

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

MUR: 7137  
 DATE COMPLAINT FILED: 9/20/2016  
 DATES OF NOTIFICATION: 9/27/2016,  
 2/21/2017, 4/14/2017  
 DATE OF LAST RESPONSE: 5/20/2017  
 DATE ACTIVATED: 5/23/2017

EXPIRATION OF SOL: 6/7/2021 -  
 6/22/2021  
 ELECTION CYCLE: 2016

**COMPLAINANT:**

Terry Miles

**RESPONDENT(S):**

Laborers' International Local #538  
 Laborers' International Union of America  
 PAC  
 Precision Pipeline, LLC  
 Richard Phelps  
 Jillian Preller  
 Dan Tuthill  
 Laborers' International Local #231  
 Midwest Region Laborers' Political League

**RELEVANT STATUTES AND  
REGULATIONS:**

52 U.S.C. § 30118(a)  
 52 U.S.C. § 30118(b)(3)  
 11 C.F.R. § 114.2(f)(2)(iv)  
 11 C.F.R. § 114.5(a)(2)-(5)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

Complainant, an employee of Precision Pipeline, LLC ("Precision Pipeline"), alleges that political contributions to a union separate segregated fund ("SSF") were deducted from his paychecks without authorization, in violation of the Federal Election Campaign Act of 1971, as

MUR 7137 (Laborers' International Local #538, *et al.*)

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1 amended (the "Act"). Complainant also alleges that when he refused to authorize the  
2 contributions, personnel associated with Local #538 of the Laborers' International Union of  
3 North America ("LIUNA") and Precision Pipeline told him they were mandatory, and a  
4 Precision Pipeline manager threatened his job if he refused. Despite Complainant's refusal to  
5 authorize such contributions, Precision Pipeline deducted contributions totaling \$11.70 to  
6 Midwest Region Laborers' Political League ("FedLPL"), the SSF of another LIUNA local  
7 chapter (Local #231).

8 Precision Pipeline acknowledges that Complainant did not authorize the contributions,  
9 and its staff erred in deducting them. The record indicates that Precision Pipeline and its office  
10 and payroll manager, Jillian Preller, impermissibly solicited contributions without informing  
11 Complainant of his right to refuse to contribute without reprisal. Accordingly, we recommend  
12 that the Commission find reason to believe that Precision Pipeline and Preller violated 52 U.S.C.  
13 § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4). Because the record suggests the possibility that  
14 Precision Pipeline may have deducted additional contributions from other workers without  
15 authorization, the Commission should investigate to determine the scope of the violation.

16 As to the two LIUNA Locals, and Local #231's SSF, FedLPL, the record is disputed and  
17 unclear. Because the investigation of the deductions will likely clarify their roles, we  
18 recommend that the Commission take no action at this time as to Local #538, its agents Richard  
19 Phelps and Dan Tuthill, Local #231, and Fed LPL. However, we recommend that the  
20 Commission find no reason to believe that LIUNA PAC, which never received any contributions  
21 from Complainant, violated the Act.

## II. FACTUAL SUMMARY

The Complainant worked for Precision Pipeline at different locations on the Dakota Access Pipeline, including nearby locations in Iowa and Illinois.<sup>1</sup> As such, Complainant worked under the jurisdiction and benefit packages of multiple LIUNA local branches, including Locals #231 and #538. Although the pipeline project was scheduled to begin in June 2016 in both Iowa and Illinois, a delay in Iowa caused the project to begin only in Illinois, an area where Precision Pipeline's workers were under Local #231's jurisdiction.<sup>2</sup>

Complainant received an orientation from LIUNA personnel in West Burlington, Iowa, near the border of Illinois. Complainant alleges that during that orientation, Richard Phelps, a steward for Local #538, instructed him to sign political action committee ("PAC") authorization forms, stating that the forms were "voluntary[,] but not really[:] you have to sign these."<sup>3</sup> Complainant circled the word "voluntary" on the form and did not sign. Complainant alleges that Phelps told him he had to sign and called an unnamed business administrator, who informed Complainant that "political deductions were mandatory."<sup>4</sup> Complainant still would not sign the forms.

Local #538 disputes Complainant's allegation that Phelps told Complainant the SSF contributions were mandatory. Instead, Local #538 states that the form includes three signature lines—two authorizing union dues and one authorizing PAC deductions—and Phelps's statement

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<sup>1</sup> Compl. Addendum (Sept. 20, 2016).

<sup>2</sup> See Local #231 Resp. (March 21, 2017), Robert Schroeder Aff. ¶ 8 (March 21, 2017).

<sup>3</sup> Compl. at 3 (Sept. 20, 2016).

<sup>4</sup> *Id.*

that “you have to sign these” referred to union dues, not SSF deductions.<sup>5</sup> In an affidavit, Phelps swears he told Complainant that the section regarding SSF contributions was voluntary.<sup>6</sup> He further states that he accepted the form even though Complainant did not sign it.<sup>7</sup>

On June 7, 2016, Complainant began working for Precision Pipeline in Illinois. Because his orientation from Local #538 representatives was in Iowa, Complainant apparently believed he was working under Local #538's jurisdiction. In reality, while Complainant worked in Illinois, he was under Local #231's jurisdiction.<sup>8</sup> Complainant never received an orientation from Local #231.

