

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL ELECTION COMMISSION,

Plaintiff,

v.

PLUMBERS AND PIPEFITTERS LOCAL
UNION NO. 9, *et al.*,

Defendants.

Civil Action No. 24-1450-APM

CONSENT JUDGMENT

Plaintiff Federal Election Commission (“FEC” or “Commission”) filed this action for declaratory, injunctive, and other appropriate relief against defendants Plumbers and Pipefitters Local Union No. 9 (“Union”) and Plumbers and Pipefitters Local Union No. 9 Political Action Committee (“PAC”) (collectively, “defendants”). (ECF 1 & 4-1.) The Commission, Union, and PAC have stipulated to the Court’s entry of this Consent Judgment based on the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1345, as this is an action brought by an agency of the United States expressly authorized to sue by an act of Congress, 52 U.S.C. §§ 30107(a)(6), 30109(a)(5)(d), (a)(6)(A).

2. Venue is proper in the U.S. District Court for the District of Columbia pursuant to the forum selection clause in the conciliation agreement entered into between the parties under 52 U.S.C. § 30109(a)(4)(A)(i), which went into effect on October 30, 2018 (ECF 1-1) (“Conciliation Agreement”). Section VII, Conciliation Agreement.

THE PARTIES

3. Plaintiff FEC is the independent agency of the United States government with exclusive jurisdiction over the administration, interpretation, and civil enforcement of the Federal Election Campaign Act (“FECA” or “Act”), codified at 52 U.S.C. §§ 30101-30145. *See* 52 U.S.C. §§ 30106(b)(1), 30107(a), 30109. The Commission is authorized to institute investigations of possible violations of the Act, *id.* § 30109(a)(1)-(2), to enter into conciliation agreements to correct or prevent violations of the Act, *id.* § 30109(a)(4)(A), (a)(5), and to initiate civil actions in the United States district courts to obtain judicial enforcement of the Act and conciliation agreements, *id.* §§ 30107(a)(6), 30109(a)(5)(D), (6).

4. Defendant Union is a labor organization whose business address is 2 Iron Ore Road at Route 33, Englishtown, New Jersey 07726.

5. Defendant PAC is a political action committee registered with the Commission and is the Union’s “separate segregated fund” under FECA (ID: C00155440). The PAC’s business address is 2 Iron Ore Road at Route 33, Englishtown, New Jersey 07726.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

6. FECA provides that:

In any case in which a person has entered into a conciliation agreement with the Commission under paragraph (4)(A), the Commission may institute a civil action for relief under paragraph (6)(A) if it believes that the person has violated any provision of such conciliation agreement. For the Commission to obtain relief in any civil action, the Commission need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.

52 U.S.C. § 30109(a)(5)(D).

7. With certain exceptions, labor organizations are generally prohibited from making contributions to federal campaign committees, and a political committee is prohibited from

knowingly accepting or receiving such contributions. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d).

8. Labor organizations are permitted to use their general treasury funds to establish and administer a separate segregated fund (“SSF”), which in turn is permitted to make contributions in connection with federal elections. 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. §§ 114.1(a)(2)(iii), 114.5(b).

9. A labor organization or its SSF may only solicit contributions from the union’s members and executive or administrative personnel and their families. 52 U.S.C. § 30118(b)(4)(A)(ii); 11 C.F.R. § 114.5(g)(2).

10. An SSF is prohibited from making contributions or expenditures “by utilizing . . . dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment.” 52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a)(1).

11. It is unlawful for any person, including a labor organization (*see* 52 U.S.C. § 30101(11)), to solicit a contribution to an SSF without informing the employee of the political purpose of the SSF and of the right to refuse to contribute without any reprisal. 52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4).

12. If an amount for contributions is suggested, existing law requires the person soliciting the contribution to state that the amount is merely a suggestion, that the member is free to contribute more or less without any reprisal, and that the union will not favor or disadvantage anyone because of the amount of the contribution or a decision not to contribute. 52 U.S.C. § 30118(b)(3); 11 C.F.R. § 114.5(a)(2).

