

U.S. Department of Labor

Employment Standards Administration
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December 2, 2009

Mr. Ignacio Castillo, Business Manager
Laborers Local 389
300 7th Avenue
San Mateo, CA 94406

LM File Number: 035-465
Case Number: [REDACTED]

Dear Mr. Castillo:

This office has recently completed an audit of Laborers Local 389 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 and President Joseph Scott 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 audit disclosed the following:

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 Local 389's 2008 records revealed the following recordkeeping violations:

1. Meal Expenses

Local 389 did not require officers and employees to submit itemized receipts for meal expenses. For one officer, the non-itemized receipts totaled at least \$1,200. 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. 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.

2. Disposition of Property

Local 389 did not maintain an inventory of hats, jackets, and other property it purchased, sold, or gave away. The union must report the value of any union property on hand at the beginning and end of each year in Item 28 of the LM-2. The union must retain an inventory or similar record of property on hand to verify, clarify, and explain the information that must be reported in Item 28.

The union must record in at least one record the date and amount received from each sale of union hats, jackets and other items.

Based on your assurance that Local 389 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-2) filed by Local 389 for fiscal year ending December 31, 2008, was deficient in the following areas:

1. Acquire/Dispose of Property

Item 15 [LM-2] (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 hats and t-shirts totaling more than \$2,200 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.

2. Disbursements to Officer and Employees (LM-2)

Local 389 did not include bonuses to employees totaling \$500 in Schedule 12 (Disbursements to Employees). The union must report in Column D of Schedules 11 and 12 (Gross Salary Disbursements) all wages paid to officers and employees.

3. Investments

Local 389 reported the market value of investments in Schedule 5 (investments), even when the cost of those investments was lower. The union must report the book value of investments. Book value is the lower of cost or market value.

I am not requiring that Local 389 file an amended LM report for 2008 to correct the deficient items, but Local 389 has agreed to properly report the deficient items on all future reports it files with OLMS.

Other Issue: Use of Signature Stamp

During the audit, Former Business Manager [REDACTED] advised that, on occasion, two employees can use one or both signature stamps for the treasurer and the president to sign union checks. Article IV (D) of Local Union Constitution requires that checks be

signed by the president and treasurer. The two signature requirement is an effective internal control of union funds. Its purpose is to attest to the authenticity of a completed document already signed. However, the use of a signature stamp for the signers does not attest to the authenticity of the completed check, and negates the purpose of the two signature requirement. OLMS recommends that Local 389 review these procedures to improve internal control of union funds.

I want to extend my personal appreciation to Laborers Local 389 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. Joseph Scott, President