FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**FEDERAL ELECTION COMMISSION**

| In the Matter of | ) | |
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| Trans World Airlines, Inc. | ) | |
| William H. Hoar, Vice President of Labor Relations, Trans World Airlines, Inc. | ) | MUR 2845 |

**STATEMENT OF REASONS**

Chairman Danny L. McDonald
Commissioner John Warren McGarry
Commissioner Scott E. Thomas

The issue in Matter Under Review ("MUR") 2845 is whether Trans World Airlines, Inc. ("TWA") may delay in meeting its statutory obligation to make its payroll deduction plan available to a labor organization's separate segregated fund. Applying the statute and Commission regulations, we conclude that TWA failed to comply with the statutory requirement that it make this solicitation method available to the labor organization upon "written request." Accordingly, we agree with the General Counsel's recommendation to find reason to believe that TWA violated 2 U.S.C. §441b(b)(6).

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 members 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 stockholders 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 the method shall be made available "at a cost sufficient only to reimburse the corporation for the expenses incurred thereby." 11 C.F.R. §114.5(k).

The facts in this MUR are not in dispute. TWA makes available to its executive and administrative personnel a payroll deduction program to facilitate the making of contributions by those individuals to the corporation's separate segregated fund. On October 7, 1988, the Independent Federation of Flight Attendants ("IFFA") requested, in writing, that TWA "make available to IFFA the methods of soliciting voluntary political contributions, or facilitating the making of voluntary contributions used by TWA." By the end of November, 1988, TWA

had not responded to this request, much less, made available its solicitation methods to the labor organization.

On November 30, 1988, IFFA tried again and sent another written request to TWA. This letter asserted that a complaint would be filed with the Federal Election Commission if the request was not met by December 15, 1988. On December 7, 1988, TWA responded by noting that the IFFA October 7 letter had been "referred to [TWA's] Legal Department for review." TWA promised to contact IFFA regarding the matter "after the Legal Department has completed its review of this matter."

Having not heard from TWA since the December 7, 1988, letter, IFFA renewed its written request on January 25, 1989. Again, IFFA asked for a response within two weeks. If no response was received, IFFA indicated that it would "pursue whatever means are available to secure TWA's compliance" with its requests. By letter dated February 10, 1989, TWA responded, stating that TWA was "reviewing what, if any methods are presently being used by TWA and you will be informed as to the results of our review shortly."

Nearly two months later, IFFA had heard nothing further from TWA and on April 10, 1989, filed a complaint with the Federal Election Commission. IFFA alleged that TWA and William H. Hoar, Vice President of Labor Relations for TWA, had failed to make available to the labor organization a method of solicitation employed by the corporation in violation of the Act and Commission regulations. Nearly one-half year had passed

between the time of IFFA's initial request of TWA and the filing of a complaint with the FEC.

One week after the filing of a complaint by IFFA, counsel for TWA responded to the complaint in an April 17, 1989, letter to the Commission. Counsel indicated that TWA had "determined to make available to the Independent Federation of Flight Attendants (IFFA) a payroll deduction plan for contributions by IFFA-represented TWA employees to its political action committee." And just two weeks after that, on May 2, 1989, TWA sent a letter to IFFA agreeing to the "establishment of a political action payroll deduction for Flight Attendants at TWA."

The Office of General Counsel prepared a report for Commission consideration that contained a factual and legal analysis of the allegation contained in the IFFA complaint filed with the Commission. The General Counsel concluded that "it does not appear TWA has complied with the Act and regulations by making [the payroll deduction method] available 'on written request.'" The General Counsel recommended that the Commission find reason to believe that TWA violated 2 U.S.C. §441b(b)(6) but take no further action in light of the fact that an agreement had been reached between TWA and IFFA.[1]

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1. In addition, the General Counsel recommended that the Commission find no reason to believe that William H. Hoar violated 2 U.S.C. §441b(b)(6) since there was no indication that Mr. Hoar was "personally responsible for the delay in responding to the IFFA requests for payroll deduction."

A motion to find no reason to believe that TWA violated 2 U.S.C. §441b(b)(6), and thus rejecting the General Counsel's recommendation, received three votes. Three Commissioners supported the General Counsel's recommendation and opposed the no reason to believe motion.

We support the General Counsel's recommendation. In our opinion, a labor organization requesting the use of a corporation's payroll deduction plan should not have to make three written requests of the corporation, file a complaint with the Federal Election Commission, and wait seven months before that corporation finally makes available to the labor organization its payroll deduction program. The statute plainly requires a corporation to make available a particular method of fundraising utilized by the corporation to a labor organization which represents its employees upon the written request of the labor organization. In our opinion, Congress fully expected that this legislative command would be promptly fulfilled. In MUR 2845, TWA failed to do so.

Unlike our colleagues, we cannot countenance the repeated delays which occurred in this MUR as being consistent with the statutory mandate that a corporation "<u>shall</u> <u>make</u> <u>available</u> such

method, on written request." 2 U.S.C. §441b(b)(6) (emphasis added). To the contrary, we believe that the delays and unresponsiveness present in this MUR are unacceptable. Accordingly, we agree with the General Counsel's recommendation to find reason to believe that TWA violated 2 U.S.C. §441b(b)(6).

9-19-89
Date

Danny Lee McDonald
Chairman

9-19-89
Date

John Warren McGarry
Commissioner

Sept. 19, 1989
Date

Scott E. Thomas
Commissioner