13. All contributions to a SSF must be voluntary and without coercion. 52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a). A solicitation may be considered coercive if proper

notices are not given. *See Pipefitters Local Union No. 52 v. United States*, 407 U.S. 385, 414-15, 427 (1972); Conciliation Agreement, Section IV ¶ 8.

14. A labor organization may use a payroll-deduction or check-off system to collect contributions to its SSF. *FEC v. Nat'l Educ. Ass'n*, 457 F. Supp. 1102, 1109 (D.D.C. 1978); FEC Advisory Opinion 2013-12 (Serv. Emp. Int'l Union) at 3, 2013 WL 5352759 (Sept. 12, 2013).

15. However, a contributor must affirmatively authorize such payroll deductions from the contributor's wages. *Nat'l Educ. Ass'n*, 457 F. Supp. at 1106; FEC Advisory Op. 2013-12 (Serv. Emp. Int'l Union) at 3; Conciliation Agreement, Section IV ¶ 9. While certain other forms of documentation may serve as proof of payroll documentation authorization, signed payroll deduction forms may serve as the best documentation that a deduction was authorized at a particular time for a particular amount. *See FEC, Stm't of Policy; Recordkeeping Requirements for Payroll Deduction Authorizations*, 71 Fed. Reg. 38,513 (July 7, 2006).

16. As currently construed by the courts and the Commission, a reverse check-off system, by which SSF contributions are deducted from wages unless an employee opts out, is a *per se* violation of 52 U.S.C. § 30118(b)(3)(A). *Nat'l Educ. Ass'n*, 457 F. Supp. at 1110; Conciliation Agreement, Section IV ¶ 11.

17. FECA authorizes a United States district court to order a defendant who has violated FECA to pay a civil penalty. 52 U.S.C. § 30109(a)(6)(B)-(C). For each violation that is not knowing and willful, "the civil penalty shall not exceed the greater of \$24,225 or an amount equal to any contribution or expenditure involved in the violation"; for each violation that is knowing and willful, "the civil penalty shall not exceed the greater of \$51,744 or an amount

equal to 200% of any contribution or expenditure involved in the violation.”¹ 11 C.F.R. § 111.24(a)(1), (a)(2)(i).

18. In addition to imposing civil penalties, FECA authorizes United States district courts to “grant a permanent or temporary injunction, restraining order, or other order” against any defendant who has violated the Act. 52 U.S.C. § 30109(a)(6)(B).

FACTS SUPPORTING THE JUDGMENT

19. The facts supporting the judgment are recited in paragraphs 1 through 39 of the Joint Stipulation for Entry of Consent Judgment (ECF No. 13).

Plaintiff FEC and defendants Union and PAC having stipulated to the entry of this Consent Judgment, it is HEREBY ORDERED, ADJUDGED, AND DECREED that:

20. Defendants Union and PAC violated the Conciliation Agreement by, after the effective date of the Conciliation Agreement: (a) causing contributions to the PAC to be deducted from the pay of multiple members without first obtaining a signed payroll deduction authorization form; (b) causing contributions to the PAC to be deducted from the pay of multiple members after those members affirmatively declined to participate in the payroll deduction program; and (c) by using a payroll deduction authorization form that did not state “[t]hat an individual is free to contribute more or less than the guideline[] suggest[s],” 11 C.F.R.

¹ FECA provides that courts may impose civil penalties that “do[] not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation,” or if the violation was knowing and willful, “do[] not exceed the greater of \$10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation.” 52 U.S.C. § 30109(a)(6)(B)-(C). However, federal agencies are required to adjust civil monetary penalties for inflation each year. 28 U.S.C. § 2461 note § 4. For FECA violations, the adjusted civil penalty for 2024 is \$20,528 per violation and \$51,744 for knowing and willful violations. See 11 C.F.R. § 111.24(a)(1), (a)(2)(i) (2024); FEC, *Civil Monetary Penalties Annual Inflation Adjustments*, 89 Fed. Reg. 697, 698 (Jan. 5, 2024).

