

BEFORE THE FEDERAL ELECTION COMMISSION

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3	In the Matter of)
4)
5	Laborers' International Local #538)
6	Precision Pipeline, LLC)
7	Richard Phelps)
8	Jillian Preller)
9	Dan Tuthill)
10	Laborers' International Local #231)
11	Midwest Region Laborers' Political League)
		MUR 7137

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

We recommend that the Commission: (1) enter into pre-probable cause conciliation with Precision Pipeline, LLC and Jillian Preller for their violations of 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4); (2) dismiss the allegation that Laborers' International Local #538 ("Local 538"), Laborers' International Local #231 ("Local 231"), Richard Phelps, Dan Tuthill, and Midwest Region Laborers' Political League ("MRLPL") violated the Act or Commission regulations and close the file with respect to these Respondents; (3) approve the attached conciliation agreement; and (4) approve the appropriate letters.

II. INTRODUCTION

This matter arose from a complaint filed by Terry L. Miles, an employee of Precision Pipeline, LLC ("Precision Pipeline"), alleging that political contributions to a union separate segregated fund ("SSF") were deducted from his paychecks without authorization.¹ Complainant also alleged 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

¹ Compl. at 3 (Sept. 20, 2016).

1 threatened his job if he refused.² Respondents acknowledged that Precision Pipeline deducted
2 contributions for the SSF without Complainant's authorization but denied that they told
3 Complainant that the contributions were mandatory or threatened his job.³

4 On December 12, 2017, the Commission found reason to believe that Precision Pipeline
5 and Jillian Preller violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4) by soliciting
6 contributions without informing an employee of his right to refuse to contribute without any
7 reprisal.⁴ With respect to the other respondents in this matter, the Commission found no reason
8 to believe that Laborers' International Union of America PAC violated the Act and took no
9 action at that time as to Laborers' International Local #538, Richard Phelps, Dan Tuthill,
10 Laborers' International Local #231, and Midwest Region Laborers' Political League.⁵

11 The investigation sought to determine the scope of Precision Pipeline's violations.⁶ In
12 particular, the investigation sought to identify all employees from whom Precision Pipeline
13 deducted involuntary contributions, the total amount of contributions deducted from those
14 employees, and the extent to which the local labor unions may have been involved in Precision
15 Pipeline's conduct.⁷ The investigation also sought to clarify a factual dispute about
16 Complainant's allegations that Jillian Preller and Richard Phelps threatened his employment in
17 an attempt to coerce him to make political contributions.⁸

² *Id.* at 3-4.

³ Precision Pipeline Resp. at 2-3.

⁴ Certification, MUR 7137 (Laborers' International Local #538, *et al.*) (Dec. 14, 2017).

⁵ *Id.*

⁶ *Id.*; First Gen. Counsel's Rpt. at 12-13, MUR 7137.

⁷ First Gen. Counsel's Rpt. at 12-13, MUR 7137.

⁸ *See id.*

1 Precision Pipeline and Jillian Preller cooperated with the investigation. The investigation
2 revealed that Precision Pipeline deducted a total of \$181.15 in unauthorized political
3 contributions from 13 employees, including \$11.70 from Complainant.⁹ In addition, the
4 investigation confirmed that Preller told Complainant that he could leave his job and return to his
5 home union if he was unhappy with the unauthorized political contributions.¹⁰ Precision
6 Pipeline and Preller have requested pre-probable cause conciliation with the Commission.¹¹

7 The investigation uncovered no information suggesting that Local #538, Richard Phelps,
8 Dan Tuthill, Local #231, or MRLPL was involved in withholding unauthorized political
9 contributions. The investigation produced information denying Complainant's allegation that
10 Phelps told him that the political contributions were mandatory. Based on the facts before the
11 Commission, we recommend that the Commission dismiss the allegations against Laborers'
12 International Local #538, Richard Phelps, Dan Tuthill, Laborers' International Local #231, and
13 Midwest Region Laborers' Political League and close the file with respect to these Respondents.

