

U.S. Department of Labor

Office of Labor-Management Standards
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April 21, 2016

Ms. Susan Johnston, President
Office of Professional Employees
AFL-CIO LU 391
1400 N Roosevelt Blvd.
Schaumburg, IL 60173-4348

Case Number: 310-6006370 [REDACTED]
LM Number: 029480

Dear Ms. Johnston:

This office has recently completed an audit of Office of Professional Employees AFL-CIO Local Union 391 (OPEIU Local 391) 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 Lynnett Davis, Vice President Jearlean Fleming, Recording Secretary Norma Moore and Trustee Sabrina Elms on April 12, 2016 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 391's 2014 records revealed the following recordkeeping violations:

1. Meal Expenses

Local 391 did not always require officers and employees to submit itemized receipts for meal expenses totaling at least \$140.67. The union must maintain itemized receipts provided by restaurants to officers and employees. For example, you provided a "guest receipt" stub for meal expenses incurred at The Artist's Café. 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.

Local 391's records of meal expenses (including receipts for individual purchases of drinks including coffee and other food items) rarely included written explanations of union business conducted or the full names and titles of the persons incurring meal expenses totaling at least \$1,743. For example, there were at least 20 individual purchases of coffee at Dunkin Donuts where the receipts were not documented as to the full name of the individual incurring the expense, the title of the person incurring the expense was not documented, nor was the purpose of the union business documented. A receipt for pizza at Lou Malnati's for \$135.66, dated September 8, 2014, was not documented as to the union business conducted. An individual purchase at Corner Bakery Café totaling \$15.26, at 7:50 am on September 9, 2016, was not documented as to the union business conducted or the name and title of person who incurred the restaurant charge. Another example is a receipt for Miller's Pub totaling \$177.00 on December 16, 2014 was not document as to the union business conducted or the names and titles of persons who incurred the restaurant charges. Union 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

2. Disposition of Property

Local 391 did not maintain an inventory of gift cards purchased and given away totaling at least \$4,290. The union must report the value of any union property on hand at the beginning and end of each year in Item 30 (Other Assets) of the LM-3. 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 Item 30.

3. Receipt Dates not Recorded

Entries in Local 391's General Ledger 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.

Based on your assurance that Local 391 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 391 for the fiscal year ended December 31, 2014, was deficient in the following areas:

1. Disbursements to Officers

Local 391 did not include reimbursements to officers totaling at least \$4,594 in the amounts reported in Item 24 (All Officers and Disbursements to Officers). It appears the union erroneously reported these payments in Item 48 (Office & Administrative Expense).

The union must report most direct disbursements to Local 391 officers and some indirect disbursements made on behalf of its officers in Item 24 (E) (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).

2. Salary Payments to Officers

Local 391 failed to report at least \$6,625 in payments to officers in the amounts reported in Item 24(D) ((Gross Salary (before taxes and other deductions)). Local 391 reported no payments to officers in Item 24(D). The audit revealed that all officers received a monthly "allowance." The audit also revealed that these payments are intended to compensate the officers for the work that they do and are not intended to be reimbursement to them for any specific expenses. Local 391 routinely reimburses expenses to officers in addition to their monthly "allowance." For example, you received \$1,375 in allowances, but Item 24(D) reports that you received no payments during the year. As another example, Secretary Treasurer Lynnett Davis received \$3,000 in allowances, but Item 24(D) reports that she received no payments during the year. It appears that payments to all officers were

erroneously reported in Item 24 column (E) (Allowances and Other Disbursements) on the report.

The union must report most direct disbursements to Local 391 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).

Local 391 must file an amended Form LM-3 for the fiscal year ended December 31, 2014 and December 31, 2015, to correct the deficient items discussed above. I have provided you with instructions for the Form LM-3. The reporting forms and instructions are available on the OLMS website (www.olms.dol.gov). The amended Form LM-3 should be submitted to this office at the above address as soon as possible, but not later than September 1, 2016. Before filing, review the report thoroughly to be sure it is complete, accurate, and signed properly with original signatures.

Other Issue

Officer Salary/Allowance as Taxable Income

The audit revealed that Local 391 may be improperly following state or federal requirements for withholding of various taxes from payments to officers. While Local 391 itself may be exempt from income taxes, payments made by Local 391 to officers and employees are not exempt, except in certain circumstances. Local 391 maintains that its officers do not receive a salary but rather an "allowance." 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 391 as an "employer" must also pay its share of Social Security and Medicare taxes. Local 391 may be liable for the Federal Unemployment Tax (FUTA) as well.

I recommend that you contact the Illinois Department of Revenue in Springfield at 800 732-8866 or 217 782-3336 (ask for Publication 130 February 2016 "Who is Required to Withhold Illinois Income Tax"), 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 391 may be required to file). I also suggest that you determine Local 391's requirements, if any, under the Illinois Worker's Compensation Act by contacting the Illinois Workers' Compensation

Commission (IWCC WC) at its Worker's Compensation Division in Chicago at 100 W Randolph St Suite 8-200, Chicago, IL 60601, Phone 312/814-6611.

I want to extend my personal appreciation to Office of Professional Employees AFL-CIO Local Union 391 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:

Ms. Lynnett Davis, Secretary Treasurer

Ms. Jearlean Fleming, Vice President

Ms. Norma Moore, Recording Secretary

Ms. Sabrina Elms, Trustee