U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Buffalo District Office
130 South Elmwood Avenue
Room 510
Buffalo, NY 14202-2465
(716)842-2900 Fax: (716)842-2901

February 5, 2010

Mr. Thomas Charles, Business Manager
Operating Engineers, AFL-CIO
Local 832
3174 Brighton Henrietta Town Line Rd.
Rochester, NY 14623-2752

LM File Number 048-960
Case Number: [redacted]

Dear Mr. Charles:

This office has recently completed an audit of Operating Engineers, Local 832 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, Richard Ross, Recording Secretary/Business Agent and Betty Judy, Bookkeeper, on January 29, 2010, 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 832 records for fiscal year ending December 31, 2008 revealed the following recordkeeping violations:

1. Credit Card Expenses

   Local 832 did not retain adequate documentation for reimbursed expenses and credit card expenses incurred by you; Richard Ross, Recording Secretary/Business Agent; Joe Agnello, Financial Secretary/Business Agent; Tom Stephens, Organizer/Business Agent; and Grant Malone, Conductor/Business Agent, totaling over $1,000 combined. Each of the officers were issued separate credit cards and their expense receipts did not always disclose a purpose/union benefit for the charges incurred.

   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 832 did not retain adequate documentation for meal expenses incurred by the local union totaling at least $3,863. For example, charges made at Rick's Prime Rib House for $1,632 in April 2008 and $1,682 in December 2008 failed to identify the purpose/union benefit for those 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.

   Local 832 records of those meal expenses did not include written explanations of union benefit received or the names and titles of the persons incurring the restaurant charges. Union records of meal expenses must always 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 and addresses of the restaurants where the officers or employees incurred meal expenses.

3. Bank Records

Local 832 failed to retain the Merrill Account statement covering the period of September 1 through September 30, 2008. Local 832 must maintain all bank records for all accounts.

4. Union Owned Vehicles

The union did not maintain records necessary to verify the accuracy of the information reported in Schedules 11 (All Officers and Disbursements to Officers) and 12 (Disbursements to Employees) of the LM-2.

Local 832 incurred expenses for seven local union automobiles covering gas, oil changes, general maintenance and any miscellaneous repair work during 2008. Local 832 does allow limited personal use (in town travel) of the union owned vehicle assigned, but did not maintain records documenting business versus personal use of those union vehicles.

The LM-2 instructions include specific rules for the reporting of automobile expenses. The union must report operating and maintenance costs for each of its owned vehicles in Schedules 11 and 12 of the LM-2, allocated to the officer or employee to whom each vehicle is assigned.

For each trip they take using a union owned vehicle, officers and employees must maintain mileage logs that show the date, number of miles driven, whether the trip was business or personal, and, if business, the purpose of the trip.

Based on your assurance that Local 832 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 832 for fiscal year ending December 31, 2008 was deficient in the following areas:

1. Sale and Purchase of Investments and Fixed Assets

   Local 832 failed to report in Schedule 3 (Sale of Investments and Fixed Assets) and Schedule 4 (Purchase of Investments and Fixed Assets) all the monies received and disbursed for the sale and purchase of investments and assets. The LM-2 reported "net" sale and purchases on their report. The total amount received and paid out are to be reported on the report as well as the amount of any reinvestments.

2. Failure to Itemize Receipts and Disbursements

   Local 832 did not properly report "major" transactions in Schedules 14 (Other Receipts); Schedule 15 (Representational Activities); Schedule 16 (Political Activities and Lobbying); and Schedule 18 (General Overhead). A "major" transaction includes any individual transaction of $5,000 or more or total transactions to or from any single entity or individual that aggregates to $5,000 or more during the reporting period and which the local cannot properly report elsewhere in Statement B. Local 282 did not itemize for applicable vendors and instead, in error, aggregated all the monies attributable to each vendor and posted December 31, 2008 as the transaction date as a cover all for each vendor.

3. Sale of Supplies

   Local 832 did not correctly report receipts from the sale of supplies or disbursements for supplies for resale. The audit revealed that during 2008, Local 832 collected receipts totaling at least $3,136 from the sale of hats and shirts to members. The LM-2 instructions require that the union report receipts from the sale of supplies in Item 39 (Sale of Supplies) and also report disbursements for supplies for resale in Item 59 (Supplies for Resale). Local 832 reported $0 for both Item 39 and 59 for 2008. Additionally, Local 832 must report the value of any supplies for resale on hand at the beginning and end of the year in Item 28 (Other Assets) and Schedule 7 (Other Assets.)

I am not requiring that Local 832 file an amended LM 2 report for fiscal year ending December 31, 2008 to correct the deficient items. Local 832 has agreed to properly report the deficient items on all future reports it files with OLMS, most notably the LM-2 for fiscal year ending December 31, 2009.

I want to extend my personal appreciation to Operating Engineers, Local 832, for the cooperation and courtesy extended to me during this compliance audit. Please ensure that this letter and the compliance assistance materials provided to you during the exit interview are retained for future reference and use. If I can be of any further assistance, please do not hesitate to call.

Sincerely,

[redacted]
Investigator

cc: Brian Cougevan, President, Local 832
Jennifer L. Arbore, CPA