



October 18, 2010

Mr. Joseph Jondreau, President  
Locomotive Engineers, IBT Division 188  
10935 S. Stone Rd  
Solen Springs, WI 54873

Case Number: [REDACTED]  
LM Number: 540-843

Dear Mr. Jondreau:

This office has recently completed an audit of Locomotive Engineers, IBT Division 188 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, Secretary-Treasurer Jon Urban, and Local Chairman Scott Reinke on September 30, 2010, 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 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 Division 188's 2008 and 2009 records revealed the following recordkeeping violations:

### 1. General Reimbursed Expenses

Division 188 did not retain adequate documentation for reimbursed expenses incurred by Local Chairman Scott Reinke and Secretary-Treasurer Jon Urban totaling at least \$1,318. For example, Mr. Reinke was reimbursed \$200 to have the union's computer repaired in October 2009. However, no receipt was retained to support the expense. Additionally, at least \$400 was disbursed to Mr. Reinke and Mr. Urban for mileage to attend meetings and conferences, but adequate records were not retained. The only records retained to support these expenses were canceled checks and expense reports with no description of the union business that required the officers to travel. In the case of mileage payments to officers for travel on union business, Division 188 must maintain records which identify the business purpose of each trip, the dates of travel, the locations traveled to and from, and the number of miles driven.

### 2. Lost Wages

Division 188 did not retain adequate documentation for lost wage reimbursement payments to Mr. Reinke or Mr. Urban totaling at least \$3,300 in 2009. Records must be maintained in support of lost wage claims that identify each date lost wages were incurred, the number of hours lost on each date, the applicable rate of pay, and a description of the union business conducted. The audit found that Division 188 used expense reports to document lost wage claims, but did not identify the dates that wages were lost, the number of hours lost on each date, or the applicable rate of pay.

During the exit interview, I provided a sample of an expense voucher that Division 188 may use to satisfy this requirement. The sample identifies the type of information and documentation that the local must maintain for lost wages and other officer expenses.

### 3. Receipt Dates not Recorded

Entries made by Division 188 in the check register, maintained in Quicken, do not reflect the date of the receipt, the sources of the payments, or the individual amounts received. During the audit, Mr. Urban advised that, rather than record in Quicken the dates that monies were received, he sometimes records the dates that bank deposits were made and the total amount deposited on each date. Division 188 receives a dues check from Wisconsin Central General Committee of Adjustment about once every two or three months. Some payments appear to have been deposited in a different year than when they were received. For example, a dues check in the amount of \$1,431 was received in October 2009 according to the check stub, but was not deposited or recorded in Quicken until January 2010.

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 receipts must be recorded when money is actually received, and disbursements must be recorded when

money is actually paid out. Failure to record the date money was received could result in reporting some receipts for a different year than the one in which they were received.

#### 4. Lack of Salary Authorization

Division 188 did not maintain records to verify that Mr. Urban's salary reported in Item 24 (All Officer and Disbursements to Officers) of the LM-3 was the authorized amount and was therefore correctly reported. Mr. Urban receives a monthly salary of \$100 that is paid twice a year. During the audit, Mr. Reinke advised that Mr. Urban's salary was authorized and approved by the membership at a meeting. However, the division did not keep any records of that meeting. Mr. Urban is the only officer who receives a monthly salary. Division 188 must keep a record, such as meeting minutes, to show the current salary authorized by the entity or individual with the authority to establish salaries.

The proper maintenance of union records is the personal responsibility of the individuals who are required to file Division 188's LM-3 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

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 Division 188 for the fiscal year ended December 31, 2009, was deficient in the following areas:

##### 1. Disbursements to Officers

Division 188 did not include some salary payments to Mr. Urban totaling at least \$900 in the amounts reported on Item 24 (All Officers and Disbursements to Officers). The Quicken records indicate that Mr. Urban received some salary checks and lost wages during the audit period; however, only Mr. Urban's monthly salary of \$100 appears to have been reported in Item 24. It appears some payments were erroneously not reported anywhere in Statement B (Receipts and Disbursements).

Also, Division 188 misreported reimbursements to you, Mr. Urban, and Alternate Secretary-Treasurer Brian Hankins in Column E (Allowances and Other Disbursements) of Item 24. Division 188's check stubs, expense reports, and Quicken records show that you received approximately \$2,247 in reimbursed expenses, but \$2,594 was reported next to your name in Column E. In addition, the records indicate Mr. Urban received approximately \$1,038 in

reimbursed expenses, but only \$1,223 was reported next to his name in column E. Finally, Mr. Hankins received approximately \$72, but no payments were reported to him in Column E.

Most direct disbursements officers and some indirect disbursements made on behalf of its officers must be reported 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. Statement A (Cash Balances)

It appears that the cash figures reported in Item 25 are not the cash figures according to the union's books after reconciliation to the bank statements. The Quicken records indicate that Division 188's beginning cash balance was \$3,758 on January 1, 2009. However, only \$1,179 was reported in Item 25A (Start of the Reporting Period). Division 188's records indicate the ending cash balance was \$1,915 on December 31, 2009, but \$2,286 was reported in Item 25B (End of the Reporting Period). The instructions for Item 25 state that the union should obtain account balances from its books as reconciled to the balances shown on bank statements.

## 3. Statement B (Receipts & Disbursements)

Division 188 misreported its receipts by at least \$5,372 and misreported disbursements by at least \$3,853. Division 188's Quicken records and check stubs from the General Committee of Adjustment show \$9,246 was received during 2009. However, the amount reported in Item 44 (Total Receipts) is \$14,618. The check register shows \$9,657 was disbursed during 2009. The amount reported in Item 55 (Total Disbursements) is \$13,511.

As we discussed at the exit interview, labor organizations which have total annual receipts of less than \$10,000 may file the Form LM-4, Labor Organization Annual Report. Division 188 must file an amended Form LM-3 or LM-4 for fiscal year ended December 31, 2009, to correct the deficient items discussed above. I provided you with a blank forms and instructions, and advised you that the reporting forms and instructions are available on the OLMS website ([www.olms.dol.gov](http://www.olms.dol.gov)). The amended Form LM-3 or LM-4 should be submitted to this office at the above address as soon as possible, but not later than November 2, 2010. Before filing, review the report thoroughly to be sure it is complete, accurate, and signed properly with original signatures.

Other Issue

Tax Withholdings

The audit revealed that Division 188 may not be properly following state or federal requirements for withholding of various taxes from payments to officers. While Division 188 itself may be exempt from income taxes, payments made by Division 188 to officers and employees are not exempt, except in certain circumstances. Mr. Urban advised that he withheld taxes from wages, but has not paid either the employer taxes or withheld employee federal and unemployment taxes to the Internal Revenue Service or the State of Wisconsin for at least two years.

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 Division 188 as an “employer” must also pay its share of Social Security and Medicare taxes. Division 188 may be liable for the Federal Unemployment Tax (FUTA) as well.

OLMS 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 “Circular E, Employer’s Tax Guide,” and Form 990, which Division 188 may be required to file). OLMS also suggests that you determine Division 188’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 Locomotive Engineers, IBT Division 188 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: Mr. Jon Urban, Secretary-Treasurer