

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Detroit District Office
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February 1, 2007

Mr. Timothy D. Robertson, Treasurer
Automated Systems Workers
3605 21st Street
Wyandotte, MI 48192

Re: Case Number: [REDACTED]

Dear Mr. Robertson:

This office has recently completed an audit of the Automated Systems Workers (ASW) 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 and ASW President Peter Reuter on September 28, 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

The CAP, which covered the fiscal year ending May 31, 2006, disclosed several recordkeeping violations of Title II of the LMRDA. Section 206 requires, among other things, that the president and treasurer or corresponding principal officers of each labor organization maintain adequate records for at least five 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 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 revealed the following recordkeeping violations:

Lost Wages

Vouchers submitted by union personnel seeking compensation for wages lost while conducting union business do not provide all of the information required under Title II. The vouchers must identify the date, the specific times and number of hours lost, the rate of pay, and the specific union purpose for incurring lost wages. A comparison of vouchers and employer payroll records for September 15 and October 17, 2005, gave rise to the appearance that several officers may have received duplicate pay.

While it is possible that the discrepancy was not intentionally caused, the lack of required information on the vouchers could possibly lead to a different conclusion. Section 501(c) of the LMRDA makes it a federal crime, punishable by a maximum fine of \$250,000 and/or imprisonment of not more than five years, for a labor union officer or employee to embezzle or otherwise convert union funds or property to his own use or the use of another. Although criminal prosecution is not being contemplated at this time, please be advised that it would not be precluded in the future if this office receives additional negative information bearing on these matters. In order to avoid this situation in the future, I highly recommend that union officials periodically spot-check claims for lost wages against employer records.

In addition, Article XXI, Section 1 of the ASW's bylaws states that executive board members shall be compensated for time spent conducting union business at the rate of \$20 per hour, or \$30 per hour for "overtime lost." During the opening interview, you and ASW Vice President Daniel Molloy stated that the latter rate may be paid to an executive board member who spends time conducting union business not only when he could have been working overtime for his employer, but also when he completes a regular work shift and employer overtime is not available.

A review of the minutes of past membership and executive board meetings did not disclose authorizations or approvals of such an interpretation and calls into question the legitimacy of this type of payment. You agreed to ensure that there is a full understanding, either by the inclusion in the union's constitution and bylaws or in the form of membership or executive board authorizations recorded in meeting minutes, about the level of wages, allowances, and expenses (if any) to which the union's officers, employees, and members are entitled. This would include, among other things, the union's policy as to whether lost employer overtime must be mandatory or may be

voluntary. I would appreciate it if you would send me copies of your union's constitution and bylaws or meeting minutes that show authorization or approval of your union's current compensation policies.

Disposition of Property

During the audit period, the ASW spent over \$3,600 on t-shirts and hats, which were either sold or given away, and purchased more than \$13,000 worth of Dearborn Sausage Company gift certificates, which were given to members around Christmas. In both situations, the union failed to maintain adequate records to account for the property. In the case of items sold to members, the date and amount received from every sale must be recorded in at least one union record, preferably on pre-numbered duplicate receipts issued in sequential order. The detail of records required to be maintained for items given away is somewhat dependent upon the manner in which the property is distributed. In the case of one-time distributions, like the gift certificates, the union can most easily satisfy the recordkeeping requirement by attaching a list of the names of individuals who receive the items. In the case of items frequently distributed, like the t-shirt and hats given away, the union can meet the recordkeeping requirement by maintaining an inventory record and requiring union personnel who distribute the items to record on the inventory record the date and quantity taken from supplies on hand.

These types of transactions must be reported on your union's Labor Organization Annual Report (Form LM-3) in Items 30 (Other Assets), 43 (Other Receipts), and 51 (Contributions, Gifts and Grants), as appropriate. In addition, the type and value of any property given away and the identity of the recipient(s) of such property must be reported in Item 56 (Additional Information).

Other

The audit disclosed other missing or incomplete records required to be kept to support expenditures. The recordkeeping requirement for disbursements can be most easily satisfied with a sufficiently descriptive bill, invoice, receipt, etc., that identifies the vendor's name and address, the date and amount of the transaction, and the goods or services provided. Where meal expenses are incurred, the names of individuals present and the names and locations of restaurants must be recorded. In the case of reimbursed mileage expenses for personal vehicles used on official union business, records must be maintained which identify the date of travel, locations traveled to and from, number of miles driven, and the business purpose of each use.

If a receipt is not sufficiently descriptive, then the union should note the missing information on the receipt. If the business purpose of the disbursement or the identity of the recipient(s) of the goods or services is not self-evident, then the union must note such information on the receipt or some other record. If a receipt is not provided by a vendor, then the union must create a record containing the above information with a notation that original documentation was not provided. The only exception to this policy is for expenses generated by the union (e.g. salary, lost time, etc.) which, nonetheless, must be supported by some other type of documentation (e.g. payroll records, lost time vouchers, executive board and membership authorizations and/or approvals, etc.).

