



December 7, 2023

B.J. Motley, President  
Food and Commercial Workers Local 304A  
101 S. Fairfax Avenue  
Sioux Falls, SD 57103

Case Number: 320-6023560( )  
LM Number: 007359

Dear President Motley:

This office has recently completed an audit of Food and Commercial Workers Local 304A 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 Mustafa Kalombo, Recording Secretary Candace Conner, Vice President Lual Agutdau, Vice President Bullen Furula, Vice President Sam Hamilton, Vice President Bobby Conner, Vice President Kevin Kaul (participating by phone), and Vice President Susan Michaels (also participating by phone), on November 15, 2023, 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 304A's 2021 records revealed the following recordkeeping violations:

1. Receipt Dates not Recorded

Entries in QuickBooks, Local 304A's bookkeeping software, 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-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. Disposition of Property

Local 304A did not maintain an inventory of hats, jackets, and other property it purchased, sold, or gave away. The union must report the value of any union property on hand at the beginning and end of each year in Schedule 7 (Other Assets) and Item 28 (Other Assets) 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 Schedule 7 and Item 28. The union must record in at least one record the date and amount received from each sale of union hats, jackets, and other items.

In addition, in the case of items given away to members, the union must retain records that identify the date the items were given away and the recipients of those items.

3. Inventory of Fixed Assets

The audit revealed that Local 304A has significant fixed assets, including but not limited to computers, printers, cellular phones, and office furniture. Since at least 2018, Local 304A has reported fixed assets totaling \$44,079 in Schedule 6 (Fixed Assets), Column B (Cost or other basis); however, Local 304A failed to retain any records to verify the accuracy of that figure. During the audit Secretary Treasurer Kalombo confirmed that Local 304A does not maintain a current inventory list of its fixed assets.

In the case of fixed assets, the local must maintain an inventory or other similar record(s) identifying each fixed asset and the cost and depreciation of each fixed asset. It is also important to keep a record of the location of equipment that is not maintained in the office (e.g. iPads). Such records are required to be retained to verify, clarify, and support information required to be reported in Schedule 6 of the Form LM-2.

4. Disbursements to Vendors

Local 304A did not maintain adequate supporting documentation for disbursements paid to vendors totaling approximately \$30,000. For example, in August 2021, Local 304A disbursed \$3,828.19 to a catering service. Although Local 304A retained an invoice, the

documentation did not identify the union business purpose of the expense, which is not sufficient. During the audit, Secretary Treasurer Kalombo confirmed that the expense was related to the purchase of food for the annual picnic.

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.

#### 5. General Reimbursed and Credit Card Expenses

The audit revealed that Local 304A failed to maintain adequate supporting documentation for reimbursed expenses and credit card expenses incurred by you, Secretary Treasurer Kalombo, Business Agent John Massaley, and Vice President Michaels totaling at least \$15,000 (not including mileage reimbursements which is explained below). For example, Local 304A retained no supporting documentation for a \$417.44 check to you, a \$152 check to Business Agent Massaley, and a \$152 check and a \$264 check to Secretary Treasurer Kalombo. As another example, the union failed to identify the names and titles of people present for over \$1,500 in meal expenses you charged to the union credit card, which is not sufficient.

Labor organizations must retain original receipts, bills, and vouchers for all disbursements. 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. 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. 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.

#### 6. Reimbursed Auto Expenses

Union officers and employees who received reimbursement for business use of their personal vehicles did not retain adequate documentation to support payments to them totaling almost \$2,500 during 2021. In most cases, the documentation maintained for mileage reimbursement did not identify the locations traveled to and from and in many other instances, the union business purpose for the travel was not provided. 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.

Based on your assurance that Local 304A 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 304A for the fiscal year ended December 31, 2021, 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 304A amended its constitution and bylaws in 2020 but did not file a copy with its LM report for that year.

As agreed, Local 304A will file a copy of its current constitution and bylaws with OLMS as soon as possible but not later than March 30, 2024 with the filing of their LM-2 report for fiscal year ending December 31, 2023.

#### 2. Disbursements to Officers

Local 304A did not include \$1,500 in meal expenses that you incurred on the union's credit card in Column F (Disbursements for Official Business) of Schedule 11 (All Officers and Disbursements to Officers). It appears that the local erroneously reported these payments in Schedules 15 through 19.

The union must report in Column F of Schedules 11 and 12 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.

#### 3. Failure to Itemize Disbursements

Local 304A did not properly report some "major" transaction(s) in Schedule(s) 15 through 19. A "major" transaction includes any individual transaction of \$5,000 or more or total transactions to or from any single entity or individual that aggregate to \$5,000 or more during the reporting period and which the local cannot properly report elsewhere in Statement B. For example, Local 304A disbursed three payments totaling more than \$26,000 to Smith and McElwain Law Offices (including two individual disbursement transactions of more than \$5,000 each); however, these payments were not properly reported on an itemization page in

Schedule 15 (Representational Activities). Instead, Local 304A misreported these disbursements in Line 5 (Other Disbursements) of the detailed summary page for Schedule 15.

