

REPRESENTATIVE FOR PETITIONER:  
Robert A. Hicks, Macey, Swanson and Allman

REPRESENTATIVE FOR RESPONDENT:  
Jerri Brown, LaGrange County Deputy Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

LOCAL UNION NO. 871	)	Petitions:	44-002-10-2-8-00001
UAW BUILDING CORPORATION,	)		44-002-10-2-8-00002
	)		
Petitioner,	)	Parcels:	44-07-18-100-000.006-002
	)		44-102-00001-10
	)		
v.	)	County:	LaGrange
	)		
LAGRANGE COUNTY ASSESSOR,	)	Township:	Bloomfield
	)		
Respondent.	)	Assessment Year:	2010

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Appeal from the Final Determination of the  
LaGrange County Property Tax Assessment Board of Appeals

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**April 12, 2013**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

**ISSUE**

Should the subject property be granted an exemption for 2010 under Ind. Code §6-1.1-10-16 because the property was predominantly used for educational or charitable purposes, or under Ind. Code §6-1.1-10-23 because the property was exclusively used as a fraternal benefit association?

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

1. The subject property is the union office and meeting facility for Local Union No. 871, UAW Building Corporation (Local 871 UAW) and is located at 2040 Dodge Drive in LaGrange.
2. The Petitioner filed two Applications for Property Tax Exemption, Forms 136, with the LaGrange County Assessor on April 14, 2010. One Application was for real property and the other was for personal property. The Applications claimed both the real and personal property should be 100% exempt.
3. On September 26, 2011, the LaGrange County Property Tax Assessment Board of Appeals (PTABOA) issued determinations that the real and personal property are 100% taxable. The PTABOA determined “Unions, though they are a non-for-profit organization, do not qualify for property tax exemption under IC 6-1.1-10-16.” According to the Notices of Action on Exemption Application, the 2010 total assessed value of the real property is \$84,600. The 2010 assessed value of the personal property is \$43,070.
4. On October 25, 2011, the Petitioner filed two Petitions for Review of Exemption, Forms 132, seeking the Board’s review of those determinations.
5. The Board's designated Administrative Law Judge, Jaime S. Harris, held a consolidated hearing on November 14, 2012. She did not conduct an on-site inspection of the property.
6. The Vice President of Local 871 UAW, Jana S. Sturgill, and the Financial Secretary of Local 871 UAW, Deborah S. Kaough, were sworn as witnesses for the Petitioner. Deputy Assessor Jerri Brown was sworn as a witness for the Respondent.
7. The Petitioner presented the following exhibits:  

Exhibit 1 – Articles of Incorporation of Local 871 UAW,  
Exhibit 2 – Bylaws of Local 871 UAW,

- Exhibit 3 – Deed conveying property at issue to Local Union No. 871 UAW Building Corporation,
- Exhibit 4 – Copy of 2006 UAW Constitution,
- Exhibit 5 – Copy of 2010 UAW Constitution,
- Exhibit 6 – 1973 Order and Judgment of Marion County Superior Court declaring Union Building Corporation tax exempt,
- Exhibit 7 – A copy of an Order of Permanent Injunction issued by the Marion County Superior Court on December 31, 1974,
- Exhibit 8 – Decision of State Board of Tax Commissioners dated September 7, 1995, for Union Building Corporation,
- Exhibit 9 – Final Determination of the Indiana Board of Tax Review dated February 4, 2005, for Union Building Corporation,
- Exhibit 10 – Copies of checks distributed by Petitioner for charitable purposes,
- Exhibit 11 – Photographs of personal property held by Local Union No. 871 UAW Building Corporation,
- Exhibit 13 – List of inventory held by Local Union No. 871 UAW Building Corporation,
- Exhibit 14 – Form LM-3 Labor Organization Annual Report,
- Exhibit 17 - Collective Bargaining Agreement between Local Union No. 871 and Dometic (employer), and
- Exhibit 18 –Financial records of Local Union No. 871 UAW Building Corporation.

