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SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

STATE OF WASHINGTON, ex rel.
EVERGREEN
FREEDOM FOUNDATION, et al.,

Plaintiffs,

vs.

WASHINGTON EDUCATION ASSOC., et al.,

Defendants.

NO. 97-2-01419-8

COURT'S DECISION

In early 1997, plaintiff Evergreen Freedom Foundation wrote to the Public Disclosure Commission contending that defendants' activities during the 1996 election cycle¹ required that it register as a political committee pursuant to the Public Disclosure Act. It charged that the Washington Education Association and the National Education Association were in violation of the law and should be required to register and pay substantial penalties. When the PDC and the Attorney General declined to act on those charges, EFF brought this lawsuit as a private citizen acting on behalf of the State of Washington, as permitted by the PDA. Pretrial rulings established that the scope of this lawsuit is limited to the claims asserted by EFF to the PDC and the Attorney General, and upon which those two organizations have declined to act.

Trial was conducted in May, for 16 days, and included the testimony of approximately 50 witnesses and 750 exhibits. After consideration of that evidence, I conclude that EFF has failed to prove its case; that WEA is not a political committee and so did not violate the PDA as charged by EFF.

¹ Pretrial rulings establish the 1996 election cycle as the period between July 1, 1995, and November 6, 1996.

1 In most bench trials the trial court makes findings and conclusions based upon a known
2 set of legal standards previously identified by Washington appellate courts. These appellate
3 precedents are binding on the trial court. Here the only direct precedent on the issue presented
4 at trial is *State v. Evans*, 86 Wn.2d 503 (1976), the primary purpose test. Other legal principles
5 apply however. Primary among these is the constitutional protection of free speech and, in this
6 context, free association guaranteed by the First Amendment to the U.S. Constitution - and in
7 no arena is that right more carefully guarded than in the political arena. WEA has challenged
8 the law asserted here by EFF, RCW 42.17.020(33), arguing that it is unconstitutional on its
9 face because it abridges this constitutional protection for defendant and its members. I
10 rejected this contention before trial. WEA also challenged the constitutionality of the law as it
11 is proposed for application here, but my decision on the facts and law make it unnecessary and
12 inappropriate to address that constitutional issue now.

13 A second legal principle applicable here holds that the purpose of the Public Disclosure
14 Act is that “political campaign . . . contributions and expenditures be fully disclosed to the
15 public and that secrecy [be] avoided.” RCW 42.17.010(1). This principle, contained in a
16 voter Initiative, has been acknowledged numerous times by our Supreme Court and was,
17 indirectly, in *Evans* (p. 507-508), but with this caveat:

18 The definition [of political committee], though, was not drafted to ensnare
19 indiscriminately all persons [or organizations] seeking to influence
20 governmental decision-making by their contributions given in support of or
opposition to candidates or ballot propositions.

21 Where the surrounding facts or circumstances indicate that [sic] The primary or
22 one of the primary purposes of the person [or organization] making the
23 contribution is to affect, directly or indirectly, governmental decision-making by
supporting or opposing candidates or ballot propositions, then that person [or
organization] becomes a “political committee” and is subject to the Act’s
disclosure requirements.

24 *Evans*, p. 508-509.

1 In pretrial hearings the parties and this court addressed the inconsistent use of “the
2 primary purpose” and “one of the primary purposes” in *Evans*.² Defendant has urged that I use
3 the narrower statement and so be consistent with federal decisions in that regard. However,
4 for discovery purposes I announced my intention to apply the broader “one of the principle
5 purposes” statement. Now, for purposes of deciding the matter, I conclude that the broader
6 statement is the rule of *Evans*. Such a broad construction is consistent with the broad purpose
7 statement of the PDA.

8 The result of *Evans* is that an organization must comply with the registration and
9 reporting requirements for a political committee if, in relevant part, that organization makes or
10 expects to make expenditures in support of or in opposition to any candidate or any ballot
11 proposition, and the organization has as one of its primary purposes the goal to affect, directly
12 or indirectly, governmental decision-making by supporting or opposing candidates or ballot
13 propositions. This is the primary purpose test.

14 In the findings that follow I find that defendant has made expenditures opposing
15 Initiatives 173 and 177.³ Those expenditures would require defendant to register as a political
16 committee if it is an organization included within the definition of political committee by the
17 primary purpose test. The amount of expenditures made by defendant for political purposes
18 has been hotly contested throughout this case in part because RCW 42.17.020(14)(b)(v)
19 exempts from the definition of contributions:

20 An internal political communication primarily limited . . . to the officers,
21 management staff, or stockholders of a corporation or similar enterprise, or to
22 the members of a labor organization or other membership organization.
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25 ² *Evans* used the broader statement to announce the principle (dicta) but applied the narrower statement to
26 decide the case (binding precedent).

27 ³ In defining political committee, RCW 42.17.020(33) speaks to “receiving contributions or making
28 expenditures . . .” In pretrial rulings I declared my intention to construe “making expenditures” to include
payments to a third party such as a polling organization and contributions made to a political committee
such as the No on Initiatives 173/177 Committee.