Complainant's first paycheck, for the period ending June 12, 2016, showed deductions for Illinois political contributions.<sup>9</sup> The day after receiving this paycheck, Complainant confronted Phelps. Complainant states that Phelps said any deductions were made pursuant to

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<sup>5</sup> Local #538's Response also suggests that it may not have solicited funds on behalf of a federal SSF. An affidavit submitted by Local #538's field representative states that Local #538 collects contributions for the Iowa Labor Political Education Fund and the Midwest Construction Promotional Committee. Local #538 Resp., Dan Tuthill Aff. ¶ 6 (Nov. 21, 2016). Neither of those groups are registered as federal SSFs with the Commission. However, Local #538's authorization form states that those entities may make expenditures and contributions “in connection with federal, state, and local elections.” It is not clear whether those groups were required to have registered as federal SSFs, or if Phelps or Tuthill were involved in solicitations for any federally registered SSFs.

<sup>6</sup> Phelps states that he “explained that he worked in Wisconsin [Complainant's home union] on a pipeline project recently and had agreed to pay into the Wisconsin local PAC funds because I thought it was in the best interest of the Wisconsin Laborers,” but ultimately accepted Complainant's unsigned authorization form. Local #538 Resp., Richard Phelps Aff. ¶ 10 (Nov. 18, 2016).

<sup>7</sup> *Id.*; *see also* Local #538 Resp. at 3.

<sup>8</sup> *See* Precision Pipeline Resp. at 3 (Nov. 17, 2016); Local #538 Resp. at 2; Local #231 Resp. at 2.

<sup>9</sup> Compl. at 3; Compl. Attach. 2. At least one of these deductions was for a federal SSF. The Complainant's paystub dated June 12 shows deductions for PAC (\$2.60), MROC (\$13.00), RE MAINT (\$7.80), LPL (\$1.56), and FEDERAL/LPL (\$2.60). Local #231's Response indicates that FEDERAL/LPL refers to Midwest Region Laborers' Political League, a federally registered SSF. *See* Local #231 Resp.; Robert Schroeder Aff. ¶ 4.

Precision Pipeline provided three more of Complainant's pay stubs showing deductions to the same entities in varying amounts. Precision Pipeline Resp. Attachs. (June 19, June 26, and July 3, 2016, paychecks). A total of \$11.70 was deducted for FEDERAL/LPL. *See* Fed LPL Resp. at 2 (May 21, 2017).

the “Pipeline Agreement Contract” (“Agreement”).<sup>10</sup> Complainant also contacted Jillian Preller, Precision Pipeline’s office and payroll manager. According to Complainant, Preller stated that an unnamed steward had not turned in Complainant’s authorization forms.<sup>11</sup> On June 21, Preller allegedly informed Complainant that according to the Agreement, SSF deductions were mandatory.<sup>12</sup> On June 22, Complainant received another paycheck reflecting political deductions.<sup>13</sup> Complainant alleges that on June 24, both Phelps and Preller told him again that political deductions were mandatory under the Agreement, and Preller told him, “[i]f you don’t like it here[,] go home.”<sup>14</sup> Complainant states that Phelps was “angry” and said “if [Complainant] came into his local to work[,] [Complainant] had to pay and support politicians of his local[’]s choice.”<sup>15</sup> Complainant states that he knows of at least one other employee who also had unauthorized political contributions deducted from his pay.<sup>16</sup>

Precision Pipeline acknowledges that it deducted unauthorized political contributions from four of Complainant’s paychecks.<sup>17</sup> Precision Pipeline explains that it relied on payroll guidelines in the Agreement that erroneously indicated that PAC contributions from employees

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<sup>10</sup> Precision Pipeline’s Response clarifies that the Agreement is a contract it has with the Pipe Line Contractors Association, a trade group of pipeline workers. *See* Precision Pipeline Resp. at 1-2. The trade group is not a respondent in this matter.

<sup>11</sup> Compl. at 3.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* An addendum to the Complaint states that Dan Tuthill also told Complainant that PAC contributions were mandatory because of the Agreement. Tuthill states that he is a field representative for Local #538 and does not believe he has met Complainant. Local #538 Resp., Tuthill Aff. ¶ 5.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> Precision Pipeline Resp. at 3.

