



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

MEMORANDUM

Date: February 1, 2017
To: Public Disclosure Commission Members
From: Kurt Young, PDC Compliance Officer
Subject: 45-Day Citizen Action Complaint
Service Employee's International Union 775 (SEIU 775)
PDC Case 12270

I. Background, Complaint Allegations, Request for PDC Review and Statutes/Rules

The Service Employee's International Union 775 (SEIU 775) is a local labor organization that is affiliated with the Service Employees International Union. SEIU 775 is a Lobbyist Employer that has been registered with the PDC since 2004, and also has a political action committee.

On October 4, 2005, SEIU Local 775 Separate Segregated Fund filed a Committee Registration (C-1pc report), registering as a new political action committee, selecting the Full Reporting option and listing David Rolf as Treasurer.

On August 29, 2007, SEIU Healthcare 775NW Separate Segregated Fund filed an amended C-1pc report, listing Adam Glickman-Flora as the Campaign Manager and Suzanne Wall as Treasurer.

On February 8, 2012, Service Employees International Union Healthcare 775NW Quality Care Committee filed a C-1pc report

On December 15, 2016, a 45-day Citizen Action Letter (Complaint) was filed by The Freedom Foundation (FF) pursuant to RCW 42.17A.765(4) with the Washington State Attorney General, Clark County Prosecuting Attorney, Ferry County Prosecuting Attorney, Lewis County Prosecuting Attorney, Lincoln County Prosecuting Attorney, King County Prosecuting Attorney, and Thurston County Prosecuting Attorney. FF alleged that SEIU 775 have violated provisions of RCW 42.17A by failing to register and report as a political committee for their combined support of candidates and ballot propositions in Washington State during calendar year 2016.

Exhibit #1.

The Citizen Action Letter was received by the Washington State Attorney General's Office (AGO) on December 15, 2016, and the Complaint was referred to the PDC by the AGO for investigation on January 5, 2017.

RCW 42.17A.005(39) defines "political committee" as "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."

RCW 42.17A.205 require political committees to register with the PDC if they have the expectation of receiving contributions or making expenditures in support a statewide ballot proposition.

RCW 42.17A.235 states that **RCW 42.17A.240** require political committees, including bona fide political party committees, to timely and accurately file reports of contributions and expenditures, including the disclosure of contributions made to candidates for public office. Under the full reporting option, until five months before the general election, Summary Contribution and Expenditure Reports (C-4 reports) are required monthly when contributions or expenditures exceed \$200 since the last report. C-4 reports are also required 21 and 7 days before each election, and in the month following the election, regardless of the level of activity. Monetary Contribution reports (C-3 reports) are required to be filed weekly beginning June 1st of an election year, on the Monday following the date of deposit, and monetary contributions must be deposited within five business days of receipt.

PDC Interpretation 07-02, *Primary Purpose Test Guidelines*, distills relevant case law and other legal guidance (AGO 1973 no. 14, *State v. Dan Evans Committee*, and *Evergreen Freedom Foundation v. Washington Education Association*) concerning the definition of "political committee" in RCW 42.17.020(39). As discussed in the Interpretation, a person is a political committee if that person becomes a "receiver of contributions" to support or oppose candidates or ballot propositions, or if expenditures to support or oppose candidates or ballot propositions become one of the person's primary purposes.

II. Complaint

The 45-day letter alleges that the SEIU 775 as a labor organization, engaged in political activities, and those activities indicate that a primary purpose of the union is to influence elections. Therefore, the union needs to report all activities as a political committee and not just contribution and expenditure activities undertaken by a political committee.

As part of the complaint filed with the PDC, FF provided 65 exhibits containing thousands of pages of documents (Note: none of the exhibits are attached to staff's Investigative Review), that included the following:

- Multiple copies and amendments of US Department of Labor Forms LM-2 filed by SEIU 775 for calendar years 2010, 2011, 2012, 2013, 2014 and 2015.
- Copies of C-4 report and amended C-4 reports filed by SEIU 775 PAC for calendar years 2012-2016.

- A multi-page printout from the Working Washington website.
- An amended copy of IRS Form 990 for calendar year 2012.
- A copy of an SEIU 775 Membership Application.
- A printout from the SEIU 775 website entitled "About Us."
- A copy of SEIU 775 Constitution and By-laws.
- An SEIU 775 "Notice to Represented Members."
- A copy of SEIU 775 "Join Today" communication sent to non-members.
- A copy of an SEIU 775 email sent to members.
- Copies of SEIU 775 2012 and 2016 candidate endorsements.
- A copy of a 2016 SEIU 775 Candidate Guide.
- A copy of 2016 Initiative recommendations.
- A copy of a 2016 post-election email communication sent to members.
- A copy of a 2012 Jay Inslee C-3 report.
- Copies of 2016 I-1501: Campaign to Prevent Fraud and Protect Seniors C-3 reports.
- A copy of a 2016 Seattle Times article concerning SEIU and their participation in the 2016 election cycle.
- 720 pages of C-3 reports filed by candidates and political committees dating back to CY 2010, disclosing contributions that had been received from SEIU 775.
- 263 pages of C-4 reports
- Multiple copies of C-3 reports filed by candidates disclosing contributions received from SEIU 775.