1 This IPC exemption has been the source of contention in two respects: First, whether it should
2 limit consideration of any activities by defendant when applying the primary purpose test; and
3 second, if defendant is a political committee, the extent to which its activities (expenditures)
4 are exempt from reporting, if at all. I conclude that the IPC exemption does not apply to any
5 activities of defendant when considering the primary purpose test. All activities of the
6 organization are properly considered; none are exempt. Because I have concluded that
7 defendant is not a political committee the second issue is moot.

8 The most important legal issue raised in this case is identification of the standards by
9 which the primary purpose test is decided. There is no state appellate court decision that
10 addresses the issue⁴ and the Public Disclosure Commission, the agency charged with
11 administering the registration and reporting law, has not promulgated or approved any specific
12 standards. Federal court decisions about the Federal Election Act are helpful but not directly
13 in point.

14 **Specific Findings – The Primary Purpose Test**

15 Before defining the legal standard applied here, I address the findings from the
16 evidence that must support the legal conclusions. I find:

17 1. WEA is a labor organization incorporated in the State of Washington and organized
18 pursuant to Section 501(c)(5) of the Internal Revenue Code. It is comprised of 65,000 to
19 70,000 members who are employed in the State's school districts, community colleges and
20 universities, or retired therefrom.⁵ The main purpose of WEA is to assist its members in their
21 collective bargaining with their employers.

22 2. WEA is affiliated with NEA, 22 regional affiliates called UniServ councils and
23 355 local education associations. Membership in NEA, WEA, and a local association is
24 combined. The local association is the bargaining unit; WEA bargains for it, NEA provides

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26 ⁴ *Evans* does not identify standards. It dealt with a single \$500 expenditure from a trust created by a
political committee.

27 ⁵ Unless otherwise stated, all statistics, amounts, numbers and description of events are for the 1996
election cycle, from July 1, 1995, to November 6, 1996, even if stated in present tense.
28

1 substantial financial support. Governance at each level of affiliation is autonomous from all
2 other levels, but from the bottom up each level provides some representation on the
3 governing board of the next higher affiliate.

4 3. WEA is governed by a Representative Assembly composed of elected members and
5 from which its officers are elected. The Representative Assembly meets annually in the
6 spring. During the balance of the year, it is governed by its officers and a board of directors
7 which meets monthly. WEA hires approximately 170 staff persons,⁶ most of whom are
8 employed at its central headquarters. Staff support in the field is for the most part
9 accomplished by persons employed independently by the UniServ councils.

10 4. Membership dues are collected by member's employers pursuant to collective
11 bargaining agreements and remitted to a paymaster who divides the money among NEA,
12 WEA and local association dues. Revenue received by WEA comes from either membership
13 dues or agency shop fees from non-WEA members. Expenditure of shop fees is limited to
14 activities concerning the collective bargaining agreements from which the non-members
15 benefit. Membership dues are deposited into the WEA general fund.

16 5. The WEA fiscal year runs from September 1 through August 31. An annual budget
17 is adopted by the WEA board in July or August following a traditional budget process.
18 Budget transfers and revisions occurring during the fiscal year require a vote of the board of
19 directors, but not a vote of the membership. Relevant to the issues here, contributions and
20 expenditures for political purposes during the relevant time period were decided by the board
21 after the revenue had been collected and deposited in the general fund. For the 1996 election
22 cycle, expenditures by WEA for all purposes totaled \$25,266,147. After deduction for the
23 NEA \$410,000 contribution and Community Outreach Program funds addressed by the
24 settlement between WEA and PDC, the total was \$23,807,373.⁷

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26 ⁶ My notes show either 170 or 70. The figure should be corrected if necessary.

27 ⁷ I have used Mr. Vanetta's accounting figures. He extended his accounting period from November 6 to
28 December 31, 1996, in order to pick up transactions for the relevant period that were booked after the
election.

1 in its activities. As a part of the re-engineering project, WEA undertook substantial
2 restructuring. Its Divisions became Policy Centers: Communication and Information;
3 Governance and Administration; Learning and Public Policy; Membership and Affiliate
4 Advocacy; Support Services; Community Outreach; Awareness; and Building and Grounds.
5 Its Legislation Commission was eliminated and replaced with work teams comprised of
6 members, governance and staff. Among these were the Public Policy Oversight Committee,
7 the Political Action Work Team, the Initiative Work Team and the Organizing Public
8 Education Work Team.

9 9. In the 1992 general election, Initiative 134 was passed. It significantly changed
10 rights and responsibilities for participation in the political process by organizations such as
11 WEA. In response, WEA formed a separate Life After 134 Task Force which reported at the
12 same Spring, 1994, Representative Assembly. As a consequence of that report, WEA-PAC, a
13 registered political committee, and Community Outreach Program, a separate program within
14 WEA, were created. Financial transactions for COP were tracked in a separate WEA budget
15 category, the J Account. Activities by WEA-PAC and COP, and transactions in the J Account
16 for the 1996 election cycle were the subject of a lawsuit brought by the PDC. The lawsuit was
17 resolved by settlement that required WEA to change some procedures and pay \$100,000 in
18 penalties and costs. The issues resolved by that lawsuit are not included in this case.

