



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via Facsimile & First Class Mail
202-328-9162

JAN 12 2012

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Washington, DC 20009

RE: MUR 6515
Professional Fire Fighters of Wisconsin

Dear Mr. Gold:

On August 5, 2011, you notified the Federal Election Commission of the possibility that your client, Professional Fire Fighters of Wisconsin ("PFFW"), and former PFFW Executive Board officers, Tracy Aldrich, Robert Baird, Michael Drury, Richard Gale, John Gee, Troy Haase, Lance Hanson, Patrick Kilbane, Len Orlando, Ann Watzku f/k/a Ann Paggs and Michael Woodzieka, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with activity between 2002-2010.

After reviewing your submission, the Commission found reason to believe, on December 13, 2011, that PFFW and each of the above-named Executive Board Officers knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Act, and 11 C.F.R. §§ 110.4(b)(i) and 114.2(b) of the Commission's regulations in connection with their reported 2002 to 2008 activity. The Commission also found reason to believe that PFFW and PFFW Executive Board officers Robert Baird, John Gee, and Lance Hanson violated 2 U.S.C. §§ 441b(a) and 441f and 11 C.F.R. §§ 110.4(b)(i) and 114.2(b) in connection with their reported 2009 to 2010 activity, and that Messrs. Baird, Gee and Hanson's 2009-2010 violations had been knowing and willful. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determinations.

Please note that PFFW and its former Executive Board officers have a legal obligation to preserve all documents, records and materials relating to this matter until notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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In the meantime, 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. You may submit a written request for relevant information gathered by the Commission in the course of its investigation of this matter. See Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34986 (June 15, 2011).

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

1
2 **FACTUAL AND LEGAL ANALYSIS**
3

4 **MUR 6515**
5

6 **RESPONDENT:** Professional Fire Fighters of Wisconsin
7

8 **I. INTRODUCTION**

9 This matter was initiated by a *sua sponte* submission ("Submission") made to the Federal
10 Election Commission ("the Commission") by the Professional Fire Fighters of Wisconsin
11 ("PFFW") and certain individuals who served as PFFW Executive Board officers at different
12 points between 2002 and 2010 (collectively referred to as "Respondents"). For the reasons set
13 forth below, the Commission found that there was reason to believe that the Professional Fire
14 Fighters of Wisconsin knowing and willfully violated 2 U.S.C. §§ 441b(a) and 441f and
15 11 C.F.R. §§ 110.4(b)(i) and 114.2(b) with respect to federal contributions reimbursed by PFFW
16 from 2002 through 2008. Further, the Commission found that there was reason to believe that
17 the Professional Fire Fighters of Wisconsin violated 2 U.S.C. §§ 441b(a) and 441f and 11 C.F.R.
18 §§ 110.4(b)(i) and 114.2(b) with respect to federal contributions reimbursed by PFFW from 2009
19 and 2010.

20 **II. FACTUAL SUMMARY**

21 PFFW, the statewide affiliate of the International Association of Fire Fighters ("IAFF"),
22 reimbursed eleven of its officers for \$18,263.34 in contributions to IAFF's separate segregated
23 fund, International Association of Firefighters Interested in Registration and Education PAC
24 ("FIREPAC") between 2002-2010. PFFW reimbursed the FIREPAC contributions in two ways.
25 Between 2002 and 2008, with the authorization of the full Executive Board, PFFW reimbursed
26 eleven officers for \$16,888.34 in FIREPAC contributions via claims they submitted for expenses
27 related to fictitious "legislative meetings" in Madison, Wisconsin. Submission at 6-7. In 2009

1 and 2010, after the fictitious "legislative meetings" scheme ended, without the knowledge of the
2 full Executive Board, PFFW reimbursed three officers for \$1,375 in FIREPAC contributions via
3 claims they submitted for expenses related to conference registration fees that they never actually
4 paid.

5 PFFW represents that it has 1) obtained repayments of all known amounts of the
6 unlawfully reimbursed contributions; 2) notified its regional caucus and local unions about the
7 improper expense payment practices; 3) notified FIREPAC of the unlawful reimbursements; and
8 4) obtained the resignations of remaining Executive Board officers who received unlawful
9 contribution reimbursements.

