

Executive Summary and Staff Analysis
Service Employees International Union Healthcare 775NW
(45-Day Citizen Action Complaint)
PDC Case No. 15-070

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Case No. 15-070, a 45-Day Citizen Action Complaint (Complaint) filed on July 22, 2015 by James G. Abernathy and David M.S. Dewhirst of the Freedom Foundation against Service Employees International Union Healthcare 775NW (SEIU 775) and David Rolf, Adam Glickman, and Sterling Harders in their respective capacities as President, Secretary-Treasurer, and Vice President of SEIU 775.

Background

The Citizen Action Complaint was filed with the Washington Attorney General's Office and referred to the PDC for investigation and possible action on August 6, 2015. On August 24, 2015, PDC staff sent a letter to SEIU 775, informing them that staff had opened a formal investigation, and requesting a written response to the allegations and to several staff questions by September 4, 2015.

Allegations

The Citizen Action Complaint included three allegations, with the third allegation containing four components: **(See Exhibit 1 – Complaint)**

First Allegation: That SEIU 775 is a political committee because it has an expectation of receiving contributions and making expenditures in support of, or in opposition to candidates or ballot propositions. The complaint alleged that as a political committee, SEIU 775 has failed to register and report with the PDC.

Second Allegation: That SEIU 775, as a lobbyist employer, has failed to file a special report of contributions (PDC form L-3C) for in-kind contributions aggregating more than \$100 in a calendar month to its continuing political committee, SEIU 775 Quality Care Committee (SEIU 775 PAC).

Third Allegation: That SEIU 775 and its officers sent a political advertising letter on or about August 12, 2014 to Individual Providers (IPs) who were nonmembers of the union, soliciting them to join the union, and as full member to authorize a contribution through a payroll deduction to the international union's political committee, SEIU Committee on Political Education (SEIU COPE), a committee registered with and reporting to the Federal Election Commission. The Complaint alleged that sending this political advertising letter triggered several violations, as follows:

1. That SEIU 775 and its officers, as a political committee, failed to report the receipt of contributions authorized by IPs joining the union in response to the August 12, 2014 letter as contributions earmarked for SEIU COPE. (RCW 42.17A.270)

2. That, in the alternative, if the PDC determines that SEIU 775 is not a political committee, SEIU 775 failed to report the August 12, 2014 letter as an independent expenditure not otherwise required to be reported. (RCW 42.17A.255)
3. That SEIU 775 and its officers failed to report the August 12, 2014 letter as independent expenditure political advertising within 24 hours of mailing the letter, a requirement for political advertising mailed within 21 days of an election with a fair market value of \$1,000 or more. (RCW 42.17A.260)
4. That SEIU 775 and its officers failed to timely report the August 12, 2014 letter as an electioneering communication within 24 hours of mailing the letter, a requirement for an electioneering communication mailed within 60 days of an election that clearly identifies a candidate for a state, local or judicial office either by specifically naming the candidate, or by identifying the candidate without using the candidate's name, with a fair market value of \$1,000 or more. (RCW 42.17A.305)

Investigative Findings (See Exhibit 2 – Response to Complaint and Exhibit 3 – Supplement to Response to Complaint)

First Allegation: The Commission's Interpretation 07-02, "Primary Purpose Test" Guidelines, sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements: (1) a "receiver of contributions" prong; and (2) a "making of expenditures to further electoral political goals" prong. A requirement of the "making of expenditures" prong states that the organization making expenditures must have as its "primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ..." (WA Court of Appeals, *EFF v. WEA*, 2003). In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question. A nonexclusive list of analytical tools that may be used to evaluate the evidence includes: (1) the content of the stated goals and mission of the organization; (2) whether the organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals.

Receiver of Contributions Prong: The complaint alleged that SEIU 775 is a political committee because it has an expectation of receiving contributions, and is a receiver of contributions. This argument is based on the fact that in an August 12, 2014 letter, SEIU 775 asked IPs who are nonmembers to join the union as full members, and after

joining, to authorize their employer to withhold an indicated amount per month from their pay and forward it to SEIU 775 as a contribution to be forwarded to SEIU COPE.

SEIU 775's role in these transactions was to ask nonmembers to become full members and to authorize payroll deductions for contributions to SEIU COPE. In soliciting contributions to a federal political committee, SEIU 775 was not a receiver of contributions under RCW 42.17A, nor do these actions demonstrate an expectation of receiving contributions reportable under RCW 42.17A. These activities do not make SEIU 775 a political committee.