14 **III. RESULTS OF INVESTIGATION**

15 We requested information from Precision Pipeline and Preller. Precision Pipeline,
16 through counsel, submitted copies of checkoff authorization forms for union employees working
17 at the jobsite involved in the complaint; a copy of an agreement with the Pipe Line Contractors
18 Association stipulating the withholding rates and political contribution rates for union locals
19 performing work for Precision Pipeline; an explanation of how the company identified payroll

⁹ See Letter from William C. Martucci, counsel for Precision Pipeline and Jillian Preller, Shook, Hardy & Bacon, LLP, to Ray Wolcott, Staff Attorney, FEC at 3-4 (Jul. 31, 2018) ("Investigation Response 1"); .

¹⁰ Preller Decl. at 3 (Mar. 14, 2018).

¹¹ See Letter from William C. Martucci, Shook, Hardy & Bacon, LLP, to Antoinette Fuoto, Staff Attorney, FEC (Jan. 16, 2018).

1 deductions for its union employees; and a list of all union employees from whom Precision
2 Pipeline withheld political contributions without prior authorization.¹² Additionally, Preller
3 provided a written declaration and agreed to an interview to discuss Precision Pipeline's process
4 for determining payroll deductions, her role in that process, and her direct interactions with
5 Complainant.¹³ Precision Pipeline also provided information about revisions to company policy
6 made after the Commission's reason-to-believe finding, along with related training materials,
7 designed to prevent future unauthorized deductions.¹⁴

8 Precision Pipeline, LLC is a division of MasTec, Inc. and is taxed as a corporation as part
9 of MasTec, Inc.'s consolidated corporate income tax return.¹⁵ Complainant was hired by
10 Precision Pipeline to perform work on the Dakota Access Pipeline in Iowa, where he would be
11 under the jurisdiction and benefit package of Local #538.¹⁶ In early June 2016, Complainant
12 attended a Local #538 orientation in West Burlington, Iowa.¹⁷ During the orientation, Local
13 #538 Steward Richard Phelps provided Complainant with an authorization form to complete.¹⁸
14 The form has two sections authorizing union dues and one section authorizing political action
15 committee ("PAC") deductions for Iowa Laborers' Political Education Fund and Midwest

¹² Investigation Response 1; Letter from William C. Martucci, Shook, Hardy & Bacon, LLP, to Ray Wolcott, Staff Attorney, FEC at 2 (Oct. 30, 2018) ("Investigation Response 2"); Letter from William C. Martucci, Shook, Hardy & Bacon, LLP, to Ray Wolcott, Staff Attorney, FEC at 2 (Feb. 19, 2019) ("Investigation Response 3").

¹³ Summary of Interview with Jillian Preller at 1; Preller Decl.

¹⁴ Investigation Response 2 at 3-4.

¹⁵ Email from William C. Martucci, Shook, Hardy & Bacon, LLP, to Kristina Portner, Staff Attorney, FEC at 1 (Sept. 9, 2019).

¹⁶ Compl. at 3 (Sept. 20, 2016); Precision Pipeline Resp. at 2-3 (Nov. 18, 2016).

¹⁷ Compl. at 3; Local #538 Resp., Richard Phelps Aff. ¶ 8.

¹⁸ *Id.*

1 Construction Promotional Committee.¹⁹ Complainant signed the union dues sections but did not
2 sign the section authorizing PAC deductions.²⁰

3 Complainant alleges that during that orientation, Phelps instructed him to sign the form,
4 stating that the forms were “voluntary[,] but not really[;] you have to sign these.”²¹ Complainant
5 alleges that Phelps told him he had to sign and called an unnamed business administrator, who
6 informed Complainant that “political deductions were mandatory.”²² Local #531 and Phelps
7 deny this characterization. In a sworn affidavit, Phelps states that he told Complainant that the
8 section regarding SSF contributions was voluntary and that he accepted the form even though
9 Complainant did not sign the section authorizing PAC contributions.²³ The available
10 information confirms that Phelps accepted the form without a signature in the section authorizing
11 PAC contributions.²⁴

12 Although the pipeline project was scheduled to begin in June 2016 in both Iowa and
13 Illinois, a delay in Iowa caused the project to begin only in Illinois, an area where Precision
14 Pipeline's workers were under Local #231's jurisdiction.²⁵ Complainant performed work in

¹⁹ Local # 538 Resp. at 2, Ex. 1.

