



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE BEGINNING OF MUR # 2657

DATE FILMED 3/2/90 CAMERA NO. 4

CAMERAMAN AS

20040783003

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: 4 May 1988

ANALYST: Robert DiNardo

I. COMMITTEE: New York State Laborers Political Action
Committee affiliated with the Laborers
International Union of North America
AFL-CIO (C00220566)
Gaspar Lupo, Treasurer
108 West 39th Street, Room 1001
New York, NY 10018

II. RELEVANT STATUTE: 11 CFR 102.5(a)(1)(i)
2 U.S.C. §441b(a)

III. BACKGROUND:

Receipt of an Apparent Impermissible Contribution from an
Unregistered Organization

The New York State Laborers Political Action Committee
affiliated with the Laborers International Union of North
America AFL-CIO ("the Committee") reported a receipt of
\$31,451.95 on August 5, 1987 from an unregistered
organization, the New York Laborers' Legislative League, on
its 1987 Year End Report (Attachment 2).

On February 24, 1988 a Request for Additional
Information ("RFAI") was sent to the Committee notifying it
of the receipt of a contribution from an unregistered
organization. The RFAI asked the Committee to clarify the
permissibility of the contribution. If the contribution was
not permissible, the RFAI recommended the total amount be
refunded and/or transferred to its non-federal account with
the donor's consent (Attachment 3).

On March 10, 1988 Mr. Orrin Baird contacted the Reports
Analysis Division ("RAD") analyst. Mr. Baird said the
contribution was accidentally deposited into the Committee's
federal account. Mr. Baird stated that the contribution
contained funds from labor unions. The RAD analyst told Mr.
Baird to transfer the amount to its non-federal account and
report it on the Committee's 1988 April Quarterly Report.
The analyst also asked Mr. Baird to send a photocopy of the
transfer check to the Commission (Attachment 4).

NEW YORK STATE LABORERS POLITICAL
ACTION COMMITTEE AFFILIATED WITH
THE LABORERS INTERNATIONAL UNION OF
NORTH AMERICA AFL-CIO
REPORTS ANALYSIS OGC REFERRAL
PAGE 2

On March 14, 1988 the Committee notified the Commission by letter that it was in the process of remedying the matter (Attachment 5).

Because the Committee had not yet transferred-out the funds, a Second Notice was sent to the Committee on March 17, 1988 (Attachment 6).

On April 4, 1988 the Committee notified the Commission by letter that the total amount of the impermissible contribution was transferred to its non-federal account. The Committee included photocopies of a transfer check for \$29,846.34 dated January 25, 1988, and a transfer check for \$1,717.73 dated March 28, 1988 (Attachment 7). The Committee's 1988 April Quarterly Report included a statement describing the transfer-out (Attachment 8).

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None.

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FEDERAL ELECTION COMMISSION

1987-1988

UNITED STATES OF AMERICA

DATE: 12/19/88

PAGE 1

COMMITTEE	RECEIPTS	DISBURSEMENTS	COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
NEW YORK STATE LABORERS POLITICAL ACTION COMMITTEE					
CORRECTED ORGANIZATION: LABORERS INTL UNION OF NO AMER AFL-CIO					
REQUEST FOR ADDITIONAL INFORMATION					
1987 STATEMENT OF ORGANIZATION					
YEAR-END	181,642	1,658	0 00	1	88FEC/498/3108
YEAR-END - AMENDMENT			30DEC87	2	88FEC/497/3511
REQUEST FOR ADDITIONAL INFORMATION			5AUG87 -31DEC87	5	88FEC/500/2413
REQUEST FOR ADDITIONAL INFORMATION AND			5AUG87 -31DEC87	3	88FEC/515/4298
1988 STATEMENT OF ORGANIZATION - AMENDMENT			5AUG87 -31DEC87	3	88FEC/510/4089
MISCELLANEOUS REPORT TO THE			5AUG87 -31DEC87	2	88FEC/513/2692
APRIL QUARTERLY	31,804	38,846	1FEB88	3	88FEC/503/5033
			14MAR88	2	88FEC/512/5103
			1JAN88 -31MAR88	5	88FEC/520/0673
TOTAL	213,446	0		26	TOTAL PAGES

ID #C00220566 NON-PARTY NON-QUALIFIED

All reports listed have been reviewed.

Ending cash on hand as of 3/31/88: \$172,941.51

Outstanding debts and obligations owed by the committee as of 3/31/88: \$0

Attachment 1

SCHEDULE A

ITEMIZED RECEIPTS

Use separate schedule for each category of the Schedules Summary Page

PAGE 1 OF 1
FOR LINE NUMBER 11(0)(i)

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

NEW YORK STATE LACREERS' POLITICAL ACTION COMMITTEE

A. Full Name, Mailing Address and ZIP Code

NEW YORK LACREERS' LEGISLATIVE LEAGUE

Name of Employer

Not Applicable

Date (month, day, year)

8/5/87

Amount of Each Receipt this Period

Occupation

Not Applicable

Receipt For: ☐ Primary ☐ General☐ Other (specify): Not applicable

Aggregate Year-to-Date > \$

31,451.95

31,451.95

B. Full Name, Mailing Address and ZIP Code

Name of Employer

Date (month, day, year)

Amount of Each Receipt this Period

Occupation

Receipt For: ☐ Primary ☐ General☐ Other (specify):

Aggregate Year-to-Date > \$

C. Full Name, Mailing Address and ZIP Code

Name of Employer

Date (month, day, year)

Amount of Each Receipt this Period

Occupation

Receipt For: ☐ Primary ☐ General☐ Other (specify):

Aggregate Year-to-Date > \$

D. Full Name, Mailing Address and ZIP Code

Name of Employer

Date (month, day, year)

Amount of Each Receipt this Period

Occupation

Receipt For: ☐ Primary ☐ General☐ Other (specify):

Aggregate Year-to-Date > \$

E. Full Name, Mailing Address and ZIP Code

Name of Employer

Date (month, day, year)

Amount of Each Receipt this Period

Occupation

Receipt For: ☐ Primary ☐ General☐ Other (specify):

Aggregate Year-to-Date > \$

F. Full Name, Mailing Address and ZIP Code

Name of Employer

Date (month, day, year)

Amount of Each Receipt this Period

Occupation

Receipt For: ☐ Primary ☐ General☐ Other (specify):

Aggregate Year-to-Date > \$

G. Full Name, Mailing Address and ZIP Code

Name of Employer

Date (month, day, year)

Amount of Each Receipt this Period

Occupation

Receipt For: ☐ Primary ☐ General☐ Other (specify):

Aggregate Year-to-Date > \$

SUBTOTAL of Receipts This Page (optional)

31,451.95

TOTAL This Period (last page this line number only)

31,451.95



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

FEB 24 1988

Gaspar Lupo, Treasurer
New York State Laborers Political
Action Committee
108 West 39th Street - Room 1001
New York, NY 10018

Identification Number: C00220566

Reference: Year End Report (8/5/87-12/31/87)

Dear Mr. Lupo:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-Schedule A of your report discloses receipts from organizations that are not registered with the Commission (pertinent portion(s) attached). 2 U.S.C. §441b prohibits the receipt of funds from national banks, corporations, and labor organizations. Under 11 CFR 102.6, however, certain entities may serve as collecting agents for the purpose of transmitting contributions to a separate segregated fund.