8. The Respondent presented the following exhibits:

- Exhibit 1 – Letter from Petitioner to Board dated November 9, 2011,
- Exhibit 2 – Letter from Petitioner to Respondent dated November 9, 2011,
- Exhibit 3 – Petition for Review of Exemption for Real Property with attachments,
- Exhibit 4 – Petition for Review of Exemption for Personal Property with attachments,
- Exhibit 5 – Notice of Hearing for real property,
- Exhibit 6 – Notice of Hearing for personal property,
- Exhibit 7 – IBTR Final Determination – *Steelworkers Hall, Inc. v. Porter County PTABOA*,
- Exhibit 8 – IBTR Final Determination – *International Union of Operating Engineers, Local 150, Building Corporation v. Lake County PTABOA*,
- Exhibit 9 – Copy of Ind. Code §6-1.1-10.

9. The following additional items are recognized as part of the record:

- Board Exhibit A – Notices of Hearing,
- Board Exhibit B – Petitions for Review (Form 132),
- Board Exhibit C – Hearing Sign-In Sheet.

## OBJECTIONS

10. Ms. Brown objected to all of Petitioner's exhibits because she did not receive them at least 5 business days before the hearing. In response to the that objection, Mr. Hicks stated the notice of hearing on the petition indicated that at least five days prior to the hearing the parties need to exchange evidence and summaries of witness testimony. Petitioner never received the summaries of witness testimony from Respondent. Ms. Brown stated that according to 52 IAC 2-7-1, the summary is no longer required.
11. According to 52 IAC 2-7-1(b)(1), copies of documentary evidence must be provided to the opposing party at least five days prior to the hearing. Failure to comply with this requirement can be grounds to exclude the evidence. 52 IAC 2-7-1(f). The purpose of this requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, fair consideration of cases. Summaries of witness testimony are no longer required under the rules.
12. While Petitioner's exhibits could be excluded for failure to provide them at least five days prior to the hearing, the Board will allow them. The Respondent received Petitioner's evidence on November 7, 2012, and the hearing was set for November 14, 2012. Therefore, there were four business days in which to review the evidence (seven days total including the weekend and Veteran's Day). This situation can be distinguished from cases in which a party waits until the day of the hearing to provide evidence to the opposing party. Here, the Petitioner attempted to comply with the statutory requirements. The Respondent failed to prove that it suffered any harm or prejudice as a result of the Petitioner's failure to exchange the evidence five days prior to the hearing. Respondent had ample time to review the Petitioner's exhibits because there was not an extensive amount of materials to examine and the exhibits were only late by one day. The Board will therefore allow the exhibits of both parties to be entered into evidence.
13. Ms. Brown objected to Ms. Kaough's testimony regarding the value of the personal property. Petitioner appealed the denial of exemption pertaining to the subject property, not the value of the assessment. Ms. Brown also testified that prior to the hearing, she had a discussion

with Ms. Kaough about a plan to go back and fix the assessment values in order to obtain accurate figures for the personal property at issue. Therefore, the assessment value of the personal property should not be discussed at this hearing.

14. Mr. Hicks responded that it was his understanding that the Board has within its power not only the ability to change an assessment, but also to address other issues that arise, including the value of the assessment, as long as it is related to the current appeal.
15. The Administrative Law Judge ruled that a 131 Petition for Review of Assessment is required in order to appeal the value of the assessment. As the Petitioner only filed Petitions for Review of Exemption, that issue could not be addressed at the current hearing.

#### **SUMMARY OF THE PETITIONER'S CASE**

16. The Petitioner contends that its property is exempt from taxation pursuant to Ind. Code §6-1.1-10-16 because it is used for charitable and educational purposes. The Petitioner further contends that its property is exempt from taxation pursuant to Ind. Code §6-1.1-10-23 as a fraternal benefit association. *Hicks argument.*
17. Indiana Codes §6-1.1-11-3.5 and §6-1.1-11-4 do not require an entity that has a tax exemption to re-file for an exemption every two years. The Ind. Code also presumes that the exemption carries over to the next entity that purchases it, so long as the usage of the property has not changed. When the subject property was owned by Local #1417, it was exempt for many years. The property was then transferred to the Union Building Corporation, the UAW's international building corporation. The property was also exempt at that time. It was then transferred to Petitioner. Only after the assessor was elected and completed her determination, was it ruled that the property in question was not exempt. The property's use has been the same through the years and throughout various building corporations. *Hicks argument.*
18. The Petitioner's first witness, Deborah Kaough, testified that she has been employed at Dometic, which manufactures parts for recreational vehicles, for the last 37 years. The

