

U.S. Department of Labor

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September 25, 2009

Mr. Michael Tobin, President
Stage & Picture Operators, AFL-CIO
Local 38
20017 Van Dyke
Detroit, MI 48234

Re: Case Number [REDACTED]
LM File Number: 022-547

Dear Mr. Tobin:

This office has recently completed an audit of Stage & Picture Operators Local 38 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 Edwin Miller, and Business Agent Timothy Magee on September 24, 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.

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 38's 2008 records revealed the following recordkeeping violations:

1. Meal and Mileage Expenses

Local 38's 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, check [REDACTED] was expensed for \$174.90 and check [REDACTED] was expensed for \$185.65, but neither the names and titles of persons incurring the charges, nor the union business conducted, were noted. 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.

Union officers and employees who received reimbursement for business use of their personal vehicles did not retain adequate documentation to support payments to them totaling at least \$365 during 2008. The union must maintain records which identify the dates of travel, locations traveled to and from, and number of miles driven. The records 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.

2. Information Not Recorded in Meeting Minutes

During the audit, you and Mr. Miller advised OLMS that the membership authorizes all disbursements at membership meetings. However, a review of the meeting minutes disclosed a failure to provide accounts of all disbursements authorizations. For example, authorizations for \$490.72 of per diem payments to attend conventions that were made to Local 38 2nd Vice President John Ferry were not included in the meeting minutes. Minutes of all membership and executive board meetings must clearly and accurately report any disbursements authorizations made at those meetings.

3. Lack of Salary and Allowance Authorization

Local 38 did not maintain records to verify that the salaries and allowances reported in Schedule 11 (All Officers and Disbursements to Officers) and 12 (Disbursements to Employees) of the LM-2 was the authorized amount and therefore was correctly reported.

During the audit year, Local 38 officers received salaries and business agent Tim Magee received a salary and a monthly car allowance. Article XIX, Section 3 of the Stage & Picture Operators Local 38 Constitution dated September 7, 2008, states that the salaries of the officers and employees, with the exception of the office secretary, shall be set at the regular session in October prior to nomination for office. During the audit, information was provided regarding the pay rates and allowances for the officers and the business agent. However, review of the regular meeting minutes dating back to October 2001 did not document the salary amounts that were authorized and approved.

The union must keep a record, such as meeting minutes, to show the current salaries or allowances authorized by the entity or individual in the union with the authority to establish salaries and allowances.

Authorization and approval of large and/or unusual disbursements and a full understanding of the level of wages, allowances, and expenses to which the union's officers and members are entitled should be recorded in the minutes of your membership or executive board meetings if they are not fully covered in the union's constitution and bylaws.

The recordkeeping requirement can be most easily satisfied with a descriptive bill, invoice, or receipt that identifies the vendor's name and address, the date and amount of the transaction, and the goods or services provided. If a receipt is not descriptive, you should note the missing information on the receipt. If a receipt is not provided by the vendor, then you must create a record containing the identifying information with a notation that original documentation was not provided.

As previously noted above, labor organizations must retain original receipts, bills, and vouchers for all disbursements, in addition to, membership or executive board meeting minutes to document approval of disbursements. The president and financial secretary (or corresponding principal officers) of your union, who are required to sign your union's LM report, are responsible for properly maintaining union records.

The proper maintenance of union records is the personal responsibility of the individuals who are required to file Local 38'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.

During the exit interview, you and Mr. Miller agreed to discuss the salaries and allowances for union officers and the business agent outlined above at Local 38's next membership meeting on October 5, 2009, to obtain and document authorization of these disbursements and provide OLMS with a copy of the meeting minutes. Based on your assurance that Local 38 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(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 38 amended its constitution in 2008, but did not file a copy with its LM report for that year. Local 38 has now filed a copy of its constitution and bylaws with OLMS.

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 38 for the fiscal year ending December 31, 2008, was deficient in the following areas:

1. Interest

Local 38 understated the interest earned on its bank accounts by \$6,425.00 in Item 40 (Interest). The union must report all interest and dividends received from savings and checking accounts, bonds, mortgages, loans, investments, and all other sources.

2. Disbursements to Officers

Local 38 did not report the name of one officer and the total amount of payments to him or on his behalf in Schedule 11 (All Officers and Disbursements to Officers). The union must report in Schedule 11 all persons who held office during the year, regardless of whether they received any payments from the union.

I am not requiring that Local 38 file an amended LM report for 2008 to correct the deficient items, but Local 38 has agreed to properly report the deficient items on all future reports it files with OLMS.

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 38's officers and employees were bonded for \$125,000, but they must be bonded for at least \$177,852.77. During the exit interview, you advised that bonding coverage will be obtained in the amount of \$200,000. Since Local 38 provided documentation that it obtained adequate bonding coverage after the exit interview, no further enforcement action will be taken at this time.

Other Issues

1. Two Signatures on Checks

The LMRDA outlines general fiduciary responsibilities for officers and employees of labor organizations. Union officials occupy positions of trust and, therefore, must ensure that the union's funds and other assets are used solely for the benefit of the union and its members. To prevent, or at least inhibit, the misuse of their funds, most organizations install internal controls over the handling of their finances. The audit disclosed that some union checks were signed by only one officer. This is not a recommended financial practice, and Local 38 is encouraged to adopt a policy requiring that all checks drawn on the union's bank account have a second signature, and ensure that each signer fully understands that his fiduciary responsibilities demand that checks be signed only after they are completely filled out and he knows the purpose and legitimacy of each transaction.

I want to extend my personal appreciation to Stage & Picture Operators Local 38 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 are passed on to future officers. If we can provide any additional assistance, please do not hesitate to call.

Sincerely,

[REDACTED]
Investigator

cc: Edwin Miller, Secretary Treasurer