

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Kansas City Resident Investigative Office
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December 16, 2009

Mr. Dan Cerveny, Secretary-Treasurer
Musicians AFL-CIO
Local 70-558
4535 Leavenworth Street
Omaha, NE 68106

LM File Number 015-632
Case Number: [REDACTED]

Dear Mr. Cerveny:

This office has recently completed an audit of Musicians Local 70-558 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 on December 10, 2009, 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.

The CAP disclosed the following:

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 70-558's 2008 records revealed the following recordkeeping violations:

1. Bank Records

Local 70-558 did not retain adequate documentation for two bank accounts, the Shorty Vest Scholarship Fund savings account and the Short Vest Scholarship Fund certificate of deposit account. All bank documents received by the local must be retained for a minimum of five years. This also includes any email notifications the local receives from Paypal regarding its account. Either the emails must be kept along with adequate software to open the documents, or the emails must be printed out and retained in hard copy form.

2. Sick Leave and Vacation Time

Local 70-558 did not maintain records to verify the use of sick leave and vacation time used by its full time officer. These records must be maintained by the local because they are a part of the officer's salary and must be available to verify, clarify, and explain the salary portion of its LM-3 report.

3. Information Not Recorded in Meeting Minutes

During the audit, you advised OLMS that the executive board authorized payment for your wife to travel with you to a convention in exchange for work she did in the office. However, the minutes of the meeting do not contain any reference to this. President Chris Acker confirmed this disbursement was approved at an executive board meeting. Minutes of all membership or executive board meetings must report any disbursement authorizations made at those meetings.

Based on your assurance that Local 70-558 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 70-558 for fiscal year ending December 31, 2008, was deficient in that:

1. Disbursements to Officers

Local 70-558 did not include some disbursements to officers totaling approximately \$4,500 in the amounts reported in Item 24 (All Officers and Disbursements to Officers).

The union must report most direct disbursements to Local 70-558 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. This also includes payments made to officers for performances. 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. 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 70-558 amended its constitution and bylaws in 2004, but did not file a copy with its LM report for that year.

Local 70-558 has now filed a copy of its constitution and bylaws.

Local 70-558 must file an amended Form LM-3 for fiscal year ending December 31, 2008, to correct the deficient items discussed above. I provided you with a blank form and instructions and advised you that 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 January 15, 2010. Before filing, review the report thoroughly to be sure it is complete, accurate, and signed properly with original 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 those individuals or their predecessors handled during the preceding fiscal year.

Local 70-558's officers and employees are currently bonded for \$15,000, but they must be bonded for at least \$16,710.60. Local 70-558 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 January 15, 2010.

Other Issue

Use of Signature Stamp

During the audit, you advised that it is Local 70-558's practice for you as secretary-treasurer to sign all union checks and to stamp the signature of President Chris Acker on union checks. You indicated that no one but you reviews the checks before they are issued. Article III of Local 70-558's bylaws requires that checks be signed by the president and secretary-treasurer. 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, the use of a signature stamp for the second signer does not attest to the authenticity of the completed check and negates the

purpose of the two signature requirement. OLMS recommends that Local 70-558 review these procedures to improve internal control of union funds.

I want to extend my personal appreciation to Musicians Local 70-558 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,

A solid black rectangular redaction box covering the signature of the investigator.

Investigator

cc: Chris Acker, President