employees at Dometic are represented by Petitioner Local 871 UAW. Ms. Kaough is also a union official who has worked as the Financial Secretary for Local 871 UAW since April of 2006. Marilyn Marks is the President of Local 871 UAW. Jana Sturgill is the Vice President. Lisa McBride is the Recording Secretary. There are also three trustees, a sergeant at arms and a guide. According to Ms. Kaough, the primary functions of Local 871 UAW are to negotiate contracts for union members, educate them on different labor laws, obtain better benefits for members, and make their jobs better overall. *Kaough testimony.*

19. The union serves a charitable role that is demonstrated by its community service committee. Petitioner submitted copies of checks given to union members in times of need or for special events. If an employee is on leave for an extended amount of time (at least four weeks), the union will help him or her with groceries, gas, rent, utilities, or whatever the need may be. The union does not simply hand the employee cash, but instead supplies those on extended leave with gift cards or checks to pay specific bills. The donations are provided pursuant to the collective bargaining agreements between Dometic and the employees. Ms. Kaough testified that people call her on numerous occasions seeking advice while she works at the union hall. These employees ask her questions such as where to go and what to do after they are laid off from their jobs. Ms. Kaough gives them any and all references she has available or that she is able to find. *Kaough testimony; Pet. Ex. 10; Pet. Ex. 17.*
20. As another community service, the union puts together a Christmas party for the Life Care nursing home facility. The union members purchase a Christmas tree to set up at the union hall. Members then pick a tag with a random name off the Christmas tree and donate presents to the residents of the nursing home. After purchasing the gifts, the members meet at the union hall to assemble the presents and then spend a day at the nursing home celebrating Christmas and giving the gifts to the nursing home residents. Members sell raffle tickets to raise the money to purchase the gifts. *Kaough testimony.*
21. The union has other committees separate from the general union such as the recreational and orientation committees. The recreational committee conducts holiday parties and other social events that union members and their families can attend. For example, the union conducts a Christmas party and a summer picnic. Committee officials make it a point to invite all of the

Dometic retirees, because it is important to keep them involved in the activities. The orientation committee deals with all the new employees, which Dometic has gained a lot of recently. The committee collects so much money per new member and then holds an orientation dinner. The new employees are educated on what the workforce will be like and what to expect. The orientation committee tries to make the new employees feel welcome to the company. The union holds an annual Easter egg hunt for the community. There were also a few fundraisers held in 2010. The purpose of one of the fundraisers was to raise money for the recreational committee. The union raffles different types of items during the holiday parties. Other fundraisers were fish fries open to the community and held for people that had recently had serious health problems in an effort to raise money to assist them in whatever ways possible. All or most of the above stated events occurred at the subject property. Approximately 70-75% of the events that take place at the subject property involve some form of community service. *Kaough testimony.*

22. The Petitioner was incorporated as an Indiana non-profit organization on September 15, 2008. Union Building Corporation sold the subject property to the Petitioner for one dollar. Prior to that, Local 871 UAW rented the building for union meetings from Local #1417. Ms. Kaough established the building corporation after speaking with the International Union's legal representative, Larry Fluke. Mr. Fluke informed Ms. Kaough that legally, the building needed to be a separate entity from the union. Pursuant to the Petitioner's Articles of Incorporation, the purpose of the corporation is to hold title to the property and to promote educational, fraternal, and social activities among its members. Dues are paid to the International Union, UAW, which is the big UAW located in Detroit, Michigan. If the corporation were to dissolve, all remaining assets would be transferred to the Union Building Corporation and to such organizations organized and operated exclusively for charitable, educational, religious or scientific purposes that qualify as an exempt organization under 501(c)(3) of the Internal Revenue Code. *Kaough testimony; Pet Ex. 1; Pet. Ex. 3.*
23. According to the Articles of Incorporation, two different kinds of membership are available within the corporation, regular and executive. All members of Local 871 UAW are regular members. Executive members serve on the executive board, the building corporation board,

and other committees. Ms. Kaough is one of the seven original members of the Board of Directors. Part of her role is to oversee the union and its members in order to make sure they are following the bylaws and membership rules. *Kaough testimony; Pet Ex. 1.*

