

U.S. Department of Labor

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March 13, 2008

Mr. Michael Swamp
Business Manager
Iron Workers, AFL-CIO
Local Union 440
801 Varick Street
Utica, NY 13502

LM File Number: 044-977

Case Number: [REDACTED]

Dear Mr. Swamp:

This office has recently completed an audit of Iron Workers Local Union 440 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 Office Secretary Paula Layaw and yourself on March 6, 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 Iron Workers Local 440's records revealed the following recordkeeping violations:

1. General Disbursements

Local 440 did not retain adequate documentation for some disbursements totaling at least \$2,763. For example, there was no documentation from the Luppino's Trackside Tavern for \$493.96 for a check issued December 22, 2006. In addition, two Cingular Wireless bills were not retained for \$415.51 and \$277.66. Two checks were also issued to the Utica Postmaster for \$72.80 and \$195, both of which failed to be supported with a receipt.

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. Credit Card Expenses

Local 440 did not retain adequate documentation for credit card expenses incurred by Business Manager Michael Swamp, Vice President Larry Beauvais, or President Joseph Combs totaling at least \$1,620. For example, bills totaling \$800 were not retained for lodging at the Spa Hotel in Niagara Falls for three of the union's officers. Also, numerous gas receipts were not retained for purchases on the union credit card.

As, previously noted above, labor organizations must retain original receipts, bills, and vouchers for all disbursements, including those charged to the union credit card. A credit card statement is not considered adequate documentation.

3. Petty Cash Records

The union did not maintain adequate records for monies disbursed from petty cash. Labor organizations must retain adequate documentation for all disbursements, including cash disbursements from petty cash. Several receipts were missing and an accurate balance of the fund was not maintained.

Based on your assurance that Local 440 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 Iron Workers Local 440 for fiscal year ending June 30, 2007 was deficient in the following areas:

1. Disbursements to Officers and Employees (LM-2)

Local 440 did not include some reimbursements to officers totaling at least \$3,900 in Schedule 11 (All Officers and Disbursements to Officers). It appears that the local erroneously reported these payments in Schedules 15 through 19.

Although disbursements to Vice President Larry Beauvais and President Joseph Combs were subsequently reimbursed back to the union by the Apprentice Fund, initial disbursements were made to these officers and need to be reported next to the officers' name in Schedule 11. In addition, all officers should be listed with their title and status on the report whether payments were made to them during the fiscal year.

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.

Furthermore, on Schedule 11 (All Officers and Disbursements to Officers) and Schedule 12 (Disbursements to Employees) the union failed to report sufficiently the estimated percentage of time spent by officers or employees on activities that fall within Schedules 15 through 19. The union reported that Business Manager

Swamp spends 100% of his time on Representational Activities. Swamp stated that he spends time on other activities as well.

The union also failed to report deductions withdrawn from the total disbursements to both officers and employees on Line 8 of Schedule 11 and Schedule 12.

2. Failure to Report Receipts and Disbursements (Netting)

The union failed to report all cash receipts received during the period and alternately, all cash disbursements when money was actually paid out, on Statement B of the LM-2 report. Since all cash flowing in and out of the union must be reported, "netting" is not permitted. Netting is the offsetting of receipts against disbursements and reporting only the balance (net) as either a receipt or disbursement. Therefore, any monies received or disbursed even on behalf of another entity must be reported as such on the LM-2 report.

The total receipts listed in Line 49 (Total Receipts) of Statement B and the total disbursements reported on Line 68 (Total Disbursements) of Statement B are reported incorrectly.

3. Schedule 7, Other Assets

Local 440 reported Prepaid Rent as Other Assets on Schedule 7 of Form LM-2 in the amount of \$540. The audit found no record of such a pre-payment.

4. Failure to Itemize Disbursement or Receipt (LM-2)

Local 440 did not properly report several "major" transactions in Schedule(s) 14 and 18 on Form LM-2. 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 that several payments were made to Blitman & King and to AT&T that aggregate to \$5,000 or more during the reporting period which would be considered as "major" transactions. These entities should be itemized on the report in the appropriate schedule provided all services rendered were categorized in the same area.

In addition, on Schedule 14, Other Receipts, some "major" transactions that were reported were done so incorrectly. For example, the administrative fees received from the Apprentice fund during the reporting period, should not be lumped into

one date the funds were received on the report. The date reported in Column D should be the date the funds were actually received from the entity. Furthermore, the Type or Classification entered on Column B is incorrect. Although it may be an accounts payable or receivable, the type of business should be reported, such as *Utility Company* or *Accounting Services*.

On Schedule 18 of the report, the union listed several "major" transactions although the purposes, amounts, and entity listed on the report were reported incorrectly. The local union cannot be the entity listed in Column A on Schedule 18. Furthermore, "miscellaneous" used to describe a "major transaction" is insufficient. All transactions not considered a "major" transaction should be reported in the appropriate Schedule under "Non-Itemized Transactions."

5. Failure to Report Contributions, Gifts, & Grants

Local 440 failed to report any contributions, gifts or grants disbursed during the reporting period on the Detailed Summary Page of Schedule 17. The audit revealed that during the reporting period, the union made several donations and/or contributions that should have been reported in this schedule.

Local 440 must file an amended Form LM-2 for fiscal year ending June 30, 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 April 11, 2008. Before filing, review the report thoroughly to be sure it is complete and accurate, and properly signed with electronic signatures.

Other Issues

1. Inventory of Fixed Assets

As discussed with you during course of the audit and during the exit interview, an inventory list is recommended. Office Secretary Paula Layaw agreed to compile a list and provide one to OLMS once completed.

2. Signing Blank Checks

During the audit, you advised that President Joseph Combs and Business Manager Michael occasionally signs blank checks. Furthermore, you advised that two signatures are required on checks, which is also recognized by the bank. 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, signing a blank check in advance does not attest to the authenticity of a completed check, and negates the purpose of the two signature requirement. OLMS recommends that Local 440 review these procedures to improve internal control of union funds.

I want to extend my personal appreciation to Paula Layaw and you for the cooperation and courtesy extended during this compliance audit. I strongly recommend that you make sure this letter and any 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 Joseph Combs

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