

U.S. Department of Labor

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May 19,2008

Jeffrey Cunningham, President
Government Employees, AFGE, AFL-CIO
Local 1629
5500 Armstrong Road, Room 20
Battle Creek, MI 49037

LM File Number: 501-548

Case Number: [REDACTED]

Dear Mr. Cunningham:

This office has recently completed an audit of American Federation of Government Employees (AFGE) Local 1629 under the Compliance Audit Program (CAP) to determine your organization's compliance with the standards of conduct provisions of the Civil Service Reform Act of 1978 (CSRA). As discussed during the exit interview with you and AFGE Local 1629 Secretary-Treasurer Michael Willbur on January 30, 2008, 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

Section 458.3 of the standards of conduct regulations applies the labor organization reporting and recordkeeping requirements of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) to federal sector unions. Section 206 of the LMRDA requires, among other things, that labor organizations 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, labor organizations must maintain all records used or received in the course of union business.

For disbursements, this includes not only original bills, invoices, receipts, vouchers, and applicable resolutions, but also documentation 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 union officer or employee should

write a note on it providing the additional information. For money it receives, the labor organization must keep at least one record showing the date, amount, purpose, and source of that money. The labor organization must also retain bank records for all accounts.

The audit of Local 1629's 2006 records revealed the following recordkeeping violations:

1. Lack of Stipend Authorization

Local 1629 did not maintain records to verify that the stipends reported in Item 24 (All Officers and Disbursements to Officers) of the LM-3 were the authorized amounts and, therefore, were correctly reported. The union must keep a record, such as meeting minutes, to show the current stipends authorized by the entity or individual in the union with the authority to establish stipends.

2. Information not Recorded in Meeting Minutes

During the audit, Mr. Willbur advised OLMS that the membership authorizes all disbursements at the beginning of the year during the completion of the annual budget. However, neither the annual budget nor executive board or membership meeting minutes show authorization for a payment to Mr. Willbur's wife for typing the local's meeting minutes. Minutes of all membership and executive board meetings must report any disbursement authorizations made at those meetings.

3. Credit Card Expenses

Local 1629 did not retain adequate documentation for credit card expenses incurred by you totaling at least \$5,476.24. For example, you charged \$843.55 to the Local 1629 Visa credit card to pay the Washington Plaza Hotel. No supporting documentation was retained such as a bill or invoice. Disbursements for lodging must be supported by original receipts, bills, invoices, etc. Local 1629 also failed to maintain all monthly credit card statements.

As previously noted above, labor organizations must retain original receipts, bills, and vouchers for all disbursements. The president and treasurer (or corresponding principal officers) of your union, who are required to sign your union's LM report, are responsible for properly maintaining union records.

4. Failure to Record Receipts

Local 1629 did not record in its receipts records some monies received during the audit year totaling at least \$733.09. For example, check # [REDACTED] for \$452.09 appears on a bank deposit ticket, but is not included in the union's receipt records. Union receipts records must include an adequate identification of all money the union receives. The records should show the date and amount received, and the source of the money.

5. Office Equipment and Internet Services

Local 1629 failed to retain records for all disbursements for office equipment and internet services. For example, Local 1629 purchased a shredder for \$48.75 and failed to retain the receipt. As previously noted, labor organizations must retain original receipts, bills, and vouchers for all disbursements.

6. Cancelled Checks

At the time of the audit, Local 1629 did not have in its possession any original cancelled checks for the audit period. As discussed with Mr. Willbur during the audit, your union is permitted to use a truncated checking account (an account in which original checks are not returned to the account holder), only if the financial institution retains the original checks or complete, clear, and legible images of the front and back sides of original checks for the required five years, and provides the checks (originals or copies) to the union without substantial delay. OLMS recommends that you discuss with the bank the requirement that the records be maintained for five years, and ensure that the bank meets this requirement. If the bank does not maintain original or imaged cancelled checks for five years, you must make arrangements for the local to otherwise do so.

