

# American Federation of Labor and Congress of Industrial Organizations



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October 26, 2012

Alan J. McDonald, Esq.  
McDonald, Lamond, Canzoneri & Hickernell  
153 Cordaville Road, Suite 320  
Southborough, MA 01772-1834

Re: Ethical Practices Committee Decision

Dear Mr. McDonald:

Enclosed is the decision of the AFL-CIO's Ethical Practices Committee concerning AFSCME's complaint against McDonald, Lamond, Canzoneri & Hickernell. If you have any questions, please contact AFL-CIO General Counsel Lynn Rhinehart at 202-637-5155.

Sincerely,

  
Richard L. Trumka  
President

cc: Elizabeth H. Shuler, AFL-CIO Secretary-Treasurer and  
Vice Chair, AFL-CIO Ethical Practices Committee  
Arlene Holt Baker, AFL-CIO Executive Vice President  
Veda Shook, Chair, AFL-CIO Ethical Practices Committee  
Roy Flores, AFL-CIO Ethical Practices Committee  
Michael Goodwin, AFL-CIO Ethical Practices Committee  
Lee Saunders, President, AFSCME  
Jack Dempsey, General Counsel, AFSCME  
Steven Tolman, President, Massachusetts AFL-CIO

Enclosure

**BEFORE THE ETHICAL PRACTICES COMMITTEE OF THE AFL-CIO**

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In the Matter of )  
 )  
the American Federation of State, )  
 )  
County, and Municipal Employees )  
 )  
Complaint against the Law Firm of )  
 )  
McDonald, Lamond, Canzoneri & )  
 )  
Hickernell )  
\_\_\_\_\_ )

**DECISION**

This matter involves a complaint by the American Federation of State, County and Municipal Employees (AFSCME), dated August 9, 2012, concerning an alleged violation of the AFL-CIO’s May 2001 policy against Law Firm Dual Unionism by the Southborough, Massachusetts law firm of McDonald, Lamond, Canzoneri & Hickernell (the McDonald firm).

In May 2001, the AFL-CIO Executive Council adopted a policy statement on Law Firm Dual Unionism. The statement defines law firm dual unionism as “[d]ecertification challenges to bargaining units represented by affiliated unions [that] are mounted with the support and, in some cases, led by law firms with connections to the labor movement.” The statement “adopts as its Do Not Patronize policy the principle that affiliates should discontinue relationships with any vendor or law firm that provides material support to dual organizations challenging representation rights of affiliated unions.” The policy aims to prevent situations where “resources created and nurtured by the labor movement are turned against it.”

On August 9, 2012, the AFL-CIO received a complaint from AFSCME requesting that the McDonald firm be placed on the AFL-CIO’s Do Not Patronize list for the firm’s involvement in creating a new independent union to raid and displace AFSCME Local 2824 as the representative of approximately 260 workers employed by the Town of Plymouth, Massachusetts. The Committee received and reviewed AFSCME’s letters of August 9, August 23, and September 19, 2012, and letters from the McDonald firm dated August 27 and August 28, 2012. The Committee also reviewed three letters from current clients of the McDonald firm (Massachusetts Nurses Association, Operating Engineers Local 877, and Teamsters Local 127) speaking favorably about the firm and Alan McDonald. The Committee has fully and carefully considered all the information and arguments presented in these submissions in making its decision.

The background of the case is as follows. Beginning in June 2012, Alan McDonald and his law firm met with officers of AFSCME Local 2824 and assisted the group in forming a new

union to raid AFSCME Local 2824 from the inside out as the representative of approximately 260 workers employed by the Town of Plymouth, Massachusetts. They set up a new group, called COBRA (Collective Bargaining Relief Organization). On July 2, 2012, COBRA filed petitions with the Massachusetts Labor Commission seeking to oust AFSCME in two different bargaining units. Alan McDonald is listed as the organization's representative on the petitions. To the Committee's knowledge, no elections have yet been held in either bargaining unit.