19 10. Change within WEA resulting from the Life After 134 Task Force is the second of
20 the three factors mentioned above and is evidenced primarily by the publications of the
21 organization from that time. They show an intention to centralize and participate very actively
22 in legislative lobbying. Although no actual trends were established by the evidence,
23 publications suggest that WEA's involvement increased in this area.⁸ On the other hand, the
24 same publications show an intention to decentralize election activity and pull back from
25 partisan political activity and away from issues that were not specifically education related.

26 _____
27 ⁸ Legislative lobbying is not an activity that falls within the definition of political committee, RCW
28 42.17.020(33).

1 WEA transferred to the local associations all responsibility for races other than state legislative
2 races. Initially, it retained endorsement responsibility for state legislative races (Exhibit 174),
3 but that was later changed to candidate recommendations determined by membership vote
4 (Exhibit 1). One important result of the task force in the re-engineering project was the
5 creation of the Public Policy Oversight Committee, and its associated work teams.

6 11. A third factor that captured WEA's attention during the period from 1994 through
7 the end of the election cycle was the public debate about charter schools and education
8 vouchers. In 1995, initiatives to the legislature numbered 173 and 177, were circulated among
9 the populous. WEA perceived these ideas and initiatives as incompatible with its mission to
10 support public education; as a direct threat to the economic interests of its members; and as an
11 opportunity, by opposing the initiatives, to re-engage itself with its members on an issue which
12 vitally interested them. Accordingly, WEA responded in three discernible ways. It worked
13 with its membership to inform, educate and organize them in their opposition to the initiatives.
14 It worked with other organizations publicly opposed to the initiatives through the No on I-
15 173/177 Committee. In this regard, it contributed \$263,500 cash plus in-kind contributions to
16 the No Committee. Finally, WEA worked to solicit a very large contribution from NEA in
17 competition with associations in other states who were contesting similar ballot propositions.
18 NEA contributed \$410,000 to the No Committee.

19 12. The initiatives to the legislature were resisted by WEA to some extent by its
20 lobbying apparatus. WEA believed that the legislature would not take action and for the most
21 part seemed content to permit that to occur. When the legislature did not act, the initiatives
22 became ballot propositions on March 18, 1996.

23 13. One result of the three factors important to understanding WEA's actions,
24 discussed above, was the preparation of a draft plan by three WEA staff persons entitled
25 *Political Action for Children and Public Education* (Exhibit 1, hereafter the plan). The plan
26 addresses the political aspects of the means by which WEA could undertake to accomplish its
27 mission statement. It also addressed how WEA-PAC would fit with WEA activities, an
28

1 outgrowth of the Life After 134 Task Force. Finally, and most importantly, it proposed
2 actions to help defeat Initiatives 173/177.

3 14. The plan addresses the political aspects of the ends by which WEA undertook to
4 accomplish its mission statement. The goal of the plan is the same as the mission statement:
5 “To make public education the best it can be for students, staff and communities.”

6 15. The plan was also a necessary adjunct to WEA’s application for NEA funds to
7 combat Initiatives 173/177. The plan was prepared rather late in the process of re-engineering
8 the WEA and coincided with the process of applying for those funds.

9 16. The plan, in the form in which it has been preserved, is clearly a draft - and it is
10 marked as such in every section. It was never formally adopted by WEA, but it was
11 transmitted to NEA as part of the fund application and some aspects of the plan were clearly
12 undertaken by WEA. This uneven, often contradictory, history emphasizes the ambivalent
13 nature of the plan. **It is ambitious and comprehensive**, but only a small portion of it was
14 actually undertaken and an even smaller portion was successfully completed. Nevertheless, it
15 is the strongest evidence mustered by EFF to show that a primary purpose of WEA is “to
16 affect, directly or indirectly, governmental decision making by supporting or opposing
17 candidates for ballot propositions.” (*State v. Evans*, supra, p. 509) Accordingly, here follow
18 specific findings on each section of the plan.⁹

19 17. The section entitled *CAMPAIGN AND CAMPAIGN RECOMMENDATIONS*, is
20 the section with the greatest degree of implementation. All action items were undertaken and
21 all experienced at least partial success. However, rather than support EFF’s claim, this section
22 is evidence of WEA’s withdrawal to less active political involvement. In turn, the action items
23 narrowed WEA’s political focus to key issues important to its mission statement, withdrew
24 from endorsement of candidates in favor of recommendations, decentralized the

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27 ⁹ WEA sought protection from publication of the plan on first amendment grounds. That protection was
28 granted so the document is governed by the Protective Order. However, to give context to this portion of
the opinion, I have attached an outline of section and action item titles.

