

U.S. Department of Labor

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January 9, 2008

Mr. Wayne Zimmerman, President
Electrical Workers IBEW AFL-CIO Local 160
1130 27th Ave North
St. Cloud, MN 56303

LM File Number 022-522
Case Number: [REDACTED]

Dear Mr. Zimmerman:

This office has recently completed an audit of IBEW 160 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, Business Manager Thomas Koehler, Treasurer Shawn Daly, and CPA Charlie Marini on December 6, 2007, 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 160's 2005 records revealed the following recordkeeping violations:

1. General Reimbursed Expenses

The Labor Organization Annual Report (Form LM-2) filed by Local 160 for its fiscal year ending December 31, 2005 reports in Column f (Disbursements for Official Business) of Schedules 11 (All Officers and Disbursements to Officers) and 12 (Disbursements to Employees) disbursements totaling more than \$100,000. However, Local 160 did not retain adequate documentation for many meal and other reimbursed expenses incurred by Business Manager Koehler and the business representatives. As an example, Business Representative James Anderson was reimbursed for six car wash expenses he recorded on expense reports totaling more than \$80 in October of 2005. However, no receipts were retained for those expenses. As another example, Business Manager Koehler did not retain receipts for expenses totaling more than \$2,500.

Records retained in support 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, Business Representative Daryl Tindle was reimbursed \$159.80 for a meal at Jax Café in Minneapolis on Friday November 4, 2005. The receipt notes that seven people were present, but the receipt does not note the names of the individuals present or the purpose of the expense. 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 the meal expense.

As 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. Authorization for expenses

Local 160 has a written policy that identifies authorized amounts to be paid for union personnel who travel to attend conferences and conventions. However, the

Local has no written policies that identify the circumstances under which meals and similar expenses not related to attending conferences or conventions are authorized to be incurred. Mr. Koehler advised me that he uses his own judgment in determining which types of expenses may be paid by Local 160, and in the case of meal expenses, he has advised union personnel that only "legitimate business expenses" should be claimed.

The audit revealed that union personnel frequently incurred meal expenses in the Twin Cities area. For instance, in November and December of 2005 either the business manager or a business representative was reimbursed for meals in Minneapolis on every working day (Monday-Friday) except November 23, 24, and 25, and December 6, 20, 23, 26, 30. In most cases, adequate documentation was not retained to enable OLMS to verify that the expenses were necessary for conducting union business.

Article XVII of the International Constitution identifies the duties of local union officers. Article XVII, Section 8 identifies the duties of the business manager. Section 4 identifies the duties of the financial secretary. However, neither Article XVII nor the local bylaws specify which officer has the duty to authorize expenses. Section 201(a) of the LMRDA states that "every labor organization shall adopt a constitution and bylaws and shall file a copy thereof with the Secretary...." In addition to filing a constitution and bylaws, labor organizations must also submit a report detailing, among other things, "detailed statements, or references to specific provisions of documents filed under [Section 201(a)] which contain such statements, showing the provisions made and procedures followed with respect to ...authorization for disbursement of funds of the labor organization...."

In order to meet the reporting requirement of Section 201(a), Local 160 filed an LM-1 report for fiscal year ending December 31, 1990. Instead of submitting a detailed statement along with the report that explained Local 160's practice and procedure regarding the authorization of disbursements, Local 160 indicated on the LM-1 that specific provisions involving the authorization for disbursement of labor organization funds could be found in the local's constitution and bylaws. However, as indicated above, no specific authorization for union expenses could be found in the local's bylaws or constitution.

In order to comply with Section 201(a), Local 160 must report the provision made and procedures followed with respect to the authorization of disbursement of

funds. The information may be incorporated into Local 160's bylaws or filed with an amended Labor Organization Information Report (Form LM-1).

In addition, OLMS strongly recommends that Local 160 establish written guidelines that identify the circumstances and the types and amounts of expenses that are authorized to be incurred. Written guidelines can help ensure effective internal controls and safeguard union assets.

3. Inadequate Mileage Logs

Local 160 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 160 appears to have included some amounts for automobile expenses in Column (F) of Schedule 11 (All Officers and Disbursements to Officers) and Schedule 12 (Disbursements to Employees) for the eight union officers and employees who are assigned a union automobile. However, Local 160 did not maintain records documenting business versus personal use of the union vehicles.

In the case of Local 160, union personnel retained mileage logs in which they recorded some amounts of mileage driven. However, the logs maintained do not sufficiently identify the business purpose of each use. In addition, the audit revealed instances where union personnel recorded significant mileage driven on days when they appeared to be on vacation, even though Mr. Koehler advised the union has an unwritten policy that allows union personnel to use union cars for personal business on a "limited basis." For instance, according to his mileage logs, Business Representative James Anderson drove 779 miles conducting union business on June 6, 7, 8, and 9. However, Anderson's vacation records show that he was on vacation June 6 through June 10.

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.

