



May 26, 2015

Mr. Tony Worth, President  
Elevator Constructors Local 85

Case Number: 320-6003642( )  
LM Number: 034346

Dear Mr. Worth:

This office has recently completed an audit of the Elevator Constructors Local 85 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 telephone exit interview with you, Business Representative Bill Kogelschatz, Financial Secretary Teri Van Horn, and Trustees Joel Richmond and Rick Reed on May 12, 2015, 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 85's 2014 records revealed the following recordkeeping violations:

## 1. Failure to Maintain Adequate Receipt Records

Entries on Local 85's deposit spreadsheets that are prepared by Ms. Van Horn fail to identify the source and purpose of cash receipts totaling at least \$450. The deposit spreadsheets are the only record maintained by Local 85 that identifies non-dues receipts; however, this record is deficient in that cash receipts from multiple sources for multiple purposes are lumped together on one line item and identified as "cash." Furthermore, for receipts received by way of check, the deposit spreadsheet records reflect the check date as the date the money was received. Ms. Van Horn advised most personal checks for dues are sent to Local 85 in the mail; therefore the check date and the date the check was received were generally not the same.

Union receipts records must include an adequate identification of all money the union receives. The records should show the date and amount received, and the source of the money. The date of receipt is required to verify, explain, or clarify amounts required to be reported in Statement B (Receipts and Disbursements) of the LM-2. The LM-2 instructions for Statement B state that the labor organization must record receipts when it actually receives money and disbursements when it actually pays out money. Failure to record the date money was received could result in the union reporting some receipts for a different year than when it actually received them.

## 2. General Reimbursed and Credit Card Expenses

During the audit year, Local 85 disbursed \$446 in direct reimbursements to Mr. Kogelschatz for union expenses he incurred and initially paid for out of pocket. However, Local 85 failed to maintain receipts or other supporting documentation for payments to him totaling more than \$200. In lieu of original supporting documentation, Local 85 maintained handwritten notes that did not sufficiently describe the expense or the union business purpose of the expense that was being reimbursed.

In addition, Mr. Kogelschatz and Ms. Van Horn charged more than \$300 worth of expenses on the union credit card at businesses such as Meijer, Menard's, and K-Mart, but failed to identify the union business purpose of the expenses anywhere in the union's records.

As discussed above, labor organizations must retain original receipts, bills, and vouchers for all disbursements. If an expense receipt is not sufficiently descriptive, a union officer or employee should write a note on it providing the additional information, including the union business purpose. 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.

### 3. Meal Expenses

Local 85 did not require officers and employees to submit itemized receipts for meal expenses totaling approximately \$200. Itemized receipts provided by restaurants to officers and employees must be retained. 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.

In addition, Local 85's records of meal expenses did not always include written explanations of the union business conducted or the names and titles of the persons incurring or receiving the benefit of the restaurant charges. For example, an expense of \$74.47 was charged to Pizza Hut on December 20, 2014. Local 85 failed to record the names and titles of those present as well as the union business purpose of the expense on the credit card receipt.

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.

### 4. Union Owned Automobiles

Local 85 did not maintain records necessary to verify the accuracy of the information that is required to be reported in Schedules 11 (All Officers and Disbursements to Officers) of the LM-2.

Local 85 incurred expenses totaling at least \$9,000 for the union automobile assigned to Mr. Kogelschatz during 2014, including gas, insurance, repairs and maintenance expenses. However, Local 85 did not maintain records documenting business versus personal use of the union vehicles. Although Mr. Kogelschatz maintained a very general mileage log, the details of the log did not distinguish business mileage versus personal mileage. Mr. Kogelschatz advised that he commutes to and from work with the union vehicle on most days and also occasionally uses the automobile for other personal use.

The LM-2 instructions include specific rules for the reporting of automobile expenses. Operating and maintenance costs for each owned or leased vehicle must be reported 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 a record, such as 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.

5. Lack of Asset Records

The audit revealed that Local 85 has significant fixed assets, including but not limited to an automobile, several computers, several printers or other multi-functional devices, and various furniture items; however, Local 85 failed to retain any records that identified these assets.

