



ITPEU (AFL-CIO)

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May 13, 2003

Via Telefax & Mail

Maureen Benitz, Campaign Finance Analyst
Reports Analysis Division
Federal Election Commission
Washington, D.C. 20363

**Re: Industrial Technical & Professional Employees Union
Political Action Committee d/b/a ITPE PAC
ID No. C00286419**

Dear Ms. Benitz:

As I advised you during our telephone conversation last week, I am counsel to the Industrial Technical & Professional Employees Union Political Action Committee d/b/a ITPE PAC; and your letter of April 23, 2003, has been referred to me for response. The issue raised in your letter was whether certain contributions to the Abercrombie and LoBiondo campaign committees by ITPE PAC exceeded the statutory limit when combined with contributions to those campaigns by "affiliated" political action funds.

Pursuant to our discussion, I hereby confirm that the ITPE Union severed its relationship (affiliation) with District No. 1-MEBA effective July 1, 2001. Accordingly, it is beyond question that, effective July 1, 2001, ITPE PAC has no longer been an "affiliate" of District No. 1, MEBA - Political Action Fund, Professional Airways Systems Specialists (AFL-CIO) dba PASS PAC or District No. 4 - NMU/MEBA AFL-CIO Political & Legislative Organization on Watch dba NMU FLOW, the three other committees whose contributions were combined with those of ITPE PAC to determine whether overpayments were made. The contributions by ITPE PAC to the Abercrombie and LoBiondo campaigns on or after July 1, 2001, therefore, should not be combined with those of these other multi-candidate committees.

The only contribution by ITPE PAC (i.e., preceding July 1, 2001), about which there might remain any question was that for \$500 to Abercrombie for Congress on June 22, 2001. My research after our discussion, however, discloses that the PAC funds should not be considered "affiliates" even at that time. Enclosed is a letter from District No. 1-MEBA to one of your colleagues in December 1999. Point "4" of that letter discusses the relationship

John Conley, President

John Erenton, III, Secretary/Treasurer

Hiwood Harepton, Vice President

E. (Ruthie) Jones, Vice President

Mary Williams, Vice President

Page 2

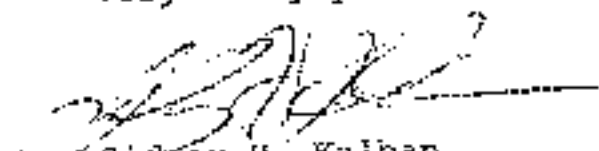
Re: ITPE PAC, ID No. C00286419

among the various unions in question and their PACs. As is explained in that letter, those relationships were of a nature that they do not fit within the definition of "affiliation" as used in the federal election statute. Also enclosed is a copy of the legal opinion of the Preston Gates law firm to which reference is made in the MEBA letter of December 1999. Please be advised that the language in the affiliation agreement between District No. 1-MEBA and ITPE paralleled that of the affiliation agreements of PASS and NMO which are discussed in the legal opinion.

MEBA and ITPE did not have any controlling interest in the other nor any authority or ability to affect the other's governance. Throughout this affiliation with District No. 1-MEBA, ITPE always maintained full autonomy over its staff and finances and elected its own officers; and had no input whatsoever with regard to MEBA's officers, staff and/or finances. Neither union was involved in the formation of the other nor provided any significant funds or goods to the other. (ITPE did pay a small amount of per capita to MEBA, which was then passed through to the AFL-CIO.) There was no overlapping or common membership. There was no coordination of contributions to candidates. There was far less of a relationship between MEBA and ITPE than there was among the unions involved in Federal Election Commission v. Sailors' Union of the Pacific Political Fund, 828 F.2d 502 (9th Cir. 1987), in which the Court held that two of the unions in question and their political action funds were not "local units" of their international and that their contributions therefore were not to be aggregated for purposes of the monetary caps on political contributions to any given campaign.

Please contact me at the above **New York** address and/or telephone number after you have reviewed these materials and advise if you still believe that ITPE PAC must request the Abercrombie campaign for any reimbursement. Thank you very much for your consideration.