A collecting agent may be a committee which is affiliated with the separate segregated fund; the connected organization; or a local, national, or international union. See 11 CFR 102.6(b)(1).

Funds received from a collecting agent are to be attributed to the original contributors and should be disclosed according to the requirements of 11 CFR 104.3(a). If the amounts in question were contributed by individuals and transmitted to your committee by a collecting agent, the activity should be included on Line 11a of the Detailed Summary Page. Any contribution from an individual, that exceeds \$200 in the aggregate during the calendar year, should be itemized on a supporting schedule. Collecting agents need not be identified on your report.

To the extent that the funds received were not from entities serving as collecting agents, the Commission recommends that you refund all non-voluntary


contributions to the donor(s) in accordance with 11 CFR 103.3(b). Alternatively, if you choose to transfer the funds to an account not used to influence federal elections, the Commission advises that you inform the contributor in writing and provide the contributor with the option of receiving a refund. You may wish to seek a written authorization (either before or after the transfer-out) from the donor for any transfer-out to protect the donor's interests.

Please inform the Commission immediately in writing and provide a photocopy of your check for the refund or transfer-out. In the best interests of the committee, all refunds and transfers-out should be made within thirty days of the treasurer's receipt of the contribution. See 11 CFR 103.3(b). Refunds and transfers-out should be disclosed on a supporting Schedule B for Line 26 or 20 of the report covering the period during which they are made.

Although the Commission may take further legal steps concerning the acceptance of prohibited contributions, prompt action by your committee in refunding or transferring-out the amounts will be taken into consideration.

A written response or an amendment to your original report(s) correcting the above problem(s) should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 376-2480.

Sincerely,


Robert B. DiNardo
Reports Analyst
Reports Analysis Division

MEMORANDUM TO THE FILES:

COMMITTEE: New York State Laborers Political Action Committee
I.D. NUMBER: C00220566
CONTACT: Orrin Baird, Attorney
DATE: March 10, 1988
ANALYST: Robert B. DiNardo
SUBJECT: 1987 Year End Report RFAI

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Mr. Baird called at 9:45 regarding the RFAI. He said the contribution from the New York Laborer's Legislative League should have been deposited into the committee's non-federal account. However, the treasurer accidentally deposited the entire amount into the committee's federal account. Mr. Baird said the committee considered the funds impermissible because it contained money from labor unions that was originally received twenty (20) years ago. I told Mr. Baird to transfer this amount to the committee's non-federal account and report it on their 1988 April Quarterly Report. I also told him to send the FEC a written response to this matter, and to include a photocopy of the transfer check. Mr. Baird said he would do this as soon as possible.

RECEIVED
FEDERAL ELECTION COMMISSION
MAR 14 1988
LAW OFFICES
CONNERTON, RAY & SIMON

ROBERT J. CONNERTON
DAVID W. ELBAOR
THEODORE T. GREEN
JAMES S. RAY
PHILLIS PAYNE
ORRIN BAIRD
LAURENCE E. GOLD
RONALD BRON
JACK CURRAN
LEGISLATIVE DIRECTOR
(NOT A MEMBER OF THE BAR)
PAUL R. REGAN
OF COUNSEL

1220 L STREET, N.W.
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STANLEY C. WISNIEWSKI
SUSAN M. BACH
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TERESA M. CONNERTON
ERIC STEELE
BRIAN M. NECHINGER
JOHN BEN BRADDOCK

† ADMITTED IN MD ONLY
* ADMITTED IN VA ONLY
• ADMITTED IN IL ONLY

March 11, 1988

Robert D. DiNardo
Reports Analyst
Reports Analyst Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: New York State Laborers' Political Action Committee

Dear Mr. DiNardo:

This letter is to memorialize our telephone conversation of March 10. In our conversation, I explained to you that funds from the New York Laborers' Legislative League were mistakenly deposited into the New York State Laborers' Political Action Committee's federal account rather than into its non-federal account. Therefore, it was reported as a contribution to the federal account. As we discussed on the telephone, I will check with the client and have the money transferred from the federal account into the non-federal account. We will then write you a letter explaining what we have done and report the transfer on the April quarterly report.

You also told me that we will probably receive a follow-up letter giving us an additional fifteen days to respond to your original letter. As long as we take the steps which I have outlined above, you assured me that we need not be concerned about our failure to take the appropriate action within the first 15 day period.

Sincerely,

Orrin Baird

OB/nw

cc: Vice President Caivano
Gaspar Lupo

38 234107581 9301



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-3

March 17, 1988

Gaspar Lupo, Treasurer
New York State Laborers Political
Action Committee
108 West 39th Street, Room 1001
New York, NY 10018

Identification Number: C00220566

Reference: Year End Report (8/5/87-12/31/87)

Dear Mr. Lupo:

On February 24, 1988 you were notified that a review of the above-referenced report(s) raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act.

Your March 11, 1988 response is incomplete because you have not provided all the requested information. For this response to be considered adequate, the following information is still required.

-Your response indicates that "...funds from the New York Laborers' Legislative League were mistakenly deposited..." into your federal account. You also state that you "...will check with the client and have the money transferred from the federal account into the non-federal account." If you transfer the funds to an account not used to influence federal elections, the Commission advises that you inform the contributor in writing and provide the contributor with the option of receiving a refund. You may wish to seek a written authorization (either before or after the transfer-out) from the donor for any transfer-out to protect the donor's interests.

Please inform the Commission immediately in writing and provide a photocopy of your check for the transfer-out. In the best interests of the committee, all refunds and transfers-out should be made within thirty days of the treasurer's receipt of the contribution. See 11 CFR 103.3(b). Refunds and transfers-out should be disclosed on a supporting Schedule B for Line 26 or 20 of the report covering the period during which they are made.

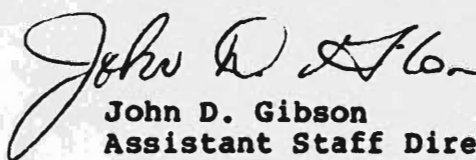
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Although the Commission may take further legal steps concerning the acceptance of prohibited contributions, prompt action by your committee in refunding or transferring-out the amounts will be taken into consideration.

If this information is not received by the Commission within fifteen (15) days from the date of this notice, the Commission may choose to initiate audit or legal enforcement action.

If you should have any questions related to this matter, please contact Robert DiNardo on our toll-free number (800) 424-9530 or our local number (202) 376-2480.

