



May 23, 2017

Mr. Kevin Ellis, President  
AFGE Local 2338  
1500 N. Westwood Blvd.  
Poplar Bluff, MO 63901

Case Number: 510-6007486 [REDACTED]  
LM Number: 502256

Dear Mr. Ellis:

This office has recently completed an audit of AFGE Local 2338 under the Compliance Audit Program (CAP) to determine your organization's compliance with the provisions of the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. 7120, and the Department's regulations, 29 CFR 458. As discussed during the exit interview with you, First Vice President Rodney Smith, Second Vice President Larry Wertenberger, Treasurer [REDACTED], Secretary Katina Dudley, and Sergeant-at-Arms Ryan Wells on May 22, 2017, 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 of the LMRDA and Title 29 of the Code of Federal Regulations (C.F.R.) Section 403.7 require, among other things, that labor organizations maintain adequate records for at least five years after reports are filed by which the information on the reports can be verified, explained and clarified. Pursuant to 29 C.F.R. Section 458.3, this recordkeeping provision of the LMRDA applies to labor organizations subject to the requirements of the Civil Service Reform Act of 1978 (CSRA) as well. Therefore, as a general rule, labor organization must retain 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 AFGE Local 2338's 2015 and 2016 records revealed the following recordkeeping violations:

1. General Reimbursed Expenses

Local 2338 did not retain adequate documentation for reimbursed expenses incurred by the union's officers and members totaling at least \$9,532.29. For example, the local failed to maintain documentation to explain the following reimbursements: \$1,450.78 and \$1,846.26 on November 6, 2014 for a training in Palm Springs, California to President Kevin Ellis and First Vice President Rodney Smith, respectively; \$194.95 on April 13, 2015 to Ellis for "council training"; \$2,179.66 on August 13, 2015 to Ellis to attend a national convention; \$879.99 on October 23, 2015 to Ellis for district training in Oklahoma City, Oklahoma; \$753.05 on January 19, 2016 for a presidents' meeting in Oklahoma City, Oklahoma; \$864.06 and \$736.44 on June 10, 2016, for Smith and member [REDACTED] to attend training at the Lake of the Ozarks; and \$626.40 on September 16, 2016 for airfare to a national convention.

Local 2338 did not retain adequate documentation for adequately verify, clarify or explain disbursements made by the union totaling at least \$5,608.12. For example the local did not retain invoices or receipts to explain the following disbursements: check [REDACTED] dated October 23, 2015, in the amount of \$1,562.50, check [REDACTED] dated December 2, 2012, in the amount of \$2,046.59 and check [REDACTED] dated December 12, 2015 in the amount of \$1,303.03 made payable to "Belle Ame" or check [REDACTED] dated December 12, 2016 in the amount of \$696.00 made payable to "AAD Grotto".

In addition, the records show that [REDACTED] received \$1,992.84 to purchase gifts for a membership raffle that occurred at the local's annual Christmas party. The local retained documentation to verify, clarify or explain the items purchased for the raffle; however, there was no record of what items were raffled or who received them.

2. Information not Recorded in Meeting Minutes

During the audit, Mr. Ellis advised OLMS that disbursements are authorized by the membership. Section 19 of the AFGE Local 2338 Constitution and Bylaws requires that expenditures in excess of \$500.00 per month must have prior membership approval by approved budget or separate membership vote. However, the minutes of the meeting do not contain any reference to those issues.

As 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.

The proper maintenance of union records is the personal responsibility of the individuals who are required to file Local 2338'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.

Based on the assurance that Local 2338 will retain adequately document and properly authorize disbursements OLMS will take no action at this present time. However, due to the fact that some of the violations revealed during the audit were noted during a previous OLMS audit, Local 2338 has been advised that continuous noncompliance with the LMRDA is unacceptable.

### Reporting Violations

Pursuant to 29 C.F.R., Section 458.3, the reporting requirement under 29 C.F.R. Section 403.2 (see Section 201(b) of the Labor-Management Reporting and Disclosure Act (LMRDA)) is made applicable to labor organizations subject to the requirements of the CSRA. This provision requires labor organizations to file annual financial reports that accurately disclose their financial condition and operations. The audit disclosed a violation of this requirement. The Labor Organization Annual Report Form LM-3 filed by Local 2338 for the fiscal year ended October 30, 2016, was deficient in the following area:

#### 1. Disbursements to Officers

Local 2338 did not include some cash withdrawals to officers totaling at least \$9,878.65 in the amounts reported Item 24 (All Officers and Disbursements to Officers). It appears the union erroneously reported these payments in Item 48.

The union must report most direct disbursements to Local 2338 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).

Local 2338 must file an amended Form LM-3 for the fiscal year ended October 31, 2015, to correct the deficient items discussed above. I encourage Local 2338 to complete, sign, and file its report electronically using the Electronic Forms System (EFS) available at the OLMS website at [www.olms.dol.gov](http://www.olms.dol.gov). Reporting forms and instructions can be downloaded from the website, if

you prefer not to file electronically. The amended Form LM-3 should be filed electronically no later than July 31, 2017 or submitted to this office at the above address by the same date. Before filing, review the report thoroughly to be sure it is complete and accurate. Paper reports must be signed with original signatures.

#### Other Violations

##### 1. Expense Policy

As I discussed during the exit interview with the executive board, the audit revealed that Local 2338 does not have a clear policy regarding union travel. It is unclear who is allowed to travel and how travel expenses such as transportation, lodging, per diem, mileage, and miscellaneous expenses are determined. In addition, the local has no specific recordkeeping method, such as a voucher, to record expenses paid or reimbursed to an officer or member traveling on behalf of the union. OLMS recommends that unions adopt written guidelines concerning such matters.

##### 2. Signing Blank Checks


During the audit, you advised that Kevin Ellis and Katrina Dudley signs blank checks. Your union's bylaws require that all checks be signed by the president and 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, signing a blank check in advance does not attest to the authenticity of a completed check, and negates the purpose of the two signature requirement. OLMS recommends that Local 2338 review these procedures to improve internal control of union.

I want to extend my personal appreciation to AFGE Local 2338 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,



Investigator

cc: Mr. Rodney Smith, First Vice President  
Mr. Larry Wertenberger, Second Vice President  
, Treasurer  
Ms. Katina Dudley, Secretary  
Mr. Ryan Wells, Sergeant-at-Arms