1 recommendation process by implementing a blind vote by members, transferred responsibility
2 for state legislative recommendations to UniServ councils, and transferred responsibility for
3 US Congressional recommendations to WEA-PAC.

4 18. The section entitled **CAMPAIGN TARGETS** were all at least partially undertaken.
5 Defeat of Initiatives 173/177 was clearly WEA's intention and is addressed in other findings.
6 Action item three, *Election of Recommended Candidates*, was undertaken by WEA-PAC and
7 NEA-PAC, not WEA. **The WEA political action work team undertook candidate tracking**, but
8 otherwise did very little of the coordination with UniServ councils mentioned in the action
9 item.

10 19. Very few of the actions identified in the section entitled *VOTER TARGETING*
11 were undertaken or accomplished by WEA. The first action item, *Statewide Voter Targeting*,
12 was initiated by WEA personnel by contacting Catalyst, an independent business. The work
13 product was delivered to and paid for by the No on 173/177 Committee, not WEA. EFF
14 argues that evidence of implementation of the next two action items may be found in **WEA's**
15 **receipt of the Democratic Party statewide voter file and participation in the Democratic**
16 **Coordinated Campaign**. However, WEA did not use the voter file in any systematic way and
17 its participation in the Democratic Coordinated Campaign was limited to attendance of a few
18 early meetings where WEA representatives learned that the focus of the coordinated campaign
19 would be elections and not defeat of the initiatives. Thereafter, the WEA representatives
20 dropped out. The action item entitled *Voter File: UniServ Pilot Project*, was undertaken by a
21 mailing from the political action work team to various UniServ Councils. So little response
22 was received that the project collapsed and was abandoned.

23 20. None of the action items in the section entitled *RESEARCH AND DATA* were
24 completed except **the polling identified in action item one**. None of the other action items
25 were undertaken except number five, entitled ***Review and Update of Membership File***. This
26 project was begun but not completed and provided no discernible benefit. WEA did not
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1 undertake ongoing research for the initiative campaigns of monthly tracking through the
2 Elway Poll.

3 21. During the election cycle in question, WEA commissioned two polls by Marttila &
4 Kiley.¹⁰ The first, completed in June 1995, polled attitudes of WEA and PSE members
5 concerning education vouchers and charter schools. The WEA/PSE poll was conducted at a
6 time when the two organizations were discussing merger. The second, completed in January
7 1996, polled public attitudes about the two initiatives to the legislature. This poll was done
8 with the expectation that the initiatives to the legislature would become ballot propositions and
9 so in part tested opposition messaging, among other objectives. WEA eventually provided
10 these poll results to the No on 173/177 Committee. Membership polling is a feature common
11 to labor unions and is an ongoing service of WEA designed to keep the organization and its
12 membership connected on issues important to the members. For public sector labor unions
13 such as WEA, public polling on issues vital to its contracts are also common activities. The
14 January 1996 poll commissioned by WEA is evidence considered as part of the primary
15 purpose test, but it is not of itself an undertaking that transforms WEA to a political
16 committee.

17 22. WEA provided some of the services identified in the section entitled *LOCAL LEVY*
18 *SUPPORT*, but delivery fell far short of the action items in the plan. WEA was not directly
19 involved in levy campaigns or with levy campaign committees; rather, its plan was to offer
20 services to the UniServ council and local education associations to encourage membership
21 participation in the campaigns. The training offered by WEA was to UniServ councils, not
22 local levy committees. It was provided to two of twenty-two councils. In addition, WEA
23 presented an optional mini-session (approximately 1.5 hours) on levy campaign involvement
24 at the 1996 WEA Leadership Assembly. WEA offered voter ID and GOTV assistance to local

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26 ¹⁰ The polls were completed before preparation of the plan. It refers to three polls; the third being an
27 earlier membership poll conducted before the Spring, 1995. No explanation was offered about this poll,
28 but there is testimony about another poll testing membership and public attitudes regarding mandatory
arbitration that may be the same poll.

1 associations, but delivered that service to only six or eight associations. Finally, the research
2 offered by WEA to the UniServ councils and local associations consisted of accumulating
3 historical voting patterns from OSPI and local auditors, and tracking historical trends within
4 individual school districts. The WEA person who performed this service credibly estimated
5 that her time involved in this activity was approximately two percent of her total.

6 23. More than any other section of the plan, the section entitled *INITIATIVE*
7 *CRITERIA* focuses upon WEA's request for a \$400,000 contribution to the No on 173/177
8 Committee by NEA. This section contains no action items, but rather is an overblown account
9 of what WEA had done and was prepared to do. The subsections entitled *Budget Impact* and
10 *Budget Issues and Campaign Structure*, as well as the section at the end of the plan entitled
11 *BUDGET*, discuss a budget that was never approved or implemented by WEA.

12 24. Similarly, the section entitled *INITIATIVES AND REFERENDUMS* contains no
13 action items. It is a discussion about initiative and referendum procedures.

