



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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July 12, 2021

Delivered electronically to Danielle Franco-Malone, legal counsel on behalf of the Washington Federation of State Employees

Subject: "AMENDED" Complaint return letter regarding the Washington Federation of State Employees, PDC Case 89278

Ms. Franco-Malone:

Enclosed is a copy of an electronic letter sent to Maxford Nelson with the Freedom Foundation concerning a complaint he filed with the Public Disclosure Commission (PDC) against your client, the Washington Federation of State Employees (WFSE).

As noted in the letter to Mr. Nelson, there was no evidence found or provided that the \$200,000 in AFSCME funds received by WFSE in 2016 was deposited into their SSF, but instead the funds were deposited into WFSE's general treasury. The deposit of the \$200,000 grant received from AFSCME and deposited into WFSE's general treasury did not make WFSE or WFSE's general treasury account a political committee as a receiver of contributions.

Staff found there was no basis to conclude that one of WFSE's primary purposes during calendar year 2018 was to support or oppose candidates or ballot propositions, and the \$15,000 expenditure made from WFSE to RPEC in 2018, was not intended by WFSE to be received and deposited by RPEC into its political committee account. The \$15,000 expenditure did not make WFSE a political committee under the expenditures prong of the primary purpose test.

PDC staff is dismissing this matter in accordance with RCW 42.17A.755(1). If you have questions, please contact PDC staff member Kurt Young by e-mail at pdcc@pdcc.wa.gov.

Sincerely,

Endorsed by,

/s _____
Electronically Signed, Kurt Young
Compliance Officer

/s _____
Electronically Signed Kim Bradford, Deputy Director
for Peter Lavallee, Executive Director



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July 12, 2021

Delivered electronically to Maxford Nelson with the Freedom Foundation

Subject: “AMENDED” Complaint return letter regarding the Washington Federation of State Employees, PDC Case 89278

Mr. Nelson:

The Public Disclosure Commission (PDC) has completed its investigation of the complaint filed by the Freedom Foundation (FF) on April 15, 2021, against the Washington Federation of State Employees (WFSE). Specifically, the complaint alleged WFSE needed to register and report as a political committee as follows for: (1) Calendar year 2016 based on an Out-of-State Political Committee report (C-5 report) filed by American Federation of State, County and Municipal Employees Special Account (AFSCME) disclosing a \$200,000 contribution made on September 9, 2016, to AFSCME Washington Council 28 (WFSE), and listing the purpose as “Grant to an affiliate”; and (2) Calendar year 2018 based on a \$15,000 contribution disclosed by the Retired Public Employees Council of Washington PAC as having been received from WFSE in September of 2018.

PDC staff reviewed the allegations listed in the complaint and exhibits you initially filed on April 15, 2021; the supplemental complaint and exhibits you submitted on June 16, 2021, that included a six-page cover letter, copies of WFSE’s Constitution and By-Laws, and copies of the 2016 and 2018 Form LM-2 Reports filed with the US Department of Labor by AFSCME; the statutes, rules and reporting requirements for a political committee; and queried the PDC contribution and expenditure database for WFSE activities during calendar year 2018.

In addition, staff reviewed: (1) the May 21, 2021, response from Dmitri Iglitzin and Danielle Franco-Malone, attorneys with the law firm Barnard, Iglitzin & Lavitt, LLP and legal counsel for WFSE; (2) the June 18, 2021, email and attached response letter from Ms. Franco-Malone addressing the PDC staff follow-up questions and request for a document concerning the FF complaint; and (3) the July 7, 2021, email with an attached response letter from Ms. Franco-Malone to the supplemental complaint information submitted by FF.

Based on staff’s investigation, we found the following:

- WFSE is a statewide labor organization that is affiliated with American Federation of State, County, and Municipal Employees (AFSCME). WFSE has a Separate Segregated Fund (SSF) that is registered under Section 527 of the Internal Revenue Code, and reports to the Internal Revenue Service (IRS) under the name WFSE – SSF.
- WFSE is also a Lobbyist Employer that has been registered and reporting with the Public Disclosure Commission (PDC) since the 1970s.

- 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). The Interpretation states that a person is a political committee if that person becomes a “receiver of contributions” to support/oppose candidates or ballot propositions, or if the expenditures to support/oppose candidates or ballot propositions become one of the person’s primary purposes.

