



April 3, 2013

Mr. Isaac Ortiz, President
AFGE Local 83
PO Box 331
Anthony, NM 88021

Case Number: 420-14115-[REDACTED]
LM Number: 501-001

Dear Mr. Ortiz:

This office has recently completed an audit of AFGE Local 83 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 President Isaac Ortiz, Secretary-Treasurer Rosemary Oster, Vice President Jose Duran, Vice President Jesus Renova, Sergeant of Arms Terry Green, Chief Steward Ricardo Rubio and CPA Dawn Munoz on April 2, 2013, 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 of the LMRDA and Title 29 of the Code of Federal Regulations (C.F.R.) Section 403.7 require, among other things, that labor organizations maintain adequate records for at least five years after reports are filed by which the information on the reports can be verified, explained and clarified. Pursuant to 29 C.F.R. Section 458.3, this recordkeeping provision of the LMRDA applies to labor organizations subject to the requirements of the Civil Service Reform Act of 1978 (CSRA) as well. Therefore, as a general rule, labor organization must retain 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 83's 2012 records revealed the following recordkeeping violations:

1. Office and Administrative Expenses

Local 83 did not retain adequate documentation for general office supplies expenses and debit card expenses incurred by the union officers totaling at least \$3,456.63 during 2012. For example, there is approximately \$626.31 in expenses for Office Depot for which the local did not retain adequate documentation. A review of the 2012 debit card activity revealed that there were undocumented travel expenses of \$904.60 including payments of \$60.00 to American Airlines and \$487.20 and \$357.40 to Southwest airlines. Additionally, receipts were not retained for \$1,097.28 in the category of office and administrative expenses. For example, a debit card purchase was made at Wal-Mart for \$167.38 with no receipt found in the records. Also, a debit card purchase was made at Sam's Club for \$377.06 with no documentation in the files.

As 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.

2. Reimbursed Expenses to Officers

Local 83 did not retain adequate documentation itemizing the 2012 Verizon Wireless cell phone statements for Isaac Ortiz to distinguish between personal calls and union business related calls. The president is authorized per the local's 2012 annual budget to have a cell phone bill paid monthly by the union. However, there is no specific amount authorized in the budget. The OLMS review of the Verizon Wireless statements determined it was not possible to confirm that cell phone being paid for by the local was strictly for business use. If there is a dual usage of the cell phone, the personal charges must be subtracted from the union business charges. The remaining union business total is what the local is authorized to pay on that bill. Authorization must be clearly written for any cell phone expenses paid out from the union.

3. Meal Expenses

Local 83's records of meal expenses did not always include an actual receipt in the records showing proof of the date, location and purpose of the meal. There was \$1,494.50 in total meal expenses that had no back up in the records. A few notable examples of these undocumented expenses include \$50.64 to Emiliano's Pizza, \$105.49 to Great American Land & Cattle, \$76.75 to Homestyle Pizzeria and \$120.14 to WING IT restaurants.

Local 83 did not require officers to submit itemized receipts for meal expenses totaling at least \$5,848.21. The union must maintain itemized receipts provided by restaurants to officers and employees. These itemized receipts are necessary to determine if such disbursements are for union business purposes and to sufficiently fulfill the recordkeeping requirement of LMRDA Section 206.

Local 83 records of meal expenses did not always include written explanations of union business conducted or the names and titles of the persons incurring the restaurant charges. The union records of meal expenses must include written explanations of the union business conducted and the full names and titles of all persons who incurred the restaurant charges. Also, the records retained must identify the names of the restaurants where the officers or employees incurred meal expenses.

4. Disposition of Giveaways to Members

Local 83 did not maintain an inventory property it purchased, sold, or gave away. Local 83's 2012 approved annual budget allowed for \$9,000 in the category of giveaways. According to the review of the debit card expenditures, the annual expense for this category was \$12,131.19.

The union must report the value of all giveaways to members each year in Item 51 (Contributions, Gifts and Grants) of the LM-3. The union must retain an inventory or similar record of gifts and giveaways purchased to verify, clarify, and explain the information that must be reported in Item 51.

The union must record in at least one record the date and amount of each circumstance in which giveaways were submitted to members. For example, \$12,131.19 is listed in the local's general ledger as the total giveaways for members in 2012. \$3,883.83 of that total is flowers purchased from Corina's Flowers, Emily's flowers and Flower's com for the purpose of funeral arrangements or retirement celebrations. The remaining \$8,742.36 disbursed for giveaways are not documented in the local's records and include prizes, gift cards, snacks, and electronics and food items given away to members or used for membership related parties. The local's records must include the purchase date of each item, when the item was given away to a member and which member the item was given to.