14 25. All specific candidate support in the section entitled *CANDIDATE SUPPORT* was
15 undertaken by WEA-PAC or NEA-PAC. Governance of WEA-PAC was accomplished by
16 many of the same personnel who governed WEA (executive director, officers and board
17 members), but meetings and records were kept separate. WEA staff provided staff support to
18 WEA-PAC, but there is no evidence to show that this was other than incidental. WEA staff
19 also represented the organization (WEA) in meetings with other labor unions and the trial
20 lawyers, as well as both major political parties. No specific programs or actions were shown
21 to have resulted from these meetings. No action was taken on the *Community Electoral*
22 *Coalitions* action item.

23 26. Of the action items in the section entitled *MEMBERSHIP INVOLVEMENT*, only
24 the first, *Membership Involvement as an Ongoing Priority*, was implemented to any significant
25 degree. Items two, four, five, and six were not attempted. The *Local Leader and Staff*
26 *Involvement* item was started but failed to make any progress and was abandoned.

1 27. WEA committed significant staff resources to the action items in the section
2 entitled *COMMUNICATIONS*; but accomplishments were far short of the action items. WEA
3 used existing publications to maintain a constant drum beat of interest in opposing the
4 initiatives among its members. It published two issues of a new publication titled *Campaign*
5 *Watch* and included an article on the initiatives in its *Welcome Back* member letter. The
6 *Meetings and Forums* action item resulted in a single mini-session at the WEA Leadership
7 *Assembly*. There were no *Press Events on Behalf of Recommended Candidates*.¹¹ Many of
8 the more ambitious action items in this section involved the “A-teams” identified in the
9 preceding section. These teams were never created and the action items were not undertaken.

10 28. The action items in the section entitled *FIELD OPERATIONS* are mostly a repeat
11 of the action items from *COMMUNICATIONS*. WEA did several mailings to its membership
12 regarding the member ballots for candidate recommendations. It did a Local President’s
13 mailing to membership encouraging anti-initiative volunteer work and donations for the No on
14 173/177 Committee and conducted its own GOTV phone banks just before the election. WEA
15 field representatives recruited volunteers from among its members to work on No on 173/177
16 Committee phone banks and provided yard signs and campaign paraphernalia to its
17 membership for the No on 173/177 Committee and for recommended candidates.

18 29. The only action items undertaken in the section entitled *FUND RAISING* was to
19 encourage membership contribution to WEA-PAC.

20 30. The key action item in the section entitled *STAFFING STRUCTURE* was the
21 recruitment of “Twenty WEA Internal Field Organizers to educate, train and mobilize the
22 membership.” WEA was able to recruit eleven field organizers from its membership and staff.
23 All began in mid or late Summer, 1996. With few exceptions, their primary responsibilities
24 were to organize volunteers for the No on 173/177 Committee phone banks.

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27 ¹¹ Mr. Regan testified that this action item was not undertaken. He later testified that perhaps there were
28 one or two press events, but there was no corroborating evidence at all.

1 31. In addition to consideration of the plan, EFF asserts that the activities of WEA
2 during the election cycle show that one of its primary purposes was to support or oppose
3 ballot propositions. WEA was active and instrumental in the anti-initiative campaign, but
4 except for the anti-initiative campaign the record does not establish significant activities in
5 candidate elections or levy election support when compared to other WEA activities or the
6 anti-initiative campaign activities. Throughout the case EFF's focus has been on
7 illuminating the anti-initiative campaign activities.

8 32. During the election cycle, the WEA President, C. T. Purdom, authored several
9 letters and articles published to the membership in WEA publications and authored a letter to
10 members and mailed to them on No on 173/177 Committee letterhead. These letters warned
11 against the perceived effects of the initiatives and encouraged volunteer work and money to
12 defeat them. Otherwise the WEA time spent by the President on political purposes was
13 miniscule.¹² The WEA President was also chair of WEA-PAC, but these meetings and duties
14 were kept appropriately segregated from his WEA duties.

15 33. The WEA Executive Director, James Seibert, was similarly not directly involved in
16 political activities. Like the President, he also authored articles to the membership with a
17 distinct, often strident, anti-initiative theme. The Executive Director also made staff
18 appointments concerned with political activities, primarily anti-initiative activities. Otherwise,
19 like the President, the Executive Director was much more concerned in his day-to-day
20 activities with matters other than political or campaign activities. The main focus of both the
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25 ¹² The extensive record presented to establish the day-to-day activities of the President and Executive
26 Director of WEA suggests a priority of importance in WEA activities quite different than the election cycle
27 rhetoric contained in WEA publications to its members. The actual record of activities for these
28 individuals and the organization as a whole is much more compelling than the publication rhetoric; the
difference is perhaps best explained by the need to encourage anti-initiative volunteerism by the
membership.

