

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Chicago District Office
230 South Dearborn Street
Room 774, Federal Office Building
Chicago, IL 60604
(312)596-7160 Fax: (312)596-7174



March 17, 2009

Mr. Michael Tuthill, Secretary Treasurer
Laborers
Local 538
118 W. Main St.
East Galesburg, IL 61430-0053

LM File Number 001-244

Case Number: [REDACTED]

Dear Mr. Tuthill:

This office has recently completed an audit of Laborers Local 538 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 [REDACTED] and you on March 10, 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.

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 538's 2008 records revealed the following recordkeeping violations:

1. General Expenses

Local 538 did not retain adequate documentation for expenses incurred by the union totaling at least \$2500. For example, the local could not provide backup documentation during the audit for check [REDACTED] to AEH Construction in the amount of \$1139.17 and for check [REDACTED] to Brickyard Restaurant in the amount of \$1323.72.

As previously noted above, 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. Information not Recorded in Meeting Minutes

During the audit, Mr. Tuthill advised OLMS that the executive board and the membership authorized the purchase of a 2006 Chevy Trailblazer for \$17,000 in December 2007 and authorized a business trip that cost over \$1000 to the Midwest Region Tri-Funds conference in June 2007. Article IX, Section 3 of the Uniform Local Union Constitution requires that "the executive board shall have the authority to make commitments and disbursements in its discretion from the funds of the local union ... for expenses as it deems necessary or proper to carry out the objects and purposes of the union. However, the minutes of the meetings do not contain any reference to those issues. Minutes of all executive board meetings must report any disbursement authorizations made at those meetings.

3. Meal Expenses

Local 538 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, a meal expense at the Shorty Pants Lounge in the

amount of \$163.67 did not include any required documentation. 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 538 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 538 for fiscal year ending June 30, 2008, was deficient in the following areas:

1. Failure to Itemize Disbursements

Local 538 did not properly report several "major" transaction(s) in Schedules 17 and 18. 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. For example, the audit found that payments to Ameren IP, First Bank, and Knox County Real Estate Collector were not itemized properly on the schedules.

2. Automobile Expenses

Local 538 did not include in the amounts reported in Schedule 12 (Disbursements to Employees) disbursements for the operation and maintenance of a union automobile driven by Organizer Casey Hartman totaling at least \$8500.

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. Acquire/Dispose of Property

Item 15 (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 toys, food, and t-shirts totaling more than \$2500 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."

4. Failure to List All Officers of the Union

Local 538 did not enter the names of each person who held office in the union during the reporting period. A new president and auditor assumed office prior to the end of fiscal year 2008. Schedule 11 should include all the labor organization's officers whether or not any salary or other disbursements were made to them by the union.

5. Gross Salary Disbursements

Local 538 did not properly report Michael M. Tuthill's gross salary disbursements on Schedule 11. It appears that Tuthill's gross salary was incorrectly reported as \$788 higher than the actual salary disbursements made to him by the union.

6. Failure to Report a Liability of the Union

Local 538 did not properly report a liability of the union totaling at least \$2000. As of June 30, 2008, the local owed Michael M. Tuthill, Financial Secretary, at least \$2000 for reimbursements of auto and meal expenses incurred during the fiscal year.

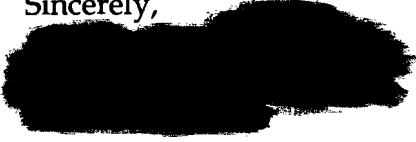
7. Direct Taxes

Local 538 did not properly report direct taxes on Item 65 that were assessed against and paid by the union, including the local's FICA taxes as an employer. It appears that the local erroneously reported these payments in Schedules 17 or 18.

Local 538 must file an amended Form LM-2 for fiscal year ending June 30, 2008, 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 17, 2009. Before filing, review the report thoroughly to be sure it is complete and accurate, and properly signed with electronic signatures.

I want to extend my personal appreciation to Laborers Local 538 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: Gary Jacobs, President