10 A. 2002-2008 Reimbursements

11 PFFW is governed by an eleven officer Executive Board, all of whom are full-time
12 firefighters. They are elected to staggered three-year terms at annual IAFF/PFFW state
13 conventions. Submission at 3. During a January 2002 leadership retreat, PFFW's then existing
14 Executive Board encouraged its officers to increase their FIREPAC contributions to a level that
15 would also allow them to attend the IAFF annual conference without paying a registration fee.
16 *Id.* When some Executive Board officers expressed concern about their ability to afford larger
17 contributions to FIREPAC, the Executive Board agreed that "any officer who made such a
18 contribution in order to attend the legislative conference would be able to submit an expense
19 statement to the PFFW for two administrative days to be characterized as a 'legislative meeting'
20 in Madison [Wisconsin]." *Id.* at 6-7. PFFW states that the "legislative meeting" contrivance was
21 adopted in order to reduce, if not eliminate, the financial burden to Board members who made
22 the larger contributions to FIREPAC instead of paying the registration fee to IAFF. *Id.* at 7.
23 During similar retreats held during January or February of each successive year - with the

1 exception of 2004 when the topic was apparently not raised - PFFW designated similar
2 "legislative meeting" dates as a vehicle for the reimbursement of that year's FIREPAC
3 contributions by Executive Board officers. *Id.* at 7.

4 PFFW asserts that the 2002 retreat was the first and last time that its Executive Board
5 discussed this repayment practice in any depth, and the practice continued until 2008, "without
6 legal review or operational analysis." Submission at 7. According to the declarations of the
7 Executive Board officers, none of them considered the legal ramifications of the reimbursement
8 program under the Act, or other laws, and most, if not all, of those who participated in the 2002
9 retreat had not seen IAFF or FIREPAC materials advising not to seek reimbursement for
10 contributions in connection with attendance at the legislative conference. *Id.* at 7; *see also*
11 Declarations.

12 PFFW argues that the 2002 agreement was not the product of any pre-retreat planning by
13 any officer and there was no specific discussion about whether such practices complied with
14 applicable laws or IAFF policies. Submission at 14. Nevertheless, all of the PFFW officers
15 acknowledge that they made false claims for the reimbursement of expenses from fictitious
16 "legislative meetings" as a means to obtain reimbursement of FIREPAC contributions.

17 In 2008, Michael Woodzicka replaced Richard Gale as PFFW President. Submission at
18 7. In preparation for the 2009 retreat, Woodzicka reviewed PFFW's practices and procedures, as
19 well as IAFF legislative conference registration materials stating that contributions to FIREPAC
20 could not be reimbursed with union funds. Submission at 8; *see also* Woodzicka Declaration at
21 ¶ 13. Woodzicka stopped the practice of making reimbursements for non-existent meetings
22 because it was an "unwritten practice" and he believed that "there should be clear policies to
23 ensure that Executive Board members were fairly reimbursed for legitimate expenses that they

1 actually incurred on the PFFW's behalf." *Id.* Although Woodzicka ended the practice of
2 scheduling fictitious legislative meetings in 2008, PFFW did not take any corrective action or
3 consider self-reporting the improper reimbursements for more than a year.

4 **B. 2009-2010 Reimbursements**

5 During the course of preparing this Submission, PFFW learned that it also had
6 reimbursed three Executive Board officers -- Baird, Gee, and Hanson -- for \$1,375 in FIREPAC
7 contributions made in 2009-2010. Submission at 10. Baird, Gee, and Hanson state that they
8 made \$500 contributions each to FIREPAC in March 2009 and February 2010 in connection
9 with the 2009 and 2010 IAFF legislative conferences. By making the \$500 contributions to
10 FIREPAC, IAFF waived their registration fees. However, Baird, Gee, and Hanson submitted
11 expense claims requesting reimbursement of the conference registration fees they had not
12 actually paid in order to be reimbursed for their contributions. *Id.* at 10-11; *see also* Baird, Gee,
13 and Hanson Declarations. PFFW admits that it effectively reimbursed these 2009-2010
14 FIREPAC contributions, but asserts that no Executive Board officer, other than the three officers
15 submitting the claims, was aware that the \$425 and \$475 registration fees had not been paid.
16 Submission at 2, 10-11.

