FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

In the Matter of	)	
	)	
General Electric Company	)	MUR 3486
	)	
Kidder, Peabody Group, Inc.	)	

STATEMENT OF REASONS

CHAIRMAN SCOTT E. THOMAS
COMMISSIONER DANNY L. MCDONALD

In Matter Under Review ("MUR") 3486, the Commission considered whether a corporation may avoid its statutory duty to make its payroll deduction plan available to a union by simply terminating the plan after receiving notice from the union that it wishes to utilize the plan. Because we do not believe Congress intended this statutory obligation to be so easily circumvented, we would find reason to believe that the respondents failed to make their payroll deduction plan available in violation of the Act.

I.

The Federal Election Campaign Act of 1971, as amended, ("the Act") provides that "any corporation. . .that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any member working for such corporation. . . ." 2 U.S.C. §441b(b)(6) (emphasis added). This statutory provision is implemented by the regulations at 11 C.F.R. §114.5(k). That section provides that any corporation that uses a method of soliciting voluntary contributions for its political fund from its stockholder or executive and administrative personnel and their families shall make that method available to a labor organization representing any members working for the corporation. The regulations further provide that if the corporation uses no method to facilitate contributions from executive or administrative personnel, it need not make any method available to the labor organization. 11 C.F.R. §114.5(k)(4).

The facts in this matter are straightforward. The Kidder Peabody Group Inc. ("Kidder Peabody") is an affiliate of the General Electric Company ("GE") and maintains a separate segregated fund. The International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM") represents employees working for General Electric and maintains a separate segregated fund, the Machinists Nonpartisan Political League. On October 10, 1991, an IAM official made a courtesy telephone call to a GE official advising him that IAM would be forwarding a written request asking that GE provide IAM with a payroll deduction plan pursuant to §441b(b)(6) since the GE affiliate Kidder Peabody provided such a plan to its employees.[1] The GE official stated that he was not aware that Kidder Peabody had such a checkoff plan, but indicated that he would investigate the matter.

Subsequently, the GE official telephoned the IAM representative and "stated that rather than providing checkoff to the IAM, the company would drop the deduction for Kidder Peabody employees 'thereby solving the problem.'" Affidavit of George J. Poulin, Complaint at Attachment A, ¶5. On December 3, 1991, IAM requested, in writing, that GE make available to IAM the same payroll deduction method made available by Kidder Peabody to its employees. On January 13, 1992, GE rejected IAM's request. GE "confirmed that Kidder Peabody did have a payroll deduction option for their political action committee," but stated that "[b]ecause such a payroll deduction was contrary to GE practices, the Kidder Peabody payroll deduction option was discontinued." Complaint at Attachment D.

On March 17, 1992, IAM filed a complaint with the Federal Election Commission against GE. The complaint alleged that "GE has violated §441b(b)(6) by refusing to make available to the IAM at GE the method of soliciting voluntary contributions utilized by GE affiliate Kidder Peabody Group Inc." Complaint at 1.

On December 1, 1992, the Commission considered the General Counsel's Report which recommended that the Commission (1) find no reason to believe that GE violated 2 U.S.C. §441b(b)(6) and 11 C.F.R. §114.5(k), and (2) find no reason to believe Kidder

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1. Since GE and Kidder Peabody are affiliated, if either uses payroll deduction as a means of facilitating contributions, then payroll deduction for union members employed by either GE or Kidder Peabody, must be made available to IAM and its separate segregated fund. 11 C.F.R. §114.5(k)(1). See Advisory Opinion 1982-45, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5688. GE, however, argued that only the subsidiary that actually utilizes a payroll deduction plan is required to make this same method available to unions representing its employees. The General Counsel properly rejected this argument. General Counsel's Report at 13 n.3.

Peabody violated the statute. On a tally vote, three Commissioners approved the General Counsel's Report, and two Commissioners (the undersigned) objected to the Report. One Commissioner recused. A motion to close the file and send the appropriate letters passed with five Commissioners supporting the motion.

II.

This matter raises two issues. First, whether IAM provided adequate notice to GE that IAM wished to use the payroll deduction plan used by Kidder Peabody, a subsidiary of GE. Second, whether the discontinuance of that plan by GE excused GE from complying with the requirements of 2 U.S.C. §441b(b)(6). In our opinion, IAM provided adequate notice to GE. Moreover, we believe that the termination of that plan by GE after receiving notice from IAM does not relieve GE of its responsibilities under the Act. Accordingly, we conclude that GE violated §441b(b)(6) by refusing to make available the Kidder Peabody payroll deduction plan to IAM.

A.

Respondents argue that GE was under no obligation to make the payroll deduction method available to IAM because Kidder Peabody did not "utilize" the payroll deduction method at the time IAM had submitted a written request, as required by §441b(b)(6). They state that Kidder Peabody had eliminated its payroll deduction method as of October 15, 1991 and that it wasn't until December 3, 1991, two months later, that IAM made its formal written request. Under the circumstances of this case, however, we believe that GE did receive adequate notice of IAM's intentions to use the Kidder Peabody payroll deduction method.