7. Disposition of Property

During the audit period, Local 1629 spent \$1,404.50 on t-shirts, which were given away to members over the span of two months. The local failed to maintain adequate records to account for the property. The detail of records required to be maintained for items given away is dependent upon the manner in which the property is distributed. In the case of one-time distributions, 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-shirts 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.

Based on your assurance that Local 1629 will retain adequate documentation in the future, OLMS will take no further enforcement action at this time regarding the above violations.

Reporting Violations

Pursuant to 29 C.F.R. Section 458.3, the requirement under 29 C.F.R. Section 402.4 implementing LMRDA Section 201(a) is made applicable to labor organizations subject to the requirements of the CSRA. This provision requires labor organizations to file copies of any revised constitution and bylaws when it files its annual financial report. The audit disclosed a violation of this requirement. Local 1629 amended its constitution and bylaws in 2004, but did not file the required copies with its report for that year. Local 1629 has now filed a copy of its constitution and bylaws.

Pursuant to 29 C.F.R. Section 458.3, the reporting requirement under 29 C.F.R. Section 403.2 (see Section 201(b) of the Labor-Management Reporting and Disclosure Act (LMRDA)) is made applicable to labor organizations subject to the requirements of the CSRA. This provision requires labor organizations to file annual financial reports that accurately disclose their financial condition and operations. The audit disclosed a violation of this requirement. The Labor Organization Annual Report (Form LM-3) filed by Local 1629 for fiscal year ending December 31, 2006, was deficient in the following areas:

1. Disbursements to Officers

Local 1629 did not include all payments to officers in the amounts reported in Item 24 (All Officers and Disbursements to Officers). For example, you were paid per diem totaling \$1,050.00 during the audit year, and officers received payments for recruiting new members. Mr. Willbur advised that these payments were reported in Item 52 (Other Disbursements).

The union must report most direct disbursements to Local 1629 officers and some indirect disbursements made on behalf of its officers in Item 24. A "direct disbursement" to an officer is a payment made to an officer in the form of cash, property, goods, services, or other things of value. See the instructions for Item 24 for a discussion of certain direct disbursements to officers that do not have to be reported in Item 24. An "indirect disbursement" to an officer is a payment to

another party (including a credit card company) for cash, property, goods, services, or other things of value received by or on behalf of an officer. However, indirect disbursements for temporary lodging (such as a union check issued to a hotel) or for transportation by a public carrier (such as an airline) for an officer traveling on union business should be reported in Item 48 (Office and Administrative Expense).

2. Item 20 (Fidelity Bond)

Local 1629 did not report the maximum amount recoverable under a fidelity bond for a loss caused by an officer, employee, or agent of your organization who handles your organization's funds in Item 20 (Fidelity Bond). However, the audit revealed the amount recoverable to be \$35,000. During the exit interview, Mr. Willbur advised that the question being left unanswered was an oversight.

3. Acquire/Dispose of Property

Item 13 (During the reporting period did your organization acquire or dispose of any assets in any manner other than by purchase or sale?) should have been answered "Yes," because the union gave away t-shirts totaling \$1,404.50 during the year. The union must identify the type and value of any property received or given away in the additional information section of the LM report along with the identity of the recipient(s) or donor(s) of such property. The union does not have to itemize every recipient of such giveaways by name. The union can describe the recipients by broad categories, if appropriate, such as "members" or "new retirees." In addition, the union must report the cost, book value, and trade-in allowance for assets that it traded in.

I am not requiring that Local 1629 file an amended LM report for 2006 to correct the deficient items, but Local 1629 has agreed to properly report the deficient items on all future reports it files with OLMS.