Sincerely,



John D. Gibson
Assistant Staff Director
Reports Analysis Division

90040783103

HAND DELIVERED

LAW OFFICES

CONNERTON, RAY & SIMON

1920 L STREET, N.W.

FOURTH FLOOR

WASHINGTON, D.C. 20036-5004

(202) 466-6790

TELECOPIER

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WRITER'S DIRECT DIAL NUMBER

April 1, 1988

ROBERT D. CONNERTON

JAMES W. L. SIMON

DIRECTOR OF THE BUREAU

JAMES S. RAY

PHILLIS PAYNE

ORRIN BAIRD

LAWRENCE E. GILES

RONALD SIMON

JACK CURHAN

LEGISLATIVE DIRECTOR

PROV. MEMBER OF THE BAR

PAUL K. REGAN

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STANLEY C. WISNIEWSKI

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TIMOTHY M. CONNERTON

EMIL STEELE

BRIAN M. HECHINGER

JOHN M. N. BROADBENT

* ADMITTED IN MD ONLY

* ADMITTED IN VA ONLY

* ADMITTED IN IL ONLY

John D. Gibson
 Assistant Staff Director
 Reports Analyst Division
 Federal Election Commission
 Washington, D.C. 20463

Identification No.: C0020566

Reference: Year End Report (8/5/87-12/31/87)

Dear Mr. Gibson:

I am writing in response to your letter of March 17 regarding the above-referenced report of the Laborers' New York State Political Action Committee. When I previously corresponded regarding this matter with Robert D. DiNardo, I indicated to him that the contribution on the above-referenced report with which the Commission was concerned was money which had been deposited into the political action committee's federal account by mistake. This mistake was realized prior to receiving the Commission's February 24 letter and the proper transfer of funds was made. Upon further checking of the books, we discovered a small additional deposit which had also been mistakenly made into the federal account. This money has also been transferred out. I am enclosing copies of the checks transferring out both sums of money. I have also instructed the accountant that in preparing the next quarterly report he should report these transfers out on that report.

If you have any further questions regarding this matter, please feel free to contact me.

Sincerely,

Orrin Baird

OR: LA
 Encl.

cc: Samuel Calvano
 Gaspar Lupo
 Ray Froimowitz

9004071831004

**NEW YORK STATE LABORERS' POLITICAL ACTION
COMMITTEE AFFILIATED WITH THE LABORERS'
INTERNATIONAL UNION OF NORTH AMERICA AFL-CIO**

**Explanation for Line 20, Detailed Summary of
Receipts and Disbursements - Transfers**

This amount represents funds from the New York Laborers' Legislative League which were mistakenly deposited into the New York State Laborers' Political Action Committee's federal account rather than into its non-federal account. In our last report of December 31, 1987 we reflected it as an itemized cash receipt and we are now reflecting the transfer out into the non-federal account.

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1/ The Committee's Statement of Organization lists only one affiliated organization, the Laborers Political Action League.

asked the Committee to clarify the permissibility of the receipt of these funds. The RFAI contained the standard admonition that if the receipt of the funds was not permissible, the Committee should refund the money or transfer the funds, with the donor's consent, to an account not to be used to influence federal elections.

On March 10, Mr. Orrin Baird, an attorney for the Committee, called in response to the RFAI sent on February 24, 1988.

Mr. Baird explained that the money from the League should have been deposited into the Committee's non-federal account, but the treasurer accidentally deposited the entire amount into the Committee's federal account. Additionally, Mr. Baird stated that the Committee considered the funds impermissible because they contained money from labor unions which was originally received twenty years ago. RAD told Mr. Baird to transfer the amount to its non-federal account and report it on the Committee's 1988 April Quarterly Report, as well as send a photocopy of the transfer check to the Commission.

The Commission received a letter from Mr. Baird on March 14, 1988, in which he notified the Commission that he would check with the Committee and have the money transferred from the federal account into the non-federal account. RAD subsequently sent a Second Notice to the Committee regarding the transfer-out on March 17, 1988.

In a letter from Mr. Baird received April 4, 1988, the Committee indicated that it had transferred-out the total amount

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of the impermissible funds. Mr. Baird explained that the mistake was realized and the funds transferred prior to the Committee's receipt of the RFAI. However, Mr. Baird further indicated that the Committee had since discovered an additional small amount of funds which also had been mistakenly deposited into the federal account. He reported that these funds also had been transferred out. Mr. Baird enclosed copies of the two checks which transferred both deposits. One transfer check is for \$29,846.34 and is dated January 25, 1988; the other transfer check is for \$1,717.73 and is dated March 28, 1988. The Committee included an explanation of these transfers-out on its 1988 April Quarterly Report.

The following is a summary of the Committee's transactions regarding the mistaken deposits:

8/5/87	\$ 31,451.95	Original Deposit of Funds from League to Federal Account
1/25/88	<u>- 29,846.34</u>	1st Transfer-out to Non-federal Account
	1,605.61	Balance - Funds from Original Deposit Remaining in Federal Account
3/28/88	<u>- 1,717.73</u>	2nd Transfer-out to Non-federal Account
	<u>\$ (112.12)</u>	Amount Transferred in Addition to Original Deposit

The Committee wrote two transfer checks, for \$29,846.34 and \$1,717.73, which transferred a total of \$31,564.07 to the Committee's non-federal account. Note, however, that the Committee received \$31,451.95, an amount less than that

ultimately transferred, from the League in the original deposit. Thus, the Committee transferred an additional \$112.12 from its Federal account beyond the amount of original impermissible funds discovered by RAD.

B. Legal Analysis

1. Accepting Funds from Labor Organizations

The Act prohibits any political committee knowingly to accept or receive a contribution from any labor organization.

2 U.S.C. § 441b(a). A review of the Committee's disclosure reports filed with the Commission indicated that the Committee accepted \$31,451.95 on August 5, 1987 from the League, an unregistered labor organization. Furthermore, the attorney for the Committee stated that the Committee considered the funds impermissible because the funds contained money from labor organizations.

The Committee accepted these funds on August 5, 1987, depositing the funds into its federal account. It did not begin transferring the funds to its non-federal account until January 25, 1988.^{2/} Therefore, this Office recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 441b(a) by knowingly accepting impermissible funds from the League, an unregistered labor organization. This Office makes no recommendation concerning a violation of 2 U.S.C. § 441b(a) by

^{2/} Assuming the entire deposit of \$31,451.95 was impermissible, the deposit was not transferred in full until March 28, 1988.

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the League because the Committee has stated that these funds were deposited in error.

2. Depositing Impermissible Funds into Federal Account

11 C.F.R. § 102.5(a)(1) requires an organization, which is involved in political activity in connection with both federal and non-federal activity, to establish a separate federal account into which only funds subject to the prohibitions and limitations of the Act shall be deposited. Furthermore, 11 C.F.R.

§ 102.5(a)(2) states that only contributions designated for the federal account, contributions solicited in connection with a federal election, and contributions from contributors who were informed that all contributions are subject to the prohibitions and limitations of the Act may be deposited in a federal account.

The Committee operates a separate federal account in conformity with 11 C.F.R. § 102.5(a)(1). However, the Committee accepted funds from at least one unregistered organization, as well as apparently deposited an additional impermissible amount, as noted below:

1. - New York Laborers' Legislative League (unregistered) - \$31,451.95
2. - Undisclosed Source - \$112.12^{3/}

^{3/} We have assumed for purposes of this analysis that the \$112.12 transferred in addition to the original deposit comprises the "small additional deposit" to which the Committee refers in its correspondence with RAD; our investigation may prove otherwise.