²⁰ *Id.*

²¹ Compl. at 3.

²² *Id.*

²³ Local #538 Resp., Richard Phelps Aff. ¶ 10 (Nov. 18, 2016); *see also id.* at 3.

²⁴ *See* Local #538 Resp., Miles Checkoff authorization and Assignment form (June 7, 2016).

²⁵ *See* Local #538 Resp. at 1 (Nov. 21, 2016); Local # 231 Resp., Robert Schroeder Aff. ¶ 8 (March 21, 2017).

1 Illinois under the jurisdiction and benefits package of Local #231 in June 2016.²⁶ Complainant
 2 never completed a Local #231 form authorizing union dues or PAC contributions.²⁷

3 During the investigation, Precision Pipeline admitted that it deducted unauthorized
 4 political contributions for four pay periods from Complainant's pay, totaling \$11.70.²⁸ In
 5 addition, it admitted that it deducted contributions for twelve additional employees who had not
 6 signed a political contribution authorization form.²⁹ In total, \$181.15 in unauthorized political
 7 contributions were improperly withheld from 13 Local #231 employees:³⁰

Name	Amount of Deduction
	\$1.00
	\$9.05
	\$24.25
	\$13.50
	\$18.55
	\$29.35
	\$10.80
	\$15.10
	\$5.80
	\$18.65
	\$4.95
	\$18.45
Terry Miles (Complainant)	\$11.70
Total	\$181.15

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 9 According to Precision Pipeline, these unauthorized deductions were the result of
 10 Precision Pipeline's reliance on an error contained in its agreement with the Pipe Line

²⁶ Compl. at 5; Precision Pipeline Resp. at 2-3; Local # 231 Resp. at 2.

²⁷ Local # 231 Resp. at 2.

²⁸ Precision Pipeline Resp. at 3.

²⁹ See Investigation Response 1 at 3-4. In addition, Precision Pipeline was unable to locate any union related paperwork or authorizations for two additional employees. *Id.*

³⁰ *Id.*

1 Contractors Association (the "PLCA"). Precision Pipeline is an affiliate of PLCA, an association
2 of pipeline contractors that negotiates labor agreements on behalf of its members.³¹ When
3 Precision Pipeline began work in Illinois, it entered into an agreement with the local PLCA
4 ("PLCA Agreement").³² The PLCA Agreement contains an appendix specifying the amount of
5 LIUNA deductions to be made from each union employee's pay in each zone within Illinois.³³
6 The deductions that needed an employee's prior approval were marked with asterisks.³⁴ Most
7 zones in the PLCA Agreement did have asterisks in the PAC field and notations that PAC
8 contributions required employee authorization.³⁵ However, due to an error, the PAC
9 contribution field for Zone 8 was *not* marked with an asterisk.³⁶

10 Precision Pipeline's payroll processing team relied on the error in the PLCA agreement
11 when setting up the payroll system for this particular job.³⁷ As a result, political deductions were
12 taken from all employees, including the Complainant, who worked on this job in Illinois Zone 8,
13 regardless of whether they had signed the authorization paperwork.³⁸ Since 2013, Precision

³¹ Investigation Response 1 at 2.

³² Precision Pipeline Resp. at 2.

³³ Investigation Response 1 at 2.

³⁴ *Id.* at 2.

³⁵ Investigation Response 1 at 2-3, Ex. A at 4-6.

³⁶ *Id.*

³⁷ Investigation Response 2 at 2. Precision Pipeline's electronic payroll system must be set up separately for each new job because each job involves different locations, local union charters, and unions deepening on the type of work being performed and the location of the job site. *Id.* When setting up the electronic payroll system, Precision Pipeline's payroll processing team reviews the appropriate union documents to determine the appropriate deductions, the rate of those deductions, and what authorization is required to take those deductions. *Id.* For jobs involving LIUNA, the payroll processing team consults the PLCA agreement to determine the appropriate deductions for each zone. *Id.* at 2-3. Once the job is set up in the electronic payroll system and the forms for a particular employee are entered, the system automatically calculates pay deductions. *Id.*

³⁸ *Id.* at 3.

