



February 22, 2011

Mr. Raymond Sawicky, President
United Food and Commercial Workers Local 653
13000 63rd Avenue North
Maple Grove, MN 55369

Case Number: |||||
LM Number: 028-080

Dear Mr. Sawicky:

This office has recently completed an audit of United Food and Commercial Workers Local 653 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, Secretary-Treasurer Richard Milbrath, Bookkeeper Sandy Aldridge, various executive board members, and CPA Eric Bartsch on February 1, 2011, 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 653’s 2009 records revealed the following recordkeeping violations:

- 1. General Reimbursed and Credit Card Expenses

Local 653 did not retain adequate documentation for credit card expenses incurred by you and Secretary-Treasurer Milbrath, and for reimbursed expenses incurred by other union officers and business agents. For example, a review of the local's credit card records show you charged \$78,506 of expenses to the union Visa assigned to you, and that Mr. Milbrath charged at least \$23,778 of expenses to the union Visa assigned to him. However, itemized receipts were not retained for many charges for food, office, and travel expenses. As an example, expenses you and Mr. Milbrath incurred included at least 114 expenses at Mad Jacks Sports Café and Dick's Bar and Grill in the Twin Cities totaling at least \$4,716. You stated during the audit that these expenses were principally for alcoholic drinks and appetizers, and copies of the itemized receipts obtained by OLMS reflect as much. The specific union business conducted that required the expenses be incurred was not noted in any record, though notations on the credit card statements indicate that most of these expenses were for you, Mr. Milbrath and Business Agent Greg Larson. You stated that these expenses were incurred while discussing union business that the three of you "would not have discussed unless you met at the bar."

As another example, you made several purchases at BP Liquor, but failed to retain any receipts for those purchases. Notations on credit card statements indicate the expenses were for refreshments for "board meetings," "campground," "staff party," and "office expense." Copies of the receipts obtained by OLMS from BP Liquor indicate the charges were also principally for the purchase of alcoholic beverages. Records retained in support of these expenses also did not sufficiently identify the union business purpose.

Officers and employees were routinely reimbursed for expenses for office supplies, meals, and other travel expenses, but failed to retain original receipts or adequate supporting documentation that identified the items purchased. Business agents did not always turn in itemized receipts for meals. You indicated during the audit that you were unaware that itemized receipts were required to be retained.

In the case of meal expenses, records retained 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, and itemized receipts must be retained to determine if such disbursements are for union business purposes and to sufficiently fulfill the recordkeeping requirement of LMRDA Section 206. The president and treasurer (or corresponding principal officers), who are required to sign your union's LM report, are responsible for properly maintaining union records.

2. Union Owned Vehicles

Local 653 did not maintain records necessary to verify the accuracy of the information reported in Schedules 11 (All Officers and Disbursements to Officers) and 12 (Disbursements to Employees) of the Labor Organization Annual Report (Form LM-2). In 2009, Local 653 owned five cars and two SUV's. You stated that Local 653 purchases a new Chevrolet Suburban for your use every year and a new Suburban for Mr. Milbrath's

use every other year. The other five cars owned by the union are assigned to business agents. You and Mr. Milbrath are assigned Holiday gas cards used to pay for vehicle expenses. The business agents assigned a car each receive a \$2,400 annual allowance to cover gasoline expenses. During 2009, these expenses together were more than \$19,000. No mileage logs were retained for any of the union's vehicles other than the one assigned to Mr. Milbrath. However, that log is not adequate because it only identifies his personal use of the vehicle.

You stated that you use the union vehicle assigned to you primarily for commuting purposes. However, a one-page document you prepared that is used by Ms. Aldridge and the union's accountant, Eide Bailly, indicates you estimated that only 45% of your use of the vehicle was related to personal travel. You also stated that you were unaware that mileage logs were required to be retained. 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. These records are required to be retained to enable OLMS to determine if Local 653 has properly reported expenses related to the operation and maintenance of union vehicles as required in the instructions for the Labor Organization Annual Report (Form LM-2) required to be filed with OLMS.

3. Disposition of Property

Local 653 disbursed more than \$160,000 for tickets to professional sporting events, Broadway plays, Valley Fair, the Minnesota Zoo, Shrine Circus, and movie theaters. In addition, Local 653 also purchased jackets, sweatshirts, t-shirts, books, and other property totaling more than \$1,500. Tickets were given away, and other items were both resold and given away to members. While Local 653 retained records that identify persons who received various tickets, it did not maintain records that identified the items (and their value) that were on hand at the beginning and end of the year. You indicated during the exit interview that many items were on hand at the beginning and end of 2009. Such records are required to be maintained to verify and support information concerning other assets that is required to be disclosed on Local 653's LM-2 reports.

