

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Buffalo District Office
130 South Elmwood, Suite 510
Buffalo, NY 14202
(716) 842-2900 / FAX: (716) 842-2901



June 6, 2007

Frank Gambacorta, President
Asbestos Workers, AFL-CIO
Local 40
7 Country Ridge
Schenectady, NY 12304-2531

LM File Number 050-893

Case Number: [REDACTED]

Dear Mr. Gambacorta:

This office has recently completed an audit of Asbestos Workers, Local 40 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 on June 1, 2007, 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 40's 2006-2007 records revealed the following recordkeeping violations:

1. General Reimbursed and Credit Card Expenses

Local 40 did not retain adequate documentation for reimbursed expenses and credit card expenses incurred by Financial and Corresponding Secretary Bernard Cardella and Business Manager Jeffrey Guynup totaling at least \$600. For example, on February 1, 2006 Jeff Guynup made an American Express purchase for "general merchandise" at a Walmart Supercenter in the amount of \$53.77 had no receipt on hand. Another American Express purchase by Jeff Guynup was made on March 9, 2006 for tires at the Tire Warehouse of Troy in the amount of \$592.98 with no receipt(s) on hand.

As previously 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.

2. Meal Expenses

Local 40 did not require officers and employees to submit itemized receipts for meal expenses totaling at least \$100. 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.

Local 40 records of meal expenses did not always include written explanations of union business conducted or the names and titles of the persons incurring the restaurant charges. For example, Bernard Cardella made an American Express purchase for a meal costing \$133 had no receipt available and no record of who was at the restaurant and the purpose. 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.

3. Reimbursed Auto Expenses

Business Manager Jeff Guynup who received reimbursement for business use of his personal vehicle(s) must retain adequate documentation to support payments to him totaling at least \$1,000 during 2006-2007. 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 40 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 (LM-3) filed by Local 40 for fiscal year ending January 31, 2007 was deficient in the following areas:

1. Failure to Report all Receipts and Disbursements

Local 40 failed to report all cash receipts and cash distributions on the LM-3 totaling at least \$4,352. The local "netted" expenses and reimbursement receipts for a conference that officers attended during the period. "Netting" of cash receipts and cash disbursements are not permitted.

2. Disbursements to Officers

Local 40 did not include some reimbursements to officers totaling at least \$1000 in the amounts reported Item 24 (All Officers and Disbursements to Officers). It appears the union erroneously reported these payments in Item 48 (Office and Administrative Expenses) or did not report the payments at all.

The union must report most direct disbursements to Local 40 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.

Local 40 must file an amended Form LM-2 for fiscal year ending January 31, 2007, to correct the deficient items discussed above. Local 40 must file an amended LM-2 report since its cash receipts are greater than \$250,000. The filing procedures and the availability of the filing software can be found on the OLMS website (www.olms.dol.gov). The amended Form LM-2 must be electronically filed as soon as possible, but not later than July 15, 2007. Before filing, review the report thoroughly to be sure it is complete and accurate, and properly signed with electronic signatures.

Other Violation

The audit disclosed the following other violation:

Inadequate Bonding

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 handled by those individuals or their predecessors during the preceding fiscal year. Local 40's officers and employees are currently bonded for \$15,000, but they must be bonded for at least \$39,000. Local 40 should obtain adequate bonding coverage for its officers and employees immediately. Please provide proof of bonding coverage to this office as soon as adequate coverage has been obtained, but not later than July 15, 2007.

I want to extend my personal appreciation to Asbestos Workers Local 40 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 be of any additional assistance, please do not hesitate to call.

Sincerely,


Investigator

cc: Bernard Cardella – Financial & Corresponding Secretary
Jeffrey Guynup – Business Manager