Other Issues

1. Duplicate Payments

You were reimbursed a total of \$432.79 for union business purchases charged to the union's credit card and your personal credit card. The union also paid the credit card companies directly for those expenses. Thus, you were reimbursed \$432.79 to which you were not entitled. During the audit, you advised that this

situation happened in error and you wrote a check to the local in the amount of \$99.72 to pay back a portion of the monies owed. At the exit interview, you advised that you will have the remainder of what you owe deducted from recruitment payments owed to you by the local. OLMS recommends that Local 1629 implement appropriate internal controls to ensure that officers are reimbursed only for actual out-of-pocket expenses.

2. Officer Stipends as Taxable income

The audit revealed that Local 1629 may be improperly following state or federal requirements for withholding of various taxes from payments to officers. While Local 1629 itself may be exempt from income taxes, payments made by Local 1629 to officers are not exempt, except in certain circumstances. Local 1629 maintains that its officers do not receive a salary, but rather a stipend for holding officer positions. No matter the name, such payments are not intended to be reimbursements to officers for any specific expenses. While this office has no authority to interpret the federal or state tax code, it is our understanding that the stipend payments are subject to the withholding of income, social security, and Medicare taxes, and that Local 1629, as an "employer," may also have to pay its share of social security and Medicare taxes. Local 1629 may also be liable for federal and state unemployment insurance taxes.

OLMS recommends that you contact the Michigan Department of Treasury in Lansing at (517) 636-4730 (ask for the publication "Michigan Income Tax Withholding Guide" (Form 446)), and the Internal Revenue Service (ask for "Circular E, Employer's Tax Guide," and Form 990, which Local 1629 may be required to file) to determine Local 1629's tax obligations. It is also suggested that you determine Local 1629's obligations, if any, under the Michigan Workers' Disability Compensation Act by contacting the Michigan Department of Labor & Economic Growth, Workers' Compensation Agency, at 888-396-5041.

3. Duplicate Receipts

Some retired members of Local 1629 pay dues directly to the union. Mr. Willbur records dues payments in the union's receipts journal, but he does not issue receipts to the dues payers. OLMS recommends that Local 1629 use a duplicate receipt system where the union issues original pre-numbered receipts to all members who make payments directly to the union and retains copies of those receipts. A duplicate receipt system is an effective internal control because it ensures that a record is created of income which is not otherwise easily verifiable.

If more than one duplicate receipt book is in use, the union should maintain a log to identify each book, the series of receipt numbers in each book, and to whom each book is assigned.

4. Signing Blank Checks

The LMRDA outlines general fiduciary responsibility for officers and employees of labor organizations. Union officials occupy positions of trust and, therefore, must ensure that the union's funds and other assets are used solely for the benefit of the union and its members. To prevent, or at least inhibit, the misuse of union funds, most organizations install internal controls over the handling of their finances. During the audit, you were observed signing a blank check in advance. You and Mr. Willbur confirmed that you sign checks before they are completed. This is not a recommended financial practice and Local 1629 is encouraged to adopt a policy ensuring that each signer fully understands that his fiduciary responsibilities demand that the checks be signed only after they are completely filled out and he/she knows the purpose and legitimacy of each transaction.

5. Checks Written to Cash

Local 1629 issued four checks to "cash" during the audit period. Checks to "cash" may be easily negotiated by unauthorized individuals. An effective internal control that your union should consider implementing to prevent this from occurring is to prohibit the practice of drawing checks to "cash" and issue each check in the name of the intended payee. If cash is required to replenish a properly documented petty cash fund, it should, nevertheless, be obtained by drawing checks in the name of the custodian in order to provide the union with a paper trail of all check disbursements.

6. Mileage or Gas Expense Policy

You and Mr. Willbur advised that officers may claim either mileage or gas when traveling on union business. The audit revealed that Local 1629 does not have a clear policy regarding the rules for claiming mileage or gas. OLMS recommends that Local 1629 adopt written guidelines concerning such matters.

I want to extend my personal appreciation to AFGE Local 1629 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

Mr. Jeffrey Cunningham
May 19, 2008
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to future officers. If we can provide any additional assistance, please do not hesitate to call.

Sincerely,



Investigator

cc: Michael Willbur, Secretary-Treasurer