\$200,000 contribution/grant received by WFSE in 2016

- Mr. Iglitzin and Ms. Franco-Malone stated one of the allegations in the complaint is that WFSE was required to register and report to the PDC as a political committee, based on WFSE’s receipt of \$200,000 that was transmitted from the AFSCME’s “Special Account” to WFSE on September 9, 2016.
- Mr. Iglitzin and Ms. Franco-Malone stated this allegation “is identical in many key respects” to the two prior FF complaints filed against WFSE: PDC Case Number 14266, filed on January 17, 2017; and PDC Case No. 62411, filed on January 2, 2020. After reviewing those complaints, PDC staff determined WFSE was not required to register the SSF as a political committee, because “the SSF is an account established, controlled, and funded by WFSE, such that expenditures from the SSF are the equivalent of expenditures from WFSE’s general fund.”
- On March 28, 2017, PDC Case Number 14266 was referred to the Attorney General’s Office (AGO), in which the AGO declined to take action against WFSE and concluded that “WFSE’s Separate Segregated Fund should not be considered as a person in its own right under state campaign finance laws.” In responding to the complaint in that matter, Mr. Iglitzin stated that an SSF is not a separate person. Further, he clarified that the SSF “is merely a separate bank account, or fund, within the total control of the labor organization that has created it.”
- Mr. Iglitzin also clarified that the fact that WFSE’s SSF has filed an IRS Form 8871 does not change this analysis. Rather, “[t]he obligation to file a Form 8871 flows from federal tax law, but does not materially change the nature or status of an entity for purposes of state law.” He also stated, “there is no dispute that WFSE’s SSF is managed, operated, funded and directed entirely by WFSE itself. WFSE’s Executive Director makes all final approvals of monies provided to and spent from the SSF.”
- Mr. Iglitzin stated FF has provided no evidence indicating that the \$200,000 in question was deposited into WFSE’s SSF. Mr. Iglitzin confirmed that the \$200,000 was deposited into WFSE’s member dues account, the primary account used by WFSE to pay for all its representational and operational expenses.
- Mr. Iglitzin and Ms. Franco-Malone stated FF’s recent complaint regarding the \$200,000 deposit is a claim “that WFSE itself received this money for electoral political purposes. However, there is no evidence that WFSE received or spent the money for electoral political purposes, and that in fact did not happen.”
- Mr. Iglitzin and Ms. Franco-Malone stated no evidence was provided of “any connection between the AFSCME money received by WFSE and any political expenditures or contributions subsequently made by WFSE. Thus, the claim that WFSE received this money from AFSCME for electoral political purposes must be rejected as lacking any factual basis.”

\$15,000 WFSE expenditure to Retired Public Employees Council of Washington

- Mr. Iglitzin and Ms. Franco-Malone stated the second allegation concerned a \$15,000 transfer that was received by “WFSE from AFSCME in late August of 2018.” They stated that the \$15,000 in funds received by WFSE, were then “transmitted to the Retired Public Employees Council of Washington (RPEC), a Section 501(c)(4) social welfare organization, which was subsequently deposited into the Retired Public Employee Council of Washington PAC, a Section 527 political organization.”
- Mr. Iglitzin and Ms. Franco-Malone stated that the \$15,000 was received and disclosed by RPEC PAC as a contribution from WFSE on a Monetary Contributions Report (C-3 report) as being received on September 4, 2018. They stated that “WFSE never intended the \$15,000 that it had received from AFSCME to go into RPEC’s PAC.”
- PDC staff requested that WFSE provide a copy of the cancelled check, which Ms. Franco-Malone included as part of her June 18, 2021, email response as an attachment. Staff reviewed the cancelled check which stated WFSE check #102026 was made out to RPEC on August 31, 2018, in the amount of \$15,000, and included the address 906 Columbia Street SW, Suite 501, Olympia, WA 98501-1240. Staff’s review confirmed that the check did not include the word “PAC.”
- Mr. Iglitzin and Ms. Franco-Malone stated that “Under WFSE’s longstanding policies and practices, WFSE does not make contributions to candidates for state or local office, or political committees that support or oppose such candidates directly out of its general funds.” They acknowledged that FF’s claims were true and WFSE did receive the funds from AFSCME and made an expenditure to RPEC’s 501(c)(4) organization.
- PDC staff’s review of the 2018 LM-2 Report filed by AFSCME found that under Section 16 – Political Activities and Lobbying on page 305 of the Report listed a \$15,000 expenditure was made on August 27, 2018, to AFSCME WA Council 28 for “State and Local Political Program Support.”
- Mr. Iglitzin and Ms. Franco-Malone stated that “WFSE expects and intends that all such contributions be made, if at all, by WFSE’s SSF, which WFSE funds out of its general funds.” They stated that WFSE on occasion grants funding “directly to social welfare organizations out of its general funds... which is precisely what occurred here” and added that WFSE did not make out its check in the name of RPEC PAC, but only to “RPEC.”
- Ms. Franco-Malone stated that WFSE “Council 28 and RPEC are both affiliates of AFSCME” and that current RPEC members are former members of WFSE. She stated that when WFSE members retire from Washington State service, the members have the option of joining RPEC, in which they receive WFSE communications that includes information about legislation that may affect members pensions and healthcare. In addition, she stated “WFSE works with RPEC to coordinate retirement planning workshops for WFSE members. WFSE pays RPEC to present at those workshops.”
- In addition to the \$15,000 transfer to RPEC, Ms. Franco-Malone stated that during calendar year 2018, WFSE made five transfers or payments to RPEC of between \$89.50 to \$222 to pay for retirement workshops that took place in February, March, and July of 2018. She stated WFSE regularly worked with RPEC in 2018 by hosting “retirement planning workshops and made several payments to RPEC for that purpose in 2018. Further, as noted, WFSE and RPEC both work to advance political (non-electoral) and legislative goals by informing WFSE and RPEC members about legislation that impacts their members.”