Since the Regulations permit only deposits into the federal account of funds that are subject to the prohibitions of the Act, and the Committee accepted funds from an unregistered organization that are prohibited by Section 441b(a) of the Act as well as other impermissible funds from an undisclosed source, the Committee violated 11 C.F.R. § 102.5(a)(1) by depositing these funds into its federal account. Additionally, these funds may not have met the requirements set forth in 11 C.F.R.

§ 102.5(a)(2) because according to the Committee, the funds were not intended to be used in connection with federal election activity. Therefore, there appears to be reason to believe that the Committee violated 11 C.F.R. § 102.5(a)(2) by depositing these funds into the federal account. Accordingly, this Office recommends that the Commission find reason to believe that the Committee violated 11 C.F.R. § 102.5(a).

3. Failure to Register Committee

2 U.S.C. § 431(4)(A) defines the term "political committee" as any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year. Section 433(a) states that all committees within the meaning of Section 431(4) shall file a statement of organization within 10 days after becoming a political committee. Furthermore, 2 U.S.C. § 434(a)(1) states that each treasurer of a political committee

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must file reports of receipts and disbursements in accordance with the provisions of Section 434.

RAD stated in the referral that the Committee had accepted \$31,451.95 from the League, an unregistered organization. This amount exceeds the \$1,000 reporting requirement. However, because it seems apparent that the League never intended its funds to be used for the purpose of influencing federal elections, this Office is making no recommendation with regard to the registration or reporting requirements of the League.

III. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that the New York State Laborers Political Action Committee and Gaspar Lupo, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a).
3. Approve the attached letter and Factual and Legal Analysis.
4. Approve the attached questions.

Lawrence M. Noble
General Counsel

Date July 15, 1988

By: Lois G. Lerner
Associate General Counsel

Attachments:

1. Referral Materials
2. Letter with Questions to Respondent
3. Factual and Legal Analysis

Staff Person: Janice Lacy

9004078314

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
New York State Laborers Political) RAD Referral #88L-11
Action Committee, and Gaspar)
Lupo, as treasurer)

(MUR
2657)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 26, 1988, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to the above-captioned matter:

1. Open a Matter Under Review.
2. Find reason to believe that the New York State Laborers Political Action Committee and Gaspar Lupo, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a).
3. Approve the letter and Factual and Legal Analysis attached to the General Counsel's report dated July 15, 1988.
4. Approve the questions recommended in the General Counsel's report dated July 15, 1988.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

7-28-88

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

0004078315



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 8, 1988

Gaspar Lupo, Treasurer
New York State Laborers
Political Action Committee
108 West 39th Street, Room 1001
New York, N.Y. 10018

RE: MUR 2657
New York State Laborers
Action Committee and
Gaspar Lupo, as treasurer

Dear Mr. Lupo:

On July 26, the Federal Election Commission found that there is reason to believe the New York State Laborers Political Action Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 102.5(a) of Commission Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit any such materials to the General Counsel's Office, along with answers to the enclosed questions, within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. 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 at this time so that it may complete its investigation of the matter.

Letter to Gasper Lupo, Treasurer
Page 2

Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Janice Lacy, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,



Thomas J. Josefiak
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Questions

00040783117

ACC# 221

FEDERAL ELECTION COMMISSION
MAIL ROOM

STATEMENT OF DESIGNATION OF COUNSEL

88 AUG 25 AM 9:44

MUR 2657
NAME OF COUNSEL: Mr. Orrin Baird, Esquire
ADDRESS: Connerton & Bernstein
1920 L Street, N.W. 4th Fl.
Washington, D. C. 20036-5004
TELEPHONE: 202-466-6790

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

8/23/88
Date
Gaspar Lupe
Signature

RESPONDENT'S NAME: Gaspar Lupe, Sec-Treas.
ADDRESS: New York State Laborers Political Action Committee
108 W 39th St.
New York, N.Y. 10018
HOME PHONE: _____
BUSINESS PHONE: 212-736-7076

88 AUG 25 PM 2:38
FEDERAL ELECTION COMMISSION

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CCC# 228

LAW OFFICES

CONNERTON, RAY & SIMON

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(202) 466-6790

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(202) 689-3458

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THEODORE T. GREEN
JAMES S. RAY
PHILLIS PAYNE
ORRIN BAIRD
LAURENCE E. GOLD
RONALD SIMON

JACK CURRAN
LEGISLATIVE DIRECTOR
(NOT A MEMBER OF THE BAR)

PAUL K. REGAN
OF COUNSEL

STANLEY C. WISNIEWSKI
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BRIAN M. HECHINGER*
JOHN MCN. BROADDUS
DANIEL S. KOZMA
PAUL GREENBERG†

† ADMITTED IN MD ONLY
* ADMITTED IN VA ONLY
* ADMITTED IN IL ONLY

August 26, 1988

Office of General Counsel
Federal Election Commission
999 E Street, N.W., Suite 657
Washington, D.C. 20463

Attn: Janice Lacy

Re: MUR-2657 New York State Laborers Action Committee and
Gaspar Lupo, as Treasurer

Dear Ms. Lacy:

As you are aware, I have been designated as counsel in the above-referenced matter. The client received Chairman Josefiak's letter of August 8, 1988 on August 12, 1988. Since that time, because of the press of other client responsibilities, I have been unable to prepare a complete response to Chairman Josefiak's letter. Last week, I was out of town conducting depositions most of the week and this week I have been preparing an appellate brief to be filed in the United States Court of Appeals for the Third Circuit. Next week I will be on vacation. Accordingly, I am requesting an extension of time within which to respond to Chairman Josefiak's letter.

A response is currently due on August 27, 1988 which is a Saturday. I am hereby requesting an additional extension of 20 days or until Friday, September 16, 1988. Your cooperation in this matter would be greatly appreciated. If there will be any problem in granting this extension, please advise me by noon on August 26, 1988.

Sincerely yours,


Orrin Baird

OB/nw

88 AUG 26 AM 10:06

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FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 8, 1988

Orrin Baird, Esq.
Connerton, Ray & Simon
1920 L Street, N.W. 4 Fl.
Washington, D.C. 20036-5004

RE: MUR 2657
New York State Laborers
Action Committee and
Gaspar Lupo, as treasurer

Dear Mr. Baird:

This is in response to your letter dated August 26, 1988, which we received on August 26, 1988, requesting an extension of 20 days to respond to questions posed by the Commission. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on September 16, 1988.

