1</sup> The complainant alleged that she was fired, along with another employee, when they refused to comply with a UPW request to sign-wave, phone bank, canvass, and contribute to Hanabusa’s campaign.<sup>2</sup> In response, the union denied that it coerced employees to participate in union-supported pro-Hanabusa campaign activity. UPW also argued that, under the Act and *Citizens United v. FEC*, 130 S. Ct. 876 (2010), UPW could compel its employees to participate. According to UPW, *Citizens United* established that a labor union may engage in political activity, and that nothing prohibits it from requiring participation by union employees in this activity.

<sup>1</sup> The full facts of this matter appear in the First General Counsel’s Report, Section II.A., dated Jan. 31, 2011 are incorporated herein by reference.

<sup>2</sup> The Commission unanimously found no reason to believe that UPW and its managers coerced employees to make financial contributions to the Hanabusa campaign. In support of this conclusion, the Commission noted complainant’s failure to allege any specific information regarding purported monitoring of employee response to the solicitation. Factual and Legal Analysis (UPW) at 2-3.

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Because UPW coerced employees to contribute their off-hour time to the union's independent political activities, OGC recommended – and our colleagues agreed – that the Commission should find reason to believe UPW violated 2 U.S.C. § 441b(a).<sup>3</sup>

We disagree. Commission regulations prohibit a labor organization from facilitating the making of a contribution by means of “coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to *make a contribution or engage in fundraising activities on behalf of a candidate or political committee.*” 11 C.F.R. § 114.2(f)(2)(iv) (emphasis added). Further, the Act states that it shall be unlawful for a *separate segregated fund* to “make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal.” 2 U.S.C. § 441b(b)(3)(A); see also 11 C.F.R. § 114.5(a).

These provisions do not apply to UPW's independent campaign efforts. Those efforts did not include making contributions to, or fundraising on behalf of, a federal candidate. Thus, 11 C.F.R. § 114.2(f) is inapplicable here.<sup>4</sup> And, given that UPW is not the connected organization for a federal political committee, 2 U.S.C. § 441b(b)(3)(A) and 11 C.F.R. § 114.5(a) are equally inapposite. UPW's independent use of its paid workforce to campaign for a federal candidate post-*Citizen's United* was not contemplated by Congress<sup>5</sup> and, consequently, is not prohibited by either the Act or Commission regulations.

We agree that UPW required its employees to engage in political activities in behalf of a federal candidate; in fact, that is the basis for our finding reason to believe UPW violated the Act by failing to file independent expenditures reports. Specifically, we voted in favor of finding that UPW should have disclosed expenditures for employees who participated in campaign activities expressly advocating Hanabusa's election that exceeded the Act's reporting thresholds.<sup>6</sup> Had the employees not been compelled to participate, but instead, merely had been volunteers, their activities would not have constituted independent expenditures by UPW. As noted above, however, requiring employees to work on independent expenditures for either the

<sup>3</sup> OGC further recommended reason to believe findings against Dayton Nakamelua, Clifford “Chip” Uwayne, and Laurie Santiago for allegedly directing and/or consenting to the coercion of UPW employees. As described herein, because we find no basis for the finding against UPW, there is consequently no reason to believe that these individuals violated the Act.

<sup>4</sup> The Commission unanimously agreed with OGC's recommendation to find no reason to believe that a violation occurred with respect to financial contribution to the Hanabusa campaign.

<sup>5</sup> As even our colleagues note, the legislative history shows that, at the time of FECA's passage in 1971 and the 1976 amendments to the Act, Congress was concerned about coercion of contributions and drafted legislation accordingly. Because there was no discussion about the propriety of requiring employees to undertake political activities as part of their employment, legislative history has no bearing on the issue before us.

<sup>6</sup> See MUR 6344, Factual and Legal Analysis dated April 18, 2011, Att. 1 at 9; Certification dated April 13, 2011 (approving the Factual and Legal Analysis)).

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union or a non-connected political committee is not a violation of the Act or Commission regulations.

Thus, for the foregoing reasons, we voted not to find reason to believe that United Public Workers violated 2 U.S.C. § 441b(a).

August 21, 2012  
Date

  
CAROLINE C. HUNTER  
Chair

August 21, 2012  
Date

  
DONALD F. MCGAHN II  
Commissioner

Aug. 21, 2012  
Date

  
MATTHEW S. PETERSEN  
Commissioner

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