Very truly yours,



Sidney H. Kalban
Union Counsel

cc: John F. Conley, President
John Brenton III, Secretary-Treasurer

Dec-19-1999 02:31

FROM: MEBA HEADQUARTERS

+202315755

T-710 P. 002/904 F-899

DISTRICT NO. 1-PCD, MEBA
(AFL-CIO)

LAWRENCE H. O'TOOLE
PRESIDENT

ROBERT McFETERS
SECRETARY-TREASURER

444 NORTH CAPITOL STREET, NW, STE. 814
WASHINGTON, D.C. 20001
COURT 678-5343
FAX 202-638-3369

December 9, 1999

Mr. Dominick Ciraldi
Reports Analyst
Federal Election Commission
Washington, DC 20543

Dear Mr. Ciraldi:

Thank you for the time you spent on the telephone with me last week discussing the various problems with MEBA's FEC reports, which are raised in your four recent preliminary review letters. As I indicated on the telephone with you, three of these will be easy to solve. The affiliation issue might take a little longer to unravel.

The following is a recap of actions or explanations of the issues raised in your letters to us:

- 1) June Monthly Report issue. We have contacted the Trent Lott for Mississippi committee. They have refunded to MEBA the 5/4/99 \$5000 check mistakenly submitted for the 2000 Primary. We will report it as a refund on Line 16 of the FEC report. A copy of the refunded check from Trent Lott for Mississippi is enclosed.
- 2) Amended March and Amended April thru August Monthly Report letters. In these letters, you raised the issue of identifying "Various U.S. Shipping Companies" and "Various Licensed Shipping Companies" as the employer of itemized contributors on Line 11(a)(i) of our reports. The lion's share of itemized contributors is made by our members through a voluntary checkoff from their Vacation Plan check. The Vacation Plan is administered by the MEBA Benefit Plans office. MEBA members may sail one to five or six voyages per year with any of over three dozen shipping companies having collective bargaining contracts with MEBA that pay into the Vacation Plan. The payments are made monthly to the Plan based on gross sea-days worked by our members. This payment system makes it impossible to identify the employer when the contributions are checked off from the Vacation Plan check. As I understand from discussions with previous MEBA accounting staff, this manner of reporting the contributor's employer has been utilized by MEBA's political committees since their inception in the 1970's, and has never previously been challenged by FEC.

Mr. Dominick Ciarelli
 Reports Analyst
 December 9, 1999
 Page 2

Two possible solutions come to mind. First, identify the MEBA Vacation Plan Trust as the employer for the report. The Plan does deduct Federal and state taxes, FICA and voluntary deductions from members' checks, so this should be a feasible solution. Second, list the best shipping company that the member sailed with as the employer. We would be able to identify that company for each contributing member. However, this solution may be a little misleading because most of the vacation pay might be accrued from sailing with a company other than the last one sailed. Please let us know how you wish to proceed with this in the future.

- 3) Amended March and Amended April thru August Monthly Report Letters. In these letters you point out that for several itemized contributors on these reports we were missing aggregate year-to-date totals. All of these amended reports were recently re-amended reflecting the missing aggregate year-to-date totals. The new amendments dated December 1, 1999 were sent by U.S. Priority Mail to you personally on Monday, December 6. If you have any questions on these amendments, please contact Mr. Frank Laurito of our staff on (202) 638-5355 (x1654).
- 4) July Monthly Report Letter. Your letter to us implies that District No. 1, PCD, MEBA PAF has contributed over the \$5000 per election limit for the 2000 Primary election on three Congressional candidates. Since District No. 1, MEBA PAF has contributed exactly \$5000 to each of these candidates earmarked for the 2000 Primary election, you presumably have come to this conclusion based on the contributions of three former National MEBA Districts. In March 1998, the Department of Labor conducted a convention and election of new officers for the new, reconstituted National MEBA. This constitution provides for two Districts - No. 1, PCD, MEBA and No. 3, Radio Officers Union (does not have a Federal PAC). Around that time, the other unions which were formerly Districts of the National MEBA, namely, the National Maritime Union (NMO), the Professional Airways Systems Specialists (PASS) and the Industrial, Technical and Professional Employees Union (ITPE) became autonomous, affiliated unions of District No. 1, MEBA. In this scenario, those three unions use District No. 1 as a conduit to affiliate with the National AFL-CIO through National MEBA's charter.

The affiliation agreement between each of these three unions and District No. 1, MEBA states that the organizations have "complete financial autonomy" and "complete independence to structure their own internal affairs... including... the right to control their own Constitution and By-Laws." These unions have no controlling interest, no authority to participate in the governance, no authority to hire or control personnel, no common overlapping officers or membership with any of the others. None of the unions provides funds to any of the others in any significant amounts.