If you have any questions, please contact Janice Lacy, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

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(NOT A MEMBER OF THE BAR)
PAUL K. REGAN
OF COUNSEL

† ADMITTED IN MD ONLY
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° ADMITTED IN IL ONLY

September 16, 1988

VIA MESSENGER

Office of General Counsel
Federal Election Commission
999 E Street, N.W., Suite 657
Washington, D.C. 20463

Attn: Janice Lacy

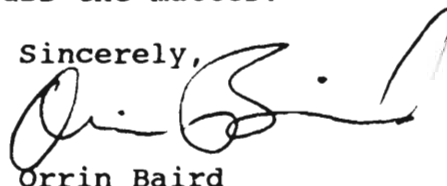
Re: MUR-2657 New York State Laborers Action Committee and
Gaspar Lupo, as Treasurer

Dear Ms. Lacy:

Enclosed please find responses to interrogatories of Mr. Lupo and the New York State Laborers' Political League in the above-referenced matter. If after reviewing the interrogatories you have any further questions regarding this matter, please let me know and I will be glad to provide whatever information you need.

If the Commission is not satisfied that the committee has complied with its responsibilities under the Act, I would request a meeting with you to discuss the matter.

Sincerely,


Orrin Baird

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encl.

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BEFORE THE FEDERAL ELECTION COMMISSION

MUR-2657 New York State Laborers
Political Action Committee and
Gasper Lupo, as Treasurer

Responses to Interrogatories

Comes now David Caivano, Administrator of the New York State Laborers' Political Action Committee, and answers the interrogatories of the Federal Election Commission as follows:

1. Provide a description of the New York Laborers' Legislative League ("the League"). State whether this organization is affiliated in any way with the New York State Laborers Political Action Committee ("the Committee").

RESPONSE:

The New York Laborers Legislative League is a political action fund which was established by the New York Regional Office of the Laborers' International Union in the late sixties or early seventies. For as long as anyone can remember, the fund appears to have been inactive. It was established by an individual who is now deceased. The New York Laborers' Legislative League is affiliated with the Laborers' International Union. The New York State Laborers' Political Action Committee is also affiliated with the Laborers' International Union.

2. The Committee reported that it received \$31,451.95 from the League on August 5, 1987. The Committee indicates that it mistakenly deposited these funds into its federal account.
 - a. Describe the circumstances under which the Committee deposited the funds into its federal, and not its non-federal, account.

RESPONSE:

a. Shortly after the death of the prior Regional Manager, the current Regional Manager, Samuel Caivano, discovered two bank accounts -- a passbook account and a checking account -- which were maintained in the name of the New York Laborers' Legislative League. It was believed that these funds were derived from voluntary contributions from members received in the early 70's. After consulting with counsel, it was determined that these funds

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could only be used to make contributions to state and local candidates where permitted by law.

At around the same time, the New York State Laborers' Political Action Committee was formed. It was intended that the Committee would have both a federal and non-federal account. On August 5, 1987, the balance in the checking account of the New York Laborers' Legislative League (\$1605.61) was transferred into a new bank account in the name of the New York State Laborers' Political Action Committee. On December 1, 1987, the League's passbook savings account was closed and the balance in that account (\$29,846.34) was transferred to the bank account in the name of the New York State Laborers' Political Action Committee. On December 9, 1987, \$112.12 was deposited in the same account. This represented interest which had been earned on the League's passbook account but which had not yet been posted to the account at the time that the account was closed. Subsequently, voluntary contributions meeting the requirements of the Act were received by the Committee and deposited into this bank account.

In January 1988, it was discovered that the Committee had failed to establish separate bank accounts for its federal and non-federal accounts. The Committee immediately on January 22, 1988 opened a separate bank account in the name of the "New York Laborers' Political Action Committee State Fund." On January 25, 1988, \$29,846.34 (the amount of money that had been deposited in the first Committee account on December 1, 1987) was transferred from the original bank account to the new New York State Laborers' Political Action Committee State Fund account.

Subsequently, in March 1988, it was realized that the original deposit from the League's checking account made on August 5, 1987 and the additional interest on the League's passbook account deposited on December 9, 1987 had been overlooked and had not been transferred out of the first bank account into the bank account of the state fund. Therefore, on March 28, 1988, \$1,717.73 was transferred out of the original bank account into the state fund bank account. This represented the \$1605.61 deposit from the League's checking account plus the \$112.12 in additional interest which had been paid on the League's passbook account.

- b. State, to your knowledge, whether the entire amount of the \$31,451.95 in funds received from the League contained money from labor unions. If it did not, please provide a break-down of how much of the funds did contain money from labor unions.

RESPONSE:

b. It is believed that none of the \$31,451.95 received from the League's accounts contained money from labor unions. We believe that that entire amount was derived from voluntary contributions from members and interest paid on those contributions. However, we cannot establish this based on existing records, and the individual who established the account is now deceased.

3. On January 25, 1988, the Committee transferred-out \$29,846.34 in funds from its federal to its non-federal account. Why did the Committee transfer an amount less than the amount of the original deposit (\$31,451.95)?

RESPONSE:

As explained in response to interrogatory 2(a), the original deposit of August 8, 1987 and the subsequent deposit of interest paid on the passbook account deposited on December 9, 1987 were overlooked in making the January 25 transfer out.

4. On March 28, 1988, the Committee transferred-out \$1,717.73 in funds from its federal to its non-federal account. This transfer and the prior transfer (\$29,846.34 on January 25, 1988) total \$31, 564.07 in funds transferred-out by the Committee from its federal account. This total amount is \$112.12 more than the original deposit of \$31,451.95 which the Committee indicated it would transfer. Please describe why the Committee transferred-out from its federal account any amount greater than the original deposit it received from the League.

RESPONSE:

As explained in response to interrogatory 2(a), the Committee transferred out all of money which had come from the League, as well as interest paid on that money.

5. The Committee states that a subsequent transfer of funds to the Committee's non-federal account involved a small additional deposit which had also been mistakenly made into the federal account. Regarding this deposit, provide:

- (a) the total amount of the deposit to the federal account;
- (b) the source of the funds; and
- (c) the date the Committee received the funds.

RESPONSE:

See response to interrogatory 2(a).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 15, 1988.



David J. Caivano

90040783125

BEFORE THE FEDERAL ELECTION COMMISSION

88 OCT 13 AM 9:26

In the Matter of)
New York State Laborers) MUR 2657
Political Action Committee)
and Gaspar Lupo, as treasurer)

SENSITIVE

COMPREHENSIVE INVESTIGATIVE REPORT #1

On July 26, 1988, the Commission found reason to believe that the New York State Laborers Political Action Committee (the "Committee") and Gaspar Lupo, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a) in connection with funds received from an unregistered committee which were mistakenly deposited into the Committee's federal account. Also on July 26, 1988, the Commission approved a letter and interrogatories to the Committee regarding these deposits, which were subsequently mailed to the Committee's legal counsel on August 8, 1988.


By letter dated August 26, 1988, counsel for the Committee requested a twenty-day extension of time due to vacation and litigation schedules. This Office granted the extension of time on September 8, 1988, so that the extended due date was September 16, 1988.

On September 16, 1988, we received a response from counsel to the interrogatories. This Office is analyzing the answers counsel provided, and will prepare a report with appropriate recommendations.