III. Staff Investigative Review and Analysis

A. Records and Database Information

PDC staff reviewed the following documents:

- December 15, 2016, a 45-day Citizen Action Letter (Complaint) was filed by The Freedom Foundation (FF) against SEIU 775, and the multiple attachments included as part of the Complaint.
- SEIU 775 monetary and in-kind contributions, and expenditures listed in the PDC contribution and expenditure database.
- C-3, C-4 and Independent Expenditure reports (C-6 reports) filed by SEIU 775 PAC, Monthly Lobbyist Expense reports (L-2 reports) filed by SEIU 775 registered lobbyists, and Annual Lobbyist Employers reports (L-3 reports) filed by SEIU 775.
- PDC staff Executive Summary and Analysis of PDC Case 15-70 concerning a similar Complaint filed against SEIU 775 by the FF. **(Exhibit #2)**
- January 6, 2017, response letter from Dmitri Iglitzin, an attorney with Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP, on behalf of SEIU 775 that was sent to Linda Dalton, Senior Assistant Attorney General and forwarded to PDC staff. **(Exhibit #3)**

B. PDC Staff Investigative Review Findings and Analysis

The scope of PDC staff's review of SEIU 775 activities is limited by the Citizen Action letter to potential alleged violations that occurred within two years from the date the Complaint was filed. PDC staff reviewed activities undertaken by SEIU 775, as a local union, and the SEIU 775 Quality Care PAC for calendar year 2016.

Summary of PDC Interpretation #07-02 "Primary Purpose Test Guidelines"

On May 2, 2007, the Commission adopted PDC Interpretation #07-02, which is based on a formal Attorney General's Opinion (AGO) and two court cases that were decided after Initiative 276 was approved by voters in 1972. The interpretation describes a "primary purpose" test or analysis that is used to assist in determining when an entity may become a political committee and be required to register and report in accordance with the disclosure requirements. See Exhibit #3.

Specifically, the interpretation referenced the trial court's decision in *Evergreen Freedom Foundation v. Washington Education Association* which adopted a standard for determining "one of the primary purposes" of an entity, and applied it by stating:

An organization is a political committee if one of its primary purposes is to affect governmental decision making by supporting or opposing candidates or ballot propositions, and it makes or expects to make contributions in support of or in opposition to a candidate or ballot measure.

The interpretation discussed two possible prongs or scenarios under which an entity (person) may become a political committee. The two prongs include: (1) Having the expectation to receive or receiving contributions that are used to support or oppose candidates or ballot propositions; or (2) Having the expectation of making expenditures to further the electoral political goals of an organization.

When the evidence indicates that one of an organization's primary purposes is electoral political activity during a specific period of time, the organization may be a political committee and be required to comply with the appropriate disclosure requirements.

Staff Review Findings

Mr. Igliztin stated in the response that the most recent complaint filed by the FF against SEIU 775 was "very similar, if not identical" to the allegations that were filed by FF against SEIU 775 on July 22, 2015. He went on to state that "Those allegations were carefully investigated by the Washington State Public Disclosure Commission ("PDC") in PDC Case No. 15-070, which issued an Executive Summary and Staff Analysis on or about September 22, 2015, which found the charges lacking in merit. On September 24, 2015, the Washington State Attorney General's Office then reached the same conclusion, effectively adopting both the analysis and the conclusions of the Commission."

Mr. Iglitzin stated that SEIU 775 was not a political committee required to register with PDC under the "contributions" prong because there is no evidence that it had "the expectation of receiving contributions" in support of, or opposition to, any candidate or ballot proposition.

Concerning FF's new allegations, Mr. Iglitzin provided the following:

- The first charge provides no evidence that the funds SEIU 775 received from SEIU International (SEIU) were either solicited or used for the purpose of supporting or opposing any candidate or ballot proposition. SEIU 775's LM- 2 report (see Exhibit's A and B) disclosed that a sum of money was provided to SEIU 775 by SEIU for "political advocacy," and showed that SEIU 775 received money from SEIU, but provided no evidence that the money was intended to be used for electoral political activity.
- The second argument makes "the same error or misunderstanding that flawed" FF's 2015 Complaint against SEIU 775 since the allegations fails to understand that the provision by SEIU 775 of providing staff time to other entities and then being reimbursed for such staff time is not a contribution. Mr. Iglitzin further stated that expenditures made to SEIU 775 by a political committee are a reimbursement and not a contribution, such as the example provided concerning Working Washington. The funds were not provided by SEIU 775 for the purpose of supporting or opposing a candidate or ballot proposition, but were paid for staff services provided by SEIU 775 to Working Washington.
- He noted that FF uses the same logic concerning the allegation that the funds paid, which were actually reimbursements made to SEIU 775 by SEIU 775 Quality Care PAC, were "to purchase staff time from SEIU 775 (Complaint Exhibits C, J, and K) and were not a contribution being made to SEIU 775 for electoral political purposes."
- The third argument, that "SEIU 775's activities during the two-year period covered by the Complaint were 'designed to raise money for SEIU COPE render SEIU 775' as a political committee under the 'contributions' prong of the primary purpose test for a political committee" is detailed below.

SEIU 775 as a 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. The complaint based that fact on an SEIU 775 Membership Application in which the union asks individuals who are not currently SEIU 775 members to become full union members. Once a member has joined the union and authorized their employer to withhold a designated monthly amount from their pay as dues, a portion of those dues monies are withheld as a contribution and forwarded to SEIU COPE, a federal political committee in Washington DC.

Based on the membership application, SEIU 775's role in these transactions is to ask non-members 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.

Mr. Iglitzin stated that this allegation was previously investigated and rejected by the PDC in PDC Case 15-070, as noted by PDC staff in the Executive Summary and Staff Analysis. In addition, PDC staff noted additional factors that were discussed in the PDC Case 15-070, which were used to determine if SEIU 775 was a political committee as detailed below.

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, as noted in the prior Complaint (PDC Case 15-070) included the following:

- 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 assist the union in achieving its goals which include: (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; and (8) Adapt, innovate, and create.

Staff's assessment is that only two of the strategies, #3 and #5 may include an aspect involving electoral political activities. No evidence was submitted to contradict SEIU 775's public statements concerning the union's mission, goals and strategies to achieve its goal, and there was no evidence provided demonstrating that SEIU 775 has merely restated its primary political purpose in broad non-political terms.

Staff did not find any financial evidence showing that supporting candidates or ballot proposition campaigns was a top priority for SEIU 775 during calendar year 2016.

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, as well as possibly the strategy to advance pro-worker policy through influencing government.

However, no evidence was found that SEIU 775 has substantially achieved its stated goals and mission through 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.

Mr. Iglitzin noted in his response that the AG's Office reviewed SEIU 775's expenditures prior to CY 2016, which included a portion of CY 2015, and concluded in September of 2015 that "[t]he records and the analysis do not support a conclusion that one of the primary purposes of SEIU 775 is campaign activities." He stated that the AG's Office previously reviewed SEIU 775's expenditures and "found, properly, that such expenditures do not convert SEIU 775 into a political committee, this letter need focus only on SEIU 775's 2016 expenditures, which similarly do not have that result."

Mr. Iglitzin provided the 2016 expenditures for SEIU 775, which included both cash and in-kind contributions made during the year. He stated that all of the contributions were properly reported by SEIU 775 on the Monthly Lobbyist Expense Reports (L-2 reports) filed by Adam Glickman, and included the following:

- \$1,585,000 contributed to the Campaign to Prevent Fraud and Protect Seniors.
- \$208,236.40 contributed to Raise Up Washington.
- \$58,763 contributed to the SEIU 775 Quality Care Committee
- \$2,500 contributed to Washington Won't Discriminate.
- \$151,249.70 contributed to Yes on I-125

Mr. Iglitzin stated that SEIU 775 has not completed its annual financial statements for CY 2016 that are to be submitted to the Internal Revenue Service (IRS). He stated that it was not possible to conduct a detailed analysis of the actual total expenditures for "electoral political activity" during CY 2016 and SEIU 775's 2016 total expenditures. He went on to state the following:

[W]e have determined that SEIU 775's total expenditures in 2016 will exceed its 2015 expenditures. The IRS Form 990 filed by SEIU 775 for calendar year 2015 reveals that SEIU 775 spent a total of \$25,259,216 in that year. Using that sum as the absolute minimum level of SEIU 775 expenditures in 2016, the amount of money spent by SEIU 775 on electoral political activity in 2016 will be less than 8% of its entire budget."

While this is a slightly higher percentage that was the case in prior years, it remains true, as the PDC found in its 2015 Executive Summary and Staff Analysis ... this amount 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.

Looking at the expenditures made by SEIU 775 on electoral political activity during the two-year period covered by the Letter, for example - i.e., combining the amount spent in 2016 with the \$79,000 the PDC determined SEIU 775 spent in 2015 (see 2015 Executive Summary and Staff Analysis, page 5, third paragraph), and assuming the

same number for overall annual expenditures, \$25,259,216, for each of the two years covered - one can determine that during the relevant time period, SEIU 775 spent slightly less than 4% of its budget on electoral political activity - again, dramatically less than a majority of its expenditure activity.