Primary Purpose Test Prong: The complaint also alleged that SEIU 775 is a political committee because one of its primary purposes is to support or oppose candidates or ballot propositions. To address this allegation, PDC staff reviewed evidence relevant to the analysis recommended by the EFF v. WEA court.

SEIU 775's stated mission is to "unite the strength of all working people and their families, to improve their lives and lead the way to a more just and humane world." Its stated goals are to:

- Lift caregivers out of poverty.
- Build worker organizations that are powerful, sustainable, and scalable.
- Transform health and long-term care to ensure quality and access for all.
- Increase prosperity and reduce inequality for working people.

SEIU 775 has eight stated strategies to achieve its goals, one of which may include electoral political activity (Strategy 3):

1. Build worker leadership and activism.
2. Help workers form unions and other powerful organizations.
3. Hold politicians accountable.
4. Bargain strong contracts and provide quality services and benefits.
5. Advance pro-worker policy through influencing government, industry, and public opinion.
6. Build strategic partnerships.
7. Govern the Union democratically and use our resources responsibly.
8. Adapt. Innovate. Create.

No evidence was submitted to contradict SEIU 775's public statements concerning the union's mission, goals and strategies to achieve its goals. No evidence was provided demonstrating that SEIU 775 has merely restated its primary political purpose in broad nonpolitical terms. No non-financial evidence was provided showing that supporting candidates or ballot proposition campaigns was a top priority for SEIU 775 during either of the two years subject to the Citizen Action Notice. Staff found that SEIU 775's electoral political activity, described by its strategy to "hold politicians accountable," may have furthered its stated goals and mission. However, no evidence was found that SEIU 775 has substantially achieved its stated goals and mission by a favorable outcome in an election, nor was a specific election campaign cited in the allegations. It is clear that SEIU 775 uses means other than electoral political activity to achieve its stated goals.

Financial Evidence of Expenditure Prong – (See Exhibit 4 - PDC Staff Chart of SEIU Campaign Contributions (7/22/13 – 7/22/15))

SEIU 775 is required to produce audited financial reports detailing its "chargeable" and "nonchargeable" expenditures to show how the union calculates its agency fee that must be paid by nonmembers in lieu of paying full membership dues. Chargeable expenses are for activities supporting its collective bargaining work, while nonchargeable expenditures are those expenditures that do not relate to negotiating and administering a collective agreement and in adjusting grievances and disputes. The agency fee for workers who are not full union members is equal to the full union dues multiplied by the percentage of chargeable expenditures to total expenditures.

To demonstrate that SEIU 775 is a political committee during the two-year period subject to the Citizen Action Notice, the Complaint included a copy of SEIU 775's audited financial reports for the year ending December 31, 2012, which showed total expenditures of \$22,890,782, with 60% of those expenditures being chargeable and 40% being nonchargeable. The Complaint inferred that nonchargeable expenditures during the period covered by the Complaint are similar to the 2012 period (\$9,223,415 in 2012) and also concluded that all nonchargeable expenses are devoted to election-influencing activities, along with much of the 60% chargeable expenses, resulting in electoral political activities being a primary purpose of the union in 2012, and by inference, making SEIU 775 a political committee during the period covered by the Complaint. Of the union's \$9,223,415 in nonchargeable expenditures during 2012, \$1,313,074 were described in Federal labor disclosures as "donations," and that amount was split between political and nonpolitical donations.

SEIU 775 stated that it did not contribute any money to candidates in 2013, 2014 or 2015.

SEIU 775 stated that during 2013, it contributed \$418,821 to ballot measure campaigns and \$307,487 to SEIU 775 PAC for total contributions of \$726,308. Its total expenditures in 2013 from IRS Form 990 were \$22,821,921, resulting in campaign contributions equal to 3.18% of total expenditures.

SEIU 775 stated that during 2014, it contributed \$5,000 to ballot measure campaigns and \$20,000 to SEIU 775 PAC for total contributions of \$25,000. Total expenditures for 2014 is not yet available from IRS Form 990, but the expenditures are expected to be higher than 2014.

SEIU 775 stated that between January 1, 2015 and July 22, 2015, it contributed \$75,950 to SEIU 775 PAC. Total expenditures to date for 2015 were not made available.