Lawrence M. Noble
General Counsel

10-12-88

Date

BY: 
Lois G. Lerner
Associate General Counsel

Staff Member: Janice Lacy

OGC-811

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RONALD SIMON

JACK CURRAN
LEGISLATIVE DIRECTOR
(NOT A MEMBER OF THE BAR)

PAUL K. REGAN
OF COUNSEL

* ADMITTED IN VA ONLY
* ADMITTED IN IL ONLY

October 27, 1988

Office of General Counsel
Federal Election Commission
999 E Street, N.W., Suite 657
Washington, D.C. 20463

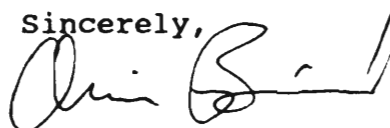
Attn: Janice Lacy

Re: MUR-2657 New York State Laborers' Political Action Committee
and Gaspar Lupo as Treasurer

Dear Ms. Lacy:

This letter is to advise you that my client would like
to initiate the conciliation process with respect to the above-
referenced matter.

Sincerely,



Orrin Baird

OB/nw

cc: Stephen Davis
Samuel Caivano

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
New York State Laborers)
Political Action Committee) MUR 2657
and Gaspar Lupo, as treasurer)

GENERAL COUNSEL'S REPORT

BACKGROUND

On July 26, 1988, the Commission found reason to believe that the New York State Laborers Political Action Committee and Gaspar Lupo, as treasurer (the "Committee"), violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a). The Commission sent interrogatories to the Committee on August 8, 1988, to which the Committee responded on September 16, 1988. On October 27, 1988, the Committee requested pre-probable cause conciliation.

II. ANALYSIS

In its response, the Committee reported facts that raise additional apparent violations of the Act. Accordingly, this Office will be making recommendations to the Commission concerning possible violations of Sections 432 and 433, and recommending that additional questions be asked of the Committee. Therefore, this Office recommends that the Commission decline at this time to enter into pre-probable cause conciliation with the Committee.


III. RECOMMENDATIONS

1. Decline at this time to enter into conciliation with the New York State Laborers Political Action Committee and Gaspar Lupo, as treasurer, prior to a finding of probable cause to believe.

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2. Approve the attached letter.

Lawrence M. Noble
General Counsel

1/3/89 BY 
Date Lois G. Wernner
Associate General Counsel

Attachments

1. Request for Conciliation
2. Letter

Staff Member: Janice Lacy

00040783129

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

New York State Laborers)
Political Action Committee)
and Gaspar Lupo, as treasurer)

MUR 2657

CERTIFICATION

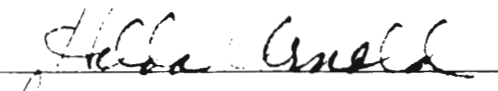
I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 9, 1989, the Commission decided by a vote of 6-0 to take the following actions in MUR 2657:

1. Decline at this time to enter into conciliation with the New York State Laborers Political Action Committee and Gaspar Lupo, as treasurer, prior to a finding of probable cause to believe.
2. Approve the letter, as recommended in the General Counsel's report signed January 3, 1989.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

January 9, 1989
Date


Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary:	Tues.,	1-3-89,	1:18
Circulated on 48 hour tally basis:	Wed.,	1-4-89,	11:00
Deadline for vote:	Mon.,	1-9-89,	4:00



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 17, 1989

Orrin Baird
Connerton, Ray and Simon
1920 L Street, N.W.
Fourth Floor
Washington, D.C. 20036

RE: MUR 2657
New York State Laborers
Political Action Committee
and Gaspar Lupo, as treasurer

Dear Mr. Baird:

On August 8, 1988, you were notified that the Federal Election Commission found reason to believe that your client, New York State Laborers Political Action Committee and Gaspar Lupo, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a). On October 27, 1988, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has considered your request and determined, because of the need for further investigation, to decline at this time to enter into conciliation prior to a finding of probable cause to believe. At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions please contact Janice Lacy, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

89 OCT 17 PM 4:09

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
)
New York State Laborers')
Political Action Committee and)
Gaspar Lupo, as treasurer)

MUR 2657

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 26, 1988, the Commission found reason to believe that the New York State Laborers' Political Action Committee and Gaspar Lupo, as treasurer (the "Committee"), violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a). These findings were based on reports filed by the Committee with the Commission which disclosed the receipt of \$31,564.07 from the New York Laborers' Legislative League (the "League"), an unregistered fund established by the New York Regional Office of the Laborers' International Union ("NY Office of the LIU"). The Committee deposited this money into its sole account. The Committee subsequently deposited individual contributions to be used for federal campaign purposes into the same account. The Commission sent interrogatories to the Committee on August 8, 1988, to which the Committee responded on September 16, 1988.

On October 27, 1988, the Committee requested pre-probable cause conciliation which was denied on January 18, 1989 (Attachment I), because of new information disclosed by the Committee indicating additional apparent violations of the Act. (Attachment II).

The Committee had filed a Statement of Organization with the Commission on January 4, 1988. However, the 1987 Year End Report

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filed by the Committee on January 4, 1988 showed that the Committee was operating as a political committee as early as August 5, 1987. (Attachment III).

II. FACTUAL AND LEGAL ANALYSIS

A. Violation of 2 U.S.C. § 441b and 11 C.F.R. § 102.5 by the Committee

2 U.S.C. § 441b(a) prohibits labor organizations from making contributions or expenditures in connection with federal elections. See also 11 C.F.R. § 114.2(b). A labor organization may, however, establish a separate segregated fund through which it may solicit contributions. See 2 U.S.C. § 441(b)(2)(C); 11 C.F.R. § 114.5(b).

An organization which finances political activity in connection with both federal and non-federal elections and which qualifies as a political committee under 11 C.F.R. § 102.5 must either establish a separate federal account into which only funds subject to the prohibitions and limitations of the Act shall be deposited or must establish a separate political committee which shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections. 11 C.F.R. § 102.5.

In its response to interrogatories, the Committee indicated that it had intended to establish separate federal and non-federal accounts in conformity with 11 C.F.R. § 102.5(a) but did not do so until January 22, 1988.

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(Attachment II(2)). Coinciding with the Committee's establishment and during the period it operated without separate federal and non-federal accounts, the League's checking and passbook savings accounts were closed and the balance, plus interest, was transferred to the Committee's account. The Committee's response to interrogatories suggests that the Regional Manager of the NY Office of the LIU, Samuel Caivano, authorized this transfer. The Committee states that the League was a political action fund established by the NY Office of the LIU sometime in the late 1960's or early 1970's and that "[f]or as long as anyone can remember, the fund appears to have been inactive."¹ The Committee acknowledges, however, that "[a]fter consulting with counsel, it was determined that these funds could only be used to make contributions to state and local candidates where permitted by law." (Attachment II(2)).

The deposits received from the League are as follows:

	<u>Date of Deposit</u>	<u>Amount</u>	<u>Source</u>
1.	8/5/87	\$ 1,605.61	League - Checking Account (closed)
2.	12/1/87	29,846.34	League - Passbook Savings Account (closed)
3.	12/9/87	112.12	League - Interest from Savings Account
		<u>\$31,564.07</u>	Total Amount Received from League

1. At the time of the initial RTB finding, this Office made no recommendation with regard to the registration or reporting obligations of the League since there was no information indicating that the League had ever intended its funds to be used for the purpose of influencing federal elections.