17 **C. Corrective Actions**

18 In January 2010, Joseph Conway, an IAFF Vice-President, advised PFFW that he had
19 learned of PFFW's improper reimbursements of FIREPAC contributions, and he asked what
20 corrective actions PFFW would take. Submission at 16. In March 2010, PFFW consulted with
21 counsel and established a "Special Committee" to review the expense payment practices and
22 recommend a course of action. *Id.* After the Special Committee concluded its review, PFFW
23 sent letters on April 10, 2010, to each of the eleven past and current Executive Board officers

itemizing the amounts known to have been reimbursed between 2004 and 2008, inviting any corrections, asking for estimates of reimbursements between 2002 and 2003, and requesting repayment of all contribution reimbursements.¹ *Id.* at 9; *see also* Submission Attachments. All eleven Executive Board officers repaid at least the specific sums requested, and some paid additional amounts to reflect 2002 and 2003 contribution reimbursements.² *Id.*

D. Summary

PFFW's payments to reimburse Executive Board officers for FIREPAC contributions are summarized below.

Executive Board Officers	Estimated Officer Reimbursement Amts. for 2002 and 2003	Officer Reimbursement Amts. for 2005-2008	Officer Reimbursement Amts. for 2009-2010	Total amt. repaid by Officers for 2002-2010
Aldrich	\$0	\$1,027.70	n/a	\$1,027.70
Drury	\$837.71	\$2,162.29	\$0	\$3,000
Gee	\$443.66	\$1,956.34	\$475	\$2,875
Hanson	\$131.11	\$2,068.89	\$475	\$2,675
Orlando	n/a	\$678.45	n/a	\$678.45
Woodzicka	\$56.53	\$1,100	\$0	\$1,156.53
TOTALS	\$2,497.42	\$14,391.02	\$1,375	\$18,263.34

¹ PFFW is unable to provide the exact reimbursement figures for 2002 and 2003 because in 2009, it shredded its pre-2005 financial records, including the expense statements submitted by PFFW officers. Submission at 8. While PFFW has the electronic Quickbook files for those years, they only record payments and not explanations of the purposes of payments to officers or others. *Id.* PFFW asserts that it shredded documents on the advice of its accountant, the shredding had nothing to do with the expense payment practice, and it happened before the internal review. *Id.*

² PFFW initially requested repayments from officers totaling \$14,193 but received a total of \$18,263.34 in repayments from those individuals. The increased amount represents the reimbursement amounts totaling \$2,497.42 from individual Executive Board officers who had their own documentation or estimates of reimbursements during 2002 and 2003 plus \$1,375 from individual Executive Board officers who used other means to cause PFFW to reimburse FIREPAC contributions made in 2009-2010.

1 **III. Legal Analysis**

2 The Federal Election Campaign Act of 1971, as amended (“Act”) prohibits a labor
3 organization from making a contribution in connection with any election and any officer of any
4 labor organization from consenting to any contribution by the labor organization. 2 U.S.C.
5 § 441b(a) and 11 C.F.R. 114.2(b). The Act further provides that “no person shall make a
6 contribution in the name of another person.” 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(i).

7 The Act also addresses violations of law that are knowing and willful. See 2 U.S.C.
8 §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is
9 violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*,
10 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established “by
11 proof that the defendant acted deliberately and with knowledge that the representation was
12 false.” *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Evidence does not have to
13 show that the defendant had a specific knowledge of the regulations; an inference of knowing
14 and willful conduct may be drawn from the defendant’s scheme to disguise the source of funds
15 used in illegal activities. *Id.* at 213-15.

16 **A. PFFW & Executive Board Officers/Conduits**

17 The expense reimbursement scheme that PFFW began in 2002 designated two days per
18 year for “legislative meetings” that never took place and allowed the Executive Board officers to
19 be reimbursed for their FIREPAC contributions by claiming expenses incurred in connection
20 with these fictional meetings. Submission at 6-7. Between 2002 and 2008, PFFW disbursed
21 \$16,888.34 to reimburse FIREPAC contributions. *Id.* at 3. In addition, between 2009 and 2010,
22 PFFW disbursed \$1,375 to reimburse FIREPAC contributions. *Id.* at 10-12.