A review of the PDC database showed that SEIU 775 made campaign contributions during the two-year period covered by the Citizen Action Complaint totaling \$758,403 (\$630,401 in 2013, \$49,002 in 2014, and \$79,000 in 2015). This is an average of \$379,202 per year resulting in campaign contributions that totaled no more than 1.66% of projected annual expenditures, using 2013 expenditures of \$22,821,921 as a benchmark. This is clearly less than a majority of SEIU 775's expenditure activity, considered an important part of the balancing of factors recommended by the EFF v. WEA court.

SEIU 775 acknowledged that it made expenditures during the period covered by the Complaint to its PAC and/or in support of ballot propositions, but denied that there is evidence that the primary or one of the primary purposes of SEIU 775 is to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions, such that SEIU 775 is a political committee subject to the Public Disclosure Act's disclosure requirements.

Second Allegation: That SEIU 775, as a lobbyist employer, has failed to file a special report of contributions (PDC form L-3C) for in-kind contributions aggregating more than \$100 in a calendar month to its continuing political committee, SEIU 775 Quality Care Committee (SEIU 775 PAC). In responding to the Citizen Action Notice, SEIU 775 denied that any of its staff members performed more than incidental PAC related functions that exceeded \$100 in any month during the period covered by the Complaint. PDC staff asked SEIU 775 to review the services performed by its staff, including Adam Glickman, Campaign Manager and a Committee Officer for SEIU 775 Quality Care Committee, and David Rolf and Sterling Harders, Committee Officers of the PAC, and to file L-3C reports as needed. SEIU 775 has informed PDC staff that the union is reviewing staff's request to review the services performed by SEIU 775 staff members, and to calculate the value of the work performed to operate and manage the PAC, and if the value exceeds \$110 in any month during the period July 22, 2013 through July 22, 2015, to report these in-kind contributions on L-3C reports.

Third Allegation:

- That SEIU 775 and its officers, as a political committee, failed to report the receipt of contributions authorized by IPs joining the union in response to the August 12, 2014 letter as contributions earmarked for SEIU COPE. (RCW 42.17A.270). The requirement to complete a report entitled "Earmarked

contributions," is reserved for a political committee receiving a contribution earmarked for the benefit of a candidate or another political committee under the jurisdiction of the PDC. Neither occurred in this matter. When a member of SEIU 775 authorizes his or her employer to withhold funds from their wages and submit it to the union to be forwarded to SEIU COPE, a federal political committee, it is a direct contribution to SEIU COPE. It is not being contributed to SEIU 775, earmarked for the benefit of SEIU COPE. In addition, a contribution made to a federal committee is outside the jurisdiction of the PDC.

- If the PDC determines that SEIU 775 is not a political committee, the Complaint offered an alternative allegation that at SEIU 775 failed to report the August 12, 2014 letter as an independent expenditure not otherwise required to be reported. (RCW 42.17A.255). PDC staff found that the August 12, 2014 letter was a request that nonunion members join the union by completing an enclosed membership form, and if they join, to authorize voluntary contributions to SEIU COPE, a federal political committee. It was not sent in support of or in opposition to any candidate or ballot proposition. Therefore, it was not an independent expenditure reportable under RCW 42.17A.255.
- That SEIU 775 and its officers failed to report the August 12, 2014 letter as independent expenditure political advertising within 24 hours of mailing the letter, a requirement for political advertising mailed within 21 days of an election with a fair market value of \$1,000 or more. (RCW 42.17A.260). As noted above, the August 12, 2014 letter was a request that nonunion members join the union and authorize voluntary contributions to SEIU COPE. It was not independent expenditure political advertising required to be reported in accordance with RCW 42.17A.260.
- That SEIU 775 and its officers failed to timely report the August 12, 2014 letter as an electioneering communication within 24 hours of mailing the letter, a requirement for an electioneering communication with a fair market value of \$1,000 or more, mailed within 60 days of an election that clearly identified a candidate for a state, local or judicial office either by specifically naming the candidate, or by identifying the candidate without using the candidate's name. (RCW 42.17A.305). As noted above, the August 12, 2014 letter was a request that nonunion members join the union and authorize voluntary contributions to SEIU COPE. It was not an electioneering communication required to be reported in accordance with RCW 42.17A.305.

Conclusion

Based on the factors identified in staff's investigation and described here, staff has concluded that:

First Allegation: SEIU 775 is not a political committee with a requirement to register and report with the PDC, and did not violate RCW 42.17A.205, .235, and .240 because

it is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions, and because supporting candidates or ballot propositions is not one of its primary purposes.