4. Receipts Records

Entries in Local 653's receipts records reflect the date money was deposited but not the date money was received. During the audit, neither you nor Bookkeeper Sandry Aldridge could identify any union record that shows the date that monies were actually received. In the case of some dues receipts, employers deduct dues from members' paychecks and directly deposit the check into the local's checking account or remit a check to the local. For checks remitted to the local, Ms. Aldridge records a "store number" and the amount of each of those payments on a deposit ticket. When a deposit is made, Ms. Aldridge records the date and amount of the deposit in Open Systems, the union's bookkeeping software. However, the actual date of receipt is not recorded in any record.

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-2. The LM-2 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 the date money was received could result in reporting some receipts for a different year than the one in which they were received.

5. Lack of Salary Authorization

Local 653 did not maintain records to verify that the salaries reported in Schedules 12 (Disbursements to Employees) of the LM-2 were the authorized amounts and were therefore correctly reported.

Your salary and the salaries of the full-time business agents are noted in attachments to executive board meeting minutes during which the salaries were approved. However, Local 653 has a collective bargaining agreement with the Office and Professional Employees Union Local 12 that covers its support staff. Local 653's payroll records for 2009 show that some of those employees were paid salaries greater than the wage schedules in the collective bargaining agreement. During the audit, Mr. Milbrath advised that some staff are authorized to be paid salaries higher than the amounts provided for in the collective bargaining agreement. However, that authorization could not be identified in any union records. Local 653 must keep a record, such as meeting minutes, to show the current salaries for officers and employees as authorized by the entity or individual with the authority to establish salaries.

6. Lack of Authorization for Purchase of Union Vehicles

As previously noted, you stated that Local 653 purchases a new Chevrolet Suburban for your use each year and another for use by Mr. Milbrath every other year. In addition, the union periodically also purchases cars that are assigned to union business agents. During 2009, Local 653 disbursed \$80,194 for the purchase of new automobiles. Article 34, Sections 2 and 4 of the UFCW Constitution requires that all disbursements be authorized by the president and approved by the executive board. Further, meeting minutes and other records support that other disbursements for the purchase of assets were approved by the executive board. However, no record could be found that documented the executive board's approval of the purchase of seven union vehicles in 2009. As it is Local 653's constitutional requirement and practice to have the Local executive board approve disbursements for the purchase of assets, Local 653 must keep a record, such as meeting minutes, documenting the authorization for the purchase of new vehicles as it does for other assets.

The proper maintenance of union records is the personal responsibility of the individuals who are required to file Local 653'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.

This office is available for any compliance assistance guidance you may need in addition to that which you may receive from your own staff counsel, outside legal counsel, and outside professional accounting services.

Based on your assurance that Local 653 will retain adequate documentation in the future, OLMS will take no further enforcement action at this time regarding the above violations. However, Local 653's records will be reviewed by OLMS again within the next year to ensure that the recordkeeping violations noted above have been corrected.

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 653 for the fiscal year ended December 31, 2009, was deficient in the following areas:

1. Statement B (Receipts and Disbursements)

During the audit, Bookkeeper Sandy Aldridge advised that some of the receipts and disbursements reported in Statement B (Receipts and Disbursements) were "netted," meaning that related receipts and disbursements were offset by one another and only the difference reported as a receipt or disbursement. The LM-2 instructions state that since Statement B reports all cash flowing in and out of an organization, "netting" is not permitted.

Ms. Aldridge also stated that the disbursements reported on the LM-2 report were those disbursements that were invoiced and recorded into the union's bookkeeping software during 2009, and not the disbursements that were actually paid out during the year. She advised that the dates of specific disbursements reported on Schedules 14 – 19 for payments over \$5,000 that require an itemization page are not the dates the disbursements were made, but rather the invoice dates recorded into the union's accounting system. The LM-2 instructions for Statement B 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. The instructions for Schedules 14 – 19 state that the date of receipt or disbursement for reporting purposes is the date the labor organization actually received or disbursed money.

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 Local 653 gave away tickets to the Minnesota Twins, Timberwolves, Vikings, Wild, Lynx, Gophers Hockey, Broadway Plays, Valley Fair, Minnesota Zoo, Shrine Circus and movie theatres totaling more than \$160,000. The local answered "yes" in Item 15, but did not identify the items given away or their value in Item 69 (Additional Information)-as required by the LM-2 instructions.

The type and value of any property received or given away must be identified in the additional information section of the LM report along with the identity of the recipient(s) or donor(s) of such property. For reporting purposes, each recipient need not be itemized. Recipients can be described by broad categories, if appropriate, such as "members" or "new retirees."

3. Interest

Local 653's bank statements indicate that the union received \$395,150 in interest; however, interest income receipts reported in Item 40 (Interest) was \$331,823.

