

DISTRICT NO. 1-PCD, MEBA

LAWRENCE H. O'TOOLE
PRESIDENT



ROBERT McFLETERS
SECRETARY-TREASURER

444 NORTH CAPITOL STREET, NW, STE. 800
WASHINGTON, D.C. 20001
RECEIVED
FEDERAL ELECTION
COMMISSION MAIL ROOM
(202) 638-5355
FAX: (202) 638-5369

1999 DEC 10 P 2:08

December 9, 1999

Mr. Dominick Ciaraldi
Reports Analyst
Federal Election Commission
Washington, DC 20463



MARINE ENGINEERS'
BENEFICIAL ASSOCIATION

MICHAEL A. INGLAD
POLITICAL DIRECTOR

PHONE (202) 638-5355, EXT. 13 • FAX (202) 638-5369
444 NORTH CAPITOL STREET, NW, SUITE 800 • WASHINGTON, DC 20001

Dear Mr. Ciaraldi:

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 letter. We have contacted the Trent Lott for Mississippi committee. They have refunded to MEBA the 5/4/99 \$5000 check mistakenly earmarked 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 contributions 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 man-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.

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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 last 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 those 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 formally Districts of the National MEBA, namely, the National Maritime Union (NMI), 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.

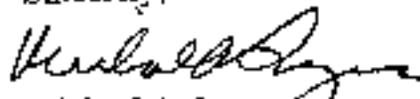
Mr. Dominick Ciaraldi
Reports Analyst
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Page 3

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, MEBA for FEC purposes.

Accordingly, on January 28, 1999, District No. 1, PCD, MEBA 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 Statement's of Organization reflecting the same changes. With regard to NMU, it disaffiliated with District No. 1, MEBA 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 (202) 638-5355 (x1660). Thank you again for your patience and cooperation.

Sincerely,



Michael A. Ingrassano
Political Director

Enclosures

cc: Robert McFeeters, Treasurer
Eric Pittman, Controller
Frank Laurito, Accounting Staff

MISSISSIPPI GOVERNMENT SAVINGS BANK, INC. BANK OF MISSISSIPPI

5931

TRENT LOTT FOR MISSISSIPPI 3-88

15-588185

DATE 12-8-99

PAY TO THE ORDER OF District #1 - MEBA PAF \$ 5,000.00
Five thousand and no/100 DOLLARS



[Signature]

FOR Refund of 5-4-99 contribution (Ar)

⑆005931⑆ ⑆065503661⑆ 01 0129054⑆



PRESTON GATES ELLIS &
ROUVELAS MEEDS LLP
ATTORNEYS

MEMORANDUM

TO: Mike Ingrao
FROM: Tim Peckinpaugh
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

I. 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.

meba/c011.doc

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.

STATEMENT OF ORGANIZATION

(See reverse side for instructions)

RECEIVED
FEDERAL ELECTION
COMMISSION MAIL ROOM

1999 DEC 10 P 2:08

(a) NAME OF COMMITTEE IN FULL <input type="checkbox"/> (Check if name is changed) District No. 1, PCD-MEBA Political Action Fund	2. DATE 01/28/99
(b) Number and Street Address <input type="checkbox"/> (Check if address is changed) 444 N. Capitol St., N.W., #800	3. FEC Identification Number C-00279380
(c) City, State and ZIP Code Washington, D.C. 20001	4. Is This Report An Amendment? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

5. TYPE OF COMMITTEE (Check one)

- (a) This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)
- | Name of Candidate | Candidate Party Affiliation | Office Sought | State/District |
|-------------------|-----------------------------|---------------|----------------|
| | | | |
- (c) This committee supports/opposes only one candidate _____ and is NOT an authorized committee.
(name of candidate)
- (d) This committee is a _____ committee of the _____ Party.
(National, State or subordinate) (Democratic, Republican, etc.)
- (e) This committee is a separate segregated fund.
- (f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund or a party committee.

6. Name of Any Connected Organization or Affiliated Committee	Mailing Address and ZIP Code	Relationship
See Attachment 1		

Type of Connected Organization
 Corporation Corporation w/o Capital Stock Labor Organization Membership Organization Trade Association Cooperative

7. Custodian of Records: (Identify by name, address (phone number - optional) and position of the person in possession of committee books and records.)

Full Name	Mailing Address	Title or Position
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8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name	Mailing Address	Title or Position
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9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.	Mailing Address and ZIP Code
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I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

TYPE OR PRINT NAME OF TREASURER Robert T. McFeeters	SIGNATURE OF TREASURER 	DATE 01/28/99
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NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g. ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

For further information contact:
 Federal Election Commission
 Toll-free 800-424-9530
 Local 202-218-3420

FEBAN053

FEC FORM 1
(revised 4/87)

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

444 NORTH CAPITOL STREET, NW, STE. 800
WASHINGTON, D.C. 20001
(202) 638-5355
FAX: (202) 638-5369

LAWRENCE H. O'TOOLE
PRESIDENT

ROBERT McFEETERS
SECRETARY-TREASURER

Attachment 1

District No. 1, PCD-MEBA
Political Action Fund

Statement of Organization

<u>Name of any Connected Organization or Affiliated Committee</u>	<u>Mailing Address and Zip Code</u>	<u>Relationship</u>
Marine Engineers' Beneficial Association (AFL-CIO)	444 N. Capitol St., #800 Washington, D.C. 20001	Connected Organization
Marine Engineers' Beneficial Association - Retirees Group Fund	444 N. Capitol St., #800 Washington, D.C. 20001	Affiliated



National Maritime Union of America

Affiliated with: District No. 1 - PCD, MEBA (AFL-CIO)

AFL-CIO Maritime Committee

International Transportworkers Federation

1150 17th Street, NW, Suite 700, Washington, DC 20036

Phone: (202) 466-7060

Fax: (202) 872-0912

December 11, 1998

Mr. Alex Shandrowsky, President
District No. 1 - PCD, MEBA
444 North Capitol Street, NW, Suite 800
Washington D.C. 20001-1570

Re: Effective Date of Disaffiliation

Dear Alex:

Please be advised that the NMU has decided that our last day of affiliation with District No. 1 - PCD, MEBA will be as of Tuesday, December 15, 1998. After that date, this Union will no longer be affiliated with your organization. As I understand, earlier this week our respective in-house counsels previously discussed the final time table for disaffiliation and all parties were acceptable to the selection of this approximate date of disaffiliation.

I greatly appreciate your cooperation and flexibility in providing time extensions to our original notice of disaffiliation a couple of months ago. It has been a pleasure working with you on this matter as well as other items of importance to both of our unions over the years.

I wish the best of luck to the future of both your organization and to you personally.

Fraternally,

Rene Licoanije
President

Federal Election Commission

**ENVELOPE REPLACEMENT PAGE
FOR INCOMING DOCUMENTS**

The Commission has added this page to the end of this filing to indicate how it was received.

<input checked="" type="checkbox"/> Hand Delivered	Date of Receipt 12-10-99
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<input type="checkbox"/> Received from the Senate Office of Public Records	Date of Receipt
<input type="checkbox"/> Other (Specify):	Postmarked _____ and/or Date of Receipt
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