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September 25, 2019

Via Email Only

Fox Blackhorn
Compliance Coordinator 2
Public Disclosure Commission
Evergreen Plaza
711 Capitol Way S #206
Olympia, WA 98504
Email: pdcc@pdcc.wa.gov

Re: PDC Case Number 56888

Dear Mx. Blackhorn:

I represent the International Association of Machinists Lodge W38 (IAM-W38) in this matter. On or around August 28, 2019, the Freedom Foundation filed a complaint against IAM-W38 with the Public Disclosure Commission (PDC). The complaint alleges that IAM-W38 did not disclose independent expenditures for legal services in opposition to Propositions 1 and 2 related to the City of Shelton in 2014.

On or around September 18, 2019, IAM-W38 first received notice of the Freedom Foundation's complaint (there was a delay because notice of the complaint was originally emailed to the wrong address).

Without waiving any of our rights or arguments, the IAM-W38 will disclose its attorneys' fees and costs related to the litigation regarding the two proposed initiatives

concerning collective bargaining in the City of Shelton in 2014. The IAM-W38 also reserves its right to supplement its arguments related to this issue. The IAM-W38 plans to disclose its attorneys' fees and costs by next week (the IAM-W38 is now working on filing a C6 report).

The IAM-W38 was not aware of a requirement to file with the PDC regarding its litigation expenses until it received the complaint through the PDC—and it is still not certain that such a requirement exists. But out of an abundance of caution, the IAM-W38 will disclose its legal expenses related to the litigation regarding the Shelton Propositions.

The IAM-W38 remains uncertain regarding any duty to file with the PDC because its conduct is distinguishable from that of the Evergreen Freedom Foundation as documented in the recent Supreme Court case, *State v. Evergreen Freedom Foundation*, 192 Wn.2d 782 (2019), and of the defendants in the even more recent case, *State v. Economic Development Board for Tacoma-Pierce County*, 441 P.3d 1269 (2019). Unlike the defendants in those cases, the IAM-W38 did not initiate litigation *against* the City of Shelton (or the Mason County Auditor) related to Propositions 1 and 2. The IAM-W38 only became a party in the lawsuit after the Plaintiff, Diane Good¹, sued the City of Shelton and the Mason County Auditor demanding that the City refer Propositions 1 and 2 for placement on the ballot for an upcoming election.

Thus, by the time the IAM-W38 became a party to this litigation, the City of Shelton had already (1) decided not to place the Propositions on the ballot; and (2) been sued by Good (who was getting help from the Evergreen Freedom Foundation). The IAM-W38 filed a motion to intervene in the lawsuit, which was granted, and then proceeded to support the City of Shelton in this litigation and argue against the Propositions as violating its collective bargaining agreements

¹ The Evergreen Freedom Foundation provided legal services for Good's lawsuit.

with the City and/or state law.² In fact, the IAM-W38 argued that it was an indispensable party under Rule 19 in this case and should have been named and properly served in this action. But significantly, if Ms. Good had never sued the City of Shelton and the Mason County Auditor to place these Propositions on an upcoming election ballot, the IAM-W38 would not have been involved with any type of litigation related to the Propositions.

In short, the Freedom Foundation was pushing the Propositions for the purpose of violating the collective bargaining agreements between the City of Shelton and the IAM-W38, and/or state laws related to public sector collective bargaining. The Union was driven into a unique position not occupied by the litigants in the Supreme Court case. The IAM-W38 had a duty to represent its members and defend the City's position to not place them on the ballot in violation of state law. This is what labor unions, including the IAM-W38, are required to do on daily basis in their normal course of business: Defend the contractual and/or statutory rights of its members. The litigation related to Propositions 1 and 2 at the City of Shelton was no different.

That is one of the reasons why the IAM-W38 did not think it had a duty to disclose its litigation expenses related to the 2014 Propositions at the City of Shelton: It was only hiring attorneys to defend the contractual and/or statutory rights of its members; conduct that it normally does not disclose to the PDC (and is still not even sure it has to).

In addition, the IAM-W38 was not hiding its involvement in this litigation. From the start, the IAM-W38 made clear that it was intervening in Ms. Good's lawsuit against the City of Shelton and the Mason County Auditor. Notably, the IAM-W38 was not behind the scenes supporting another named party or entity (as the defendant in the other recent PDC case *State v.*

² The IAM-W38 eventually became an Intervenor-Defendant in the case, Answered the Plaintiff's Complaint, and Counterclaimed.

Evergreen Freedom Foundation was doing). The IAM-W38's name was in the pleadings. Therefore, from a public policy and full disclosure perspective, the Union's conduct, positions, and arguments in this litigation were fully known from the start.

Furthermore, as the Freedom Foundation has discussed, the IAM-W38's attorneys' fees and costs are already publicly disclosed on LM-2 forms filed with the U.S. Department of Labor and available on its website. While it is true that the reader cannot determine the exact amount spent on the Shelton Propositions, it was already public knowledge that the IAM-W38 was involved in this litigation and that it was spending attorneys' fees and costs. Mason County Superior Court ultimately dismissed Plaintiff Good's Complaint.

Consequently, there is no evidence that anyone, including the IAM-W38, benefitted politically or economically from the noncompliance with PDC rules and/or regulations (assuming there was noncompliance). Moreover, the impact of the noncompliance with PDC rules and/or regulations (again, assuming there was noncompliance) on the public is minimal, if any.

And yes, it's been around five years since the IAM-W38 engaged in the litigation related to the Shelton Propositions, but the two cases upon which the Union's alleged duty of disclosure is based, *Evergreen Freedom Foundation, supra*, and *Economic Development Board for Tacoma-Pierce County, supra*, were not decided until January and May, 2019, respectively.

And as discussed above, the IAM-W38's situation is still different than the defendants in these two cases, so its duty to disclose has not been fully clarified yet.

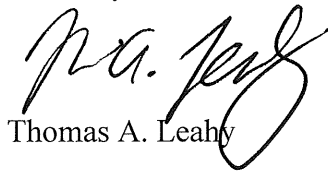
In addition, the IAM-W38 is a labor union and does not have a lot of experience with the PDC. This lack of experience with the PDC is another mitigating factor in this case.

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In sum, the IAM-W38 has responded quickly to this complaint and wishes fully to cooperate with the PDC regarding this matter and resolve it as soon as possible. Nonetheless, based on the IAM-W38's unique position in this litigation, it is still not clear the IAM-W38 needs to file with PDC, so any noncompliance (assuming there is noncompliance) is a good-faith error or misunderstanding.

Sincerely,

A handwritten signature in black ink, appearing to read "T.A. Leahy", written in a cursive style.

Thomas A. Leahy