On August 9, 2012, AFSCME filed a complaint against Alan McDonald and his law firm under the LFDU policy. On August 13, 2012, the law firm filed unfair labor practice charges against AFSCME with the Massachusetts Department of Labor Relations and the National Labor Relations Board alleging that AFSCME's filing of the law firm dual unionism complaint unlawfully interfered with the Plymouth school employees' exercise of their rights to concerted, protected activities "including the selection of their collective bargaining representative and the selection of their legal representative." To the Committee's knowledge, the ULP charges are still pending.

McDonald acknowledges that he and his firm are representing COBRA in the decertification elections. McDonald argues that he and his firm should not be placed on the AFL-CIO's Do Not Patronize list because (1) they did not initiate contact with employees about forming COBRA and filing the petitions, but the employees came to him; (2) he and his firm had no notice of the law firm dual unionism policy; (3) he believes the Do Not Patronize list is unlawful because it interferes with workers' rights to seek new representation and the counsel of their choice; and (4) enforcement of the policy and placement on the Do Not Patronize list is counterproductive because it will lead firms to lose their ties with the labor movement and become more likely, not less likely, to help groups decertify in the future. McDonald states that in his 40 years of practice as a labor lawyer, he has helped workers decertify from their existing union only a handful of times.

It is clear that by helping a group of employees form a new union to conduct a raid on AFSCME, the McDonald firm violated the AFL-CIO's Law Firm Dual Unionism policy. The Committee is not persuaded by McDonald's arguments as to why he and his firm should not be placed on the Do Not Patronize list. For the most part, McDonald makes policy arguments that reflect his disagreement with the Law Firm Dual Unionism policy and/or his lack of appreciation of the fundamental point of the policy. The policy was adopted to make sure that the resources of the labor movement – in this case legal fees paid by affiliates to lawyers – are not turned against the labor movement through supporting raids like the ones at issue in this case. The AFL-CIO has a firm and longstanding policy against raiding, and internal procedures to prevent it. The AFL-CIO does not excuse unions for raids just because the raiding union believes that the raid is somehow justified. To do so would totally undermine the AFL-CIO's longstanding no-raid policy. The Committee rejects McDonald's attempts to justify his support for these raids.

The Committee further rejects McDonald's arguments about lack of specific knowledge of the Law Firm Dual Unionism policy. First of all, if the McDonald firm had joined and participated in the Lawyers Coordinating Committee, it would have received notice of the policy

through that organization. The Committee does not believe it should excuse a law firm on grounds of notice when the law firm has voluntarily elected to absent itself from a legal organization through which it would have received notice. Furthermore, notice is not a prerequisite under the terms of the Law Firm Dual Unionism policy. Finally, even if the law firm did not specifically know that its conduct violated the AFL-CIO's Law Firm Dual Unionism policy, it should have known that forming a rival organization and conducting a raid would be viewed as a hostile act by the AFL-CIO and its affiliated unions, and this should have dissuaded the law firm from participating in the raiding activity.

The Committee also disagrees with McDonald's allegations that the policy, or enforcement of the policy, is illegal. Nothing in the policy interferes with workers' choice of their collective bargaining representative. The Committee fully expects the agencies will dismiss the pending charges as lacking merit.

In conclusion, the Committee finds that the McDonald firm is in violation of the Law Firm Dual Unionism policy and should be placed on the AFL-CIO's Do Not Patronize list. The Committee requests that this decision be circulated to all AFL-CIO affiliated unions, the Massachusetts AFL-CIO, central labor councils in Massachusetts, and to the Executive Board of the Lawyers Coordinating Committee.

Dated: October 26, 2012



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Veda Shook, Chair

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Elizabeth H. Shuler, Vice Chair

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Michael Goodwin\*

\* Vice President Rogelio Flores was not able to participate in the Committee's meeting and deliberations on this case. Vice President Lee Saunders, also member of the Committee, was recused from participating in this case because the complaint was brought by his union.

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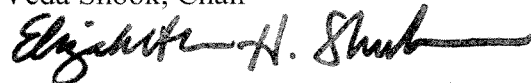
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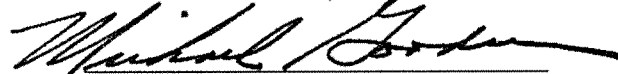
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