



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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DEC 20 2017

RE: MUR 7137
Precision Pipeline, LLC
Jillian Preller

Dear Mr. Martucci:

On September 27, 2016, the Federal Election Commission notified your clients, Precision Pipeline, LLC and Jillian Preller, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on December 12, 2017, found that there is reason to believe Precision Pipeline, LLC and Jillian Preller violated 52 U.S.C. § 30118(b)(3)(C), a provision of the Act, and 11 C.F.R. § 114.5(a)(4). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 USC § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.


If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of

the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondents. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and (12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Antoinette Fuoto, the attorney assigned to this matter, at (202) 694-1650 or afuoto@fec.gov.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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.¹ 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."²
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."³ 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

¹ Compl. Addendum (Sept. 20, 2016).

² Compl. at 3 (Sept. 20, 2016).

³ *Id.*

1 Illinois, he was under Local #231's jurisdiction.⁴ Complainant never received an orientation
 2 from Local #231.

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

⁴ See Precision Pipeline Resp. at 3 (Nov. 17, 2016).

⁵ 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.

⁶ 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.

⁷ Compl. at 3.

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.*

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

Precision Pipeline acknowledges that it deducted unauthorized political contributions from four of Complainant’s paychecks.¹³ 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.¹⁴ 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.¹⁵ Precision Pipeline states that the error was inadvertent and it intended to take corrective action.¹⁶ 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.¹⁷

¹¹ *Id.* at 4.

¹² *Id.* at 3.

¹³ Precision Pipeline Resp. at 3.

¹⁴ 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.*

¹⁵ 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.

¹⁶ *Id.* at 3.

¹⁷ *Id.*

1 **III. LEGAL ANALYSIS**

2 The Act and Commission regulations prohibit labor organizations from making
 3 contributions in connection with a federal election.¹⁸ A labor organization may establish an SSF
 4 for the purpose of engaging in federal political activity.¹⁹ All such contributions must be
 5 voluntary.²⁰ 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[.]”²¹

9 A labor organization may use a payroll-deduction or check-off system to collect
 10 contributions to its SSF.²² A contributor, however, must affirmatively authorize such payroll
 11 deductions from his or her wages.²³ 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.²⁴ Additionally, a corporation, labor

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

¹⁹ 52 U.S.C. § 30118(b)(2)(C).

²⁰ See Advisory Op. 2003-14 (Home Depot) at 3.

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

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

²³ 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”).

²⁴ 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.”²⁵

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

Further, corporations are prohibited from facilitating the making of contributions to candidates or political committees.²⁷ Facilitation is defined as using corporate resources to engage in federal election fundraising activities.²⁸ 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.”²⁹ A corporation may be held liable for the acts of its agents.³⁰

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.³¹ According to Complainant,

²⁵ 11 C.F.R. § 114.5(a)(2).

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

²⁷ 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.

²⁸ *Id.* § 114.2(f).

²⁹ *Id.* § 114.2(f)(2)(iv).

³⁰ 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).

³¹ 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.

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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.³²
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.³³
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).

³² 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.

³³ *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).