

U.S. Department of Labor

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Office of Labor-Management Standards
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August 28, 2009

Mr. Timothy Beumler, President
Stage & Picture Operators, Local 485
P.O. Box 5705
Tucson, AZ 85703-0705

LM File Number: 533-942
Case Number: [REDACTED]

Dear Mr. Beumler:

This office has recently completed an audit of Stage & Picture Operators, Local 485 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 Local 485 Secretary-Treasurer (S/T) Rose Lujan on August 28, 2009, the following problems were disclosed during the audit. 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 compliance audit of Local 485 revealed the following recordkeeping violations:

1. Failure to Record Receipts

Local 485 did not maintain adequate records for its audit year cash receipts. For example, although a cash disbursements ledger was maintained, no cash receipts ledger or equivalent record was maintained. Union receipts records must include an adequate identification of all money the union receives. The records should show, at a minimum, the date and amount received and the source of the money.

2. Information not Recorded in Meeting Minutes

During the audit, S/T Lujan advised OLMS that most expenditures of union funds are required to be disclosed to and approved by the membership at the monthly meeting, except for recurring expenditures of less than \$200 which may be paid each month after initial disclosure to and approval by the membership at a monthly meeting. Article 11, Section 10 (Executive Board) of the union's constitution states that the executive board shall "provide payment for expenses to a maximum of Two Hundred (\$200) dollars per item for the efficient operation of this Local, all amounts in excess of Two Hundred (\$200) dollars to require the direct approval of the membership." Article 18, Section 2 (Expenditures) states, "The funds of this Local shall be used only for proper operating expenses..." and Article 18, Section 4 (General Account) states, "Money may be withdrawn from the General Account only as authorized in this Constitution." The IATSE International Constitution, Local 485 bylaws, and the IATSE S/T handbook were all silent on the topic of loans. During the audit opening interview, S/T Lujan stated that the membership and executive board were both well aware of her "advances" (use of union debit card for personal purposes and repayment by personal check the following month); however, the local's meeting minutes did not contain any reference to these "advances" or to any debit card use by S/T Lujan for personal purposes, although quarterly financial reports indicated her personal debits and repayments and the cash disbursement ledger indicated her personal debit totals for each month. It is recommended that, in the future, local officers ensure that the local's membership and executive board meeting minutes contain adequate detail concerning the local's financial activities, especially for unusual transactions such as S/T Lujan's ongoing use of the union debit card for personal purposes and subsequent repayments by personal check. Essentially, these charges represent

union loans, and the local should therefore document them as such in the bookkeeping records, noting when the charges were made, to whom, under what terms, and when repayment is expected/repaid, as loan receivable items. The union's LM-3 report should reflect this situation in Items 26 and 18.

3. Lack of Authorization for Personal Use of Union Funds (Debit Card)

Local 485 maintained records (9/17/06 meeting minutes) to verify that monthly allowances reported in Item 24 (All Officer and Disbursements to Officers) of the LM-3 were the authorized amounts but did not maintain any records to verify that other disbursements of union funds – namely S/T Lujan's use of the union debit card for personal purposes – were ever approved/authorized by or disclosed to the local. The union must keep a record, such as sufficiently detailed meeting minutes, to show that unusual financial activity, such as personal use of union funds, has been approved and/or authorized by the entity or individual in the union with the authority to establish salaries and disclosed to the membership and/or executive board on a regular basis.

4. Lack of Documentation for Debit Card Expenses

Local 485 did not retain adequate documentation for at least \$10,203.23 in debit card transactions made by S/T Lujan for personal purposes. As stated above, her monthly personal debit totals were reported on the local's cash disbursements ledger and these totals and her monthly personal repayment amounts were reported on quarterly financial reports; however, there was no breakdown of the individual items comprising these monthly totals and there was no source documentation (receipts, invoices, etc.) for these debits. Nor was there any record (minutes, etc.) indicating approval by or disclosure to the local's membership or executive board for these personal debits and/or repayments.

As previously noted, labor organizations must retain, for a minimum of five years, 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 these union records.

