

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
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June 15, 2006

Ms. Shirley Noles, President
Office & Professional Employees Local 39
1602 S. Park Street, Room 226
Madison, WI 53715-2181

Re: Case Number ██████████

Dear Ms. Noles:

This office has recently completed an audit of Office & Professional Employees Local 39 under the Compliance Audit Program (CAP) to determine your organization's compliance with the provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). As discussed during the exit interview with you, Business Manager John Peterson, Accounting Specialist Nancy Lee, and Treasurer Lisa Venske on June 15, 2006, the following problems were disclosed during the CAP. The matters listed below are not an exhaustive list of all possible problem areas since the audit conducted was limited in scope.

Recordkeeping Violations

Title II of the LMRDA establishes certain reporting and recordkeeping requirements. Section 206 requires, among other things, that adequate records be maintained for at least 5 years by which each receipt and disbursement of funds, as well as all account balances, can be verified, explained, and clarified. As a general rule, all records used or received in the course of union business must be retained. This includes, in the case of disbursements, not only the retention of original bills, invoices, receipts, and vouchers, but also adequate additional documentation, if necessary, showing the nature of the union business requiring the disbursement, the goods or services received, and the identity of the recipient(s) of the goods or services. In most instances, this documentation requirement can be satisfied with a sufficiently descriptive expense receipt or invoice. If an expense receipt is not sufficiently descriptive, a note can be written on it providing the additional information. An exception may be made only in those cases where 1) other equally descriptive documentation has been maintained, and 2) there is evidence of actual oversight and control over disbursements.

In the case of receipts, the date, amount, purpose, and source of all money received by the union must be recorded in at least one union record. Bank records must also be retained for all accounts.

The audit of Local 39's 2005 records revealed the following recordkeeping violations:

1. Credit Card Expenses

Union officers and employees failed to maintain adequate documentation for expenses charged to union credit cards. There was at least one expense for which no supporting documentation could be found. Additionally, there was at least one meal expense at Pedro's Mexican Restaurant, for which the purpose and the names of those present was not documented. The date, amount, and business purpose of every expense must be recorded on at least one union record. In addition, the names of individuals present for meal expenses and the locations (names of restaurants) where meal expenses were incurred must be recorded.

2. Receipts

Local 39 failed to correctly record the dates of some of its receipts. The date money is received by the union should be recorded in at least one union record. Local 39 records the date funds were deposited rather than when they were received. The LM-2 instructions require that the LM-2 be prepared using the cash method of accounting. Under the cash method of accounting, receipts are recorded when money is actually received by your organization and disbursements are recorded when money is actually paid out by your organization. Failure to record the exact date that funds were received could result in some receipts being reported in a different year than they were actually received.

Additionally, Local 39 collected approximately \$997 of cash and checks in April 2005 for a raffle, but adequate supporting documentation was not retained to identify the source of each receipt. Union receipts records must include an adequate identification of each receipt of money. The records should show the exact date that the money was received, the identity of the source of the money, and the individual amount received from each source.

As agreed, provided that Local 39 maintains adequate documentation for its credit card expenses and receipts in the future, no additional enforcement action will be taken regarding these violations.

Reporting Violations

The CAP disclosed a violation of LMRDA section 201(b) because the Form LM-2 Labor Organization Annual Report (LM-2) for fiscal year ending December 31, 2005 was deficient in the following areas:

1. Officers Not Listed

The names of some officers who held office during the year were not reported in Schedule 11 (All Officers and Disbursements to Officers) with the total amount of payments to or for them. Only nine officer positions are identified in Schedule 11. The audit revealed that Local 39 has at least two other elected officers who are not identified in Schedule 11. The names of all persons who held office during the year must be reported in Schedule 11 regardless of whether or not they received any payments from Local 39.

2. Payments to Officers & Employees

Local 39 failed to include at least \$8,000 in payments to officers and employees in the amounts reported in Schedules 11 (All Officers and Disbursements to Officers) and Schedule 12 (Disbursements to Employees). Local 39 reported no payments to officers in Schedule 11. The audit revealed that almost all officers received a "steward's allowance" and/or reimbursed expense payments. For example, you received \$1,528.85 in reimbursed expenses and steward allowances, but schedule 11 reports that you received no payments during the year. As another example, Local 39 reported in Column F (Disbursements for Official Business) of Schedule 12 that Business Manager John Peterson received \$844. However, the audit revealed that Peterson received at least \$3,704.25 in reimbursed expenses. It appears these payments to officers and employees were erroneously reported elsewhere on the report.

Direct disbursements to officers and employees for reimbursement of expenses incurred while conducting union business must be reported in Column F of Schedules 11 and 12 (Disbursements for Official Business). In addition, indirect disbursements made to another party (such as a credit card company) for business

expenses incurred by union personnel must also be reported in Column F of Schedules 11 and 12. However, indirect disbursements for business expenses incurred for transportation by public carrier (such as an airline) and for temporary lodging expenses incurred while traveling on union business must be reported in Schedules 15 through 19. Any direct or indirect disbursements to union personnel for expenses not necessary for conducting union business must be reported in Column G (Other Disbursements) of Schedules 11 and 12.