- Ms. Franco-Malone stated WFSE provides support for this “program by allowing RPEC to use WFSE’s in-house printshop for in-house rates. WFSE and RPEC share many non-electoral legislative goals that included advocating for cost of living increases (COLA’s) for participants in the PERS 1 state retirement program and advocating for improvements to employee benefits offered through the Washington Health Care Authority.”
- Ms. Franco-Malone stated that WFSE regularly provides support to numerous other nonprofits as well, including organizations such as the Foundation for Working Families, Invest in Washington, and Refuse to Abuse. She stated funding is made for nonprofit organizations that advance the interests of WFSE’s members and are also consistent with WFSE’s normal activities. She added that “in June 2017, WFSE gave RPEC \$12,684 as part of a pilot program under which WFSE paid for a year of its former members’ dues to RPEC.”
- Ms. Franco-Malone stated in response to the supplemental complaint information provided by FF concerning the \$15,000 transfer from WFSE to RPEC, those funds were deposited into the wrong RPEC account by RPEC. She stated that FF provided no evidence “and none exists, establishing that WFSE intended for those funds to be deposited into RPEC’s PAC” account. She stated that it “simply cannot be the case that an organization could be subject to being found to be a political committee based on the “receiver of contributions” prong due to the ultimate disposition of funds that the organization expends.” She added that the disposition of RPEC funds “is wholly outside the control of the organization and the funds were expended in a manner not intended by the contributor.”
- Ms. Franco-Malone reiterated that “WFSE did not intend for the \$15,000 to be deposited by RPEC into its PAC, which is why WFSE did not make the check out to the RPEC PAC. The fact that the funds were, unfortunately, deposited by RPEC into RPEC’s PAC does not transform the nature of the transaction for purposes of determining whether WFSE ever had the requisite “expectation of receiving contributions” for electoral political purposes.”
- PDC staff’s review of the 2016 LM-2 Report filed by AFSCME found that under Section 19 – Union Administration on page 205 of the Report listed a \$10,841 expenditure was made on September 21, 2016 to the Retired Public Employees Council of Washington for “Postage.”
- Ms. Franco-Malone concluded by stating that FF “revisits the long-rejected theory that WFSE is a political committee because it segregates dues monies for electoral political activity. The Foundation has put forth no evidence that WFSE sets aside any portion of its members’ dues with actual or constructive knowledge for electoral political purpose. WFSE does not, for instance, earmark a particular amount of dues monies to be used for political purposes...does not make special assessments that will be earmarked for electoral political purposes.”
- Ms. Franco-Malone stated “WFSE chooses to allocate its SSF for electoral political purposes” and those decisions are the “discretionary responsibility” of WFSE’s Board. She indicated that was exactly like the decision made by the Attorney General’s Office which concluded in the earlier case that organizations “did not meet the definition of a political committee because such discretionary expenditures for electoral political activity did not transform members’ dues into contributions to support electoral political activity.”

Based on the above information, PDC staff found no evidence warranting an investigation into whether WFSE was acting as a political committee, based on either the \$200,000 grant received from AFSCME in 2016, or the \$15,000 transfer WFSE made to RPEC in 2018.

As noted in the disposition letter for PDC Case Number 62411, there was no evidence found or provided that the \$200,000 in AFSCME funds received by WFSE in 2016 was deposited into their SSF, but instead the funds were deposited into WFSE's general treasury. The deposit of the \$200,000 grant received from AFSCME and deposited into WFSE's general treasury did not make WFSE or WFSE's general treasury account a political committee as a receiver of contributions. Likewise, there is no basis to conclude that one of WFSE's primary purposes during the calendar year 2018 was to support or oppose candidates or ballot propositions.

The \$15,000 expenditure made from WFSE to RPEC in 2018, was not intended by WFSE to be received and deposited by RPEC into its political committee account. The \$15,000 expenditure did not make WFSE a political committee under the expenditures prong of the primary purpose test.

PDC staff is dismissing this matter in accordance with RCW 42.17A.755(1). If you have questions, please contact PDC staff member Kurt Young by e-mail at pdcc@pdcc.wa.gov.

Sincerely,

Endorsed by,

/s _____
Electronically Signed, Kurt Young
Compliance Officer

/s _____
Electronically Signed Kim Bradford, Deputy Director
for Peter Lavalley, Executive Director

cc: Danielle Franco-Malone, legal counsel on behalf of WFSE

