

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Boston District Office
Room E-365
JFK Federal Building
Boston, MA 02203
(617)624-6690 Fax: (617)624-6606



November 4, 2009

Mr. Kenneth Kephart, President
Amalgamated Transit Union AFL-CIO
Local Division 22
59 Williams Street
Worcester, MA 01609-2161

LM File Number 015-604
Case Number: || || || || || || || || || ||

Dear Mr. Kephart:

This office has recently completed an audit of ATU LDIV 22 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 Business Agent/Financial Secretary Christopher Bruce and you on November 4, 2009, 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.

The CAP disclosed recordkeeping violations and reporting violations.

Recordkeeping Violations

Title II of the LMRDA establishes certain reporting and recordkeeping requirements. Section 206 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 LDIV 22's 2008 records revealed the following recordkeeping violations:

1. General Reimbursed and Credit Card Expenses

LDIV 22 did not retain adequate documentation for reimbursed expenses and credit card expenses incurred by Business Agent/Financial Secretary Christopher Bruce totaling at least \$2,500. For example, convention, conference, or meeting lodging expenses and office administrative expenses did not have adequate documentation retained.

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.

2. Other Receipts

LDIV 22 did not regain adequate documentation for local receipts totaling at least \$115 during the audit period. These receipts were for cash received during the audit period for dues and reimbursements to the union.

As previously noted above, labor organizations must retain at least one record showing the date, amount, purpose, and source of money received. 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.

3. Receipt Dates not Recorded

Entries in LDIV 22's receipts journal reflect the date the union deposited money, but not the date money was received. Union receipts records must show the date of receipt. The date of receipt is required to verify, explain, or clarify amounts required to be reported in Statement B (Receipts and Disbursements) of the LM-3. The LM-3 instructions for Statement B state that the labor organization must record receipts when it actually receives money and disbursements when it actually pays out money. Failure to record the date money was received could result in the union reporting some receipts for a different year than when it actually received them.

Based on your assurance that LDIV 22 will retain adequate documentation in the future, OLMS will take no further enforcement action at this time regarding the above violations.

Reporting Violations

The audit disclosed a violation of LMRDA Section 201(b), which requires labor organizations to file annual financial reports accurately disclosing their financial condition and operations. The Labor Organization Annual Report (Form LM-3) filed by LDIV 22 for fiscal year ending December 31, 2008, was deficient in the following areas:

1. Disbursements to Officers

LDIV 22 did not include some reimbursements to officers totaling at least \$6,400 in the amounts reported Item 24 (All Officers and Disbursements to Officers). It appears the union erroneously reported these payments in Item 54 (Other Disbursements).

The union must report most direct disbursements to LDIV 22 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. Failure to Properly Categorize Receipts

LDIV 22 did not correctly categorize at least \$132,000 in dues payments in Item 38 (Dues). It appears as though the union erroneously reported these receipts in Item 39 (Per Capita Tax). The instructions for Item 38 state the total dues received by your organization, including dues received directly by your organization from members, dues received from employers through a checkoff arrangement, and dues transmitted to your organization by a parent body or other affiliate during the fiscal year must be entered in Item 38.

3. Failure to Properly Categorize Disbursements

LDIV 22 did not correctly categorize at least \$16,000 in office and administrative payments in Item 48 (Office and Administrative Expenses) and \$1,200 in indirect benefit disbursements in Item 50 (Benefits). The instructions for Item 48 state the total amount of ordinary office and administrative expenses, for example, rent, utilities, office supplies, postage, subscriptions, fidelity bond premiums, etc. must be entered in Item 48. Also reported in Item 48 are all taxes assessed against and paid by a labor organization, including FICA taxes as an employer. The instructions for Item 50 state the total disbursements for all direct and indirect benefit disbursements made by your organization during the fiscal year must be entered in Item 50.

4. Failure to Report Receipts and Disbursements

LDIV 22 did not report at least \$965 in local receipts and \$965 in local disbursements in Statement B of the local's LM-3 filed for the fiscal year ending December 31, 2008. The Statement B instructions state that receipts must be recorded when money is actually received by the labor organization and

disbursements must be recorded when money is actually paid out by the labor organization.

5. Failure to File Bylaws

The audit disclosed a violation of LMRDA Section 201(a), which requires that a union submit a copy of its revised constitution and bylaws with its LM report when it makes changes to its constitution or bylaws. LDIV 22 amended its constitution and bylaws in 2008, but did not file a copy with its LM report for that year.

LDIV 22 has now filed a copy of its constitution and bylaws.

LDIV 22 must file an amended Form LM-3 for fiscal year ending December 31, 2008, to correct the deficient items discussed above. I provided you with a blank form and instructions, and advised you that the reporting forms and instructions are available on the OLMS website (www.olms.dol.gov). The amended Form LM-3 should be submitted to this office at the above address as soon as possible, but not later than December 1, 2009. Before filing, review the report thoroughly to be sure it is complete, accurate, and signed properly with original signatures.

I want to extend my personal appreciation to ATU LDIV 22 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,

Mark Letizi
District Director

cc: Christopher Bruce, Business Agent/Financial Secretary

Mr. Kenneth Kephart
November 4, 2009
Page 6 of 5