24. Petitioner's bylaws outline the voting rights that union members have with respect to union affairs. Membership meetings take place once a month at the subject property. First, the financial reports are read and any new or old business is attended to. The meetings are also used to cover grievances. If there are any pending issues, the employees are allowed to attend the meetings and bring these issues to the attention of Board members. The various committees and what they entail are discussed at the meetings. Members vote on corporation actions or events that have been planned. All expenditures are voted on. If there are available classes or similar events, members vote on whether or not to send employees. Other issues, such as the right to work and any different or new laws, are covered and studied. Whenever there is a legal change, such as with taxes, the Board members inform the regular members about what actual change is taking place. After the meetings, any pending issues are then brought to Dometic, where union officials attempt to settle the issues before they turn into to a grievance. *Kaough testimony; Pet Ex. 2.*
25. The 2006 and 2010 Constitutions both apply to Petitioner as a local affiliate of the UAW. They state some of Petitioner's objectives: (1) to educate the membership in the history of the Labor Movement and to develop and maintain an intelligent and dignified membership; (2) to vote and work for the election of candidates and the passage of improved legislation in the interest of all labor; (3) to enforce existing laws; (4) to work for the repeal of those who are unjust to Labor; (5) to work for legislation on a national scale, having as its object the establishment of real social and unemployment insurance, the expense of which to be borne by the employer and the Government. *Kaough testimony; Pet Ex. 4; Pet. Ex. 5.*
26. As previously mentioned, on May 18, 2009, the subject property was deeded from the Union Building Corporation to Petitioner for one dollar. At this time, it was Ms. Kaough's understanding that the real and personal property were exempt from taxation because said properties were previously exempt. Ms. Kaough talked to the Financial Secretary from Local #1417, Linda Bouker, who stated that she filled out a 136 every year at that time and never



had to pay property taxes as they had always been exempt. Ms. Kaough also had a conversation with Larry Fluke from the International Union, UAW, about property taxes on the subject property. They discussed how the International Union had always been exempt and that they had never had to pay property taxes either. The usage of the property, which is basically the same as the previous owner, was also discussed. Therefore, Ms. Kaough assumed that Petitioner would be exempt as well. *Kaough testimony; Pet. Ex. 3.*

27. Ms. Kaough was responsible for filing the 2010 Applications for Property Tax Exemption at issue in this case. It was the first time she had ever filled out a form of this type and she admits to making an inadvertent mistake. When filling out the boxes on the Applications, Ms. Kaough admits that she checked “other” as opposed to checking charitable, educational, and/or fraternal benefit association for the purpose for which the claim for exemption was based. Since the Petitioner/corporation had just recently been formed, Ms. Kaough was not educated on how to complete the application. After the exemptions were denied, Ms. Kaough contacted Assessor Pat Monroe in order to discuss the reasoning for the denials. Ms. Monroe stated that the exemption laws did not pertain to UAW and that merely being a non-profit corporation did not make Petitioner eligible for the property tax exemptions. At no point during their conversation did the assessor inform Ms. Kaough that Petitioner could potentially get an exemption reinstated that was previously granted. Furthermore, the assessor did not indicate that Ms. Kaough could file an affidavit to potentially have the property tax exemptions granted that had previously been in place. *Kaough testimony.*
28. Petitioner allows several different associations from around the community to hold meetings at the subject property for no charge. Entities such as the Ontario Park Board, the Girl Scouts, the Women’s Auxiliary Group, and the Howe Fire Department, hold their meetings at the subject property. Political candidates have also used the property to educate members on the different people running for office. *Kaough testimony.*
29. Ms. Kaough conducts all of the general union business at her office located at the subject property. She spends approximately two hours in the morning and one hour in the evening everyday working on her books, doing payroll, addressing member issues, dealing with any financial problems, completing payroll, and negotiating benefits for members. Ms. Kaough

also distributes the checks for the several charitable events held by the union and for employees who are on leave from her office. The checks for 2010 amounted to \$2100. *Kaough testimony; Pet. Ex. 10.*