1 in the zone where Complainant worked did not need employee authorization.<sup>18</sup> Specifically,  
 2 Precision Pipeline explains that the written guidelines for that zone should have—but did not—  
 3 include an asterisk signifying that federal PAC contributions from employees in that zone  
 4 needed employee authorization.<sup>19</sup> Precision Pipeline states that the error was inadvertent and it  
 5 intended to take corrective action.<sup>20</sup> We do not know if Precision Pipeline took such action or  
 6 refunded the involuntary deductions. However, once Complainant started working in another  
 7 zone, Precision Pipeline stopped deducting PAC contributions from his pay.<sup>21</sup>

8 Local #231 responds that it was unaware Complainant worked under its jurisdiction  
 9 during June 2016.<sup>22</sup> It explains that it normally sends a copy of a member's authorization form  
 10 to Precision Pipeline's payroll office, but states that it cannot locate Complainant's signed  
 11 form.<sup>23</sup> Local #231 asserts Precision Pipeline's error was inadvertent, and provides a copy of the  
 12 Local's standard authorization form to show that its written solicitations state that contributions  
 13 are voluntary. It offered to repay any involuntary SSF contributions it unknowingly received  
 14 from Complainant.<sup>24</sup>

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<sup>18</sup> The guidelines were part of the Agreement, and, according to Precision Pipeline, its office managers relied on them to determine permissions needed within the various zones where union employees worked. Precision Pipeline Resp. at 2. The guidelines erroneously indicated that deductions for PAC contributions in Zone 8C, where Complainant was working, did not require authorization. *Id.*

<sup>19</sup> The guidelines also appear to contain the same error regarding other areas, including Zones 8A, 8B, and 13. In addition, a notation regarding Zone 4 corresponds to an ambiguous "[d]educt" note rather than the standard "when authorized by employee" note for other SSFs. *See id.*, Attach. (Agreement). Thus, Precision Pipeline may have deducted unauthorized contributions from employees in areas other than Zone 8C.

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.*

<sup>22</sup> Local #231 Resp. at 2. As explained in an attached affidavit by Robert Schroeder, Local #231's business manager, Complainant was scheduled to begin work in Iowa (under Local #538), but due to a delay in permits, began working in Illinois (under Local #231). *Id.*; Schroeder Aff. ¶ 8.

<sup>23</sup> Schroeder Aff. ¶¶ 4-7, 9.

<sup>24</sup> Local #231 Resp. at 3.

Local #538 states that Complainant worked under Local #231's jurisdiction when Precision Pipeline made the unauthorized deductions, and it denies knowing about the contributions to Local #231's SSF.<sup>25</sup> As mentioned above, Local #538 denies that Phelps told Complainant that SSF contributions were mandatory. It further states that once Complainant began work under its jurisdiction in Iowa in July 2016, Precision Pipeline stopped withholding SSF contributions.<sup>26</sup> Finally, Local #538 states that at a November 15, 2016, meeting, it told pipeline stewards to explain to new hires that political contributions were not mandatory.<sup>27</sup>

Fed LPL admits that it received \$11.70 from the Complainant without his authorization, but also states that those deductions were erroneous and inadvertent, and not due to FedLPL's actions.<sup>28</sup> Fed LPL states it was unaware of the impermissible deductions until it received the Complaint, and that it is willing to refund Complainant's contributions.<sup>29</sup>

Finally, LIUNA PAC states that it did not receive any of the contributions Complainant claims were unlawfully deducted, and that the recipients of contributions shown on Complainant's pay stub do not refer to LIUNA PAC or organizations that forward donations to LIUNA PAC.<sup>30</sup>

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<sup>25</sup> Local #538 Resp. at 2.

<sup>26</sup> *Id.*; *see also* Tracey Barrick Aff., Administrator of the Laborers-Employers Benefit Plan Collection Trust ¶¶ 6-7 (Nov. 18, 2016).

<sup>27</sup> *Id.* at 3.

<sup>28</sup> Fed LPL Resp. at 2. An affidavit provided by Fed LPL's assistant treasurer clarifies that Precision Pipeline transfers contributions to the Laborers-Employers Benefit Plan Collection Trust ("LEBPCT"), a trust that serves as a clearinghouse for union contributions and remits contributions to Fed LPL. *See* Jamie LaFauce Aff. at ¶¶ 4-6 (undated).

<sup>29</sup> Fed. LPL Resp. at 3.

<sup>30</sup> LIUNA PAC Resp. at 1 (Nov. 8, 2016).

### 1     **III.     LEGAL ANALYSIS**

2            The Act and Commission regulations prohibit labor organizations from making  
 3     contributions in connection with a federal election.<sup>31</sup> A labor organization may establish an SSF  
 4     for the purpose of engaging in federal political activity.<sup>32</sup> All such contributions must be  
 5     voluntary.<sup>33</sup> The SSF may not make contributions or expenditures using “money or anything of  
 6     value secured by physical force, job discrimination, financial reprisals, or the threat of force, job  
 7     discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of  
 8     membership[.]”<sup>34</sup>

9            A labor organization may use a payroll-deduction or check-off system to collect  
 10     contributions to its SSF.<sup>35</sup> A contributor, however, must affirmatively authorize such payroll  
 11     deductions from his or her wages.<sup>36</sup> To ensure that contributions solicited for an SSF are  
 12     voluntary, the Act and the Commission’s regulations make it unlawful for any person to solicit a  
 13     contribution to an SSF without informing the employee of the political purpose of the SSF and of  
 14     the right to refuse to contribute to the SSF without reprisal.<sup>37</sup> Additionally, a corporation, labor  
 15     organization, or the SSF of either “may not enforce any guidelines for contributions.”<sup>38</sup>

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<sup>31</sup>        52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

<sup>32</sup>        52 U.S.C. § 30118(b)(2)(C).