Dec-10-1999 02:32

From: MESA NEWSLETTER

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T-710 P. 004/004 F-000

Mr. Dominick Ciaraldi
 Reports Analyst
 December 9, 1999
 Page 3

None of these unions participated in the formation of the others. Finally, political committee fundraising and contributions are not coordinated or, in almost all cases, even discussed before they are done. Enclosed is an April 29, 1998, opinion from the law firm of Preston, Gates which concludes that these three union's political committees are not affiliated with District No. 1, MESA for FEC purposes.

Accordingly, on January 28, 1999, District No. 1, PCD, MESA Political Action Fund filed an amended FEC Statement of Organization, removing all autonomous affiliates' political committees as affiliated committees for purposes of the FEC. A copy of that amended Statement of Organization is enclosed. I believe you will find that PASS and ITPE also have amended their Statements of Organization reflecting the same changes. With regard to NMLU, it disaffiliated with District No. 1, MESA in December 1998, prior to any of the contributions which you referenced in your letter being made. A copy of their disaffiliation letter is enclosed.

I hope this explanation with enclosures satisfies the concerns raised in your four letters. We apologize for the confusion. However, in the last year we have changed Treasurer, Political Director and Controller, which makes continuity a little difficult. Should you have any questions, please not hesitate to contact me on (802) 638-5355 (x1660). Thank you again for your patience and cooperation.

Sincerely,

Michael A. Ingram
 Political Director

Enclosures

cc: Robert McFeaters, Treasurer
 Eric Pittman, Controller
 Frank Laurin, Accounting Staff



PRESTON GATES ELLIS &
ROUVELAS MEEDS LLP
ATTORNEYS

MEMORANDUM

TO: Mike Ingrao
FROM: Tim Peckinpugh
Franklin Walker
DATE: April 29, 1998
RE: PAC Affiliation Rules

Introduction and Question Presented

This memorandum responds to your request for our legal analysis of the affiliation issues concerning the MEBA PAC.

The Marine Engineers' Beneficial Association ("MEBA") has entered into a variety of agreements by which it conducts activities in coordination with other labor unions. In addition, MEBA, as well as the other labor unions subject to those agreements,¹ operate political action committees ("PACs").

You have asked us to review federal campaign finance laws, case law, and regulations promulgated by the Federal Elections Commission to determine whether any of these PACs are affiliated for contribution limitation purposes.

Brief Answer

These agreements with the PACs listed in footnote one do not serve as a basis for affiliation for contribution limitation purposes.

Neither the NMU/MEBA agreement nor the PASS/MEBA agreement suggest that the PACs associated with each union is affiliated for contribution limitation purposes. Furthermore, while the NFOPAPE/MEBA agreement raises issues of affiliation on its face, upon consultation

¹ In preparing this memorandum, we have reviewed only the agreements between MEBA and the National Federation of Public and Private Employees ("NFOPAPE"), the Professional Airways Systems Specialists ("PASS"), and the National Maritime Union ("NMU"). It is our understanding that other agreements with MEBA duplicate one of these three agreements in all significant respects.

with MEBA regarding its actual relationship with NFOPAPE, MEBA does not appear to be affiliated with the NFOPAPE for contribution limitation purposes.

Discussion

1. Legal Standard for Determining Affiliation

As you know, if PACs are "affiliated" under federal campaign finance laws, each of the affiliates is bound by a single set of contribution limits. To determine whether or not PACs are affiliated, the Federal Election Commission ("FEC") looks to a number of factors, essentially to determine whether an organization affiliated with the PAC controls the organization affiliated with another PAC (i.e., whether one union controls another union).

To determine affiliation, the FEC considers the factors set forth by regulation and clarified by federal case law. Those factors consider whether a union:

- (1) has a controlling interest in the other;
- (2) has the authority or ability to direct or participate in the governance of the other through provisions in the constitution bylaws, contracts or other rules or through informal practices or procedures;
- (3) has the authority to hire, appoint, demote or otherwise control the officers or decisionmaking employees of the other;
- (4) has a common or overlapping membership which indicates a formal or ongoing relationship with the other;
- (5) has common or overlapping officers or employees which indicates a formal or ongoing relationship with the other;
- (6) provides funds or goods (or arranges for such) in a significant amount or on an ongoing basis to the other;
- (7) had a significant role in the formation of the other; and
- (8) has a similar pattern of contribution with the other or contributions which otherwise indicate a formal or ongoing relationship with the other.