1 Pipeline has had only one job in Zone 8.³⁹ Precision Pipeline has also confirmed that this job
2 was the only one set up in its payroll system for which it did not check for the existence of an
3 authorization form before deducting political contributions.⁴⁰

4 During the investigation, we also interviewed Preller, who acknowledged that political
5 contributions were erroneously deducted from Complainant's pay checks. Preller explained that
6 her involvement in this process was limited to collecting authorization forms from the union
7 stewards and passing those forms on to Precision Pipeline's payroll department.⁴¹ Preller
8 indicated that she did not verify that forms were collected from every employee and did not
9 review the contents of the forms.⁴² She said that she merely passed the forms on to payroll
10 employees, and that the payroll employees were responsible for making the appropriate
11 withholding entries in the payroll system.⁴³ Preller denies that she threatened Complainant's
12 employment terms or conditions, but she admits that she told Complainant that "if he was
13 unhappy with the way the union agreement was written in Local Union No. 231, he had the
14 option of returning to his home local union, which had different deduction guidelines."⁴⁴

15 Precision Pipeline states that it has taken steps designed to prevent future unauthorized
16 deductions. For example, Precision Pipeline has a new policy and training initiative for its
17 payroll processing team that directs them to verify the existence of an employee authorization

³⁹ Investigative Response 3 at 2.

⁴⁰ Investigative Response 2 at 3.

⁴¹ Summary of Interview with Jillian Preller at 1.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Preller Decl. at 3.

1 before deducting political contributions.⁴⁵ In addition, the policy directs staff to notify the
 2 appropriate resource if contrary guidance is indicated on the union documents.⁴⁶

3 **IV. LEGAL ANALYSIS**

4 **A. Precision Pipeline Improperly Solicited Involuntary Contributions Through** 5 **Its Payroll Deduction Program**

6 The Act and Commission regulations prohibit corporations and labor organizations from
 7 making contributions in connection with a federal election.⁴⁷ A corporation or labor
 8 organization may establish an SSF for the purpose of engaging in federal political activity.⁴⁸ To
 9 ensure that contributions solicited for an SSF are voluntary, the Act and the Commission's
 10 regulations make it unlawful for any person to solicit a contribution to an SSF without informing
 11 the employee of the political purpose of the SSF and of the right to refuse to contribute to the
 12 SSF without reprisal.⁴⁹ A solicitation may be considered coercive if proper notices are not
 13 given.⁵⁰

14 Commission regulations permit the use of a payroll-deduction or check-off system to
 15 facilitate the making of voluntary contributions to an SSF.⁵¹ In addition, corporations may make

⁴⁵ Investigation Response 2 at 3, Exs. 1-2.

⁴⁶ *Id.* at 4, Exs. 1-2.

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

⁴⁸ 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii).

⁴⁹ 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).

⁵⁰ Conciliation Agreement at ¶ 7, MUR 5337 (First Nat'l Consumers Bank) ("A solicitation can also be coercive if proper notice is not given.").

⁵¹ See 11 C.F.R. §§ 114.1(f); 114.2(f)(4)(i); 114.5(k)(1); see also Advisory Op. 2014-04 (Enterprise Holdings, Inc.) at 2 (authorizing corporation's payroll deduction program to facilitate making of voluntary contributions to SSF); Advisory Op. 1991-19 (GTE Service Corp.) (permissibility of payroll deduction program "is dependent upon compliance with the standard of voluntariness set out in 11 CFR 114.5(a)(1)-(5)").