#### 4. Fixed Assets

Local 304A did not properly report the book value of their fixed assets in Schedule 6 and Item 27 (Fixed Assets). The audit revealed Local 304A has significant assets, including computers, printers, cellular phones, and office furniture, some of which were purchased in the last several years. However, Local 304A has not increased the value of the fixed assets reported in Schedule 6, Column B (Cost or other basis) since at least 2018. Local 304A must report the book value of all their fixed assets, including office furniture and equipment, owned by the labor organization at the start and end of the reporting period in Schedule 6 and Item 27. The book value of fixed assets is cost less depreciation.

#### 5. Other Assets

Local 304A did not report the value of its other assets in Schedule 7 and Item 28; however, during the exit interview, many of the board members agreed that Local 304A has some volume of apparel items (and possibly gift cards) on hand at the end of each year, including the audit year. As noted above, Local 304A does not keep records of these assets and, therefore, the union could not quantify the assets on hand at the end of the audit period.

Local 304A must identify and report the value of all other assets in Schedule 7 and Item 28, including apparel items and gift cards, that are on hand at the end of each reporting period.

#### 6. 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 jackets, shirts, and gift cards totaling more than \$15,000 during the audit year. Additionally, the union's employers and several vendors donated items to the union that were subsequently given away as door prizes at the union's annual picnic. 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.

#### 7. Interest

Local 304A failed to report approximately \$535 in interest receipts in Item 40 (Interest). All unreported interest was attributed to several of the union's certificates of deposit. The union

must report the total amount of received from all sources in Item 40, including savings accounts, certificates of deposit, and other interest-bearing accounts.

I am not requiring that Local 304A file an amended LM report for 2021 to correct the deficient items, but Local 304A has agreed to properly report the deficient items on all future reports it files with OLMS.

### Other Issues

#### 1. Credit Card Policy

The audit revealed that Local 304A disbursed over \$15,000 to VISA for credit card purchases incurred by you and Recording Secretary Conner during 20221; however, Local 304A has no written policy governing the use of the union 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.

#### 2. Expense Policy

As I discussed during the exit interview, the audit revealed that while Local 304A has a documented expense policy, the policy does not include a provision for the \$75 monthly mileage allowance paid to you, the secretary treasurer, and both business agents. During the audit, you stated this mileage allowance is based on past practice from previous administrations.

Additionally, the expense policy provides for the president to approve all travel expenses; however, there is no provision in the policy regarding the approval of the president's expenses. Although the Executive Board approves all expenditures based on a monthly written financial report, this approval occurs after the funds have been disbursed. OLMS recommends that Local 304A reviews their current policy and adopt additional written guidelines concerning such matters to help ensure effective internal controls and safeguard union assets.

#### 3. New Member Sign Up

The audit revealed that Local 304A disbursed funds to members and officers for "new member sign up," which is a program that provides a monetary incentive for existing members to secure union membership for new employees. During the exit interview, you advised that this program is based on a memorandum of understanding from a previous

administration and has continued through subsequent administrations based on past practice and is not currently found in any written document.

To ensure proper internal financial control over union disbursements, OLMS recommends that each union: (1) adopt a clear policy on payments to officers and members for signing up new members; (2) establish what documentation is required to be retained for new member sign up payments; and (3) establish a procedure that provides for approval of new member sign up payments.

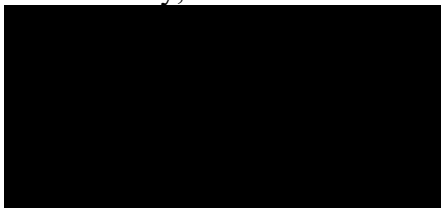
#### 4. Scholarship Program

During the audit year, Local 304A disbursed \$3,000 in scholarship awards. The only documentation retained by Local 304A for these disbursements were vouchers that indicated the union business purpose as scholarship awards. Local 304A has no written policy governing the scholarship process and there appeared to be some confusion at the exit interview among executive board officers regarding the application and review process.

To ensure proper internal financial control over union disbursements, OLMS recommends that each union: (1) adopt a clear policy on the application process and the selection of the scholarship recipients; (2) establish what documentation is required for the scholarship awards; and (3) establish a procedure that provides for approval of scholarship awards.

I want to extend my personal appreciation to Food and Commercial Workers Local 304A 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,



Senior Investigator

cc: Mustafa Kalombo, Secretary Treasurer  
Candace Conner, Recording Secretary  
Lual Agutdau, Vice President  
Bullen Furula, Vice President  
Sam Hamilton, Vice President  
Grace Mulamba, Vice President  
Bobby Conner, Vice President  
Kevin Kaul, Vice President  
Susan Michaels, Vice President