

U.S. Department of Labor

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December 19, 2008

Ms. Shawn R. Brayton, President
Food and Commercial Workers
Local 496
2901 Ridgelake, #202
Metairie, LA 70002

LM File Number: 018-714
Case Number: || || || || || || ||

Dear Ms. Brayton:

This office has recently completed an audit of Food and Commercial Workers Local 496 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 on December 17, 2008, 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 Local 496's 2007 records revealed the following recordkeeping violations:

1. Union Owned/Leased Vehicles

The union did not maintain records necessary to verify the accuracy of the information reported in Schedules 11 (All Officers and Disbursements to Officers) and 12 (Disbursements to Employees) of the LM-2.

Local 496 incurred expenses totaling at least \$7,635 for automobiles during 2007. However, Local 496 did not maintain records documenting business versus personal use of the union vehicles.

The LM-2 instructions include specific rules for the reporting of automobile expenses. The union must report operating and maintenance costs for each of its owned or leased vehicles in Schedules 11 and 12 of the LM-2, allocated to the officer or employee to whom each vehicle is assigned.

For each trip they take using a union owned or leased vehicle, officers and employees must maintain mileage logs that show the date, number of miles driven, whether the trip was business or personal, and, if business, the purpose of the trip.

2. Reimbursed Auto Expenses

Union officers and employees who received reimbursement for business use of their personal vehicles did not retain adequate documentation to support payments to them totaling at least \$3,529 during 2007. The union must maintain records which identify the dates of travel, locations traveled to and from, and number of miles driven. The record must also show the business purpose of each use of a personal vehicle for business travel by an officer or employee who was reimbursed for mileage expenses.

3. Disposition of Property

Local 496 did not maintain an inventory of textbooks 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 textbooks and other items.

4. Receipt Dates not Recorded

Entries in Local 496'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-2. The LM-2 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 Local 496 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 496 for fiscal year ending December 31, 2007, was deficient in the following areas:

1. Disbursements to Officers and Employees

Local 496 did not include some disbursements to officers and employees totaling at least \$2,506 in Schedule 11 (All Officers and Disbursements to Officers) and

Schedule 12 (Disbursements to Employees). It appears that the local erroneously reported these payments in Schedules 15 through 19.

The union must report in Column F of Schedules 11 and 12 (Disbursements for Official Business) direct disbursements to officers and employees for reimbursement of expenses they incurred while conducting union business.

In addition, the union must report in Column F of Schedules 11 and 12 indirect disbursements made to another party (such as a credit card company) for business expenses union personnel incur. However, the union must report in Schedules 15 through 19 indirect disbursements for business expenses union personnel incur for transportation by public carrier (such as an airline) and for temporary lodging expenses while traveling on union business. The union must report in Column G (Other Disbursements) of Schedules 11 and 12 any direct or indirect disbursements to union personnel for expenses not necessary for conducting union business.

2. Automobile Expenses

Local 496 did not include in the amounts reported in Schedule 11 (All Officers and Disbursements to Officers) and Schedule 12 (Disbursements to Employees) disbursements for the operation and maintenance of union automobiles totaling at least \$7,635.

The LM-2 instructions provide two methods for reporting automobile-related expenses. The union must report in Schedules 11 and 12 direct and indirect disbursements for the operation and maintenance of union owned and leased vehicles and the operation and maintenance of vehicles owned by union personnel (including gasoline, repairs, and insurance). The union may divide the expenses and report them in Columns F and G based on miles driven for union business (supported by mileage logs) compared with miles driven for personal use.

Alternatively, rather than allocating the expenses between Columns F and G, if 50 percent or more of an officer's or an employee's use of a vehicle was for official business, the union may report all of the expenses relative to the vehicle assigned to the officer or employee in Column F of Schedule 11 or 12 with an explanation in Item 69 (Additional Information) that the officer or employee used the vehicle part of the time for personal business. Similarly, if a vehicle assigned to an officer or employee was used less than 50 percent of the time for business, all of the expenses relative to that vehicle may be reported in Column G with an explanation in Item 69 that the officer or employee used the vehicle partly for official business.

