



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
United Public Workers,) MUR 6344
AFSCME Local 646, AFL-CIO)

**STATEMENT OF REASONS
OF VICE CHAIR ELLEN L. WEINTRAUB AND
COMMISSIONERS CYNTHIA L. BAUERLY AND STEVEN T. WALTHER**

This matter concerns a union’s independent political activities and its apparent attempt to coerce its employees to participate in them on the employees’ own time. The facts before the Commission strongly suggest that United Public Workers, AFSCME Local 646, AFL-CIO (“UPW” or “the union”) insisted that its employees forego other employment and personal obligations to participate in the union’s political activities in support of Colleen Hanabusa, a candidate in a 2010 special election for Hawaii’s 1st Congressional District, and that the union fired two employees who refused to fully participate. We agreed with the recommendation of the Office of General Counsel (“OGC”) to find reason to believe that UPW’s conduct violated the Federal Election Campaign Act of 1971, as amended (“the Act”), 2 U.S.C. § 441b(a).¹

It is undisputed that, on April 5, 2010, UPW held a mandatory meeting for all its employees at which union managers stated that employees were “expected” to participate in pro-Hanabusa campaign activities after work-hours.² These mandatory activities

¹ We voted to find reason to believe that UPW violated 2 U.S.C. § 441b(a); then-Vice Chair Hunter and Commissioners McGahn and Petersen dissented. See Certification in MUR 6344, dated April 5, 2011. However, the Commission unanimously voted 1) to find reason to believe that UPW violated 2 U.S.C. § 434(g) by failing to report independent expenditures in support of Hanabusa; and 2) to authorize an investigation to determine the scope of UPW’s violation. *Id.* The resulting investigation revealed that UPW failed to report disbursements of \$14,231.37 for employee campaign activities, including sign-waving, phone banking, and canvassing, and \$26,260.72 for two radio ads expressly advocating Hanabusa’s election and the defeat of her opponent. General Counsel’s Report #2 at 5-6. UPW recently signed a conciliation agreement and agreed to pay a penalty to settle that violation. See Conciliation Agreement in MUR 6344, dated June 29, 2012.

² Complaint at ¶¶ 16, 18; see also Factual and Legal Analysis (“F&LA”) (UPW) at 2-3. Employees were also encouraged to make personal financial contributions directly to the Hanabusa Committee. For the reasons set forth in the respective Factual and Legal Analyses, the Commission found no reason to believe that UPW or its managers coerced employees to make direct financial contributions to the Hanabusa

12044314776

included sign-waving on Fridays after 4:30 pm, phone banking Mondays through Thursdays after 4:30 pm, and canvassing on Saturdays.³ Additionally, the union managers directed UPW employees who had part-time work or other off-hour obligations to inform their other employers or supervisors that they would be unavailable for the next six weeks.⁴ There is no evidence, and the union does not suggest, that any employee was compensated for participating in after-hours campaign activities. Nor has the union attempted to argue that such activities were part of any employee's normal duties.

The complainant, a UPW employee, protested this mandatory participation policy at the April 5 meeting and documented her concerns in a memorandum afterwards.⁵ She explained that she was "actually eager" to participate in after-hours weekday phone banking, but that she would not participate in sign-waving on Friday evenings (due to public safety concerns) and was unavailable to participate in canvassing on Saturdays because of part-time weekend employment.⁶ Similarly, the complainant was aware that one of her colleagues had also informed the union managers that he could not participate in the Saturday canvassing because of outside employment obligations.⁷ Both the complainant and her colleague were terminated, allegedly without justification, on April 16, 2010 – approximately ten days after they informed their managers of their inability to fully participate in campaign activities.⁸

Although UPW denied that any employees were required to participate in campaign activities "as a condition of continued employment" or to make direct contributions to the Hanabusa Committee,⁹ its response did not deny any of the factual allegations described in the complaint. In fact, UPW's response confirmed that employees were required to attend a meeting at which they were "strongly urged" to participate in campaign activities after work hours.¹⁰ Nor has UPW actually disputed the complaint's description of the mandatory meeting or provided any evidence that it fired

Committee and no reason to believe that UPW, its union managers, or the Hanabusa Committee coordinated with respect to the UPW's expenditures for pro-Hanabusa campaign activities. F&LA (UPW) at 5-9; F&LA (Nakanelua) at 5-8; F&LA (Uwaine) at 5-8; F&LA (Santiago) at 5-8; F&LA (Hanabusa 2010) at 3-5.

³ Complaint at ¶ 16; F&LA (UPW) at 3. UPW's official work week is Monday-Friday from 7:30 am – 4:30 pm. Complaint at ¶ 9.

⁴ *Id.* at ¶ 21; F&LA (UPW) at 3.