1 President and Executive Director was administration of existing programs and implementation
2 of the reengineering/restructuring plan.¹³

3 34. In its reengineering/restructuring plan, WEA created a structure for political
4 activities headed by the Public Policy Oversight Committee. Two subcommittees focused on
5 matters important to the primary purpose test: The Political Action Work Team and the
6 Initiative Work Team. The role of the Political Action Work Team was to assist WEA in
7 connecting its Board of Directors with its membership in defining a political message on three
8 key issues of class size, salaries and classroom safety. The role of the Initiative Work Team
9 was to consider policy aspects of the emerging initiatives and to recommend to the Board and
10 membership how they should respond to them. Both work teams were policy coordinating
11 bodies, the Political Action Work Team focusing more on candidates and the Initiative Work
12 Team on initiatives. Neither of these work teams had an apparatus for implementing policy
13 decisions. Nowhere in the staff or governance structure of WEA was there an apparatus for
14 implementing a specific political action to support or oppose candidates or ballot propositions.
15 In the 1996 election cycle these actions were taken on an ad hoc basis by assigning additional
16 duties to staff or, in a few instances, reassigning staff.

17 35. During the 1996 election cycle WEA joined with other organizations interested in
18 defeating the initiatives by planning for and then forming the No on 173/177 Committee after
19 the initiatives to the legislature became ballot propositions. In its relationship with the No on
20 173/177 Committee, WEA played two paramount roles. It contributed far more money
21 (\$263,500 directly, plus solicitation of the \$410,000 NEA contribution) and in-kind services
22 than any other member organization and it was able to draw upon its large membership for
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25 ¹³ Two examples: The Executive Director did not attend meetings of the Public Policy Oversight
26 Committee, the committee in overall charge of political activities, or the political action and initiative work
27 teams. Second, EFF contended that the section titled *Learning and Public Policy Center* was very
28 involved in the anti-initiative campaign. The Executive Director served as interim manager of this section
(a common practice pending permanent assignment) until mid-August 1996, the height of the election
season. At that time a permanent manager was appointed and thereafter she did no work on the campaign
at all.

1 volunteers to staff phone banks, distribute yard signs and related activities called field services.
2 In other respects it was an equal with other member organizations of the committee. It had no
3 greater voice than others in the choice of director and staff, the hiring of consultants, the
4 formation of the political message and the allocation of resources.

5 36. Two persons connected to WEA played significant roles on the No on 173/177
6 Committee. Darlene Hensley was a WEA member who became state-wide field director for
7 the No Committee. Her primary responsibility was to organize and oversee the campaign
8 phone banks and to organize distribution of campaign literature such as yard signs and bumper
9 stickers. Ms. Hensley was a member of the WEA Board and the Public Policy Oversight
10 Committee until her employment by the No on 173/177 Committee, when she resigned from
11 both positions. When she retired from teaching in 1998 she became a WEA employee.
12 During the time she was employed by the No Committee her salary was paid by WEA as an
13 in-kind contribution. The second person was Kristeen Hanselman, an NEA employee
14 assigned to WEA and chair of the Initiative Work Team. She sat as the WEA representative
15 on the No 173/177 Committee Board of Directors. She and the chair of the Political Action
16 Work Team, Rod Regan, authored the plan (Exhibit 1) and participated in the application to
17 NEA for the \$410,000 contribution.

18 37. WEA assigned 11 persons to act as field representatives to organize volunteer
19 phone banks from among WEA members to assist the No on 173/177 Committee. The 11
20 were comprised of teachers, WEA staff and UniServ council staff; all were paid by WEA and
21 the salaries reported as in-kind contributions. All WEA staff assigned to this project continued
22 with their regular duties unabated. Where conflicts arose they obtained assistance from other
23 WEA staff.

24 38. Throughout the 1996 election cycle work in the primary Divisions / Policy
25 Centers¹⁴ continued unabated and unaffected by political and initiative campaign activity.

26
27 ¹⁴ The Divisions became Policy Centers in August 1996. The Policy Centers, with some restructuring from
28 the Divisions setup became: Communication and Information; Governance and Administration; Learning

1 Despite its own publication rhetoric, WEA did not curtail or suspend any of its core programs
2 administered through its Policy Centers. The record (primarily the plan, Exhibit 1) establishes
3 paper reassignment to the initiative campaign of several WEA staff members; but the record
4 also discloses in each instance that the staff member continued to perform regularly assigned
5 duties as their primary responsibility. Three staff members in particular, Ms. Takamura, Ms.
6 Steinburg and Ms. Westerman, were identified as being reassigned full time. In each instance
7 the staff member and her supervisor testified that she continued to perform her previously
8 assigned work and that the additional political work constituted a small portion of her total
9 duties. Such reassignments of staff to meet the need of a particular crisis or event were a
10 standard operating procedure for WEA. The reassignments experienced in the anti-initiative
11 campaign were less in impact than the Fife School District strike in Fall, 1995 and were no
12 greater than the Everett contract negotiation in Winter and Spring, 1996.

13 39. When WEA political expenditures¹⁵ are compared to total expenditures during the
14 16-month election cycle, I find that the political expenditures are less than four percent of the
15 total. Total expenditures equaled \$23,807,373. Total directly allocated expenditures equaled
16 \$548,444,¹⁶ including contributions to the No Committee (\$), salaries of employees or
17 members assigned to work on the anti-initiative campaign, work group and travel expenses
18 and the Marttila & Kiley poll. An additional amount must be added to political expenses to
19 account for the salaries of staff members who performed some work on political activities.