3. Improper Itemization of Disbursement or Receipt

Local 496 improperly reported several transactions as "major" transactions in Schedules 14-20. A "major" transaction includes any individual transaction of \$5,000 or more or total transactions to or from any single entity or individual that aggregate to \$5,000 or more during the reporting period and which the local cannot properly report elsewhere in Statement B. The audit found the following errors on the Itemization Pages and Statement B:

- a) Individual transactions of receipts and disbursements of less than \$5,000 were compiled together and reported as major payees or payers to "Miscellaneous" on Schedules 14, 15, and 17 rather than on the Detailed Summary Page for Schedules 14-19.
- b) Per capita paid to the UFCW International, LA AFL-CIO, and other intermediate bodies totaling at least \$174,648.00 were improperly reported as major transactions on Schedule 18 rather than in Item 56 (Per Capita Tax) of Statement B.
- c) Disbursements totaling at least \$60,222 for benefits were improperly reported on Schedule 18 rather than in Item 55 (Benefits) of Statement B and on Schedule 20.
- d) Disbursements totaling at least \$32,377 for the purchase of supplies (textbooks) for resale were improperly reported as a major payee on Schedule 19 rather than in Item 59 (Supplies for Resale) of Statement B.
- e) The audit revealed that the union provides a sick benefit and other insurance benefits for its members. The union receives at least \$41,011 from members and disbursed at least \$47,784 on their behalf. However, the union failed to report any amounts in Item 47 (From Members for Disbursement on Their Behalf) or Item 64 (On Behalf of Individual Members) of Statement B.
- f) The union withheld taxes and payroll deductions from the salary of officers and employees totaling at least \$61,876, but failed to report any amounts in Item 67 (Withholding Taxes and Payroll Deductions) of Statement B.

4. Sale of Supplies

Local 496 did not correctly report receipts from the sale of supplies or disbursements for supplies for resale. The audit revealed that during 2007, Local 496 disbursed at least \$32,377 for items that it re-sold to members, collecting receipts totaling at least \$34,793. The LM-2 instructions require that the union report receipts from the sale of supplies in Item 39 (Sale of Supplies) and disbursements for supplies for resale in Item 59 (Supplies for Resale). In addition, it must report the value of any supplies for resale on hand at the beginning and end of the year in Item 28 and Schedule 7 (Other Assets).

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. Local 496 amended its constitution and bylaws in 1999, but did not file a copy with its LM report for that year.

Local 496 has now filed a copy of its constitution and bylaws.

Local 496 must file an amended Form LM-2 for fiscal year ending December 31, 2007, to correct the deficient items discussed above. I explained to you the filing procedures and the availability of filing software on the OLMS website (www.olms.dol.gov). The amended Form LM-2 must be electronically filed as soon as possible, but not later than January 21, 2009. Before filing, review the report thoroughly to be sure it is complete and accurate, and properly signed with electronic signatures.

Other Violation

The audit disclosed the following other violation:

Inadequate Bonding

The audit revealed a violation of LMRDA Section 502 (Bonding), which requires that union officers and employees be bonded for no less than 10 percent of the total funds those individuals or their predecessors handled during the preceding fiscal year.

The audit revealed that Local 496's officers and employees were not bonded for the minimum amount required at the time of the audit. However, the union obtained adequate bonding coverage and provided evidence of this to OLMS during the audit. As a result, OLMS will take no further enforcement action regarding this issue.

Other Issues

1. Duplicate Receipt Log

Members of Local 496 pay dues directly to the union and union employees issue duplicate receipts to dues payers. Since more than one duplicate receipt book is in use, the union should maintain a log to identify each book, the series of receipt numbers in each book, and to whom each book is assigned.

2. Use of Signature Stamp

During the audit, you advised that it is Local 496's practice for you to sign all union checks and to stamp the signature of Secretary Treasurer Carolyn Verdin on union checks. You indicated that no one but you reviews the checks before they are issued. Article IX, Section C of Local 496's bylaws requires that two of the three trustees sign all checks. 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 second signer does not attest to the authenticity of the completed check, and negates the purpose of the two signature requirement. OLMS recommends that Local 496 review these procedures to improve internal control of union funds.

I want to extend my personal appreciation to Food and Commercial Workers Local 496 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,

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Investigator

cc: Ms. Carolyn A. Verdin, Secretary Treasurer