



October 24, 2012

Mr. Jake Martin, International Representative  
Plasterers & Cement Masons  
Local 909  
2001 Elm Hill Pike  
Nashville, TN 37210

Case Number: [REDACTED]  
LM Number: 006-868

Dear Mr. Martin:

This office has recently completed an audit of Plasterers & Cement Masons Local 909 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 Elbert Holbert on October 18, 2012, 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 909's 2011 records revealed the following recordkeeping violations:

1. General Reimbursed Expenses

Local 909 did not retain adequate documentation for reimbursed expenses incurred by Business Manager Elbert Holbert totaling at least \$446.12. For example, Mr. Holbert incurred hotel expenses totaling \$446.12 during the audit year, but did not maintain any supporting documentations for these expenses.

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. Reimbursed Auto Expenses

Business Manager Elbert Holbert received reimbursement for business use of his personal vehicle did not retain adequate documentation to support payments to them totaling at least \$12,777.88 during 2011. The union must maintain records which identify the dates of travel, locations traveled to and from, and number of miles driven. The record must also show the business purpose of each use of a personal vehicle for business travel by an officer or employee who was reimbursed for mileage expenses.

3. General Expenses

Local 909 did not retain adequate documentation for general expenses totaling at least \$5,583.21. As previously noted, 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.

4. Receipt Dates not Recorded

Entries in Local 909 deposit book reflect the date the union deposited money, but not the date money was received. Union receipts records must show the date of receipt. 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-3. The LM-3 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.

5. Book Balances for Start and End of Year

Local 909 did not maintain book balances for the audit year.

Unions should keep a record of its book balances as reconciled with the bank statements. The LM-3 instructions for Statement A state that the checking account balances reported should be obtained from your organization's books as reconciled with the balances shown on bank statements.

6. Receipt Records

Local 909 did not retain adequate documentation for some employer dues checkoff checks totaling at least \$14,141 during the audit year. The general principle of recordkeeping is to ensure that for all funds received, at least one union record contains the date the money was received, the amount, the source of the money, and the purpose of the payment (e.g. dues, assessment, etc.).

The proper maintenance of union records is the personal responsibility of the individuals who are required to file Local 909'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.

### 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 909 for the fiscal year ended December 31, 2011 was deficient in the following areas:

1. Disbursements to Officers

Local 909 did not include some reimbursements to officers totaling at least \$446.70 in the amounts reported Item 24 (All Officers and Disbursements to Officers). It appears the union erroneously reported these payments in Item 48.

The union must report most direct disbursements to Local 909 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

Your union's reported cash figures for the reporting period do not balance (reconcile). Specifically, cash at the start of the reporting period (Item 25(A)) plus total receipts (Item 44) minus total disbursements (Item 55) does not equal cash at the end of the reporting period (Item 25(B)).

3. Trusts or Funds

Item 11 (Did your organization created or participated in the administration of a trust or other fund?) was incorrectly answered, "No." Local 909 had a joint apprenticeship and training fund during 2011. As stated in the LM-3 report instructions, the union must provide the name, address, and purpose of the trust or fund in Item 56. If a report has been filed for the trust or other fund under the Employee Retirement Income Security Act of 1974 (ERISA), report in Item 56 the ERISA file number (Employer Identification Number – EIN) and plan number, if any.

4. 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 909 amended its constitution and bylaws in 2009, but did not file a copy with its LM report for that year. Local 909 has now filed a copy of its constitution and bylaws.

Local 909 must file an amended Form LM-3 for the fiscal year ended December 31, 2011, to correct the deficient items discussed above. I encourage Local 909 to complete, sign, and file its report electronically using the Electronic Forms System (EFS) available at the OLMS website at [www.olms.dol.gov](http://www.olms.dol.gov). Reporting forms and instructions can be downloaded from the website, if you prefer not to file electronically. The amended Form LM-3 should be filed electronically no later than November 1, 2012 or submitted to this office at the above address by the same date. Before filing, review the report thoroughly to be sure it is complete and accurate. Paper reports must be signed with original signatures.

I want to extend my personal appreciation to Plasterers & Cement Masons Local 909 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,

A large black rectangular redaction box covering the signature of the investigator.

Investigator

cc: Mr. Elbert Holbert, Business Manager