<sup>33</sup>        *See* Advisory Op. 2003-14 (Home Depot) at 3.

<sup>34</sup>        52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a).

<sup>35</sup>        *See generally* Advisory Op. 2013-12 (SEIU and SEIU Cope) at 3.

<sup>36</sup>        *See id.*; *Fed. Election Comm’n v. Nat’l Educ. Ass.*, 457 F. Supp. 1102 (D.D.C. 1978); Advisory Op. 1999-03 (Microsoft PAC) at 2 (explaining that payroll deductions require advance showing of contributor’s “specific and voluntary donative intent”).

<sup>37</sup>        52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4). The term “person” includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 52 U.S.C. § 30101(11).

<sup>38</sup>        11 C.F.R. § 114.5(a)(2).



1 A solicitation may be coercive if guidelines are provided without the requisite notices explaining  
2 the voluntary nature of those guidelines.<sup>39</sup>

3 Further, corporations are prohibited from facilitating the making of contributions to  
4 candidates or political committees.<sup>40</sup> Facilitation is defined as using corporate resources to  
5 engage in federal election fundraising activities.<sup>41</sup> A specifically enumerated example of  
6 facilitation is “[u]sing coercion, such as the threat of a detrimental job action, the threat of any  
7 other financial reprisal, or the threat of force, to urge any individual to make a contribution or  
8 engage in fundraising activities on behalf of a candidate or political committee.”<sup>42</sup> A  
9 corporation may be held liable for the acts of its agents.<sup>43</sup>

#### 10 **A. Precision Pipeline and Preller**

11 Precision Pipeline admits it deducted involuntary political contributions from  
12 Complainant's pay. Further, when Complainant challenged the deduction, its agent Preller  
13 allegedly compounded the error by threatening Complainant's job.<sup>44</sup> According to Complainant,  
14 when he confronted Preller about the involuntary deductions, she stated, “[i]f you don't like it  
15

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<sup>39</sup> See Conciliation Agreement IV.7, MUR 5337 (First Consumers Nat'l Bank) (conciliating prohibited facilitation of national bank contributions to state SSF).

<sup>40</sup> 11 C.F.R. § 114.2(f). For purposes of contribution source prohibitions, a limited liability company is treated as a corporation if it has publicly traded shares or if it has elected to be treated as a corporation with the Internal Revenue Service. 11 C.F.R. § 110.1(g)(3). It is unclear how Precision Pipeline, LLC is taxed.

<sup>41</sup> *Id.* § 114.2(f).

<sup>42</sup> *Id.* § 114.2(f)(2)(iv).

<sup>43</sup> See Restatement (Third) of Agency § 7.03 (2006) (stating that a principal may be liable for acts of its agent); *United States v. Sun-Diamond Growers of California*, 138 F.3d 961, 970 (D.C. Cir. 1998) (holding corporation liable for officer's use of corporate funds to reimburse employee's campaign contributions).

<sup>44</sup> Preller likely was acting as an agent of Precision Pipeline. The Commission has defined “agent” for purposes of implementing the Bipartisan Campaign Reform Act of 2002 (“BCRA”) as “any person who has actual authority, either express or implied” to engage in certain activities on the principal's behalf. See 11 C.F.R. § 109.3. As a payroll and office manager, Preller appears to have had the authority to deduct contributions and manage employees, and Precision Pipeline does not argue otherwise.

here[,] go home.” Precision Pipeline does not challenge Complainant’s version of events.<sup>45</sup>  
 Preller’s coercive conduct, coupled with the involuntary nature of Complainant’s deductions,  
 establish reason to believe that Precision Pipeline and its agent Preller solicited involuntary  
 contributions and threatened reprisal against Complainant if he continued to object.<sup>46</sup>  
 Accordingly, we recommend that the Commission find reason to believe that Precision Pipeline  
 and Preller violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4).<sup>47</sup>

### **B. Local #538 , Phelps, and Tuthill**

While Precision Pipeline took no deductions from Complainant while he worked under  
 Local #538’s jurisdiction, there is a factual dispute whether Richard Phelps, a Local #538  
 steward, solicited contributions without the requisite notices. The Complainant alleges that  
 Phelps presented Local #538’s authorization forms to Complainant and told him, “you have to  
 sign these.” Complainant also states that Phelps was “angry” when he objected to making  
 contributions and told him he expected Complainant to support the politicians of Local #538’s  
 choosing. Complainant further alleges that Dan Tuthill, a field representative for Local #538, as  
 well as an unknown business administrator, informed him that PAC contributions were

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<sup>45</sup> The Commission has previously found arguably less coercive conduct to be violations of 11 C.F.R. § 114.5(a). *See, e.g.*, Conciliation Agreement IV.13, MUR 5337 (First Consumers Nat’l Bank) (concluding that although a written solicitation stated contributions were voluntary, that statement did not satisfy the requirements of §114.5(a) where, *inter alia*, corporation did not specify the right to refuse without reprisal or that a contribution guideline was merely a suggestion). Here, Precision Pipeline specifically told Complainant that contributions were mandatory, and deducted money from Complainant’s paycheck over his objections.