⁵ Complaint at ¶¶ 23, 25; F&LA (UPW) at 4.

⁶ See UPW Response Ex.14.

⁷ Complaint at ¶ 34; F&LA (UPW) at 4.

⁸ Complaint at ¶¶ 14-37; F&LA (UPW) at 4-5.

⁹ UPW Response at 12.

¹⁰ *Id.* at 14-15.

1204431477

the two employees for any reason other than their refusal to participate in certain campaign activities.¹¹

The Act and Commission regulations place several limits on the ability of corporations and labor organizations to force employees to participate in political activities.¹² A number of these prohibitions focus on the activities of separate segregated funds (SSFs), which formerly served as the primary vehicles through which corporations and unions could participate in Federal elections. However, the Commission has also interpreted the Act to generally prohibit the use of “coercion, such as the threat of a detrimental job action,” to induce “any individual to make a contribution....”¹³ This approach is wholly consistent with the congressional objective to ensure that contributions from corporate and union employees, who wish to aid their employers’ political activities, are truly voluntary.¹⁴

Here, as explained above, there is significant evidence that UPW coerced employees to participate in the union’s political activities supporting Hanabusa. Even though UPW appears to have engaged in independent speech, its efforts to coerce its employees to aid its efforts on employees’ own time violated the Act as interpreted by our regulations. After *Citizens United*, UPW had every right to expressly advocate for its chosen candidate and against her opponent.¹⁵ Nothing in *Citizens United* suggests, however, that the Court intended to expand the rights of corporations and unions at the expense of their employees’ longstanding rights to be free from coercion and to express

¹¹ General Counsel’s Report #2 at 3; UPW Response at 10-11.

¹² See, e.g., 2 U.S.C. §§ 441b(a), 441b(b)(3); 11 C.F.R. §§ 114.2(f)(2)(iv), 114.5(a)(2)-(4).

¹³ 11 C.F.R. § 114.2(f)(2)(iv); see also Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates, Final Rule, 60 Fed. Reg. 64259, 64265 (Dec. 14, 1995) (corporate or labor union “employees who are unwilling to [contribute or fundraise in support of a political campaign] as part of their job have a right to refuse to do so”); MUR 5664 (International Union of Painters and Allied Traders) (finding RTB that union violated section 441b(a) by coercing employees to participate in rallies supporting John Kerry for President); MUR 5268 (Kentucky State District Council of Carpenters) (union violated section 441b(a) by coercing employees to perform work for various campaigns).

¹⁴ See, e.g., 122 Cong. Rec. H2614 (1976) (Statement of Representative Thompson in connection to 1976 amendments to Act); 122 Cong. Rec. S3700 (1976) (Statement of Sen. Bumpers in connection to same). Congress was highly concerned with maintaining “a balance between the organizational rights [of corporations and labor unions] and the rights of those who wish to retain their shareholding interest or membership status [or employment] but who disagree with the majority’s political views.” 117 Cong. Rec. 43379 (1971) (statement of Representative Hansen in connection to initial passage of the Act).

¹⁵ 558 U.S. ___, 130 S. Ct. 876 (2010). Although the plaintiff in *Citizens United* was a corporation, the Commission has interpreted the decision to apply equally to communications by labor organization. See Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, Notice of Proposed Rulemaking, 76 Fed. Reg. 80803 n.3 (Dec. 27, 2011).

12044314778

or decline to express their own political views. Such a result would run counter to objectives that Congress has repeatedly articulated.¹⁶

For these reasons, we voted to approve OGC's recommendation to find reason to believe that UPW's efforts to coerce its employees to participate in campaign activity violated the Act.

8-7-12
Date

Ellen L. Weintraub
Ellen L. Weintraub
Vice Chair

8-7-12
Date

Cynthia L. Bauerly
Cynthia L. Bauerly
Commissioner

8-7-12
Date

Steven T. Walther
Steven T. Walther
Commissioner

¹⁶ We would support asking for public comment on whether the Commission's rules governing coercion should be updated and clarified in the wake of *Citizens United* and related decisions from the lower courts. Indeed, as we have stated previously, a comprehensive rulemaking to address the many regulatory issues created by recent changes in the governing law is long overdue. See, e.g., Statement of Chair Cynthia L. Bauerly and Commissioner Steven T. Walther regarding Notices of Proposed Rulemaking to Address *Citizens United*, Dec. 15, 2011, available at http://www.fec.gov/members/statements/Statement_of_Bauerly_and_Walther_on_CU_Petition_NPRMs.pdf; Statement of Commissioner Ellen L. Weintraub on the Draft Notices of Proposed Rulemakings on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, June 17, 2011, available at <http://www.fec.gov/members/weintraub/nprm/statement20110617.pdf>.