The purpose of the §441b(b)(6) "written request" requirement is to ensure that the corporation is adequately apprised of the labor organization's desire to make use of the corporation's method of soliciting or facilitating the making of voluntary contributions.[2] In this case, there is no question that GE was apprised of the IAM request. On October 10, 1991, the General Vice President of IAM telephoned and notified the

2. Under respondents' argument, IAM would have been better off if they had not made a courtesy telephone call to the corporation. The call allowed the corporation an opportunity to terminate their payroll deduction method before receiving the more formal written request. Apparently, IAM should have wrapped its plan in a cloak of secrecy to be sprung on the corporation in a surprise written request. We cannot believe that this was Congress' intention.

Manager of the Local Contracts Operation at GE that "IAM was preparing an official written request for GE to provide the IAM with political action checkoff since one of GE's affiliates, Kidder Peaboddy, provided checkoff to its employees." Complaint, Attachment A (Affidavit of George J. Poulin).

Not only did GE receive notice from IAM of its request to use the Kidder Peabody payroll method, but just five days after receiving this information GE acted upon this notice and discontinued the Kidder Peabody payroll deduction method. According to an affidavit provided by the Managing Director of Human Resources at Kidder Peabody: "At my direction, the payroll deduction method of contributing to KidderPAC was discontinued on October 15, 1991." GE Response (Affidavit of Granville Bowie) ¶4.

Under these circumstances, we cannot accept the argument that GE did not receive adequate notice of IAM's desire to utilize the Kidder Peabody payroll deduction method. Where an oral request of the corporation has been followed up by a request in writing, and the oral request has been acted upon by the corporation, it seems clear that the corporation has actual knowledge that a request was being made. Indeed, it would seem strange to allow a corporation to use such information as the basis for terminating their payroll deduction method but, at the same time, conclude that the corporation had insufficient information under the Act to require it to make available the payroll deduction method to a requesting labor organization. In this matter, the object of notice was attained, as GE clearly knew that IAM wished to use the Kidder Peabody payroll deduction method.

B.

The General Counsel addressed respondents' statutory construction argument by stating that "in cases where a method of payroll deduction is discontinued by a corporation only for the purpose of evading its obligations under the Act, a strict interpretation of the word "utilize" would not be appropriate." General Counsel's Report at 11. We agree with the General Counsel that a strict interpretation of the word "utilize" would not be appropriate in such a matter. The General Counsel went on to conclude, however, that "such an evasion by GE does not appear to be the case in this matter." Id. We disagree.

Under the facts of this matter, we believe that the only reason GE stopped the Kidder Peabody payroll deduction plan was to avoid the obligations GE would otherwise have to implement a payroll deduction method for union members working at GE or any of its subsidiaries. GE eliminated the Kidder Peabody payroll method only five days after being notified by the IAM of its intention to use that payroll method. Indeed, a GE official "stated that rather than providing checkoff to the IAM, the

company would drop the deduction for Kidder Peabody employees 'thereby solving the problem.'" Affidavit of George J. Poulin, Complaint at Attachment A ¶5 (emphasis added). It seems obvious to us that GE made a deliberate and conscious decision to discontinue the payroll plan in order to "solv[e] the problem" and avoid its obligations under 2 U.S.C. §441b(b)(6).

In reaching our conclusion, we do not find any legal significance in the argument made by respondents and accepted by the General Counsel, that GE was unaware of its subsidiary's use of a payroll deduction method. Throughout the Act and Commission regulations, a parent corporation and its subsidiary corporations are viewed as one entity on the theory that the parent corporation controls the actions of its subsidiaries and affiliates. For example, the Act and Commission regulations both treat the separate segregated funds set up by a parent corporation and its subsidiaries as one entity subject to a single contribution limitation. 2 U.S.C. §441a(a)(5); 11 C.F.R. §§100.5(g)(2) and 110.3(a)(1)(i). Likewise, contributions made to the separate segregated funds of a parent corporation and its subsidiary corporation are considered to have been made to a single entity and subject to a single contribution limit. Indeed, §441b(b)(6) itself recognizes this by requiring any corporation, including its subsidiaries, branches, divisions and affiliates, to make its method of soliciting voluntary contributions available to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions and affiliates. See n.1 supra, and General Counsel's Report at 13 n.3. Given the statutory and regulatory recognition of the closeness of the parent-subsidiary corporate relationship, we would conclude as a matter of law that GE was aware of the Kidder Peabody payroll methods.

III.

We believe that IAM provided adequate notice to GE and that GE's subsequent termination of the Kidder Peabody payroll deduction method does not excuse GE from its responsibilities under the Act and Commission regulations. Accordingly, we conclude that GE violated 2 U.S.C. §441b(b)(6) by refusing to make the Kidder Peabody payroll deduction plan available to IAM.

6/28/93
Date

Scott E. Thomas
Chairman

6/28/93
Date

Danny L. McDonald
Commissioner