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The Committee's 1987 Year End Report shows \$149,851.61 in unitemized contributions and \$31,451.95 received from "Individuals/Persons Other Than Political Committees - (i) Itemized." (Attachment III(3)). This latter amount appears to represent the deposits from the League accounts described above. In its response to interrogatories, the Committee indicates that subsequent to these transactions, voluntary contributions which met the requirements of the Act were received by the Committee and deposited into the same account. (Attachment II(2)).

Sometime after receiving the last deposit described above, the Committee discovered that it had failed to establish separate federal and non-federal bank accounts in conformity with the Commission's Regulations. On January 22, 1988, the Committee opened a separate bank account in the name of "New York Laborers' Political Action Committee State Fund" to receive state funds. The Committee then made the following transfers from its federal to its state account:

	<u>Date of Deposit</u>	<u>Amount</u>	<u>Description</u>
1.	1/25/88	\$ 29,846.34	From 12/1/87 Deposit
2.	3/28/88	1,717.73	From 8/5/87 and 12/9/87 Deposits
		<u>\$ 31,564.07</u>	Total Amount Transferred to State Fund

Thus, all the funds received from the League were transferred into the Committee's state account by March 28, 1988. A Request for Additional Information ("RFAI"), was sent to the Committee on February 24, 1988 concerning the above deposits from the League and the transfers to the Committee's state fund.

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The Committee maintains that the funds received from the League were derived from voluntary contributions from members and interest paid on those contributions. The Committee asserts that none of the \$31,451.95 received from the League's accounts included money from labor unions. However, the Committee acknowledges that it is unable to identify conclusively the source of the funds. The Committee states in its response to the Commission's interrogatories that the individual responsible for establishing the League is now deceased.

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The results of the Commission's investigation indicate that the period of the League's active operation, during which it may have solicited contributions and made expenditures was prior to the enactment of the Federal Election Campaign Act ("The Act"). Consequently, the funds contained in the League accounts were not accumulated subject to the limitations and prohibitions of the Act. The League appears to have ceased to exist at the time its accounts were closed and its funds transferred to the Committee. Since the League never filed disclosure reports with the Commission, no information is in hand identifying the source of the League's funds.

The League was an unregistered fund established by, and under the control of, the NY Office of the LIU. Thus, the Committee was on notice at the time it accepted the League funds that the accounts may have contained labor organization funds. Furthermore, counsel for the Committee advised the Committee, apparently at the time of the Committee's establishment,

(Attachment II(2)), that the League funds could only be used for non-federal purposes.

In summary, the Committee deposited into its sole account \$31,451.95 from the account of an unregistered labor organization fund which the Committee has not been able to show contained only permissible monies. Therefore, it appears that the Committee violated 2 U.S.C. § 441b.

The Committee acknowledges that as a result of its failure to establish separate federal and non-federal accounts at the time it first began to receive individual contributions to be used for the purpose of influencing elections for federal office, it commingled federal and non-federal monies in the same account in violation of 11 C.F.R. § 102.5.

The Committee has requested pre-probable cause conciliation with respect to these matters. (See below).

B. Violation of 2 U.S.C. § 433 by the Committee

A separate segregated fund established under Section 441b is, by definition under the Act, a "political committee."

2 U.S.C. § 431(4)(B). As such, the fund must file a statement of organization no later than 10 days after establishment.

2 U.S.C. § 433(a). The statement of organization must disclose, inter alia, the name, address and type of committee; the name address, relationship and type of any connected organization or affiliated committee; the name, address and position of the custodian of books and accounts of the committee; the name, and

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address of the treasurer of the committee; and a listing of all banks, safety deposit boxes or other depositories used by the committee. 2 U.S.C. § 433(b).

Although the precise date that the Laborers' International Union established the Committee is unknown, the Committee apparently was operating on August 5, 1987 when it received its first deposit of funds from the League. The Committee's first report, the 1987 Year-End Report, covered the period August 5, 1987 through December 31, 1987 and showed receipts totaling \$181,303.56 and disbursements of \$1,658.36. (Attachment III(2)). The Committee's statement of organization was not filed with the Commission, however, until January 4, 1988. (Attachment III(1)). It appears that the Committee operated for at least six months without registering with the Commission. Therefore, this Office recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 433.²

III. PRE-PROBABLE CAUSE CONCILIATION

The Committee has already indicated that it wishes to enter into pre-probable cause conciliation with respect to its apparent violations of 2 U.S.C. § 441b and 11 C.F.R. § 102.5. The Committee has recently agreed to the inclusion of a finding of a

2. Both the Committee and the League share a common connected organization in the Laborers' International Union. The Committee failed to list the League as an affiliated committee in its Statement of Organization. Because it is unclear whether the League was a "political committee" within the meaning of 2 U.S.C. § 431(4), and, thus, whether it was required to be listed as an affiliate of the Committee, this Office makes no recommendation with respect to a separate violation of 2 U.S.C. § 433(b)(2) by the Committee regarding the non-reporting of an affiliated committee.

violation of Section 433 in a proposed conciliation agreement. Therefore, this Office recommends that the Commission agree to enter into pre-probable cause conciliation and approve the attached agreement.

IV. RECOMMENDATIONS

1. Find reason to believe that the New York State Laborers' Political Action Committee and Gaspar Lupo, as treasurer, violated 2 U.S.C. § 433.
2. Approve the attached conciliation agreement, letter and Factual and Legal Analysis.

Lawrence M. Noble
General Counsel

Date

10-16-89

BY:


Lois G. Lerner
Associate General Counsel

90040783139

Attachments

1. Request for conciliation and Commission denial of request
2. Response to Interrogatories
3. Excerpts from Statement of Organization and 1987 Year End Report
4. Conciliation Agreement
5. Letter to Respondents
6. Factual and Legal Analysis

Staff Person: Karen Powell

90040763140



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES R. HARRIS *DPH*
COMMISSION SECRETARY

DATE: OCTOBER 20, 1989

SUBJECT: MUR 2657 - GENERAL COUNSEL'S REPORT
DATED OCTOBER 16, 1989

The above-captioned document was circulated to the
Commission on Wednesday, October 18, 1989 at 11:00 a.m.

Objection(s) have been received from the Commissioner(s)
as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXXX</u>
Commissioner Elliott	<u>XXXX</u>
Commissioner Josefiak	<u> </u>
Commissioner McDonald	<u> </u>
Commissioner McGarry	<u> </u>
Commissioner Thomas	<u>XXXX</u>

This matter will be placed on the meeting agenda
for Tuesday, October 24, 1989 at 10:00 a.m.

Please notify us who will represent your Division before the
Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2657
New York State Laborers')
Political Action Committee)
and Gaspar Lupo, as)
treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session on
October 24, 1989, do hereby certify that the Commission
took the following actions in MUR 2657:

1. Decided by a vote of 5-0 to find reason
to believe that the New York State
Laborers' Political Action Committee
and Gaspar Lupo, as treasurer,
violated 2 U.S.C. § 433.

