

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
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May 1, 2008

Mr. William Plemel, President
Musicians Local 205
325 St. George Street
Green Bay, WI 54302

LM File Number: 018-100
Case Number: |||||

Dear Mr. Plemel:

This office has recently completed an audit of Musicians Local 205 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 Secretary Treasurer Michael Hennessy on April 17, 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 Violation

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 205's 2007 records revealed the following recordkeeping violation:

Reimbursed Expenses

Local 205 did not retain adequate documentation for reimbursed expenses incurred by officers and employees totaling at least \$2,118.50. For example, Regional Orchestra Performers Association (ROPA) delegate and member Steve Westergan received an advance of \$1,152.50 and additional money for reimbursement of his expenses to attend the ROPA convention; however, no supporting documentation was retained to account for the advance and the additional payments. As another example, Vice President Woody Howland was reimbursed for \$408.25 for what is identified on scraps of paper as "meals," "food," "supplies," and "repairs." However, the business purpose of those expenses is not recorded on any record, and detailed receipts for the individual expenses claimed were not retained.

As noted above, labor organizations must retain original receipts, bills, and vouchers for all disbursements. In the case of meal expenses, the union must maintain itemized receipts provided by restaurants to officers and employees. 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. 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.

During the exit interview, I provided a sample of an expense voucher Local 205 may use to satisfy this requirement. The sample identifies the type of information and documentation that the local must maintain for officer expenses.

Based on your assurance that Local 205 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 205 for fiscal year ending December 31, 2007 was deficient in the following areas:

1. Salary Disbursement to Officers

Local 205 failed to report some salary payments to officers totaling at least \$459.45 in Item 24 (All Officers and Disbursements to Officers). For example, the "Enabling Resolution" section of the bylaws states Secretary Treasurer Michael Hennessy is entitled to 25% of all billed working dues collected as part of his salary. Mr. Hennessy received a payment of \$397.65 for what is identified in the union's disbursements journal as "salary." However, it appears this payment was not included in the amount reported in Column F (Gross Salary). It appears that Local 205 erroneously reported these payments in Item 48 (Office & Administrative Expenses) and/or Item 54 (Other Disbursements).

2. Expense Disbursements to Officers

Local 205 did not report any reimbursements to officers totaling at least \$5,569.24 in Item 24 (All Officers and Disbursements to Officers). For example, you received at least \$3,494.32 in reimbursed expenses. However, nothing was reported in Column E (Allowances and Other Disbursements). It appears that Local 205 erroneously reported these payments in Item 48 (Office & Administrative Expenses) and/or Item 54 (Other Disbursements).

Local 205 must report most direct disbursements to officers and some indirect disbursements made on behalf of its officers in Column E of Item 24 (Allowances and Other Disbursements). 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).

I am not requiring that Local 205 file an amended LM report for 2007 to correct the deficient items, but Local 205 has agreed to properly report the deficient items on all future reports it files with OLMS.

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 205's officers are currently bonded for \$5,000 but they must be bonded for at least \$7,900. Local 205 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 May 28, 2008.

Other Issues

1. Signing Blank Checks

During the audit, you advised that you sign blank checks. The two signature requirement is an effective internal control of union funds. Its purpose is to attest to the authenticity of a completed document already signed. However, signing a blank check in advance does not attest to the authenticity of a completed check, and negates the purpose of the two signature requirement. OLMS recommends that Local 205 review these procedures to improve internal control of union funds.

2. Officer's Salaries as Taxable Income

The audit revealed that Local 205 may be not be following state or federal requirements for withholding of various taxes from payments to officers. While Local 205 itself may be exempt from income taxes, payments made by Local 205 to officers and employees are not exempt, except in certain circumstances. Local 205 and its bylaws state that the president receives compensation of \$1,200 per year. The secretary treasurer receives \$2,400 per year plus 25% of working dues collected. Local 205 confirmed that these payments are intended to compensate the officers a for the work that they do and are not intended to be reimbursement to them for any specific expenses.

While this office has no authority to interpret the state or federal tax code, it is my understanding that all salary and supplemental payments are subject to the withholding of income, Social Security, and Medicare taxes and that Local 205 as an "employer" must also pay its share of Social Security and Medicare taxes. Local 205 may be liable for the Federal Unemployment Tax (FUTA) as well.

I recommend that you contact the Wisconsin Department of Revenue in Madison at (608) 266-2776 (ask for the publication "Wisconsin Employer's Withholding Tax Guide"), and the Internal Revenue Service (ask for "Publication 15-B, Employers Guide to Taxable Fringe Benefits," "Circular E, Employer's Tax Guide," and Form 990, which Local 205 may be required to file). I also suggest that you determine Local 205's requirements, if any, under the Wisconsin Worker's Compensation Act by contacting the Wisconsin Dept. of Industry, Labor and Human Relations (DILHR) at its Worker's Compensation Division in Madison at (608) 266-0416.

I want to extend my personal appreciation to Musicians Local 205 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. Michael Hennessy, Secretary Treasurer