5. Recruitment Incentives Not Properly Recorded

Local 83 did not maintain any detailed accounting, backup or approvals for the \$25.00 recruitment incentive given to new members and their recruiters. The total incentives paid for 2012 is \$1,833.00. The local did not maintain records of new membership sign ups or records of what events or meetings where these sign ups took place. There is no documentation in the meeting minutes or union activity that validates these disbursements. The local must keep a detailed record of all new members and any incentive paid out to the new members and their recruiters. In the general ledger include the name of each new member, the date of their initiation, who recruited the member and what incentive they received. Additionally, the local wants to document if the incentive was paid by cash or check and on what date. If the incentive is paid by check, it's important to note the check number next to that new members name and their recruiters' name.

6. Information not Recorded in Meeting Minutes

During the audit, President Isaac Ortiz and Secretary-Treasurer Rosemary Oster advised OLMS that the executive board meetings took place at least once per month and there were other meetings held as needed. There is no official record of the executive board meetings taking place yet there are expenses associated with the meetings in the union's financial records. The local must maintain proper documentation of meeting minutes and keep that record to serve as back up for any and all expenses associated with that meeting. If there are important authorizations made at an executive board meeting they hold no merit without proper documentation of motions made and accepted and any other approvals. There was \$511.40 spent during 2012 for executive board meeting meals.

Based on your assurance that Local 83 will retain adequate documentation in the future, OLMS will take no further enforcement action at this time regarding the above violations.

The proper maintenance of union records is the personal responsibility of the individuals who are required to file Local 83's LM report. 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 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 who caused the violations, not just the individuals who are responsible for filing the union's LM report.

Reporting Violations

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 AFGE Local 83 for the fiscal year ended December, 31 2011, was deficient in that:

1. Disbursements to Officers (LM-3)

In the audit opening interview on January 24, 2013, OLMS discussed with the local's CPA, president and secretary-treasurer that all expenses paid to local officers, direct or indirect, must be listed under Item 24 (All Officers and Disbursements to Officers. After reviewing the 2011 LM-3 report at the meeting, it was revealed that Local 83 did not include all reimbursements and payments to officers under Item 24 (All Officers and Disbursements to Officers). In 2011, it appears the union erroneously reported some of the officer's

disbursements in Item 48 (Office and Administrative Expense), Item 51 (Contributions, Gifts and Grants), and Item 54 (Other Disbursements). The majority of the local's disbursements are made via the debit card belonging to the president or the secretary-treasurer. Disbursements made via these debit cards must be accounted for in full and the total expenditures must be listed on the LM-3 report under the appropriate officer's name on Item 24 (All Officers and Disbursements to Officers). OLMS review of the 2012 financial records revealed that this same error was made in 2012 and the corrections will be corrected by the local's CPA.

The union must report most direct disbursements to Local 83 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).

AFGE Local 83 must file an amended Form LM-3 for the fiscal year ended December 31, 2011, to correct the deficient items discussed above. I encourage Local 83 to complete, sign, and file its report electronically using the Electronic Forms System (EFS) available at the OLMS website at www.olms.dol.gov. Reporting forms and instructions can be downloaded from the website, if you prefer not to file electronically. The amended Form LM-3 should be filed electronically no later than May 5, 2013 or submitted to this office at the above address by the same date. Before filing, review the report thoroughly to be sure it is complete and accurate. Paper reports must be signed with original signatures.

Other Violation

The audit disclosed the following other violation(s):

Inadequate Bonding

Pursuant to 29 C.F.R. Section 458.35, officers and employees of any labor organization subject to the CSRA are required to be bonded in accordance with Section 502(a) of the LMRDA. This provision requires that union officers and employees be bonded for no less than 10% of the total funds those individuals or their predecessors handled during the preceding fiscal year.

Local 83's officers and employees are currently bonded for \$5,000 but they must be bonded for at least \$9,754.47. Local 83 should obtain adequate bonding coverage for its

officers and employees immediately. Please provide proof of bonding coverage to this office as soon as possible, but not later than May 5, 2013.

I want to extend my personal appreciation to AFGE Local 83 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:

Rosemary Oster, Secretary- Treasurer
Jose Duran, Vice President
Jesus Renova, Vice President
Ruben Borrego, Trustee
Victor Jordan, Trustee
Terry Green, Sergeant of Arms
Ricardo Rubio, Chief Steward