1 available a payroll deduction plan to labor unions and their members.⁵² In any lawful payroll
2 deduction program, a contributor must affirmatively authorize such deductions from his or her
3 wages.⁵³

4 Here, Precision Pipeline agreed to implement a payroll deduction program for Local 231
5 but solicited and collected contributions that were not voluntary. Precision Pipeline
6 acknowledges that it improperly withheld a total of \$181.15 in political contributions from
7 Complainant and 12 other Local 231 employees, and that its payroll staff erred in deducting the
8 contributions. Further, Preller admits that she told Complainant that if he was unhappy with the
9 political contribution deductions when working for Local #231, he could return to his home
10 union. Although Preller denies that she threatened Complainant's "employment terms or
11 conditions,"⁵⁴ her statement that he could return to his home union indicates that Complainant's
12 choices were to accept the political contribution deductions or leave the current job.⁵⁵ In light of
13 the evidence discovered during the investigation, we recommend that the Commission enter pre-
14 probable cause conciliation with Precision Pipeline and Preller.

⁵² See 11 C.F.R. § 114.5(k); Advisory Op. 1978-74 (Engineers Political Action Committee) at 1-2 (corporations may provide lawful methods of facilitating contributions to labor organization by agreement).

⁵³ See Advisory Op. 2013-12 (SEIU and SEIU Cope) at 3; *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").

⁵⁴ Preller Decl. at 3.

⁵⁵ See, e.g., Factual & Legal Analysis at 6, MUR 6812 (Penn Line Services Inc.) (finding reason to believe that Penn Line violated 52 U.S.C. § 30118(b)(3)(C) when it deducted money from an employee's pay for an SSF without authorization, and threatened complainant's job and then fired him when he refused to authorize payroll such deductions).

1 **B. The Commission should dismiss the allegations against Midwest Region**
2 **Laborers' Political League, Local #231, Local #538, Phelps, and Tuthill**

3 MRLPL acknowledges that it received \$11.70 in involuntary contributions from
4 Complainant, and information uncovered during the investigation suggests that it received a total
5 of \$181.15 in involuntary contributions. Accordingly, the facts indicate that MRLPL accepted
6 contributions secured by threats of job discrimination or financial reprisal in violation of section
7 30118(b)(3)(A). However, MRLPL asserts that it was unaware of the involuntary contribution
8 prior to being contacted by Precision Pipeline, and we have uncovered no information that
9 contradicts its assertion that it was not involved in withholding the involuntary contributions
10 from Precision Pipeline's employees' paychecks.⁵⁶ Therefore, we recommend that the
11 Commission dismiss the allegation that Midwest Region Laborers' Political League violated
12 52 U.S.C. § 30118(b)(3) and 11 C.F.R. § 114.5(a).

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15 With respect to Local #231, we found no information during the investigation suggesting
16 that it was involved in deducting involuntary contributions from its members.

17 Similarly, we did not uncover new evidence that Local #538; Phelps, Local #538's
18 steward; or Dan Tuthill a field representative for Local #538, solicited involuntary contributions
19 for MRLPL. Complainant alleges that Richard Phelps told him that he had to sign Local #538
20 authorization forms and that Phelps was "angry" when he objected to making political
21 contributions. But the available information shows that Phelps accepted Complainant's
22 authorization form without a signature in the PAC authorization section. The sworn complaint

⁵⁶ Midwest Region Laborers' Political League Resp. at 2.

1 further alleges that Tuthill told him that PAC contributions were mandatory, but Local #538
2 denies that allegation, and Tuthill submitted an affidavit stating that he did not remember talking
3 to or meeting the Complainant, and it is his practice to inform union members that political
4 contributions are voluntary.⁵⁷ Thus, the evidence on this point conflicts, and we do not believe
5 that additional investigation will yield useful information.

6 Accordingly, we recommend that the Commission dismiss the allegations that Local
7 #231, Local #538, Richard Phelps, and Dan Tuthill violated 52 U.S.C. § 30118(b)(3)(C) and 11
8 C.F.R. § 114.5(a)(4).

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⁵⁷ Local #538 Resp., Tuthill Aff. ¶¶ 5-9.

