

U.S. Department of Labor

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August 18, 2008

Mr. Lloyd Cureton, President
Food and Commercial Workers Local 199
P.O. Box 7167
Rochester, MN 55903-7167

LM File Number: 027-580
Case Number: [REDACTED]

Dear Mr. Cureton:

This office has recently completed an audit of UFCW Local 199 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 Treasurer Thomas Joswick on August 6, 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 199's 2007 records revealed the following recordkeeping violations:

1. Receipt Dates Not Recorded

Local 199's receipts entries in the receipts ledger do not reflect the date money was received. Receipts records must show the date of receipt, which 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 receipts must be recorded when money is actually received and disbursements must be recorded when money is actually paid out. Failure to record on the LM-3 the date money was received could result in reporting some receipts for a different year than the one in which they were received.

2. Failure to Record Receipts

Local 199 did not record in its receipts records interest earned on the savings account and certificates of deposit totaling at least \$8,600. Receipts records must include an adequate identification of all money received. The records should show the date and amount received, and the source of the money.

3. Failure to Maintain Records

Local 199 failed to retain bank statements for the savings account for the months of February and September 2007. As a general rule, all types of records created or used in the normal course of doing union business must be maintained by the union for five years.

4. Disposition of Assets

Local 199 gave away \$1,000 in cash prizes at the 2007 Christmas party, but did not maintain records that identified the recipients of the cash.

While it is not necessary to itemize every recipient of a cash prize in item 56 (Additional Information) of the LM-3 report, in the instance of cash prizes, the union must retain a record that identifies the name and amount of the cash prize

disbursed to each person. These records are required to be retained to support payments reported on the LM-3 report.

Based on Treasurer Joswick's assurance that Local 199 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 199 for fiscal year ending December 31, 2007, was deficient in the following areas:

1. Item 15 – Disposition of Assets

Item 15 (Disposition of Assets) should have been answered, "Yes," because Local 199 gave away cash prizes totaling at least \$1,000 at the 2007 Christmas party. Additionally, Local 199 gave away at least \$420 in cash door prizes at monthly membership meetings. The type and value of any property received or given away must be reported 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. Recipients can be described by broad categories, if appropriate, such as "members" or "new retirees."

Additionally, disbursements to members for attending meetings should be reported in Item 46 (Disbursements to Employees) of the LM-3. It appears these disbursements were erroneously reported in Item 51 (Contributions, Gifts, and Grants).

2. Disbursements to Officers

Local 199 did not include reimbursements to officers totaling \$1,548 in the amounts reported Item 24 (All Officers and Disbursements to Officers). It appears these payments were erroneously reported Item 50 (Benefits) and Item 51 (Contributions, Gifts and Grants). For example, you received a check for \$1,450 to pay for Christmas party expenses and cash drawings, but \$0 was reported next to

your name in Column E (Allowances and Other Disbursements).

Additionally, you and Treasurer Joswick stated that lost time is paid to officers and employees who participate in contract negotiations. Contract negotiations were last held in 2006. A review of the disbursements ledger for 2006 confirmed that officers and employees received payments for lost wages during contract negotiations. However, these payments were not reported next to the names of each officer in Column D (Gross Salary) of Item 24 for the 2006 LM-3 report. Column D must include all gross salary disbursements and disbursements for lost wages.

Most direct disbursements to Local 199 officers and some indirect disbursements made on behalf of its officers must be reported 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).

3. Cash

It appears that the cash figures reported in Item 25 (Cash) are not the cash figures according to the union's books after reconciliation to the bank statements. For example, Item 25A (Start of the Reporting Period Cash) states that cash was \$246,995. The bank statements for the checking account, savings account, and certificates of deposit show that Local 199 had \$252,702. The audit revealed that Local 199's records show that it had \$247,447 in its checking account, savings account, and certificates of deposit as of January 1, 2007.

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. Additionally, cash reported at the beginning of the reporting period in Item 25A should equal Item 25B (End of the Reporting Period Cash) from the LM-3 report for the previous fiscal year.

4. Interest

Interest receipts of \$3,618 were erroneously reported in Item 41 (Interest and Dividends) Local 199 received at least \$8,700 in interest on the checking account, savings account and certificates of deposit in 2007.

Other Violation

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 199's officers and employees are currently bonded for \$27,500, but they must be bonded for at least \$35,000. Local 199 should obtain adequate bonding coverage for its officers and employees immediately. Please provide proof of bonding coverage to this office as soon as possible, but not later than August 15, 2008.

Other Issues

1. Cash Disbursements for Christmas Drawings

During the audit, you advised that members who attend the Christmas party are eligible to receive cash prizes. As mentioned above, you received a check for \$1,450 to cover the drawings and entertainment expenses for the Christmas party. OLMS recommends that all disbursements be made by check directly to the individual receiving the funds in order to ensure internal control over disbursements. As previously noted, since the payee of these checks was an officer, the cash are considered direct disbursements for reporting purposes and must be included in the amount reported next to your name in Item 24, Column F (Allowances and Other Disbursements). OLMS recommends that Local 199 review these procedures to improve internal control of union funds.

2. Tax Withholdings

Local 199's records indicate that you did not deduct taxes from payments to members/employees for lost time payments in 2006. While this office has no authority to interpret the state or federal tax code, I recommend you contact the Internal Revenue Service and obtain the following two publications: Circular E,

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Employer's Tax Guide (Publication 15) and Supplemental Employer's Tax Guide (Publication 15-A). These two publications, as well as other information about employment taxes for small organizations, can be found on the IRS website at www.irs.gov. Circular E discusses employees, taxable wages and compensation, the calculation of withholding taxes, and FUTA. The Supplemental Employer's Tax Guide contains employment tax information on employees of exempt organizations (the IRS categorizes labor organizations as tax exempt organizations under the Internal Revenue Code 501(c) (5)).

I want to extend my personal appreciation to UFCW Local 199 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,



Investigator

cc: Thomas Joswick, Treasurer