<sup>46</sup> *See* MUR 6812 (Laborers’ International Union, *et al.*) (finding reason to believe that respondent corporation violated 52 U.S.C § 30118(b)(3)(B)-(C) where it deducted political contributions without obtaining employee’s authorization, and then fired employee when he later refused to provide authorization).

<sup>47</sup> It is possible that Precision Pipeline is treated as a corporation for tax purposes, and if so, there would also be reason to believe it and Preller violated 11 C.F.R. § 114.5(a)(2) by enforcing a guideline for contributions, and 11 C.F.R. § 114.2(f)(2)(iv) by deducting involuntary contributions over Complainant’s express objections. We intend to determine Precision Pipeline’s tax status and make the appropriate recommendation at the end of the investigation.

1 mandatory. Local #538 counters that Phelps's statement related to sections of its form unrelated  
2 to SSF contributions, and Tuthill claims that he has never met Complainant and does not recall  
3 speaking with him. It is also not clear that Local #538 solicited for a federal, as opposed to a  
4 state, SSF.<sup>48</sup> Because the facts are in dispute as to Phelps's and Tuthill's solicitations, and in  
5 light of the proposed investigation into Precision Pipeline's conduct, we recommend that the  
6 Commission take no action at this time as to Local #538, Phelps, and Tuthill.

7 **C. Local #231**

8 Local #231 appears to have been unaware that Complainant worked under its jurisdiction  
9 when Precision Pipeline deducted involuntary contributions from his pay. However, because  
10 Precision Pipeline's admitted reliance on erroneous payroll guidelines may have affected other  
11 employees working under Local #231's jurisdiction, we recommend that the Commission take  
12 no action at this time as to Local #231 pending the proposed investigation.

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<sup>48</sup>

*See note 5.*

**D. Midwest Region Laborers' Political League (Fed LPL)**

Fed LPL acknowledges that it received \$11.70 in involuntary contributions from Complainant. Accordingly, there are sufficient facts to support a reason to believe finding that the SSF violated the Act and regulations by making contributions or expenditures using "money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership."<sup>49</sup> However, we recommend taking no action at this time as to Fed LPL pending our investigation into the scope of the unauthorized contributions it received from Precision Pipeline.

**E. LIUNA PAC**

We recommend that the Commission find no reason to believe that LIUNA PAC violated the Act. LIUNA PAC does not appear to have received contributions from the Complainant, nor is there any evidence that contributions were solicited on behalf of LIUNA PAC.

**IV. PROPOSED INVESTIGATION**

We intend to seek additional information clarifying the scope of Precision Pipeline's potential violations, including identifying all employees from whom Precision Pipeline deducted involuntary contributions in the same way as Complainant, the total amount of contributions deducted from those employees, and the extent of the involvement of local labor unions in Precision Pipeline's conduct. We also intend to resolve the factual dispute between Complainant and Phelps regarding the deduction authorization form and Phelps's alleged statement that he expected Complainant to support the politicians Local #538 chose. We will also seek

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<sup>49</sup> 52 U.S.C § 30118(b)(3)(A); 11 C.F.R. § 114.5(a).

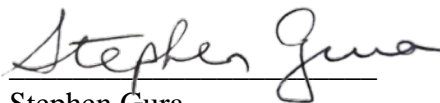
information clarifying whether Local #538 solicited contributions on behalf of a federal SSF, and whether any such solicitations conformed with the requirements of the Act and regulations. Finally, we will investigate the tax status of Precision Pipeline to determine if it is treated as a corporation. We will attempt to conduct our investigation through voluntary means but recommend that the Commission authorize the use of compulsory process as necessary.

## V. RECOMMENDATIONS

1. Find reason to believe that Precision Pipeline, LLC violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4).
2. Find reason to believe that Jillian Preller violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4).
3. Take no action at this time as to Laborers' International Local #538, Richard Phelps, and Dan Tuthill.
4. Take no action at this time as to Laborers' International Local #231.
5. Take no action at this time as to Midwest Region Laborers' Political League.
6. Find no reason to believe that Laborers' International Union of America PAC violated the Act or regulations.
7. Approve the Factual and Legal Analyses.
8. Approve the use of compulsory process as needed.
9. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

Date: 9.21.17

  
Stephen Gura  
Deputy Associate General Counsel  
for Enforcement

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*Mark Shonkwiler*

Mark Shonkwiler

Assistant General Counsel

*Antoinette Fuoto*

Antoinette Fuoto

Attorney

Attachments:

1. Factual and Legal Analysis – Precision Pipeline and Preller
2. Factual and Legal Analysis – LIUNA PAC

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Precision Pipeline, LLC MUR: 7137  
Jillian Preller

**I. INTRODUCTION**

Complainant, an employee of Precision Pipeline, LLC (“Precision Pipeline”), alleges that political contributions to a union separate segregated fund (“SSF”) were deducted from his paychecks without authorization, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Complainant also alleges that when he refused to authorize the contributions, personnel associated with Local #538 of the Laborers’ International Union of North America (“LIUNA”) and Precision Pipeline told him they were mandatory, and a Precision Pipeline manager threatened his job if he refused. Despite Complainant’s refusal to authorize such contributions, Precision Pipeline deducted contributions totaling \$11.70 to Midwest Region Laborers’ Political League (“FedLPL”), the SSF of another LIUNA local chapter (Local #231).