4. Credit Card and Reimbursed Expenses

The audit revealed that three officers and employees are assigned union credit cards and that Local 653 did not include some credit card expenses and some reimbursements to officers and employees in the amounts reported in Schedule 11 (All Officers and Disbursements to Officers) and Schedule 12 (Disbursements to Employees). As an example, Local 653 reported in Column F of Schedule 11 (Disbursements for Official Business) that direct and indirect disbursements to you and Mr. Milbrath for official business were \$10,810 and \$7,345, respectively. Further, Local 653 reported no payments to you or Mr. Milbrath in Column G (Other Disbursements). However, as previously noted, you and Mr. Milbrath incurred expenses totaling more than \$102,000 that you paid for with union Visa credit cards. In addition, Local 653 also disbursed more than \$7,000 to Holiday credit card for gasoline expenses incurred by you and Mr. Milbrath and also directly reimbursed you for other expenses. The payments to the Holiday credit card are erroneously reported in Schedule 19 (Union Administration).

Most direct disbursements to officers and employees for reimbursed expenses must be included in the amounts reported in Column F or G of Schedules 11 and 12. In many cases, credit card expenses are considered indirect disbursements to officers and employees which must also be reported in Columns F and G. The LM-2 instructions (pages 21-24) contain specific provisions regarding these reporting requirements. Disbursements for credit card expenses were erroneously reported in other categories.

As noted in the LM-2 instructions, disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on the credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company.

In the case of frequent luncheons incurred by union officers, like those incurred by you, Mr. Milbrath, and Mr. Larson at Mad Jacks Sports Café and Dick's Bar and Grill, the frequency and regularity of the meetings, and the fact that they take place at a time when the officers would otherwise normally be paying for meals themselves, appear to indicate that the meals are more for the personal benefit of the officers rather than necessary for conducting official union business. In this case, therefore, unless it can be shown that the luncheons were actually necessary for conducting official union business, such disbursements of the union must be reported in column G of schedules 11 and 12 of the LM-2 rather than in column F, and may be allocated among the officers.

Sections 214.571 through 214.577 of the LMRDA Interpretative Manual (copies attached) set forth the rules and provide examples for reporting direct and indirect disbursements for food and refreshments for officers, for employees, for general membership gatherings, and for the entertainment of individuals outside the union.

The LM-2 instructions provide two methods for reporting automobile-related expenses. 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) must be reported in Schedules 11 and 12. The expenses may be divided and reported 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 expenses related to the vehicle assigned to the officer or employee may be reported 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 related 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.

5. Travel Advances Not Reported

Local 653 issued travel advances to officers and employees to cover expenses associated with travel to union conferences and meetings. However, the amounts disbursed to officers and employees were not included in the amounts reported in Schedules 11 and 12, column F. Further, the repayments were not reported in Item 48 (Other Receipts). Officers and employees were required to return any unused portion of their advance when they returned from their trip, and the union's deposit tickets indicate that at least \$5,000 was returned in 2009. Ms. Aldridge advised that disbursements to officers and employees for travel

advances were “netted” in union records against amounts returned by officers and employees, neither the receipts nor disbursements related to the travel advances were reported on the LM-2.

6. Officer Allowances

Local 653 erroneously reported disbursements for allowances to Vice President Shirley Zachman totaling \$27,500 and to Vice President Steve Goodman totaling \$13,625 in Column E (Allowances) of Schedule 11. Meeting minutes reflect that these payments were authorized by the executive board and were additional compensation paid to those officers upon retirement. The LM-2 instruction state that amounts to be reported in Column E are allowances made on a daily, weekly, monthly or other periodic basis. Disbursements records reflect that these payments were salary, and should be reported as such in Schedule 11.

I am not requiring that Local 653 file an amended LM report for 2009 to correct the deficient items, but Local 653 has agreed to properly report the deficient items on all future reports it files with OLMS.

Other Issue

Expense Policy

As I discussed during the exit interview with you, Mr. Milbrath, and Ms. Aldridge, the audit revealed that Local 653 does not have a clear policy regarding the types of expenses personnel may charge to union credit cards. With regard to expenses that you incurred at Jacks Sports Café and Dick’s Bar and Grill, you stated that you authorized yourself to incur these expenses. Further, executive board members stated that they do not review documentation for officer or employee expenses, and that you had authority to incur expenses such as those. OLMS recommends that unions adopt written guidelines concerning meals and other travel expenses to help ensure effective internal controls and safeguard union assets.

I want to extend my personal appreciation to United Food and Commercial Workers Local 653 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,

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Investigator

cc: Mr. Richard Milbrath, Secretary-Treasurer
Ms. Sandy Aldridge, Bookkeeper
Ms. Colleen Ryan, Recording Secretary
Mr. Joe Maltese, Vice President
Mr. David Maas, Vice President
Mr. Aaron Flatgard, Vice President
Mr. Paul Henry, Vice President
Ms. Mary Schmidt, Vice President
Mr. Doug Rigert, Vice President
Mr. Doug Dehmer, Vice President
Ms. Theresa Kick, Vice President
Mr. Paul Merchlewitz, Vice President
Ms. Melissa Charles, Vice President
Ms. Judi Johnson, Vice President
Mr. Scott Larson, Vice President
Mr. Thomas Potvin, Vice President
Ms. Lorrie Wayman, Vice President
Mr. Nick Stute, Vice President
Ms. Amanda Little
Mr. Eric Bartsch, CPA