4. Receipt Records

The union did not maintain records necessary to verify the accuracy of the information reported in Item 36 (Dues and Agency Fees), Statement B (Receipts and Disbursements) of the LM-2. Local 160 receives basic dues from all of its members. In addition, some of the members also pay working dues. The basic dues are entered into a computerized receipts system called ICS. The working dues are entered into an Excel spreadsheet. All of the money for a period, generally around two weeks, is then recorded as a deposit entry in QuickBooks and is deposited in the bank. A record of each individual check and cash payment that constitutes a deposit is kept. However, no record that identifies the total amounts recorded in both ICS and Excel that were eventually posted into QuickBooks was retained. Therefore, it is impossible to determine when and if all receipts were deposited in order to verify the figures reported in Statement B.

The ICS system provides a means to help insure all receipts are deposited. The system allows users to printout daily totals of receipts entered into the system. However, Local 160 does not run daily reports. To ensure that union assets are properly safeguarded, OLMS recommends that daily receipt reports be printed and that those same amounts be recorded on bank deposit tickets or that records be retained to show that the total amounts posted can be traced to bank deposits.

The proper maintenance of union records is the personal responsibility of the individuals who are required to file Local 160's LM 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.

Local 160's records will be reviewed again within the next year to ensure that all recordkeeping violations have been corrected.

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 160 for fiscal year ending December 31, 2005, was deficient in the following areas:

1. Liability Reporting

Business Manager Koehler advised that Local 160 employees and officers are allowed to cash out up to sixty days of unused vacation time. Though this represents a liability to the union, no corresponding entry was found on Schedule 10 (Other Liabilities). The audit revealed that Local 160 officers and employees had as many as 387 unused vacation days that were carried over from 2005 to 2006 that could be cashed out under the local's policies.

2. 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 160 amended its constitution and bylaws in 1992, but did not file a copy with its LM report for that year. Local 160 has now filed a copy of its constitution and bylaws.

3. Benefit Payments

Bookkeeper Rose Eiden received eleven monthly checks for \$720 and one for \$760 during 2005. These payments were made in lieu of receiving health and welfare benefits from Local 160. Since Ms. Eiden was not required to submit any documentation substantiating the fact that the money received was used to purchase her own benefits, these payments should not be included in Schedule 20 (Benefits) as they have been reported. Instead, these payments must be included in Schedule 12 (Disbursements to Employees). If the payments are intended to compensate her additional money because the local does not provide her benefits, the payments should be reported in Column D (Salary).

I am not requiring that Local 160 file an amended LM report for 2005 to correct the deficient items, but Local 160 has agreed to properly report the deficient items on all future reports it files with OLMS.

Other Issues

1. Delinquency of Vouchers

Business Representative Lynnie Martin submits his expense vouchers and receipts for reimbursement many months after the expenses were incurred. For example, Mr. Martin was not reimbursed for June, July, August, and September 2005 expenses until February of 2006. Since validating expenses that occurred many months prior can be more difficult than validating more recent expenditures, OLMS recommends that expense reimbursement claims be submitted in a timely fashion.

2. Following the Policies

In a couple instances, Local 160 business representatives are not adhering to the local's policies. For instance, according to Local 160 Executive Board Policies & Interpretations, local union officers, executive board members, unit officers, and unit executive committee members receive an attendance fee for attending local union executive board and unit executive committee meetings. The payments were \$89.57 per meetings for 2005. According to the same policy, individuals receiving the payment are not entitled to incur any lodging expense in attendance of the meetings. However, Mr. Martin received the attendance fee and also consistently incurred hotel expenses in order to attend executive board meetings.

Similarly, Local 160 also has a policy regarding conference and convention expenses. The policy states that delegates to conventions or conferences shall receive \$80 in order to cover, "Miscellaneous, registration, tips, etc." In addition they receive hotel, airfare, \$60 per day, \$60 for taxi fare at destination, \$10 per day taxi fare at conference, \$10 per day laundry (if gone over 3 days), and \$15 per day airport parking. Based on this policy, those in attendance at the Baltimore Utility Conference received \$520 in addition to their hotel and airfare expenses. Business Representative Daryl Tindle was one of the individuals who attended the conference. Even though he received the \$520, he was also reimbursed \$130 for a Supershuttle at the conference and \$41.50 for parking at the Minneapolis airport. According to the policy, both of these expenses should have been covered in the \$520 he received.

3. Vacation

According to Business Manager Koehler, IBEW 160 officers and business representatives follow the Xcel Collective Bargaining Agreement in regard to vacation accrual and payout. Based on the Xcel Agreement, employees are allowed to accrue a maximum of 60 days of vacation. However, IBEW 160 vacation records show that the business manager and some of the business representatives are accruing more than 60 days of vacation. For instance, Business Representative Martin started 2005 with over 108 days of vacation according to vacation records. In addition, though Local 160 officer and employees are allowed to cash out up to sixty days of vacation at the time they leave the local, this policy was not found in the Xcel Collective Bargaining Agreement and was not documented elsewhere. Consequently, OLMS strongly recommends that the vacation policy regarding accrual and payout be documented for clarification.

I want to extend my personal appreciation to IBEW 160 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,

[REDACTED]
Investigator

cc: Thomas Koehler, Business Manager
William Little, Executive Board
Martin Carey, Executive Board
Kurt Zimmerman, Executive Board
Daniel Seawell, Executive Board
James Brereton, Executive Board
Alan Rademacher, Vice President
Barbara Kuck, Recording Secretary
Shawn Daly, Treasurer