

U.S. Department of Labor

Office of Labor-Management Standards
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February 15, 2011

Mr. William Duffy Jr., President
Operating Engineers AFL-CIO
Local 138
137 Gazza Blvd.
Farmingdale, NY 11735

Re: Case Number: [REDACTED]

Dear Mr. Duffy Jr.:

This office has recently completed an audit of Operating Engineers Local 138 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 Vincent Giblin, Steven Biller, Steven Barnett and yourself on February 14, 2011, 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.

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.

Recordkeeping Violations

The audit of Local 138's 2009 records revealed the following recordkeeping violation:

Meal Expenses

Local 138 records of meal expenses did not always include written explanations of union business conducted or the names and titles of the persons incurring the restaurant charges. For example, on 8/24/08 former President/Business Manager, [REDACTED] dined at the Sagamore Club Grill, at a cost of \$1,901.85. The receipt indicated that 40 people were present, but did not disclose the purpose of the meal or the names of the individuals present (only the local union numbers). Further, [REDACTED] also dined at the Lahaina Grill on 2/3/09 at a cost of \$987.15, and on 2/7/09 at a cost of \$1,922.32, while attending the International Convention. Both Lahaina Grill receipts contained the number and titles of those present, but failed to disclose the names of the delegates who attended and the purpose(s) for the meals. 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.

Based on your assurance that Local 138 will retain adequate documentation in the future, OLMS will take no further enforcement action at this time regarding the above violation.

Reporting Violations

The audit disclosed a 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-2 filed by Local 138 for the fiscal year ended June 30, 2009, was deficient in the following areas:

Disbursements to Officers

Local 138 did not report the names of some officers - more specifically the local's recording secretary - and the total amounts of payments to them or on their behalf in

Schedule 11 (All Officers and Disbursements to Officers),. The union must report in Schedule 11 all persons who held office during the year regardless of whether they received any payments from the union.

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 138 amended its constitution and bylaws in 2005, but did not file a copy with its LM report for that year.

Local 138 has now filed a copy of its constitution and bylaws.

Local 138 must file an amended Form LM-2 for the fiscal year ended June 30, 2009, to correct the deficient item discussed above (disbursements to officers). 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 February 28, 2011. Before filing, review the report thoroughly to be sure it is complete and accurate, and properly signed with electronic signatures.

Other Violations

The audit disclosed the following other violation(s):

Inadequate Bonding

The audit revealed that the amount of Local 138's bond is sufficient. However, the bond included a deductible, which is a form of self-insurance that fails to meet the bonding requirements of the LMRDA. Local 138 obtained a bond without a deductible 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

Personal use of Credit Cards

The audit revealed that Local 138 permits officers and employees to use union credit cards to pay for personal expenses. Although officers and employees promptly repaid Local 138 for the personal expenses charged (or paid the credit card company directly), OLMS does not recommend policies that allow personnel to make personal purchases with union credit cards because this may lead to misuse of union funds.

Expense Policy

As I discussed during the exit interview with you, the audit revealed that Local 138 does not have a clear policy regarding the types of expenses personnel may claim for reimbursement and/or the types of expenses that may be charged to union credit cards. OLMS recommends that unions adopt written guidelines concerning such matters.

I want to extend my personal appreciation to Operating Engineers Local 138 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: Vincent Giblin, Pitta & Giblin LLC