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VI. RECOMMENDATIONS

1. Enter into conciliation with Precision Pipeline, LLC and Jillian Preller for their violations of 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4) prior to a finding of probable cause to believe;
2. Dismiss the allegation that Midwest Region Laborers' Political League violated 52 U.S.C. § 30118(b)(3) and 11 C.F.R. § 114.5(a);
3. Dismiss the allegation that Laborers' International Local #231, Laborers' International Local #538, Richard Phelps, and Dan Tuthill violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4);
4. Close the file with respect to Laborers' International Local #231, Laborers' International Local #538, Richard Phelps, Dan Tuthill, and Midwest Region Laborers' Political League;
5. Approve the attached conciliation agreement;
6. Approve the attached Factual and Legal Analysis; and
7. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel for Enforcement

2.5.20

Date



Stephen A. Gura
Deputy Associate General Counsel for Enforcement



Jim Lee
Acting Assistant General Counsel

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Kristina Portner

Kristina M. Portner
Attorney

RW

Ray Wolcott
Attorney

- Attachment:
1. Factual and Legal Analysis

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

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3 RESPONDENTS: Laborers' International Local #538 MUR 7137
4 Richard Phelps
5 Dan Tuthill
6 Laborers' International Local #231
7 Midwest Region Laborers' Political League

I. INTRODUCTION

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10 Complainant, an employee of Precision Pipeline, LLC ("Precision Pipeline"), alleges that
11 political contributions to a union separate segregated fund ("SSF") were deducted from his
12 paychecks without authorization, in violation of the Federal Election Campaign Act of 1971, as
13 amended (the "Act"). Complainant also alleges that when he refused to authorize the
14 contributions, personnel associated with Laborers' International Local #538 and Precision
15 Pipeline told him they were mandatory.

16 Laborers' International Local #538, Richard Phelps, Dan Tuthill, and Laborers'
17 International Local #231 deny that they told Complainant that the contributions were mandatory
18 or threatened his job. Because the factual record does not sufficiently support the Complainant's
19 claims, the Commission dismisses the allegations that Local #231, Local #538, Richard Phelps,
20 and Dan Tuthill violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4).

21 Midwest Region Laborers' Political League ("MRLPL") acknowledges that it received
22 \$11.70 in involuntary contributions from Complainant but denies that it was involved in
23 withholding the unauthorized deductions. Because there is no information available that
24 contradicts MRLPL's assertion that it was not involved in withholding the involuntary
25 contributions, the Commission dismisses the allegation that Midwest Region Laborers' Political
26 League violated 52 U.S.C. § 30118(b)(3) and 11 C.F.R. § 114.5(a).

1 **II. FACTS**

2 Complainant was hired by Precision Pipeline to perform work on the Dakota Access
3 Pipeline in Iowa, where he would be under the jurisdiction and benefit package of Local #538.¹
4 In early June 2016, Complainant attended a Local #538 orientation in West Burlington, Iowa.²
5 During the orientation, Local #538 Steward Richard Phelps provided Complainant with an
6 authorization form to complete.³ The form has two sections authorizing union dues and one
7 section authorizing political action committee (“PAC”) deductions for Iowa Laborers’ Political
8 Education Fund and Midwest Construction Promotional Committee.⁴ Complainant signed the
9 union dues sections but did not sign the section authorizing PAC deductions.⁵

10 Complainant alleges that during that orientation, Phelps instructed him to sign the form,
11 stating that the forms were “voluntary[,] but not really[;] you have to sign these.”⁶ Complainant
12 alleges that Phelps told him he had to sign and called an unnamed business administrator, who
13 informed Complainant that “political deductions were mandatory.”⁷ Local #531 and Phelps
14 deny this characterization. In a sworn affidavit, Phelps states that he told Complainant that the
15 section regarding SSF contributions was voluntary and that he accepted the form even though
16 Complainant did not sign the section authorizing PAC contributions.⁸ The available information

1 Compl. at 3 (Sept. 20, 2016).

2 *Id.*; Local #538 Resp., Richard Phelps Aff. ¶ 8 (Nov. 22, 2016).