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.

Finally, as part of PDC staff's 2015 Executive Summary and Analysis, Mr. Iglitzin stated the following:

2015 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 non-chargeable 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."

PDC Staff Review of SEIU 775 Quality Care PAC & SEIU 775 Activities

Staff reviewed the PDC contribution and expenditure database, Monetary Contributions reports (C-3 reports), Summary Contribution and Expenditure reports (C-4 reports) filed by SEIU 775 Quality Care PAC, and Independent Expenditure/Electioneering Communications (C-6 reports) for the political activities undertaken during calendar years 2016.

Staff's review found the following:

I-1501: Campaign to Prevent Fraud and Protect Seniors: The PDC reports filed by the Pro-I 1501 Committee disclosed that SEIU 775 contributed a total of \$1,593,527 in support of the initiative which included \$1,535,000 in monetary contributions and \$58,527 for in-kind contributions for signature gathering (\$50,000), staff services, phone banking and postage.

I-1433: Raise Up Washington: The PDC reports filed by the Pro I-1433 Committee disclosed that SEIU 775 contributed a total of \$207,927 in support of the initiative which included \$173,000 in monetary contributions and \$34,927 for in-kind contributions for staff services, phone banking and postage.

I-1515: Washington Won't Discriminate: The PDC reports filed by the Anti I-1433 Committee disclosed that SEIU 775 contributed \$2,500 in monetary contributions to oppose the initiative.

I-125: Yes on I-125 Committee: (A 2016 City of Seattle ballot measure concerning Protecting Workers Rights) The PDC reports filed by the Pro I-125 Committee disclosed that SEIU 775 contributed a total of \$167,100 in support of the initiative which included \$120,000 in monetary contributions and \$47,100 for in-kind contributions for opinion research, and legal and staff services.

Contributions to SEIU 775 Quality Care Committee: The PDC reports filed by SEIU's 775 PAC disclosed that SEIU 775 contributed a total of \$58,912 which included a \$50,000 monetary contribution made on October 9, 2016, and \$8,912 for in-kind contributions for staff and overhead services.

SEIU 775 Quality Care PAC

The C-3 and C-4 reports filed by the PAC disclosed that the committee received \$816,665 in monetary contributions received and made \$737,318 in expenditures during CY 2016.

The monetary contributions received included \$674,321 in total contributions from the SEIU Political Education and Action Fund out of Washington DC, and the \$58,912 list above which included a \$50,000 monetary contribution made on October 9, 2016, and \$8,912 for in-kind contributions. The \$737,318 in committee expenditures in CY 2016 included contributions to political committees, candidates, and independent expenditures, that included the following:

- A \$200,000 in monetary contributions made to the Truman Fund (a caucus related political committee).
- A \$150,000 in monetary contributions made to the Kennedy Fund (another caucus related political committee).
- A \$50,000 monetary contribution made to the Washington State Democratic Central Committee.
- A \$50,000 monetary contribution made to New Directions PAC, an independent expenditures political committee.

IV. Conclusion

A review of the PDC database showed that SEIU 775 made campaign contributions during calendar year 2016 totaling \$2,029,966. While SEIU 775 has not completed IRS Form 990 for 2016, Form 990 filed by SEIU 775 for calendar year 2015 indicated that SEIU 775 spent a total of \$25,259,216.

Using 2015 annual expenditures of \$25,259,216 as a benchmark, the \$2,029,966 in political expenditures made during calendar year 2016 represented 8.03% of total projected expenditures.

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 in support of or opposition to ballot propositions, but denied 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.

1. Based on the factors identified in staff's investigation and described above, staff has determined that SEIU 775 does not appear to be a political committee with a requirement to register and report with the PDC. SEIU 775 did not violate RCW 42.17A.205, .235, and .240 because: (1) It is not a "receiver of contributions" in support of, or in opposition to candidates or ballot propositions; and (2) Supporting candidates or ballot propositions is not one of its primary purposes.

Investigative Review Exhibits

- Exhibit #1** December 15, 2016, 45-day Citizen Action Letter (Complaint) filed by The Freedom Foundation against SEIU 775. (Note – excluding thousands of pages of exhibits)
- Exhibit #2** PDC staff Executive Summary and Analysis of PDC Case 15-70, a 2015 Complaint filed against SEIU 775 by the Freedom Foundation.
- Exhibit #3** January 6, 2017, response letter from Dmitri Iglitzin, an attorney with Schwerin, Campbell, Barnard, Iglitzin & Lavitt, LLP, on behalf of SEIU 775.