

U.S. Department of Labor

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October 8, 2008

Mr. Tony Penn, Secretary-Treasurer
Laborers
Local 362
2012 Fox Creek Road
Bloomington, IL 61701

LM File Number: 004-376

Case Number: [REDACTED]

Dear Mr. Penn:

This office has recently completed an audit of Laborers Local 362 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 and Business Manager David Penn on May 2, 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.

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 362's records for fiscal year ending June 30, 2007 revealed the following recordkeeping violations:

1. General Credit Card Expenses

Local 362 did not retain adequate documentation for credit card expenses incurred by Local 362 Business Manager David Penn and Secretary-Treasurer Tony Penn totaling at least \$327. For example, David Penn failed to maintain receipts for credit card purchases of gas totaling at least \$226 during the audit year.

As previously noted above, labor organizations must retain original receipts, bills, and vouchers for all disbursements. Their 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. Union Owned/Leased Vehicles

Local 362 did not maintain records necessary to verify the accuracy of the information reported in Schedule 11 (All Officers and Disbursements to Officers) of the LM-2. Local 362 incurred expenses totaling at least \$3,563 for automobiles during fiscal year ending June 30, 2007. However, Local 362 did not maintain records documenting business versus personal use of the union vehicles.

The LM-2 instructions include specific rules for reporting of automobile expenses. The union must report operating and maintenance costs for each of its owned or leased vehicles in Schedule 11 of the LM-2 allocated to the officer to whom each vehicle is assigned.

For each trip they take using a union owned to leased vehicles, officer 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.

3. Disposition of Property

Local 362 did not maintain an inventory of t-shirts it purchased and gave away. The union must report the value of any union property on hand at the beginning and end of each year in Item 28 of the LM-2. The union must retain an inventory or similar record of property on hand to verify, clarify, and explain the information that must be reported in Item 28. The union must also retain a record of the final disposition of all property given away during the audit period as this information is required by Item 15.

Based on your assurance that Local 362 will retain adequate documentation in the future, OLMS will take no further 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 362 for fiscal year ending June 30, 2007, was deficient in the following areas:

1. 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 t-shirts totaling at least \$6,336 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."

2. Item 49 - Cash Receipts - Total Receipts

It appears that the amount reported in Item 49 is not correct according to the union's books after reconciliation to the bank accounts. It appears that the local mistakenly excluded approximately \$2,000 in receipts received during the reporting period that were eventually disbursed to a political action committee fund. As the fund is reported separately with the Illinois State Board of Elections and the \$2,000 was initially deposited into the local's general checking account, the local should have included the \$2,000 in Item 49.

3. Schedule 16 / Item 51 - Cash Disbursements - Political Activities and Lobbying

It appears that the total amount reported Schedule 16 / Item 51 is not correct according to the union's books after reconciliation to the bank accounts. It appears that the local mistakenly excluded approximately \$2,000 in local union funds that were disbursed to a political action committee fund, which is reported separately with the Illinois State Board of Elections. The instructions for Statement 16 require labor organizations to report all direct and indirect disbursements to all entities and individuals during the reporting period associated with political disbursements or contributions in money. As this disbursement did not meet the \$5,000 itemization requirement, the \$2,000 should have been included in Schedule 16, Line 5 and in Item 51.

I am not requiring that Local 362 file an amended LM-2 report for fiscal year ending June 30, 2007 to correct the deficient items, but Local 362 has agreed to properly report the deficient items on all future reports it files with OLMS.

I want to extend my personal appreciation to the Laborers Local 362 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.

Mr. Tony Penn
October 8, 2008
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Sincerely,

A large black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes.A smaller black rectangular redaction box covers the name of the investigator.

Investigator

cc: David Penn, Business Manager