3 *Id.*

4 Local # 538 Resp. at 2, Ex. 1.

5 *Id.*

6 Compl. at 3.

7 *Id.*

8 Local #538 Resp., Richard Phelps Aff. ¶ 10; *see also id.* at 3.

1 confirms that Phelps accepted the form without a signature in the section authorizing PAC
2 contributions.⁹

3 Although the pipeline project was scheduled to begin in June 2016 in both Iowa and
4 Illinois, a delay in Iowa caused the project to begin only in Illinois, an area where Precision
5 Pipeline's workers were under Local #231's jurisdiction.¹⁰ Complainant performed work in
6 Illinois under the jurisdiction and benefits package of Local #231 in June 2016.¹¹ Complainant
7 never completed a Local #231 form authorizing union dues or PAC contributions.¹²

8 Complainant's first paycheck, for the period ending June 12, 2016, showed deductions
9 for Illinois political contributions.¹³ The day after receiving this paycheck, Complainant
10 confronted Phelps.¹⁴ Complainant states that Phelps said any deductions were made pursuant to
11 the "Pipeline Agreement Contract" ("Agreement").¹⁵ On June 22, 2016, Complainant received
12 another paycheck reflecting political deductions.¹⁶ Complainant alleges that on June 24, 2016,
13 Phelps again told him that political deductions were mandatory under the Agreement.¹⁷

⁹ See Local #538 Resp. Ex. 1.

¹⁰ See Local #538 Resp. at 1; Local # 231 Resp., Robert Schroeder Aff. ¶ 8 (March 21, 2017).

¹¹ Compl. at 5; Local # 231 Resp. at 2.

¹² Local # 231 Resp. at 2.

¹³ Compl. at 3; Compl. Ex. 2. 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.

¹⁴ Compl. at 3; Local #538 Resp., Richard Phelps Aff. ¶ 13.

¹⁵ Compl. at 3.

¹⁶ *Id.* at 4.

¹⁷ *Id.*

1 Local #231 responds that it was unaware Complainant worked under its jurisdiction
2 during June 2016.¹⁸ It explains that it normally sends a copy of a member's authorization form
3 to Precision Pipeline's payroll office, but states that it cannot locate Complainant's signed
4 form.¹⁹ Local #231 asserts Precision Pipeline's error was inadvertent, and provides a copy of the
5 Local's standard authorization form to show that its written solicitations state that contributions
6 are voluntary.²⁰ It offered to repay any involuntary SSF contributions it unknowingly received
7 from Complainant.²¹

8 Local #538 states that Complainant worked under Local #231's jurisdiction when
9 Precision Pipeline made the unauthorized deductions, and it denies knowing about the
10 contributions to Local #231's SSF.²² As mentioned above, Local #538 denies that Phelps told
11 Complainant that SSF contributions were mandatory. It further states that once Complainant
12 began work under its jurisdiction in Iowa in July 2016, Precision Pipeline stopped withholding
13 SSF contributions.²³ Finally, Local #538 states that at a November 15, 2016, meeting, it told
14 pipeline stewards to explain to new hires that political contributions were not mandatory.²⁴

15 MRLPL admits that it received \$11.70 from the Complainant without his authorization,
16 but also states that those deductions were erroneous and inadvertent, and not due to MRLPL's

¹⁸ 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.

¹⁹ *Id.* ¶¶ 4-7, 9.

²⁰ Local #231 Resp. at 2, Ex. 1.

²¹ *Id.* at 3.

²² Local #538 Resp. at 2.

²³ *Id.*; *see also id.*, Tracey Barrick Aff., Administrator of the Laborers-Employers Benefit Plan Collection Trust ¶¶ 6-7 (Nov. 18, 2016).

²⁴ *Id.* at 3.