20 Mr. Vanetta, an independent CPA who contracts to perform accounting services for WEA,
21 calculated the additional amount and presented the court with alternative totals based upon
22 scenarios about whose salaries to include. Mr. Vanetta's opinions are reasonable and based
23

24
25 and Public Policy; Membership and Affiliate Advocacy; Support Services; Community Outreach;
26 Awareness; and Building and Grounds.

26 ¹⁵ Expenditures means money expended in any manner to support or oppose candidates or ballot
27 propositions - i.e., the primary purpose test. The NEA pass through contribution of \$410,000 has been
28 excluded from this calculation.

27 ¹⁶ My calculation using the figures on Exhibit 887(a); in his consideration of alternative scenarios
28 Mr. Vanetta used \$548,364.

1 upon general accounting principles. I find them credible. His use of contemporaneous
2 employee reports allocating between member and agency fee activities is a reasonable method
3 of allocating between political and non-political employee activities. The historical accuracy
4 of these reports has been established by prior audits. However, even this method overstates
5 the allocation to political activities.

6 40. Mr. Vanetta opined that the additional amount to be added for these political
7 activities is \$147,717; and that the total for all political activities is 2.92% of total
8 expenditures. His eight alternative scenarios top out at 4.57%.¹⁷ The alternatives yielding the
9 lower percentages are more reasonable than the higher percentage alternatives. The latter
10 alternatives that include 100% of certain employee salaries, including Mr. Seibert, are simply
11 not tenable.

12 **Ultimate Findings and Conclusions**

13 **The Primary Purpose Test**

14 Throughout the course of this litigation the parties have submitted several possible
15 legal standards by which to determine whether the actions of WEA, established in the
16 findings, make it a political committee. WEA has asked that I establish a bright line test that
17 will guide it and other similarly situated organizations in the future. Bright line tests are the
18 province of courts of appeal, whose decisions will be prospectively applied by and bind trial
19 courts. This decision will bind only the parties.

20 This case is an enforcement action for events that occurred earlier, so all evidence has
21 been presented and findings have been entered. Those findings may now be applied to several
22 of the proposed legal standards. When that is done I conclude in each instance that WEA is
23 not an organization which has as one of its primary purposes made expenditures in support of
24 or in opposition to any candidate or ballot proposition.

25
26 _____
27 ¹⁷ EFF criticizes Mr. Vanetta for failing to include employee benefits in this accounting, perhaps
28 appropriately. However, even if benefits of 30% of salary (the percentage testified to by Mr. Vanetta) is
added to the mix, the range becomes 3.1% to 5.25%.

1 I have considered the goals of WEA, the core values in WEA's vernacular, by
2 examining both its pronouncements and its actual implementation of those pronouncements. I
3 find that its *raison d'etre* is that of a standard public sector labor union. I find that its purpose
4 is to enhance the economic and professional security of its members.¹⁸ I include professional
5 security in this finding on the basis of clear evidence that both WEA and its membership
6 consider support for public education generally to be necessary to achieve its goal.
7 Participation in the political process to obtain economic security is a hallmark of every public
8 sector labor union. It is accomplished mainly by lobbying, but also, as here, by ballot
9 proposition campaigns where economic and professional security are at stake. Participation in
10 this type of ballot proposition campaign for these reasons does not make participation in the
11 political process a primary purpose of the union. Rather the participation is a means by which
12 the union achieves its purposes, just as contract negotiations and strikes are means to that end.
13 I find that the actions of WEA preserved this distinction throughout. Its actions focused on the
14 initiatives, and to a lesser extent levies, and clearly sought to defend the status quo within
15 which the union operated. Candidate support was conducted by WEA-PAC, but where WEA
16 and its membership set policies for candidate elections, those policies were for nonpartisan
17 support of candidates who supported public education.

18 I have also considered whether expenditure of funds on political activities may reach a
19 certain level where regardless of other considerations those expenditures in support of or in
20 opposition to candidates of ballot propositions may become a primary purpose of the
21 organization. In considering this matter, two caveats should be recalled: First, the amounts
22 considered for determining the primary purpose test are considerably greater and broader in
23 scope than would be the amounts reported to the PDC if WEA were a political committee. For
24 example, the amounts considered here include those exempt as expenses for internal political

25 _____
26 ¹⁸ The concept of economic security is self-evident. I have included professional security in this
27 explanation because this record suggests that WEA and its membership viewed the initiatives as an attack
28 on the preeminence of public education over other forms of education. For the teachers this presented
more than just economic uncertainty about their future.

1 communications under the PDC reporting requirements. Second, the public's right to know
2 reportable campaign contributions by WEA is not materially affected by this decision. The
3 vast majority of these amounts were reported as cash and in-kind contributions received by the
4 No on 173/177 Committee.¹⁹

5 I reject the expenditure of money as a legal standard to determine, without more, the
6 primary purpose test. It is a factor to be considered along with all other factors but should not
7 determine by itself an organization's responsibility to register. In determining primary purpose
8 the amount spent is meaningful only in relation to the total expenditures of the organization.

