

U.S. Department of Labor

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August 25, 2008

Mr. Michael Fox, Local President
Longshoremens ASN AFL-CIO
Local 861
PO Box 8141
Portland, ME 04104

LM File Number 032-057

Case Number: [REDACTED]

Dear Mr. Fox:

This office has recently completed an audit of Longshoremens Local 861 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, Treasurer Robert Connolly, and Business Agent Jack Humeniuk on August 19, 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.

The CAP disclosed recordkeeping violations, reporting violations, other violations, and other issues.

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 861's 2007 records revealed the following recordkeeping violations:

1. General Reimbursed Expenses

Local 861 did not retain adequate documentation for reimbursed expenses incurred by Local President Michael Fox and Local Business Agent Jack Humeniuk totaling at least \$2,700. For example, convention expenses including meals, laundry, car rental, gasoline expenses, airline tickets, and bus tickets did not have adequate documentation retained.

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. Meal Expenses

Local 861 did not require officers to submit itemized receipts for meal expenses totaling at least \$900. The union must maintain itemized receipts provided by restaurants to officers and employees. These itemized receipts are necessary to determine if such disbursements are for union business purposes and to sufficiently fulfill the recordkeeping requirement of LMRDA Section 206.

Local 861 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, meal expenses incurred by Local President Michael Fox and Local Business Agent Jack Humeniuk while in attendance at the International Longshoremens Association Convention and while on other official

union business did not include written explanations. 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.

3. Information not Recorded in Meeting Minutes

Section 7(e) of Local 861's bylaws requires that the local treasurer "shall make no disbursements there of except in compliance with resolutions duly made and passed by the membership at meetings of the Society or by the Executive Committee." However, the minutes of the local and Executive Committee meetings during the audit period were lacking authorization for at least \$2,500 in local disbursements. These disbursements included contributions and gifts given by the local to charity and political organizations and reimbursements to Local Business Agent Jack Humeniuk for expenses incurred while conducting official union business. Minutes of all membership or executive board meetings must report any disbursement authorizations made at those meetings.

Based on your assurance that Local 861 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-3) filed by Local 861 for fiscal year ending December 31, 2007, was deficient in the following areas:

1. Disbursements to Officers

Local 861 did not include any salary or reimbursement payments to officers in the amounts reported Item 24 (All Officers and Disbursements to Officers). Local 861 should have reported at least \$95,788 in salary and reimbursement payments to officers in Item 24.

Also, Local 861 did not report the names and the total amounts of payments to or on the behalf of the local's chairman of board of trustees and seven executive committee members in Item 24 (All Officers and Disbursements to Officers). According to Section 3 of Local 861's bylaws, the local's officers include: president, vice president, business agent, treasurer, secretary, chairman of board of trustees, and seven executive committee members. The union must report in Item 24 all persons who held office during the year, regardless of whether they received any payments from the union.

The union must report most direct disbursements to Local 861 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).

2. Cash Reconciliation

It appears that the cash figures reported in Item 25 are not the cash figures according to the union's books after reconciliation to the bank statements. The instructions for Item 25 state that the union should obtain account balances from its books as reconciled to the balances shown on bank statements.

3. Failure to Report Receipts and Disbursements

Local 861 did not report at least \$127,123 in local receipts and \$133,697 in local disbursements in Statement B of the local's LM-3 filed for the fiscal year ending December 31, 2007. The Statement B instructions state that receipts must be recorded when money is actually received by the labor organization and disbursements must be recorded when money is actually paid out by the labor organization.

4. Failure to Properly Categorize Disbursements

Local 861 did not correctly categorize at least \$8,852 in per capita tax payments in Item 47 (Per Capita Tax). It appears as though the local erroneously reported these disbursements in Item 48 (Office and Administrative Expense). The instructions for Item 47 state the total amount of per capita tax paid as a condition or requirement of affiliation with a parent national or international union, state and local central body, a conference, joint or system board, joint council, federation, or other labor organization must be entered in Item 47.

5. Failure to Report Trusts or Funds

Local 861 did not include information regarding its Health and Welfare Benefit Trust in Item 11 (Trusts or Funds). The instructions for Item 11 state that the union must include in Item 56 the name, address, and purpose of each trust or fund.

6. 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 861 amended its constitution and bylaws in 1989, but did not file a copy with its LM report for that year.

Local 861 has now filed a copy of its constitution and bylaws.

Local 861 must file an amended Form LM-3 for fiscal year ending December 31, 2007, to correct the deficient items discussed above. I provided you with a blank form and instructions, and advised you that the reporting forms and instructions are available on the OLMS website (www.olms.dol.gov). The amended Form LM-3 should be submitted to this office at the above address as soon as possible, but not later than August 29, 2008. Before filing, review the report thoroughly to be sure it is complete, accurate, and signed properly with original signatures.

Other Violations

The audit disclosed the following other violation:

Inadequate Bonding

The audit revealed a violation of LMRDA Section 502 (Bonding), which requires that union officers and employees be bonded for no less than 10 percent of the total funds those individuals or their predecessors handled during the preceding fiscal year.

The audit revealed that Local 861's officers and employees were not bonded for the minimum amount required at the time of the audit. However, the union obtained adequate bonding coverage 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

External Audit

According to Article XIII, Section 9 of the ILA Constitution, "the books and accounts of the local union shall be audited at least annually by a certified public accountant appointed by the Executive Board of the local." Local 861 is currently not having its books and accounts audited by a certified public account. OLMS recommends Local 861 remain in compliance with Article XIII, Section 9 of the ILA Constitution.

Mr. Michael Fox
August 25, 2008
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I want to extend my personal appreciation to Longshoremens Local 861 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,

Mark Letizi
District Director

cc: Treasurer Robert Connolly
Business Agent Jack Humeniuk