1 actions.²⁵ MRLPL states it was unaware of the impermissible deductions until it received the
 2 Complaint, and that it is willing to refund Complainant's contributions.²⁶

3 III. LEGAL ANALYSIS

4 The Act and Commission regulations prohibit corporations and labor organizations from
 5 making contributions in connection with a federal election.²⁷ A corporation or labor
 6 organization may establish an SSF for the purpose of engaging in federal political activity.²⁸ To
 7 ensure that contributions solicited for an SSF are voluntary, the Act and the Commission's
 8 regulations make it unlawful for any person to solicit a contribution to an SSF without informing
 9 the employee of the political purpose of the SSF and of the right to refuse to contribute to the
 10 SSF without reprisal.²⁹ A solicitation may be considered coercive if proper notices are not
 11 given.³⁰

12 Commission regulations permit the use of a payroll-deduction or check-off system to
 13 facilitate the making of voluntary contributions to an SSF.³¹ In addition, corporations may make

²⁵ MRLPL Resp. at 2 (May 31, 2017). An affidavit provided by MRLPL'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 MRLPL. *See Id.*, Jamie LaFauce Aff. at ¶¶ 4-6 (undated).

²⁶ MRLPL Resp. at 3.

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

²⁸ 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii).

²⁹ 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).

³⁰ Conciliation Agreement at ¶ 7, MUR 5337 (First Nat'l Consumers Bank) ("A solicitation can also be coercive if proper notice is not given.").

³¹ *See* 11 C.F.R. §§ 114.1(f); 114.2(f)(4)(i); 114.5(k)(1); *see also* Advisory Op. 2014-04 (Enterprise Holdings, Inc.) at 2 (authorizing corporation's payroll deduction program to facilitate making of voluntary contributions to SSF); Advisory Op. 1991-19 (GTE Service Corp.) (permissibility of payroll deduction program "is dependent upon compliance with the standard of voluntariness set out in 11 CFR 114.5(a)(1)-(5)").

1 available a payroll deduction plan to labor unions and their members.³² In any lawful payroll
2 deduction program, a contributor must affirmatively authorize such deductions from his or her
3 wages.³³

4 While Precision Pipeline took no deductions from Complainant while he worked under
5 Local #538's jurisdiction, there is a factual dispute whether Local #538; Phelps, Local #538's
6 steward; or Dan Tuthill, a field representative for Local #538, solicited involuntary contributions
7 for MRLPL. Complainant alleges that Richard Phelps told him that he had to sign Local #538
8 authorization forms and that Phelps was "angry" when he objected to making political
9 contributions. But the available information shows that Phelps accepted Complainant's
10 authorization form without a signature in the PAC authorization section. The sworn complaint
11 further alleges that Tuthill told him that PAC contributions were mandatory, but Local #538
12 denies that allegation, and Tuthill submitted an affidavit stating that he did not remember talking
13 to or meeting the Complainant, and it is his practice to inform union members that political
14 contributions are voluntary.³⁴ Thus, the evidence on this point conflicts and is inconclusive.

15 Local #231 appears to have been unaware that Complainant worked under its jurisdiction
16 when Precision Pipeline deducted involuntary contributions from his pay, and there is no
17 information suggesting that it was involved in deducting involuntary contributions from its
18 members.

³² See 11 C.F.R. § 114.5(k); Advisory Op. 1978-74 (Engineers Political Action Committee) at 1-2 (corporations may provide lawful methods of facilitating contributions to labor organization by agreement).

³³ See Advisory Op. 2013-12 (SEIU and SEIU Cope) at 3; *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").

³⁴ Local #538 Resp., Tuthill Aff. ¶¶ 5-9.

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1 MRLPL acknowledges that it received \$11.70 in involuntary contributions from
2 Complainant.³⁵ However, MRLPL asserts that it was unaware of the involuntary contributions
3 prior to receiving the complaint and we have uncovered no information that contradicts its
4 assertion that it was not involved in withholding the involuntary contributions from
5 Complainant's paychecks.³⁶

6 Based on the foregoing, the Commission dismisses the allegations that Laborers'
7 International Local #538, Richard Phelps, Dan Tuthill, and Laborers' International Local #231
8 violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(4). Further, the Commission
9 dismisses the allegation that Midwest Region Laborers' Political League violated 52 U.S.C.
10 § 30118(b)(3) and 11 C.F.R. § 114.5(a).

³⁵ MRLPL Resp. at 2

³⁶ *Id.*