Second Allegation: SEIU 775, as a lobbyist employer, may have violated RCW 42.17A.630(2) by failing to report in-kind contributions for the value of staff time to operate and manage its political committee, SEIU 775 Quality Care Committee, on L-3C reports. No definitive evidence was produced to verify the amount and value of staff time dedicated to running the PAC during the Complaint period. However, it is likely that a reportable value for staff time to operate and manage the committee was required to be disclosed.

Third Allegation:

- SEIU 775 and its officers, as a political committee, did not violate RCW 42.17A.270 by failing to report the receipt of contributions authorized by IPs joining the union in response to the August 12, 2014 letter as contributions earmarked for SEIU COPE. The contributions forwarded to SEIU COPE were not earmarked contributions.
- SEIU 775 did not violate RCW 42.17A.255 by failing to report the August 12, 2014 letter as an independent expenditure not otherwise required to be reported. This expenditure was not made in support of or in opposition to any candidate or ballot proposition. The August 12, 2014 letter was a request that nonunion members join the union and authorize voluntary contributions to SEIU COPE.
- SEIU 775 did not violate RCW 42.17A.260 by failing to report the August 12, 2014 letter as independent expenditure political advertising within 24 hours of mailing the letter. The August 12, 2014 letter was a request that nonunion members join the union and authorize voluntary contributions to SEIU COPE. It was not independent expenditure political advertising.
- SEIU 775 did not violate RCW 42.17A.305 by failing to timely report the August 12, 2014 letter as an electioneering communication within 24 hours of mailing the letter. The August 12, 2014 letter was a request that nonunion members join the union and authorize voluntary contributions to SEIU COPE. It was not an electioneering communication.

Recommendation

For the reasons described above, staff recommends that the Commission recommend to the Attorney General that no further action be taken on the Citizen Action Complaint. Staff recommends that the Commission direct staff to continue working with SEIU 775 to determine whether L-3C reports are required for the value of staff time to operate and manage its political committee, SEIU 775 Quality Care Committee.

Applicable Statutes, Rules, and Interpretations

RCW 42.17A.005(26)

"Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of *eight hundred dollars or more. A series of expenditures, each of which is under eight hundred dollars, constitutes one independent expenditure if their cumulative value is eight hundred dollars or more.

RCW 42.17A.005(19)(a)

(19)(a) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

(i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(ii) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

RCW 42.17A.005(37)

"Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

Interpretation 07-02 "Primary Purpose Test" Guidelines

Interpretation 07-02 is a summary of the "primary purpose test" Guidelines that relate to "political committees" under Washington State law. It sets forth two alternative prongs under which an individual or organization may become a political committee and subject to the Act's reporting requirements: (1) a "receiver of contributions" prong; and (2) a "making of expenditures to further electoral political goals" prong. A requirement of the "making expenditures" prong states that the organization making expenditures must have as its "primary or one of its primary or one of its primary purposes ... to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions ..." (WA Court of Appeals, EFF v. WEA, 2003). In addition, the Interpretation states that an appropriate framework for determining whether electoral political activity is one of the organization's primary purposes should include an examination of the stated goals and mission of the organization and whether electoral political activity is a primary means of achieving the stated goals and mission during the period in question. A nonexclusive list of analytical tools that may be used to evaluate the evidence includes: (1) the content of the stated goals and mission of the organization; (2) whether the organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals.

RCW 42.17A.205

Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier.

RCW 42.17A.235 and .240

Every political committee is required to file ongoing reports of contributions and expenditures at specified intervals.

RCW 42.17A.255

For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW

42.17A.220, 42.17A.235, and 42.17A.240. Any person making "independent expenditures" not otherwise required to be reported, shall file a C-6 report within five days after the date of making an independent expenditure of \$100 or more.

RCW 42.17A.260

The sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.

RCW 42.17A.305

A payment for or promise to pay for an electioneering communication shall be reported to the Commission on forms developed by the Commission at specified times in a specified manner.

Exhibits

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| Exhibit 1 | 45-Day Citizen Action Complaint |
| Exhibit 2 | Response to Complaint |
| Exhibit 3 | Supplement to Response to Complaint |
| Exhibit 4 | PDC Staff Chart of SEIU Campaign Contributions (7/22/13 – 7/22/15) |