3. Stewards as Employees and Payments to Stewards

Local 39 failed to report any of its payments to stewards in Schedule 12 (Disbursements to Employees). For example, chief steward Kathryn Barlett-Mulvihill received at least \$3,300 as a "steward's allowance," \$1,057.62 in reimburse expenses, and possible lost wages as an indirect disbursement (see item four below). Unless they are officers, Stewards are considered employees for LM reporting purposes, and any payments to them should be included in the amount reported in Schedule 12. In accordance with the LM-2 instructions, the name and payments to each employee who received more than \$10,000 in gross salaries, allowances, and other direct or indirect disbursements must be listed in Schedule 12. The payments to those employees who receive less than \$10,000 during the fiscal year may either be listed individually in the schedule or aggregated in Line 6 (Total Received by Employees making Less than \$10,000).

4. Wage Reimbursements to an Employer

Local 39 failed to correctly report payments totaling at least \$5,601 made on behalf of employees and officers in Schedule 11 (All Officers and Disbursements to All Officers) and/or Schedule 12 (Disbursements to Employees). Local 39 has an agreement with its largest employer, CUNA Mutual Insurance Society (CUNA), in which the Local reimburses the employer for wages-paid by CUNA to union officers and employees who participate in contract negotiations. These payments are considered "indirect disbursements" (as described above) to officers and employees for LM reporting purposes and must be included in the amounts reported in Column D (Gross Salary Disbursements) of Schedule 11 and/or Schedule 12 allocated among those officers and employees who received the payments from CUNA. It appears these payments were erroneously reported in Schedule 15 (Representational Activities).

I am not requiring that the Office & Professional Employees Local 39 file an amended LM-2 report for 2005 to correct the deficient items, but as agreed, Local 39 will properly report the deficient items on all future reports filed with this agency.

Other Issues

1. Flexible Spending Account

Local 39 maintains a flexible spending account for its employees, which is governed by Section 125 of the Internal Revenue Code and Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). The audit revealed that Local 39 may not be following federal requirements for maintaining a flexible spending account. It is my understanding that the law requires that two different accounts be maintained for dependent child care flexible spending and health/dental care flexible spending. These accounts must be separate from the general union account, and the employee's full year contribution must be available at any time. Local 39 maintains the funds for the flexible spending account in its general checking. Furthermore, the funds for the entire year are not available to employees at the beginning of year. You may want to contact the Internal Revenue Service and/or the Department of Labor - Employee Benefits Security Administration at 312-353-0900 for further information regarding requirements for operating a flexible spending account.

2. Taxable Fringe Benefits

The CAP revealed that Local 39 may have improperly followed state or federal requirements for withholding of fringe benefits for employees during 2005. In lieu of providing health insurance to its employees, Local 39 reimburses Accounting Specialist Nancy Lee and Administrative Specialist Marci Watrud the cost of their spouses' health insurance premiums. However, the payments to Ms. Lee and Ms. Watrud were not included in the total wages reported on the IRS form W-2 filed for 2005. You may wish to contact the IRS to determine whether these payments are taxable fringe benefits subject to income tax reporting.

3. Stewards Allowance as Taxable Income


The audit revealed that Local 39 may be improperly following state or federal requirements for withholding of various taxes from payments to stewards. While Local 39 itself may be exempt from income taxes, payments made by Local 39 to

officers and employees are not exempt, except in certain circumstances. Local 39 maintains that its stewards do not receive a salary but rather a "steward's allowance." The meeting minutes indicated that these payments are intended to compensate the officers and employees who are stewards for the work that they do and are not intended to be reimbursement to them for any specific expenses. While this office has no authority to interpret the state or federal tax code, it is my understanding that all salary and supplemental payments are subject to the withholding of income, Social Security, and Medicare taxes and that Local 39 as an "employer" must also pay its share of Social Security and Medicare taxes. Local 39 may be liable for the Federal Unemployment Tax (FUTA) as well.

I recommend that you contact the Wisconsin Department of Revenue in Madison at (608) 266-2776 (ask for the publication "Wisconsin Employer's Withholding Tax Guide"), and the Internal Revenue Service (ask for "Publication 15-B, Employers Guide to Taxable Fringe Benefits," "Circular E, Employer's Tax Guide," and Form 990, which Local 39 may be required to file). I also suggest that you determine Local 39's requirements, if any, under the Wisconsin Worker's Compensation Act by contacting the Wisconsin Dept. of Industry, Labor and Human Relations (DILHR) at its Worker's Compensation Division in Madison at (608) 266-0416.

I want to extend my personal appreciation to Office & Professional Employees Local 39 for the cooperation and courtesy extended during this compliance audit. I strongly recommend that you make sure this letter and the compliance assistance materials provided to you are passed on to future officers. If we can provide any additional assistance, please do not hesitate to call.

Sincerely,


Investigator

cc: Ms. Lisa Venske, Treasurer
Mr. John Peterson, Business Manager
Ms. Nancy Lee, Accounting Specialist
LM: 014-424