1 It is well settled that a principal is liable for the acts of its agents committed within the
2 scope of his or her employment. RESTATEMENT (THIRD) OF AGENCY § 7.07; *U.S. v. Sun-*
3 *Diamond Growers of California*, 138 F.3d 961(D.C. Cir. 1998) (criminal convictions affirmed
4 against Sun-Diamond in connection with a corporate contribution reimbursement scheme carried
5 out by officer). Thus, PFFW violated 2 U.S.C. §§ 441b(a) and 441f; and 11 C.F.R.
6 §§ 110.4(b)(i) and 114.2(b) in connection with both the 2002-2008 reimbursements and the
7 2009-2010 reimbursements.

8 **B. Knowing and Willful**

9 **1. 2002 through 2008 Reimbursement Scheme**

10 PFFW and the individual Executive Board officers concealed the 2002-2008
11 reimbursements by authorizing the officers to claim expenses for fictitious “legislative
12 meetings.” PFFW and the individual officers claim there was no pre-planning or discussion
13 about whether such practices would comply with the Act or IAFF policy. But, the Executive
14 Board went to considerable lengths to conceal the reimbursements over a number of years by
15 allowing its officers to be reimbursed for expense vouchers they knew were false. PFFW
16 acknowledges that the Executive Board had the option of revising its existing policies to provide
17 for legitimate reimbursement for the officers’ time and efforts. Submission at 7. Instead, it
18 chose a false method to reimburse itself for the FIREPAC contributions. Thus, even if
19 Respondents were not aware of the Act’s specific prohibitions, Respondents’ use of fictitious
20 “legislative meetings” to conceal the reimbursements strongly suggests they knew that the
21 reimbursements were improper. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990).

22 Accordingly, the Commission found reason to believe that PFFW knowingly and
23 willfully violated 2 U.S.C. §§ 441b(a) and 441f and 11 C.F.R. §§ 110.4(b)(i) and 114.2(b) by

1 using prohibited labor union general treasury funds to make contributions in the names of others
2 from 2002-2010.

3 2. 2009 and 2010 Contribution Reimbursements

4 PFFW Executive Board officers Baird, Gee, and Hanson concealed the 2009-2010
5 contribution reimbursements by claiming to have paid IAFF conference registration fees that had
6 actually been waived as a result of the FIREPAC contributions. Although Baird, Gee, and
7 Hanson did not pay the fees, they appear to have believed that they were entitled to
8 reimbursement of registration fees IAFF waived as a result of the FIREPAC contributions
9 nominally made from their personal funds. See Baird Declaration at ¶ 20, Gee Declaration at
10 ¶ 22, and Hanson Declaration at ¶ 20.

11 PFFW's decision in late 2008 to stop the "legislative meetings" reimbursement scheme
12 should have put these three officers on notice that the FIREPAC contributions could not be
13 reimbursed. The three officers have offered no reasonable explanation for their conduct. See
14 Baird, Gee, and Hanson Declarations. Further, although the reimbursements were not approved
15 by the full Executive Board, the knowledge of the three officers can be imputed to PFFW. See
16 *Sun Diamond Growers of California*, 138 F.3d 961 (D.C. Cir. 1998).

17 Based on the foregoing, the Commission could find that the actions of the Executive
18 Board officers, which also can be imputed to PFFW, constitute knowing and willful conduct.
19 However, taking into consideration that the scheme lacked the planning of the 2002-2008
20 scheme, that the full Executive Board was not aware that it was, in essence, reimbursing the
21 FIREPAC contributions made by Baird, Gee, and Hanson, and being mindful of the
22 Commission's policy encouraging *sua sponte* submissions by showing leniency where

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1 appropriate, the Commission chose to make only non-knowing and willful findings for the
2 2009-2010 contributions. *See* 72 Fed. Reg. 16,695, 16,696 (Apr. 5, 2007).

3 Thus, the Commission found reason to believe that PFFW violated 2 U.S.C. §§ 441b(a)
4 and 441f and 11 C.F.R. §§ 110.4(b)(i) and 114.2(b) by using prohibited labor union general
5 treasury funds to make contributions in the names of others from 2009 to 2010.

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