The proper maintenance of union records is the personal responsibility of the individuals who are required to file Local 485's LM-3 report. You should be aware that under the provisions of Section 209(a) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, willful failure to maintain records can result in a fine of up to \$100,000 or

imprisonment for not more than one year, or both. Under the provisions of Section 209(c) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, willful destruction or falsification of records can result in a fine of up to \$100,000 or imprisonment for not more than one year, or both. The penalties provided in Section 209(c) and Section 3571 of Title 18 apply to any person who caused the violations, not just the individuals who are responsible for filing the union's LM report.

Reporting Violations

The audit disclosed violations of LMRDA Section 201(b), which requires that labor organizations file annual financial reports accurately disclosing their financial condition and operations. The audit disclosed the following deficiencies with your union's Labor Organization Annual Report (Form LM-2) for the fiscal year ending December 31, 2007:

1. Incorrect Responses to "Yes/No" Questions (Items 14 and 18 - LM-3 page 2)

Item 14 asks whether any audit or review of the local's books and records was conducted by an outside accountant or parent body auditor or representative during the year; this item was answered "No" but it should have been answered "Yes," as your union's accountant did review your local's financial books and records on a regular basis during the year.

Item 18 asks if any officer, employee, or member received loans totaling more than \$250 during the year; this item was answered "No" but it should have been answered "Yes," as S/T Lujan received loans from the union (union debit card transactions for personal use), which she called "advances," totaling \$10,203.23 during the year (of which she paid back \$7,273 during the year as reported in Item 43: Other Receipts).

2. Disbursements to Officers (Item 24 - LM-3 page 3; Item 45 - LM-3 page 4)

The union must report most direct disbursements to Local 485 officers and some indirect disbursements made on behalf of its officers in Item 24. A "direct disbursement" to an officer is a payment made to an officer in the form of cash, property, goods, services, or other things of value. See the instructions for Item 24 for a discussion of certain direct disbursements to officers that do not have to be reported in Item 24. An "indirect disbursement" to an officer is a payment to another party (including a credit card company) for cash, property, goods, services, or other things of value received by or on behalf of an officer. However, indirect disbursements for temporary lodging (such as a union check issued to a

hotel) or for transportation by a public carrier (such as an airline) for an officer traveling on union business should be reported in Item 48 (Office and Administrative Expense).

Local 485 did not include numerous payments made directly or indirectly to officers in the amounts reported in Item 24 (All Officers and Disbursements to Officers). It appears that the union erroneously reported these payments in other LM-3 (Statement B) disbursements categories. For instance, only \$9,100 was reported next to S/T Lujan's name when \$25,278.18 should have been reported next to her name. This is because S/T Lujan not only received the 13 S/T allowance payments of \$700 but she also received \$3,900 for rent (home office), \$1,552.41 for gasoline, and \$522.54 for food, and she spent \$10,203.23 in union funds on personal items using the union's debit card. Therefore, \$25,278.18, which is the sum of direct and indirect disbursements made to her or on her behalf, must be reported next to her name in Column E (Allowances & Other Disbursements) and Column F (Total) of Item 24. Below are the originally reported versus correctly calculated amounts for disbursements made to or on behalf of the following officers of your union:

<u>Officer</u>	<u>LM-3 reported:</u>	<u>CAP calculated:</u>
Rose Lujan, S/T	\$9,100.00	\$25,278.18
William Randall, BA-N	\$8,400.00	\$13,922.03
Ray Padilla, BA-S	\$8,400.00	\$14,327.35
Timothy Beumler, Pres.	\$1,800.00	\$2,104.99
Maria Randall, VP-N	\$600.00	\$600.00
Roy Zarow, VP-S	\$600.00	\$919.80
██████████, VP-past	\$1,200.00	\$1,200.00
David Goldstein, RS	\$2,400.00	\$2,400.00
<i>TOTAL (Items 24 & 45):</i>	<i>\$32,500.00</i>	<i>\$60,752.35</i>

3. 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 485 amended its constitution and bylaws in 2008, but did not file a copy with its LM-3 report submitted to OLMS for that year; however, Local 485 filed a copy of its constitution and bylaws during the audit upon being advised of this violation.