Precision Pipeline acknowledges that Complainant did not authorize the contributions, and its staff erred in deducting them. The record indicates that Precision Pipeline and its office and payroll manager, Jillian Preller, impermissibly solicited contributions without informing Complainant of his right to refuse to contribute without reprisal. Accordingly, the Commission finds reason to believe that Precision Pipeline and Preller violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4).

1     **II.     FACTS**

2             The Complainant worked for Precision Pipeline at different locations on the Dakota  
3     Access Pipeline, including nearby locations in Iowa and Illinois.<sup>1</sup> As such, Complainant worked  
4     under the jurisdiction and benefit packages of multiple LIUNA local branches, including Locals  
5     #231 and #538. Information in the record indicates that although the pipeline project was  
6     scheduled to begin in June 2016 in both Iowa and Illinois, a delay in Iowa caused the project to  
7     begin only in Illinois, an area where Precision Pipeline’s workers were under Local #231’s  
8     jurisdiction.

9             Complainant received an orientation from LIUNA personnel in West Burlington, Iowa,  
10     near the border of Illinois. Complainant alleges that during that orientation, Richard Phelps, a  
11     steward for Local #538, instructed him to sign political action committee (“PAC”) authorization  
12     forms, stating that the forms were “voluntary[,] but not really[;] you have to sign these.”<sup>2</sup>  
13     Complainant circled the word “voluntary” on the form and did not sign. Complainant alleges  
14     that Phelps told him he had to sign and called an unnamed business administrator, who informed  
15     Complainant that “political deductions were mandatory.”<sup>3</sup> Complainant still would not sign  
16     the forms.

17             On June 7, 2016, Complainant began working for Precision Pipeline in Illinois. Because  
18     his orientation from Local #538 representatives was in Iowa, Complainant apparently believed  
19     he was working under Local #538’s jurisdiction. In reality, while Complainant worked in

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<sup>1</sup> Compl. Addendum (Sept. 20, 2016).

<sup>2</sup> Compl. at 3 (Sept. 20, 2016).

<sup>3</sup> *Id.*



Illinois, he was under Local #231's jurisdiction.<sup>4</sup> Complainant never received an orientation from Local #231.

Complainant's first paycheck, for the period ending June 12, 2016, showed deductions for Illinois political contributions.<sup>5</sup> The day after receiving this paycheck, Complainant confronted Phelps. Complainant states that Phelps said any deductions were made pursuant to the "Pipeline Agreement Contract" ("Agreement").<sup>6</sup> Complainant also contacted Jillian Preller, Precision Pipeline's office and payroll manager. According to Complainant, Preller stated that an unnamed steward had not turned in Complainant's authorization forms.<sup>7</sup> On June 21, Preller allegedly informed Complainant that according to the Agreement, SSF deductions were mandatory.<sup>8</sup> On June 22, Complainant received another paycheck reflecting political deductions.<sup>9</sup> Complainant alleges that on June 24, both Phelps and Preller told him again that political deductions were mandatory under the Agreement, and Preller told him, "[i]f you don't like it here[,] go home."<sup>10</sup> Complainant states that Phelps was "angry" and said "if [Complainant] came into his local to work[,] [Complainant] had to pay and support politicians of

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<sup>4</sup> See Precision Pipeline Resp. at 3 (Nov. 17, 2016).

<sup>5</sup> Compl. at 3; Compl. Attach. 2. At least one of these deductions was for a federal SSF. The Complainant's paystub dated June 12 shows deductions for PAC (\$2.60), MROC (\$13.00), RE MAINT (\$7.80), LPL (\$1.56), and FEDERAL/LPL (\$2.60). FEDERAL/LPL refers to Midwest Region Laborers' Political League, a federally registered SSF.

Precision Pipeline provided three more of Complainant's pay stubs showing deductions to the same entities in varying amounts. Precision Pipeline Resp. Attachs. (June 19, June 26, and July 3, 2016, paychecks). A total of \$11.70 was deducted for FEDERAL/LPL.

<sup>6</sup> Precision Pipeline's Response clarifies that the Agreement is a contract it has with the Pipe Line Contractors Association, a trade group of pipeline workers. See Precision Pipeline Resp. at 1-2.