In addition, Local 85 also purchased hats, shirts and other union apparel items during the audit year totaling approximately \$700. Although Local 85 sold some of those items during the year, Ms. Van Horn confirmed that the local had a surplus of those items on hand at the end of the year, but did not maintain an inventory that identified the value of those assets at the end of the year. The value of any union property on hand at the beginning and end of each year must be reported in Item 28 (Other Assets) of the LM-2.

In the case of fixed assets, the local must maintain an inventory or other similar record identifying each fixed asset and the approximate value of that asset. Such records are required to be retained to verify, clarify, and support information required to be reported in Schedule 6 (Fixed Assets) of the LM-2. In the case of other assets, Local 85 must maintain an inventory or similar record of property on hand to verify, clarify, and explain the information that must be reported in Item 28.

Based on your assurance that Local 85 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 85 for the fiscal year ended December 31, 2014, was deficient in the following areas:

1. 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 85 amended its constitution and bylaws in 2007, but did not file a copy with its LM report for that year.

Local 85 has now filed a copy of its constitution and bylaws.

2. 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 received various items from signatory contractors valued at more than \$700, such as DVD players, tools, cameras, etc. that were subsequently given away by Local 85 to members at the December 2014 family union meeting. In addition, Local 85 purchased additional items (kindle, air compressor, beer making kit, kids' toys) totaling more than \$200 that were also given away at the family union meeting.

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." In addition, the union must report the cost, book value, and trade-in allowance for assets that it traded in, including the union's automobile which was traded in with the purchase of the new automobile in October of 2014.

### 3. Fixed Assets (Schedule 6/Item 27)

Local 85 did not properly report the value of their fixed assets in Schedule 6 (Fixed Assets). Local 85 reported the cost basis (\$102,294) of multiple automobiles in Schedule 6, Column B (Cost or Other Basis), Line C (Automobiles); however, at the end of the reporting period, Local 85 owned only one automobile which was purchased in October of 2014 for approximately \$24,000. In addition, Local 85 failed to report the value of additional fixed assets, such as computers, printers, and furniture in Line D (Office Furniture and Equipment) and or Line E (Other Fixed Assets).

Local 85 must report the value of all their fixed assets, including land, buildings, automobiles and other vehicles, and office furniture and equipment owed by the labor organization at the end of the reporting period in Schedule 6.

### 4. Other Assets (Schedule 7/Item 28)

The audit revealed that Local 85 had at least \$1,500 worth of hats and t-shirts on hand at the end of the reporting period; however, Local 85 reported \$0 in Item 28(b) (Other Assets at the End of the Reporting Period) and Schedule 7 (Other Assets).

Local 85 must report in Item 28 the value of their inventory of resale items as other assets at both the beginning and end of the reporting period (Items 28(a) and 28(b)). In addition, the labor organization's other assets must be described in Column (A) of Schedule 7 and may be classified by general groupings or bookkeeping categories, such as utility deposits, inventory of supplies for resale, etc. and the value of those assets as shown on the labor organization's books at the end of the reporting period must be reported in Column (B) of Schedule 7.

5. Other Receipts (Schedule 14/Item 48)

The audit revealed that Local 85 received more than \$6,000 in receipts from miscellaneous sources such as the sale of state code books, registration fees for training classes, reimbursements from officers, etc.; however, Local 85 reported only \$1,982 in Schedule 14/Item 48 (Other Receipts). It appears that Local 85 misreported some of these receipts as dues income in Item 36 (Dues and Agency Fees).

If a receipt does not conform to one of the defined items in Statement B it must be included in Schedule 14 (Other Receipts).

6. Direct Taxes (Item 65)

Local 85 disbursed more than \$10,000 to the Internal Revenue Service (IRS) for purposes of employer paid (direct) taxes (FICA and Medicare) in 2014, but failed to report any of those payments in Item 65 (Direct Taxes). It appears that these payments were erroneously reported as non-itemized transactions in Schedule 15 (Representational Activities) or Schedule 19 (General Overhead).

All taxes assessed against and paid by your organization, including your organization's FICA taxes as an employer must be reported in Item 65. Do not include disbursements for the transmittal of taxes withheld from the salaries of officers and employees which must be reported in Item 67 (Withholding Taxes and Other Payroll Deductions). Also, do not include indirect taxes, such as sales and excise taxes, for purchases reported in other disbursement items.