Local 485 must file an amended Form LM-3 for the fiscal year ending December 31, 2007 to correct the deficient items contained on the original LM-3 report. I advised S/T Lujan during the exit interview that the reporting forms and instructions are available on the OLMS website (www.dol.gov/esa/olms/regs/compliance/lm3_downloadpg.htm). The amended Form LM-3 should be submitted to this office (Phoenix Resident Investigative Office, 230 N. 1st Ave., Rm. 501, Phoenix, AZ 85003) as soon as possible, but not later than September 12, 2009. Before filing, review the report thoroughly to be sure it is complete, accurate, and signed properly with original signatures. Please ensure that, in the future, your union's financial data (assets, liabilities, receipts, and disbursements) and other required information are accurately reported on the LM-3.

Other Violation

The audit disclosed the following other violation:

Loans to Officer (S/T Lujan) Exceeded LMRDA Statutory Limit of \$2,000

Section 503(a) of the LMRDA provides that no labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization that results in a total indebtedness to the labor organization of such officer or employee in excess of \$2,000. Advances paid to an officer or employee exceeding \$2,000 may constitute a Section 503(a) violation. Section 503(c) of the LMRDA provides for a maximum fine of not more than \$5,000 or imprisonment for not more than one year, or both, for any person who willfully violates Section 503. In 1987, 18 U.S.C. 3571 increased the maximum fine amount to \$100,000.

The audit disclosed a violation of LMRDA Section 503(a). Specifically, S/T Lujan's total indebtedness to the union for the loans she made to herself (union debit card transactions for personal purposes) exceeded \$2,000 during the audit year.

You told OLMS that the local terminated this loan practice after being informed of its existence by OLMS, destroyed the union debit card, and implemented new internal controls (VP's to both review bank statements monthly; President no longer signing checks blank in advance; etc.). During the exit interview, S/T Lujan confirmed these changes had been made and was advised of the potential criminal penalties for willful violation of Section 503 and she promised to no longer use union funds for personal use. Therefore, no further action is presently being considered for this violation.

Other Issues

1. Expense Policy

As I discussed during the exit interview with S/T Lujan, the audit revealed that Local 485 does not have a clear policy regarding the types of expenses personnel may claim for reimbursement, the types of expenses that may be charged to union debit and/or credit cards, and the circumstances, if any, in which union funds or other resources may be used for personal purposes. OLMS recommends that unions adopt written guidelines concerning such matters but does not recommend allowing officers or employees to use any union funds for personal purpose as this may lead to misuse (see #2 below).

2. Personal Use of Credit Cards

The audit revealed that Local 485 officers contacted by OLMS were not aware of S/T Lujan's use of the union debit card for personal expenses; nor were these officers aware of her monthly repayments to the local by personal check.

In this case, it appears that the officer repaid the union for the personal expenses she charged; however, OLMS does not recommend policies that allow personnel to make personal purchases with union debit or credit cards because this may lead to misuse of union funds.

3. Signing Blank Checks; Two-Signature Requirement

During the audit, S/T Lujan advised that you sign batches of union checks blank in advance, and you confirmed this with OLMS. In addition, the audit disclosed that several union checks were signed by only one officer (S/T Lujan). Article 11, Section 5 of your union's bylaws requires that all checks be signed by both the president (or vice president if unavailable) 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, 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. In addition, the two-signature requirement can be easily circumvented by using a union debit or credit card because only one signature is needed for a credit card transaction, and no signature is needed for a debit card transaction (only a PIN).

You advised OLMS that you will no longer sign union checks that are blank and will require that all checks to be disbursed are fully prepared (including payee, amount, S/T signature) prior you signing them at the monthly meeting. OLMS recommends that Local 485 now review these and other financial policies and practices of the local in order to further strengthen your internal financial controls.

I want to extend my personal appreciation to you and Stage & Picture Operators, Local 485 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 in this request for an amended Form LM-3 or any other LMRDA-related matter, please do not hesitate to call us.

Sincerely,



Investigator

cc: Ms. Rose Lujan, Secretary-Treasurer