



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 17, 2021

Dan Tuthill
Laborers International Union
of America, Local #538
11 W. Main Street
E. Galesburg, IL 61430

RE: MUR 7137

Dear Mr. Tuthill:

On September 27, 2016, the Federal Election Commission notified you 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 you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on January 28, 2021, voted to dismiss the allegations as they pertain to you. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Kristina Portner, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Jin Lee
Jin Lee
Acting Assistant General
Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Laborers' International Local #538 MUR 7137
Richard Phelps
Dan Tuthill
Laborers' International Local #231
Midwest Region Laborers' Political League

I. INTRODUCTION

Complainant, an employee of Precision Pipeline, LLC (“Precision Pipeline”), alleges that
al contributions to a union separate segregated fund (“SSF”) were deducted from his
checks without authorization, in violation of the Federal Election Campaign Act of 1971, as
ed (the “Act”). Complainant also alleges that when he refused to authorize the
butions, personnel associated with Laborers’ International Local #538 and Precision
he told him they were mandatory.

Laborers' International Local #538, Richard Phelps, Dan Tuthill, and Laborers' International Local #231 deny that they told Complainant that the contributions were mandatory. Complainant threatened his job. Because the factual record does not sufficiently support the Complainant's allegations, the Commission dismisses the allegations that Local #231, 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).

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

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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.

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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.*

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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.

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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)").

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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.*