7. Officers and Disbursements to Officers

Local 85 did not report the names of some officers in Schedule 11 (All Officers and Disbursements to Officers). The officers that should have been reported in Schedule 11 include you, Vice President Troy Harris, Executive Board Members Jordan Miller, James Therrian, Dale Butcher, Richard Reed, and former executive board members (who held office during part of the audit year) [REDACTED] and [REDACTED]. 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.

In addition, Local 85 did not include any direct reimbursements to Mr. Kogelschatz in Schedules 11 (approximately \$450) or any meal expenses incurred by Mr. Kogelschatz on the union's credit card totaling at least \$350. It appears the union erroneously reported these payments in Schedules 15-19.

The union must report in Column F of Schedules 11 and 12 (Disbursements for Official Business) direct disbursements to officers and employees for reimbursement of expenses they incurred while conducting union business. In addition, the union must report in Column F of Schedules 11 and 12 indirect disbursements made to another party (such as

a credit card company) for business expenses union personnel incur. However, the union must report in Schedules 15 through 19 indirect disbursements for business expenses union personnel incur for transportation by public carrier (such as an airline) and for temporary lodging expenses while traveling on union business. The union must report in Column G (Other Disbursements) of Schedules 11 and 12 any direct or indirect disbursements to union personnel for expenses not necessary for conducting union business.

#### 8. Automobile Expenses

Local 85 did not include in the amounts reported in Schedule 11 (All Officers and Disbursements to Officers) disbursements for the operation and maintenance of union automobiles totaling at least \$9,000. As mentioned previously, a review of the union's credit card statements and corresponding receipts revealed that Mr. Kogelschatz incurred charges for gas, repairs, and maintenance of the union vehicle. In addition, Local 85 disbursed three checks totaling more than \$850 to Farmers Insurance for automobile insurance.

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.

Local 85 must file an amended Form LM-2 for the fiscal year ended December 31, 2014, to correct the deficient items discussed above. The report must be filed electronically using the Electronic Forms System (EFS) available at the OLMS website at [www.olms.dol.gov](http://www.olms.dol.gov). The amended Form LM-2 must be filed no later than June 9, 2015. Before filing, review the report thoroughly to be sure it is complete and accurate.

### 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. Local 85's officers and employees were not bonded for the minimum amount required at the time of the audit. However, Local 85 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

#### 1. Automobile Policy

As I discussed during the exit interview with you and other officers and board members of Local 85, the audit revealed that Local 85 does not have a clear policy regarding the union owned automobile, specifically what types of personal use, if any, are permitted. OLMS recommends that unions adopt written guidelines concerning such matters. In addition, the audit also showed that the title for the union's automobile as well as the insurance policy associated with the automobile are in the name of Mr. Kogelschatz and not Local 85. During the audit, Ms. Van Horn advised that the title to the union's vehicle as well as its insurance policy was in Mr. Kogelschatz's name because that is how it has always been done. OLMS recommends that Local 85 review these practices to improve internal control over union assets.

#### 2. Credit Card Policy

The audit revealed that Local 85 disbursed over \$24,000 to Capital One Bank for union credit card charges incurred by Mr. Kogelschatz and Ms. Van Horn during 2014; however, Local 85 no written policy governing the use of the credit card. To ensure compliance with the LMRDA and to safeguard union assets by promoting transparency and accountability, labor organizations should establish a written policy that outlines the best practices for monitoring credit card use and administering payments within your union. OLMS recommends that unions (1) adopt clear policies and procedures for credit card use and payment, (2) maintain detailed documentation to support each credit card charge and credit card payment, and (3) regularly monitor compliance with the established credit card policies and procedures. During the exit interview, I provided you with an OLMS compliance tip regarding union credit card policies. You and other board members agreed to review the provided materials and consider creating a credit card policy for Local 85. Please refer to that publication for additional information.

I want to extend my personal appreciation to Elevator Constructors Local 85 for the cooperation and courtesy extended during this compliance audit. I strongly recommend that you make sure

Mr. Tony Worth

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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: Ms. Teri Van Horn, Financial Secretary  
Mr. Bill Kogelschatz, Business Representative