30. The collective bargaining agreement between Dometic and its employees outlines the benefits that Ms. Kaough attempts to provide for union members. Such benefits include life insurance, death benefits, hospital insurance, wages and pensions. Prior to the negotiating meeting with the company, union officials and members spend an entire week at the subject property preparing and negotiating amongst themselves concerning issues they would like included in each contract. *Kaough testimony; Pet. Ex. 17.*
  
31. Ms. Kaough presented an inventory list along with photographs in order to verify the Petitioner's personal property and their respective values. She contends the listed personal property should be tax exempt. The items on the list that are crossed out (bibles that are given out for the deceased and their families and jackets that are given to retirees) are not located inside the building. Ms. Kaough testified that the dollar figures on the inventory list were determined by use of information pertaining to the purchase prices of each of the items. She received the prices from the Union Corporation Building's insurance company when the subject property was deeded to Petitioner, because Petitioner continued to use the same insurance provider as the previous owner. The actual building is also listed with the inventory and should be subtracted from the value of the personal property. Ms. Kaough had a girl take pictures of the inside of the property while she was not present. Therefore, personal property located inside Ms. Kaough's office was omitted from the inventory list because she locks her office while she is gone. She testified that a computer, computer desk, and a chair are located inside of her office. In connection with the union, Ms. Kaough has to fill out a LM-3 Form. A LM-3 Form pertains to Petitioner's assets and expenses and has to be turned in every year by a certain deadline. It also has all of the members' salaries and lost time that had to be paid out. The LM-3 Form also identifies the inventory and improvement values, which are listed as "fixed assets." *Kaough testimony; Pet. Ex. 11; Pet. Ex. 13; Pet. Ex. 14.*

32. Petitioner contends that the subject property should also be exempt because the property is used for educational purposes. In support of this contention, Ms. Kaough testified that training is provided for union members. She educates members about labor laws and what the right to work entails. The committee deals with these issues at the union meetings, which usually take place once a month. When these issues come up, the union purchases literature to be given to the members regarding their legal rights. The union has an educational fund from which they can purchase this literature. The new member orientation also serves an educational function. New members are given folders explaining the UAW because most employees do not understand what a labor union is all about. Therefore, the orientation familiarizes new members on how the union works and its purpose. Employees attend different types of training sessions, such as financial training and leadership training. Some of the training sessions are conducted at the subject property. *Kaough testimony.*
33. Petitioner's financial reports show the different funds within the union from March 1, 2010, through March 1, 2011. These funds include the building fund, new member orientation fund, community service fund, recreation fund, and education fund. The financial report for the building fund identifies rents collected. Ms. Kaough testified that Petitioner rents the building for different parties and communions. The collected rent is the only money the Petitioner has coming into the union. This money is used for the upkeep of the building as well as any taxes that might be owed, as in the year at issue in this case. The building is rented for \$175 initially, \$75 of which is a deposit that will be returned to the renters if no damages are assessed after their use. The property is rented anywhere from once a month to four times a month depending on the time of year. The amount of rent for the 2010 tax year came to \$1950. *Kaough testimony; Pet. Ex. 18.*
34. Petitioner's second witness, Jana Sturgill, testified that she has been employed at Dometic for the last 35 years. Ms. Sturgill has been the Vice President for Local 871 UAW since April of 2006. According to Ms. Sturgill, the Ontario Park Association is a group of people that live in Ontario, Indiana. They are in charge of the upkeep of the park and raise money to do improvements to the park. When it is too cold to have the Association meetings at the park, the group members meet at the union hall. The Association uses the subject property approximately 5 or 6 times a year, and no rent is charged. *Sturgill testimony.*