9 In any event, even if the standard were appropriate, expenditure on political activities of less
10 than four percent of total expenditures is not sufficient for the primary purpose test.

11 Perhaps not surprisingly EFF proposed the most inclusive of the legal standards. That
12 standard is succinctly summarized in Mr. O'Ban's closing:

13 When an organization directs a significant amount of time and resources to
14 political action, politics must be considered a primary purpose of that
organization, regardless of what other activities that organization engages in.

15 These are the factors that plaintiffs submit this court should consider as indicia
16 of primary purpose:

17 One: Do the officers and employees of the organization spend
organizational time working on a campaign?

18 Two: Assignment of officers or employees to a political committee involved
19 in a campaign.

20 Three: Expenditure of a significant amount of funds in a campaign.

21 Four: Solicitation of funds or setting aside a portion of regular income for
the express purpose of a campaign.

22 Five: Distributing information opposing a ballot measure or candidate.

23 Six: Statements of electoral purpose by speaking agents of the corporation
24 or organization.

25 _____
26 ¹⁹ EFF very legitimately complained early in this process that WEA had not accurately reported its
27 contributions to the No on 173/177 Committee so that they were not accurately reported to the PDC. That
28 issue was addressed by the PDC and resulted in a substantial penalty to WEA. Remaining in this case is
the contention that an individual under reported the amount of her hours and therefore her in-kind
contributions. That claim fails for lack of proof.

1 Seven: Designing organizational structure to maximize political effectiveness.

2 Plaintiffs submit that these factors measure the intent - there may be others,
3 but that these factors can measure the intent and capacity and action involved
4 in influencing the political process at a level significant enough to justify
5 reporting it as a political committee. These factors ensure that incidental
6 conduct will not trigger reporting requirements, but nevertheless provide an
7 objective way to determine whether an organization is intending to exert and
8 does exert influence on the electoral process.

9 I reject this proffered legal standard; but I conclude on the basis of the findings above
10 that even if this standard were law EFF has failed to prove its case.

11 With the exception of factor No. 3 in the proffered standard, none of the seven quantify
12 the activity identified; and Mr. O'Ban's preamble and concluding paragraphs suggest only that
13 the activities be significant. If that be the test, the standard collapses upon itself and an
14 adjudicator of an enforcement action such as this is left to ponder the subjective question of
15 what is significant activity in a particular case. The standard cannot serve as an objective
16 benchmark for an organization seeking to assess prospectively its obligation to register as a
17 political committee. However, irrespective of its deficiencies as a legal standard, many of the
18 findings made above track with the factors contained in the list. EFF has failed to prove
19 factors 1, 2, 4, and 7. Factor 3 has not been proved when the amount is measured as a
20 percentage of total expenditures for the period.

21 **Findings and Conclusions – Receiver of Contributions**

22 EFF has also contended that WEA is a political committee under the “receiver of
23 contributions” prong of that test. The primary purpose test limitation does not apply to this
24 prong, so it does not relieve WEA of the responsibility if in fact it has received contributions.
25 In applying this test I have relied upon the standards contained in 1973 A.G.L.O. No. 114.
26 This opinion by the Attorney General provides, in relevant part:

27 If on the other hand - either as a part of their regular dues or in addition thereto
28 - the members of such an organization are called upon to make payments to it
which are thus segregated and used for those purposes under circumstances
where the contributors know (or should know, if reasonably observant) of that
practice, then those payments will in our judgment be “contributions” within

1 the meaning of that statutory definition and the organization, hence, will be a
2 political committee as defined therein.

3 1973 A.G.L.O. No. 114, at 5. This test has been adopted by the PDC as the test for its
4 enforcement of these issues. I adopt it as the standard to be applied in this case.

5 I find that the contributions made by WEA to the No on 173/177 Committee came from
6 general treasury funds, in fact funds held in surplus from prior year accumulations. I find that
7 the decision to make such contributions were made by the Executive Director and President of
8 the Association and approved by the Board of Directors. The decision was not made by a vote
9 of the general membership and there is no evidence that the membership held an expectation
10 that such payments would be made at the time dues were paid. There is no evidence that the
11 funds were in any manner segregated or earmarked for political expenditures until the decision
12 was made for their expenditure. Based upon these findings and the law quoted above I
13 conclude that WEA is not a political committee under the “receiver of contributions” prong of
14 RCW 42.17.020(33).

15 **Findings and Conclusions – Kristeen Hanselman**

16 The final remaining issue is the contention that Kristeen Hanselman willfully under-
17 reported her hours and rate for in-kind contributions to the No Committee. I find a general
18 failure of proof here and direct that her counsel prepare appropriate findings.

19 Dated August 26, 1999.

20 _____
21 Wm. Thomas McPhee, Judge