

U.S. Department of Labor

Employment Standards Administration
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June 19, 2007

Mr. Yasmine Guerrier, Treasurer
Laborers AFL-CIO
Local 380
PO Box 390178
Cambridge, MA, 02139-0002

Re: Case Number: [REDACTED]

Dear Mr. Guerrier:

This office has recently completed an audit of Laborers Local 380 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 Nelson Carneiro and you on June 18, 2007, 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 adequate records be maintained for at least 5 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 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 note can be

written on it providing the additional information. An exception may be made only in those cases where 1) other equally descriptive documentation has been maintained, and 2) there is evidence of actual oversight and control over disbursements.

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 of Local 380's 2006 records revealed the following recordkeeping violations:

1. Failure to maintain record of salary authorization

The local did not maintain records to verify the salary and benefits of Business Manager Nelson Carneiro. The union must keep a record, such as minutes, to show who authorized the pay package, when it was authorized, and its details. Though normally the LMRDA requires a union to maintain its financial records for no longer than five years, when those records document a policy whose effect is felt beyond that period, the record must be retained until five years after its impact has waned.

2. Failure to retain minutes

The problem outlined in item one underscores your failure to keep your minutes for a period of five years. Information received during the audit indicated that Carneiro's pay was decided on during a board meeting held within the past five years, yet the minutes documenting that meeting could not be found.

3. Missing bank statements

Bank statements of your savings account for June through August 2006 were missing. Though copies were gotten from the bank, it is most important that bank statements be safeguarded and kept in your possession for five years.

4. Lack of travel documentation

The union failed to keep such documents, such as a convention call or registration form, as to establish the purpose and length of overnight union travel. Such backup record shall serve as a means to validate the travel engaged in by the officer and/or employee was for a union purpose. The audit, though, was able to determine that the travel for 2006 was proper.

5. Inaccurate treasurer's report

The treasurer's report which is made for the benefit of the general membership did not report the withdrawal of \$2500 in cash in May 2006 for an anticipated

local summer-time barbeque. The check journal, however, reported the withdrawal. All but \$500 was returned to the treasury after it became clear that the union would not be able to hold the event. The \$500 was retained as petty cash, a fact not reported in the check journal or treasurer's report. A petty cash journal was produced, however, upon an inquiry from the auditor. (The unused balance of the petty cash fund has since been returned to the treasury as it was deemed to be unnecessary.)

The treasurer's report also failed to note that in June 2006, the union advanced President Brown two month's salary, \$800.00. In contrast, the check journal did report the advance. The audit did establish to its satisfaction that Brown received no salary for the following two months, July and August.

While there is no federal requirement that a full report of a union's disbursements and receipts be presented to the union membership on a periodic basis, when such a report is voluntarily presented, it must be accurate.

As agreed, provided that Local 380 maintains adequate documentation as discussed above in the future, no additional enforcement action will be taken regarding these violations.

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. The Labor Organization Annual Report Form LM-3 filed by Local 308 for fiscal years ending December 31, 2003, 2004 and 2006, were deficient in deficient in the following areas:

1. Loan to officer, reporting thereof

The LM reports for 2003 & 2004 failed to disclose that the union had loaned its former Treasurer Eduardo Santana \$3900 in 2003. This loan was not repaid until April 2007. Item 18 of the LM-3 clearly asks the union to report "loans totaling more than \$250 to any officer..." The union failed to do this. It reported a loan receivable for both years in Statement A, Assets and Liabilities, however, there was no information offered as to its nature. (See below for more information concerning the legality of this loan.)

The two month salary advance made to President Brown constitutes a loan under the LMRDA and should have been reported as such in 2006, eventhough by the close of the year Brown had foregone sufficient salary to consider the advance repaid.

2. Disbursements to officers

The local failed to include all its reimbursements to officers and employees in Item 24 (All Officers and Disbursements to Officers). Such payments appear to have been erroneously reported elsewhere on the LM-3 report.

All direct disbursements to 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. An "indirect disbursement" to an officer is a payment to another party (including credit card companies) 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). I direct your attention to the LM-3 instructions for more details.

3. Automobile expense

Disbursements for the operation and maintenance of union automobiles were not properly reported. The LM-3 instructions for Item 24 require that the total maintenance and operating costs of any automobile owned or leased by your organization and assigned to an officer regardless whether the use was for official business or for the personal benefit of the officer must be reported in Column E of Item 24 (Allowances and Other Disbursements).

Other Violations

Loans to officers

The \$3900 loan in 2003 to former Treasurer Eduardo Santana was illegal. Section 503(a) of the LMRDA states as follows:

No labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of \$2000.

Section 503(c) imposes upon any person who willfully violates the above a fine of not more than \$5,000 or a term of imprisonment not to exceed one year, or both.

After conversations with the union, we have concluded that it was unaware of this

prohibition. As it has pledged not to again violate this or any other provision of the Act, we shall take no further action in this matter.

Other Issues

Housekeeping for recordkeeping

The bills and receipts that the local collected to substantiate its expenses were disorganized. They were found in no particular order, nor were there any notations written on them to link them to a particular check. In the future, I urge you to note directly on the bill, the number and date of the check issued to pay the charge. The bills should then be kept in order by check number or date.

I want to extend my personal appreciation to Laborers Local 380 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: President Josephine Brown