§ 114.5(a)(2)(ii), or provide a designated space for a member to indicate an amount other than the recommended amount.

21. Because defendants Union and PAC have violated the Conciliation Agreement, FECA, and the applicable regulations discussed above, the Court imposes a civil penalty against defendants of \$240,000, for which defendants shall be jointly and severally liable. *See* 52 U.S.C. § 30109(a)(6)(B)-(C); 11 C.F.R. § 111.24(a)(1), (a)(2)(i) (2024). This penalty shall be paid in installments: (a) \$60,000 due on or before May 1, 2025; (b) \$60,000 due on or before July 1, 2025; (c) \$60,000 due on or before September 1, 2025; and (d) \$60,000 due on or before November 1, 2025.

22. Defendant Union is permanently enjoined from causing deductions to be made from any and all Union members' paychecks for contributions to PAC, or any other federally-registered separate segregated fund established by the Union, without obtaining prior written authorization and providing the notice required by 52 U.S.C. § 30118(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(2)-(5).

23. Defendant PAC is permanently enjoined from accepting contributions from Union members who have not first provided written prior authorization for any and all contributions to PAC that are deducted from the Union members' payroll and/or have not received the notice required by 52 U.S.C. § 30118(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(2)-(5).

24. Within 45 days of issuance of this Consent Judgment, and without receiving a refund request, defendants Union and PAC shall mail a check to the last known address of each Union member for the amount of all contributions that member made to the PAC for each member who declined to participate in the payroll deduction program between May 17, 2019 and the date of this Consent Judgment, including but not limited to the administrative complainant,

Rupert Baptiste. Members shall have up to 90 days from the date the checks are mailed to deposit them into their bank account or other financial institution, or the refund shall be forfeited.

25. Within 45 days of issuance of this Consent Judgment, defendants Union and PAC shall send notifications by electronic mail and postal mail to the last known address of each Union member who had a contribution to PAC deducted from their paycheck for which they had not signed an authorized payroll deduction form between May 17, 2019 and the date of the Consent Judgment's issuance stating: (a) that the PAC was required to obtain prior written authorization from Union members before deducting PAC contributions from Union members' paychecks; and (b) informing the members of their right, within 60 days of each notice being sent, to request a full or partial reimbursement of such contributions and assuring them that they will not receive any reprisal whatsoever if they make such a request. Defendants Union and PAC shall mail a refund check within 30 days of receipt of a request for such refund. Members shall have up to 90 days from the date the checks are mailed to deposit them into their bank account or other financial institution, or the refund shall be forfeited.

26. Should, after the issuance of this Consent Judgment, defendant Union cause deductions to be made from Union members' payroll for contributions to PAC or any other federally-registered separate segregated fund established by the Union, defendant Union shall ensure that any future refund requests from Union members for the refund of any deduction made without the member's prior written authorization are promptly refunded within 30 days of receipt of the refund request and without reprisal.

27. The Commission, Union, and PAC shall bear their own costs and attorney's fees with regard to the Commission's claims against Union and PAC in this litigation.

28. The attachments to the FEC's Sealed Motion for Leave to File Complaint Under Seal (ECF 4), specifically the complaint (ECF 4-1) and exhibits 2 through 7 thereto (ECF 4-2 – 4-7), shall hereby be **UNSEALED**.

29. This Court shall retain jurisdiction of this action, and of any ancillary or supplemental actions thereto, for eight years from the date of entry of this Consent Judgment in order to, among other things, implement and carry out the terms of all orders, judgments, and decrees that may be entered herein, including any that may be necessary to assure compliance with this Consent Judgment. This Consent Judgment shall automatically expire after eight years, although the permanent injunctive relief provided herein survives its dissolution.



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The Honorable Amit P. Mehta
United States District Judge