<sup>7</sup> Compl. at 3.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

his local[']s choice.”<sup>11</sup> Complainant states that he knows of at least one other employee who also had unauthorized political contributions deducted from his pay.<sup>12</sup>

Precision Pipeline acknowledges that it deducted unauthorized political contributions from four of Complainant’s paychecks.<sup>13</sup> Precision Pipeline explains that it relied on payroll guidelines in the Agreement that erroneously indicated that PAC contributions from employees in the zone where Complainant worked did not need employee authorization.<sup>14</sup> Specifically, Precision Pipeline explains that the written guidelines for that zone should have—but did not—include an asterisk signifying that federal PAC contributions from employees in that zone needed employee authorization.<sup>15</sup> Precision Pipeline states that the error was inadvertent and it intended to take corrective action.<sup>16</sup> Precision Pipeline provided no information confirming that it took such action or refunded the involuntary deductions. However, once Complainant started working in another zone, Precision Pipeline stopped deducting PAC contributions from his pay.<sup>17</sup>

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<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Precision Pipeline Resp. at 3.

<sup>14</sup> The guidelines were part of the Agreement, and, according to Precision Pipeline, its office managers relied on them to determine permissions needed within the various zones where union employees worked. Precision Pipeline Resp. at 2. The guidelines erroneously indicated that deductions for PAC contributions in Zone 8C, where Complainant was working, did not require authorization. *Id.*

<sup>15</sup> The guidelines also appear to contain the same error regarding other areas, including Zones 8A, 8B, and 13. In addition, a notation regarding Zone 4 corresponds to an ambiguous “[d]educt” note rather than the standard “when authorized by employee” note for other SSFs. *See id.*, Attach. (Agreement). Thus, Precision Pipeline may have deducted unauthorized contributions from employees in areas other than Zone 8C.

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.*

### 1     **III.     LEGAL ANALYSIS**

2           The Act and Commission regulations prohibit labor organizations from making  
 3     contributions in connection with a federal election.<sup>18</sup> A labor organization may establish an SSF  
 4     for the purpose of engaging in federal political activity.<sup>19</sup> All such contributions must be  
 5     voluntary.<sup>20</sup> The SSF may not make contributions or expenditures using “money or anything of  
 6     value secured by physical force, job discrimination, financial reprisals, or the threat of force, job  
 7     discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of  
 8     membership[.]”<sup>21</sup>

9           A labor organization may use a payroll-deduction or check-off system to collect  
 10    contributions to its SSF.<sup>22</sup> A contributor, however, must affirmatively authorize such payroll  
 11    deductions from his or her wages.<sup>23</sup> To ensure that contributions solicited for an SSF are  
 12    voluntary, the Act and the Commission’s regulations make it unlawful for any person to solicit a  
 13    contribution to an SSF without informing the employee of the political purpose of the SSF and of  
 14    the right to refuse to contribute to the SSF without reprisal.<sup>24</sup> Additionally, a corporation, labor

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<sup>18</sup>     52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

<sup>19</sup>     52 U.S.C. § 30118(b)(2)(C).

<sup>20</sup>     *See* Advisory Op. 2003-14 (Home Depot) at 3.

<sup>21</sup>     52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a).

<sup>22</sup>     *See generally* Advisory Op. 2013-12 (SEIU and SEIU Cope) at 3.

<sup>23</sup>     *See id.*; *Fed. Election Comm’n v. Nat’l Educ. Ass.*, 457 F. Supp. 1102 (D.D.C. 1978); Advisory Op. 1999-03 (Microsoft PAC) at 2 (explaining that payroll deductions require advance showing of contributor’s “specific and voluntary donative intent”).

<sup>24</sup>     52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4). The term “person” includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 52 U.S.C. § 30101(11).

organization, or the SSF of either “may not enforce any guidelines for contributions.”<sup>25</sup>

A solicitation may be coercive if guidelines are provided without the requisite notices explaining the voluntary nature of those guidelines.<sup>26</sup>

Further, corporations are prohibited from facilitating the making of contributions to candidates or political committees.<sup>27</sup> Facilitation is defined as using corporate resources to engage in federal election fundraising activities.<sup>28</sup> A specifically enumerated example of facilitation is “[u]sing 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.”<sup>29</sup> A corporation may be held liable for the acts of its agents.<sup>30</sup>

Precision Pipeline admits it deducted involuntary political contributions from Complainant’s pay. Further, when Complainant challenged the deduction, its agent Preller allegedly compounded the error by threatening Complainant’s job.<sup>31</sup> According to Complainant,

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<sup>25</sup> 11 C.F.R. § 114.5(a)(2).

<sup>26</sup> See Conciliation Agreement IV.7, MUR 5337 (First Consumers Nat’l Bank) (conciliating prohibited facilitation of national bank contributions to state SSF).

<sup>27</sup> 11 C.F.R. § 114.2(f). For purposes of contribution source prohibitions, a limited liability company is treated as a corporation if it has publicly traded shares or if it has elected to be treated as a corporation with the Internal Revenue Service. 11 C.F.R. § 110.1(g)(3). It is unclear how Precision Pipeline, LLC is taxed.

<sup>28</sup> *Id.* § 114.2(f).

<sup>29</sup> *Id.* § 114.2(f)(2)(iv).

<sup>30</sup> See Restatement (Third) of Agency § 7.03 (2006) (stating that a principal may be liable for acts of its agent); *United States v. Sun-Diamond Growers of California*, 138 F.3d 961, 970 (D.C. Cir. 1998) (holding corporation liable for officer’s use of corporate funds to reimburse employee’s campaign contributions).