Commissioners Aikens, Elliott, Josefiak,
McGarry, and Thomas voted affirmatively
for the decision. Commissioner McDonald
was not present.

(continued)

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Federal Election Commission
Certification for MUR 2657
October 24, 1989

Page 2

2. Decided by a vote of 4-1 to approve the conciliation agreement, letter, and Factual and Legal Analysis attached to the General Counsel's report dated October 16, 1989.

Commissioners Aikens, Josefiak, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented; Commissioner McDonald was not present.

Attest:

October 26, 1989

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 31, 1989

Mr. Orrin Baird, Esquire
Connerton, Ray & Simon
1920 L Street, N.W.
Fourth Floor
Washington, D.C. 20036-5004

RE: MUR 2657
New York State Laborers'
Political Action Committee
and Gaspar Lupo, as Treasurer

Dear Mr. Baird:

On July 26, 1988, the Federal Election Commission (the "Commission"), found reason to believe that the New York State Laborers' Political Action Committee and Gaspar Lupo, as treasurer (the "Committee") violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a). On October 24, 1989, The Commission found reason to believe that the Committee violated 2 U.S.C. § 433. At your request, on October 24, 1989, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your clients agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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Mr. Orrin Baird
page 2

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Karen Powell, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel



BY: Lois G. Lerner
Associate General Counsel

Enclosures
Conciliation Agreement
Factual and Legal Analysis

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30 JAN 17 AM 9:24

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of

New York State Laborers'
Political Action Committee and
Frank Lupo, as treasurer

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MUR 2657

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed
by Orrin Baird, the designated counsel of New York State
Laborers' Political Action Committee.

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II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with New York State Laborers' Political Action Committee.
2. Close the file.
3. Approve the attached letter.

Lawrence M. Noble
General Counsel

1-16-90
Date

BY:


Lois G. Lerner
Associate General Counsel

Attachments

1. Conciliation Agreement
2. Photocopy of civil penalty check
3. Letter to Respondent

STAFF PERSON: Karen Powell

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS *OK*
COMMISSION SECRETARY

DATE: JANUARY 18, 1990

SUBJECT: MUR 2657 - GENERAL COUNSEL'S REPORT
DATED 16, 1990

The above-captioned document was circulated to the
Commission on Wednesday, January 17, 1990 at 11:00 a.m.

Objection(s) have been received from the Commissioner(s)
as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner Josefiak	_____
Commissioner McDonald	XXX _____
Commissioner McGarry	_____
Commissioner Thomas	_____

This matter will be placed on the meeting agenda
for Tuesday, January 23, 1990.

Please notify us who will represent your Division before the
Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

New York State Laborers' Political
Action Committee and Frank Lupo, as
treasurer

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MUR 2657

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session on January 30,
1990, do hereby certify that the Commission decided by a
vote of 4-2 to take the following actions in MUR 2657:

1. Accept the conciliation agreement with New
York State Laborers' Political Action
Committee as recommended in the General
Counsel's report dated January 16, 1990.
2. Close the file.
3. Approve the letter attached to the General
Counsel's report dated January 16, 1990.

Commissioners Aikens, Elliott, Josefiak, and Thomas
voted affirmatively for the decision; Commissioners
McDonald and McGarry dissented.

Attest:

2-2-90
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

CLOSED

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 7, 1990

Mr. Orrin Baird, Esquire
Connerton, Ray & Simon
1920 L Street, N.W.
Fourth Floor
Washington, D.C. 20036-5004

RE: MUR 2657
New York State Laborers'
Political Action Committee
and Frank Lupo, as treasurer

Dear Mr. Baird:

On January 30, 1990, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted by you in settlement of a violation of 2 U.S.C. §§ 433 and 441b, provisions of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 102.5, a provision of the Commission's Regulations. Accordingly, the file has been closed in this matter. This matter will become a part of the public record within 30 days. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.


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Mr. Orrin Baird
page 2

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact Karen Powell, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel


BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
New York State Laborers')
Political Action Fund and) MUR 2657
Frank Lupo, as Treasurer)

CONCILIATION AGREEMENT

9 0 0 4 0 7 8 3 1 5 2
This matter was initiated by the Federal Election Commission (the "Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that New York State Laborers' Political Action Fund and Frank Lupo, as treasurer, ("Respondents") violated 2 U.S.C. §§ 441b(a) and 433 and 11 C.F.R. § 102.5(a).

NOW THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. New York State Laborers' Political Action Fund is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Frank Lupo is the treasurer of New York State Laborers' Political Action Committee. At the time of the violation, Gaspar Lupo was the treasurer of the New York State Laborers' Political Action Committee.

3. 2 U.S.C. § 441b(a) provides that political committees are prohibited from accepting contributions from labor organizations in connection with federal elections.

4. Respondents accepted the transfer of \$31,564.07 in unidentified funds from bank accounts established by the New York Office of the Laborers' International Union and opened in the name of the New York Laborers' Legislative League, an unregistered fund.

5. 11 C.F.R. § 102.5 provides that political committees must establish a separate non-federal bank account for the receipt of contributions which do not meet the requirements of the Federal Election Campaign Act of 1971, as amended (the "Act"), or may only receive contributions meeting the requirements of the Act.

6. Respondents deposited funds transferred from the bank accounts of the New York Laborers' Legislative League into the Respondent's sole bank account. Respondents subsequently

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solicited and deposited individual contributions to be used for federal campaign purposes into the same account.

7. After discovering their failure to maintain separate federal and non-federal accounts, Respondents opened a second account to receive non-federal funds and redeposited the funds received from New York Laborers' Legislative League into this account.

8. 2 U.S.C. § 433 provides that a political committee must file a statement of organization with the Commission no later than 10 days after establishment of the committee.

9. Respondents filed a statement of organization with the Commission on January 4, 1988. Respondents' 1987 Year End Report filed with the Commission disclosed that the Committee had been in existence since August 5, 1987.

V. 1. Respondents accepted the transfer of unidentified funds from a bank account established by a labor organization in violation of 2 U.S.C. § 441b(a).

2. Respondents deposited contributions for use in federal elections into an account containing contributions which did not meet the requirements of the Act in violation of 11 C.F.R. § 102.5.

3. Respondents failed to file a statement of organization within 10 days of the establishment of the Committee in violation of 2 U.S.C. § 433.

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VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of three thousand eight hundred dollars (\$3,800.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.


X. This Conciliation agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

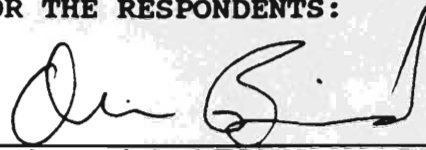
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BY:


Lois G. Lerner
Associate General Counsel

Date 2/6/90

FOR THE RESPONDENTS:


Orrin Baird
Attorney

Date 12/15/89

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2657

DATE FILMED 3/7/90 CAMERA NO. 4

CAMERAMAN AS

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