11 C.F.R. 100.5(g); see also Federal Election Commission v. Sailors' Union of the Pacific Political Fund, 828 F.2d 502 (9th Cir. 1987)(applying these factors).

II. The Affiliation Agreements

Despite a series of affiliation agreements, none of the labor unions affected by those agreements appears to control the other to such an extent as to raise the FEC's concern. In fact, the agreements explicitly state that the unions are autonomous.

A. *The NMU/MEBA Agreement*

The NMU/MEBA agreement provides that NMU shall be "an autonomous affiliate of MEBA. . . hav[ing] the right to conduct their respective affairs with complete autonomy." NMU Agreement, p. 2. The parties have "complete financial autonomy" and "complete independence to structure their own internal affairs . . . including. . . the right to control their own Constitutions and By-Laws." *Id.*

Assuming these entities conduct themselves as reflected in this agreement, there does not appear to be any control sufficient to limit contributions to a single group of affiliates.

B. *The PASS/MEBA Agreement*

Similarly, the PASS/MEBA agreement provides that PASS shall be "an autonomous affiliate of MEBA" and that "PASS shall not be bound by the MEBA Constitution and By-Laws." PASS Agreement, pp. 1-2. The parties have "complete financial autonomy" and "complete independence to structure their own internal affairs . . . including. . . the right to control their own Constitution and By-Laws." *Id.*

Again, assuming these entities conduct themselves as reflected in this agreement, there does not appear to be any control sufficient to limit contributions to a single group of affiliates.

C. *The NFOPAPE/MEBA Agreement*

The NFOPAPE/MEBA agreement stands on different grounds. The agreement, similar to the other agreements, contains recitals by which the "NFOPAPE shall continue to maintain its own structure, identity and autonomy under its own Constitution." NFOPAPE Agreement, p. 2. The Agreement, however, goes on to provide for financial assistance² from MEBA to NFOPAPE suggesting that the MEBA might have the ability to control the affairs-- at least indirectly-- of NFOPAPE. *See, e.g.*, pp. 1-2.

After discussing this financial support with MEBA officials, however, it appears that such support never materialized except for a one-time loan of \$250,000 from MEBA to NFOPAPE (the "Note"). The Note, in turn, contains no language which suggests that MEBA can

² In addition, the MEBA PAC made several contributions at the NFOPAPE PAC's request. While this might raise questions of coordination of contributions, such activity was undertaken in an isolated time period and is no longer conducted. Thus, whatever affiliation might have been suggested by this conduct is no longer applicable.

control the affairs of NFOPAPE. Thus, on its face, the Note does not suggest control sufficient to render the two parties "affiliates" for the purpose of FEC law.³

If, however, MEBA effectively controls NFOPAPE by virtue of MEBA's financial position over NFOPAPE, the FEC could conclude that MEBA and NFOPAPE are affiliates for the purposes of contribution limits. Whether this control exists is a factual question which MEBA executives should be able to answer.

Conclusion

Based on our review of the three agreements discussed in this memorandum, it does not appear that neither MEBA and NMU nor MEBA and PASS are affiliates for FEC purposes. Furthermore, no other unions operating under similar agreements (assuming their operations are accurately reflected by those agreements) would be affiliates.

On the other hand, the agreement between MEBA and NFOPAPE raises some question of affiliation. Based on our discussions with MEBA executives regarding the actual financial arrangements described in the agreement, however, we do not believe that control exists sufficient enough to render the two unions affiliated for FEC purposes. We recommend, however, that MEBA closely scrutinize its relationship with NFOPAPE to assess whether MEBA actually exerts control over the activities of NFOPAPE.

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³ Note that campaign finance law allows a PAC to give up to \$5,000 to another PAC; however, the only way for a PAC to contribute more than that amount to another PAC is for the PACs to be formally affiliated, allowing unlimited PAC to PAC contributions. Viewed another way, if a PAC contributed more than \$5,000 to another PAC, it would be tantamount to an admission that the PACs were intended to be affiliated.

Federal Election Commission

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