<sup>31</sup> Preller likely was acting as an agent of Precision Pipeline. The Commission has defined “agent” for purposes of implementing the Bipartisan Campaign Reform Act of 2002 (“BCRA”) as “any person who has actual authority, either express or implied” to engage in certain activities on the principal’s behalf. See 11 C.F.R. § 109.3. As a payroll and office manager, Preller appears to have had the authority to deduct contributions and manage employees, and Precision Pipeline does not argue otherwise.

1 when he confronted Preller about the involuntary deductions, she stated, “[i]f you don’t like it  
2 here[,] go home.” Precision Pipeline does not challenge Complainant’s version of events.<sup>32</sup>  
3 Preller’s coercive conduct, coupled with the involuntary nature of Complainant’s deductions,  
4 establish reason to believe that Precision Pipeline and its agent Preller solicited involuntary  
5 contributions and threatened reprisal against Complainant if he continued to object.<sup>33</sup>  
6 Accordingly, the Commission finds reason to believe that Precision Pipeline and Preller violated  
7 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4).

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<sup>32</sup> The Commission has previously found arguably less coercive conduct to be violations of 11 C.F.R. § 114.5(a). *See, e.g.*, Conciliation Agreement IV.13, MUR 5337 (First Consumers Nat’l Bank) (concluding that although a written solicitation stated contributions were voluntary, that statement did not satisfy the requirements of §114.5(a) where, *inter alia*, corporation did not specify the right to refuse without reprisal or that a contribution guideline was merely a suggestion). Here, Precision Pipeline specifically told Complainant that contributions were mandatory, and deducted money from Complainant’s paycheck over his objections.

<sup>33</sup> *See* MUR 6812 (Laborers’ International Union, *et al.*) (finding reason to believe that respondent corporation violated 52 U.S.C § 30118(b)(3)(B)-(C) where it deducted political contributions without obtaining employee’s authorization, and then fired employee when he later refused to provide authorization).

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: LIUNA PAC MUR: 7137

**I. INTRODUCTION**

Complainant, an employee of Precision Pipeline, LLC (“Precision Pipeline”), alleges that political contributions to a union separate segregated fund (“SSF”) were deducted from his paychecks without authorization, in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”). Complainant also alleges that when he refused to authorize the contributions, personnel associated with Local #538 of the Laborers’ International Union of North America and Precision Pipeline told him they were mandatory, and a Precision Pipeline manager threatened his job if he refused. LIUNA PAC states that it did not receive any of the contributions Complainant claims were unlawfully deducted.<sup>1</sup> The record provides no information suggesting that contributions were solicited on behalf of LIUNA PAC.

**II. LEGAL ANALYSIS**

The Act and Commission regulations prohibit labor organizations from making contributions in connection with a federal election.<sup>2</sup> A labor organization may establish an SSF for the purpose of engaging in federal political activity.<sup>3</sup> All such contributions must be voluntary.<sup>4</sup> The SSF may not make contributions or expenditures using “money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job

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<sup>1</sup> LIUNA PAC Resp. at 1 (Nov. 8, 2016).

<sup>2</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

<sup>3</sup> 52 U.S.C. § 30118(b)(2)(C).

<sup>4</sup> *See* Advisory Op. 2003-14 (Home Depot) at 3.

discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership[.]”<sup>5</sup>

A labor organization may use a payroll-deduction or check-off system to collect contributions to its SSF.<sup>6</sup> A contributor, however, must affirmatively authorize such payroll deductions from his or her wages.<sup>7</sup> To ensure that contributions solicited for an SSF are voluntary, the Act and the Commission’s regulations make it unlawful for any person 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 to the SSF without reprisal.<sup>8</sup> Additionally, a corporation, labor organization, or the SSF of either “may not enforce any guidelines for contributions.”<sup>9</sup>

A solicitation may be coercive if guidelines are provided without the requisite notices explaining the voluntary nature of those guidelines.<sup>10</sup>

LIUNA PAC does not appear to have received contributions from the Complainant, nor is there any evidence that contributions were solicited on behalf of LIUNA PAC. Accordingly, the Commission finds no reason to believe that LIUNA PAC violated the Act or Regulations.

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<sup>5</sup> 52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a).

<sup>6</sup> *See generally* Advisory Op. 2013-12 (SEIU and SEIU Cope) at 3.

<sup>7</sup> *See id.*; *Fed. Election Comm’n v. Nat’l Educ. Ass.*, 457 F. Supp. 1102 (D.D.C. 1978); Advisory Op. 1999-03 (Microsoft PAC) at 2 (explaining that payroll deductions require advance showing of contributor’s “specific and voluntary donative intent”).

<sup>8</sup> 52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4). The term “person” includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 52 U.S.C. § 30101(11).

<sup>9</sup> 11 C.F.R. § 114.5(a)(2).

<sup>10</sup> *See* Conciliation Agreement IV.7, MUR 5337 (First Consumers Nat’l Bank) (conciliating prohibited facilitation of national bank contributions to state SSF).