

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



May 14, 2008

Mr. Mike Sorell, President
Transportation Union Ind
Local 212
37 Brookman Ave
Delmar, NY 12054

LM File Number 023-107
Case Number: [REDACTED]

Dear Mr. Sorell:

This office has recently completed an audit of UTU Local 212 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 and Treasurer Mike Aiello on May 8, 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 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 212's 2007 records revealed the following recordkeeping violations:

1. General Reimbursed Expenses

Local 212 did not retain adequate documentation for reimbursed expenses incurred by the officers or local chairmen for cell phone bills totaling at least \$5,000. The president and treasurer are responsible for ensuring that the proper documentation is received prior to issuing reimbursements for expenses.

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 212 did not require officers and employees to submit itemized receipts for meal expenses totaling at least \$1,263.63. 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 212 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, restaurant receipts submitted by Local Chairman Michael Fink do not contain the names of attendees, and reason for meetings. Additionally, some of the receipts do not provide the name and address of the

restaurant. 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. Lost Wages

Local 212 did not retain adequate documentation for lost wage reimbursement payments to Local Chairman Joshua Therrien totaling at least \$1700. The union must maintain records in support of lost wage claims that identify each date lost wages were incurred, the number of hours lost on each date, the applicable rate of pay, and a description of the union business conducted. The OLMS audit found that Local 212 accepted a monthly submission from Mr. Therrien requesting reimbursement for a certain number of days worked without detail regarding the dates, hours, and union business attended.

4. Information not Recorded in Meeting Minutes

During the audit, Treasurer Aiello advised OLMS that the membership authorized non-recurring expenses at the monthly membership meetings. However, the minutes of the meeting do not contain any reference to those issues. For example, Local Chairmen Mike Fink and Joshua Therrien purchased printers in September 2007 totaling at least \$469.76 with no mention of approval in the membership meeting minutes. Minutes of all membership or executive board meetings must report any disbursement authorizations made at those meetings.

5. Lack of Salary Authorization

Local 212 did not maintain records to verify that the salaries reported in Item 24 (All Officer and Disbursements to Officers) of the LM-3 was the authorized amount and therefore was correctly reported. The union must keep a record, such as meeting minutes, to show the current salary authorized by the entity or individual in the union with the authority to establish salaries.

The proper maintenance of union records is the personal responsibility of the individuals who are required to file Local 212's LM report. You should be aware that under the provisions of Section 209(a) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, willful failure to maintain records can result in a fine of up to \$100,000 or imprisonment for not more than one year, or both. Under the provisions of Section

209(c) of the LMRDA and Section 3571 of Title 18 of the U.S. Code, willful destruction or falsification of records can result in a fine of up to \$100,000 or imprisonment for not more than one year, or both. The penalties provided in Section 209(c) and Section 3571 of Title 18 apply to any person who caused the violations, not just the individuals who are responsible for filing the union's LM report.

Reporting Violation

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 212 for fiscal year ending December 31, 2007, was deficient in that:

Local 212 did not include some reimbursements to officers totaling at least \$13,182 in the amounts reported Item 24 (All Officers and Disbursements to Officers). It appears the union erroneously reported these payments in Items 48 (Office & Administrative Expense) and 54 (Other Disbursements).

The union must report most direct disbursements to Local 212 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).

I am not requiring that Local 212 file an amended LM report for 2007 to correct the deficient items, but Local 212 has agreed to properly report the deficient items on all future reports it files with OLMS.

Other Issues

1. Expense Policy

As I discussed during the exit interview, the audit revealed that Local 212 does not have a clear policy regarding the types of expenses personnel may claim for

reimbursement. OLMS recommends that unions adopt written guidelines concerning such matters.

2. Withholding Taxes

The audit revealed that Local 212 is not withholding taxes from monthly salaries and lost time reimbursement. I suggested that Local 212 contact the IRS to determine if they should be withholding taxes and/or filing payroll tax forms.

3. Electronic Records

During the opening interview Treasurer Aiello explained that he purges the previous years' financial records from the UTU access bookkeeping system and retains the data on a thumb drive. While I was able to view the data from this thumb drive, it was not in its original format. Mr. Aiello indicated that the data could be loaded back into access; however, he was unsure what effect it would have on the current year financial information. I suggested printing a general ledger at the end of the year, prior to purging the data.

4. Financial Recordkeeping Power Point

During the exit interview I reviewed the Financial Recordkeeping power point with you. I showed you how to retrieve this power point presentation from the OLMS website and suggested that you review the power point with your local chairmen to help them understand the recordkeeping requirements regarding reimbursed expenses. As requested, this power point was also e-mailed to Mr. Aiello on May 12, 2008.

I want to extend my personal appreciation to UTU Local 212 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,

Mr. Mike Sorell
May 14, 2008
Page 6 of 6


Investigator

cc: Mike Aiello, Treasurer