The audit also disclosed that the local failed to consistently maintain detailed meeting minutes for executive board and membership meetings. For instance, you stated more than once during the audit that the membership approved the purchase of the aforementioned Dearborn Sausage Company gift certificates. However, there is no record of this approval in any of the meeting minutes furnished to me. Had detailed minutes been maintained, they might have provided information that would have helped to explain or clarify the above and other financial transactions. In addition, the minutes for contract negotiations were bound together with the membership meeting minutes. I recommend that they be maintained separately.

Conclusion/Recordkeeping Violations

Adequate records were not maintained for financial transactions involving the ASW, in violation of Section 206 of the LMRDA. Contemporaneous, accurate, and complete records necessary to permit verification of the information required on your union's annual financial report must be preserved and kept available for examination for not less than five years after the report is filed.

The proper maintenance of union records is the personal responsibility of a union's president and treasurer. You should be aware that under the provisions of Section 209(a) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, willful failure to maintain records can result in a fine of up to \$100,000 or imprisonment for not more than one year, or both. Under the provisions of Section 209(c) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, willful destruction or falsification of records can also result in a fine of up to \$100,000 or imprisonment for not more than one year, or both. The penalties provided in Section 209(c) and Section 3571 of Title 18 apply to any person, not just the individuals who are responsible for filing the union's annual financial report.

You agreed that, in the future, the ASW will maintain adequate documentation as discussed above. Therefore, no additional enforcement action will be taken regarding these violations at this time.

Reporting Violations

The CAP disclosed violations of LMRDA Section 201(b), which requires labor organizations to file annual financial reports accurately disclosing their financial condition and operations within 90 days after the end of their fiscal year. The ASW failed to file its Labor Organization Annual Report (Form LM-3) for the fiscal year ending May 31, 2006, and the six preceding fiscal years, within this time frame. In addition, the Form LM-3 filed by the ASW on September 28, 2006, was deficient in the following areas (it should be noted that the audit conducted was not intended to identify all possible reporting violations):

- The report contains financial information that should have been separately reported by ASW Locals 8 and 23.
- The cash component of the ASW's account with Fidelity Investments is incorrectly reported in Item 28 (Investments). Such funds must be included in Item 25 (Cash).
- Many of the other figures on the report did not correlate with the audit report prepared by the union's accountant.

Conclusion/Reporting Violations

Like the proper maintenance of union records, the timely filing of a union's accurate and complete annual financial report is the personal responsibility of a union's president and treasurer or corresponding principal officers. You should be aware that under the provisions of Section 209(a) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, willful failure to file reports can result in a fine of up to \$100,000 or imprisonment for not more than one year, or both. Under the provisions of Section 209(b) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, the knowing falsification of a union's annual financial report, or the omission of material facts from a report, can also result in a fine of up to \$100,000 or imprisonment for not more than one year, or both. The penalties provided in Section 209(b) and Section 3571 of Title 18 apply to any person, not just the individuals who are responsible for filing the union's annual financial report.

You recently filed an amended Form LM-3 for the fiscal year ending May 31, 2006, to correct the deficient items discussed above. At the exit interview, you agreed to file your union's annual financial reports with OLMS in a timely manner and to properly report the deficient items in the future. Therefore, no additional enforcement action will be taken regarding these violations at this time.

Other Violation

The CAP disclosed the following other violation:

Inadequate Bonding

The audit revealed a violation of LMRDA Section 502 (Bonding), which requires that union officers and employees be bonded for no less than 10 percent of the total funds handled by those individuals or their predecessors during the preceding fiscal year. The ASW's bond did not include the necessary employee dishonesty endorsement and provided for a \$1,000 deductible, which is not permitted under the LMRDA.

Since you agreed at the exit interview to comply with the bonding requirements in the future, and provided proof that the union obtained acceptable bonding coverage after the exit interview, no additional enforcement action will be taken regarding this violation at this time.

Internal Financial Controls

Adequate internal financial controls are essential in order for a union to fulfill its obligations under Title II and Title V of the LMRDA. Besides those previously discussed, I also encourage the ASW to implement the following internal financial controls:

- Require all officers, employees, and members to provide documentation for reimbursement of expenses, meeting attendance, etc., before disbursing the funds.
- Establish an internal audit committee or trustees and ensure that they conduct regular, periodic examinations of the union's books and records.

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- Require the union's financial officer to give a full report of the union's finances at each membership or executive board meeting and to obtain prior approval for large and unusual transactions.

I want to extend my personal appreciation to the ASW and Hirsch, Subelsky, and Associates, P.C., 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,

Ian Burg, District Director
Detroit District Office - OLMS

By:


Investigator

cc: Peter Reuter, President