35. Ms. Sturgill is also the chairperson of the community service committee for the union. For the last 20 years, this committee has had the “adopt a resident” program at the Life Care Center during Christmas time. The committee provides gifts for all of the residents at the Life Care Center. During the months of November and December, the committee spends time at the union hall putting together lists, buying and wrapping gifts, and preparing the Christmas tree. The presents are then delivered from the union hall to the Life Care Center. The committee likely spends 6 to 8 hours every week during those two months working to get things ready for this purpose. *Sturgill testimony.*
36. Building corporations for unions like the Petitioner that meet the necessary requirements are tax exempt. *See, e.g., Union Building Corporation v. Wayne County PTABOA*, Petition Number 89-011-02-2-8-00016 (February 4, 2005); *In the Matter of: Petition for Review of Exemption for Union Building Corporation*, Petition No. 92-502-142 (September 7, 1995). *See also Union Building Corporation v. State Bd. of Tax Comm'rs, et al.*, Marion County Superior Court, No. 23570 (1973). The LaGrange County PTABOA’s denial of real and personal property tax exemptions to the Petitioner is based solely on an erroneous understanding and misapplication of the law. Its rejection of Petitioner’s applications for exemption has no basis. *Hicks argument; Pet. Ex. 6; Pet. Ex. 8; Pet. Ex. 9.*
37. Petitioner contends that labor unions are tax exempt pursuant to Indiana case law. Decisions that were rendered by Marion County Courts dating back to the 1970’s found labor unions to be tax exempt. According to Mr. Hicks, given the breadth of the order in *William H. Livingston, et al. v. John Dobkins, et al.*, Marion County Superior Court, No. S 366-521 (1974), the judge intended for the injunction to apply to all property owned by labor organizations, regardless of the location in the state. *Hicks argument; Pet. Ex. 7.*
38. Prior to this PTABOA determination, the subject property was consistently recognized by assessing authorities as tax exempt. The PTABOA rejected the Petitioner’s property tax exemption applications simply because it is a building corporation for a union. It ignored the long history that demonstrates that the subject property is exempt from real and personal property taxes under Ind. Code §6-1.1-10-16 because of the educational and charitable usage of the property. *Hicks argument.*

39. As explained in Ind. Code §6-1.1-11-4, a change of ownership does not terminate an exemption of the property if after the change in ownership the property continues to meet the requirements for an exemption pursuant to Ind. Code §6-1.1-10-16. In this case, the property continues to meet the requirements for the exemptions that were previously granted. The PTABOA cited no evidence otherwise in reaching its conclusion. In fact, under Ind. Code §6-1.1-11-4(d), the Petitioner was not even required to submit an exemption application because: (1) the exempt property in question was used for educational or charitable purposes described in Ind. Code §6-1.1-10-16; (2) an exemption application had properly been filed in the past; and (3) the property continues to meet the requirements under Ind. Code §6-1.1-10-16. There was no intervening modification in the law or changed circumstances that nullified the exemptions previously granted to this property. *Hicks argument.*
40. Petitioner further contends that the subject property should be exempt because it is a fraternal benefit association. The subject property has a representative form of government and assists in obtaining contractual benefits to Local Union No. 871 members. Consistent with its Articles of Incorporation, it promotes fraternal activities within the meaning of Indiana law. The Local Union No. 871, UAW Building Corporation, therefore, meets the definition of a fraternal benefit association or society under Ind. Codes §6-1.1-10-23 and §27-11-7-4 and is also tax exempt under these provisions. *Hicks argument; Kaough testimony; Pet. Ex. 1.*

#### **SUMMARY OF THE RESPONDENT'S CASE**

41. The only purpose stated on Petitioner's Form 136 Applications for Exemption was "other." On the blank lines next to that option were the words "new Local Building Corporation." Charitable, educational, and fraternal benefit association were not claimed at the time of the applications. Those purposes were not stated until the Form 132 Petitions were filed with the Board. According to the Petitioner's attorney, the entity did not need to reapply due to carrying the same purpose as the previous owner. However, it is the right of the county to review any application, and since a new application was filed, it was reviewed and denied on the basis of there not being any specific code given for exemptions. The purpose stated does not qualify the entity for tax exemption. *Brown testimony. Resp't. Ex. 3; Resp't. Ex. 4.*

42. Ms. Kaough perjured herself on the Application for Property Tax Exemption. In section three on the second page of the application there is a question that asks the following: “[A]re rooms or areas ever used by individuals or groups for purposes not related to the claimed exempt use?” Ms. Kaough answered in the negative. However, she testified that community services, such as the Ontario Park Association, use the building. Therefore, other entities besides the union use the union hall. In the same section on the third page, another question asks if fees are ever charged to those who make use of rooms or area. Ms. Kaough answered this in the negative. In her prior testimony, however, she stated that she rents the union hall out for a fee. Petitioner’s Exhibit 14, the LM-3 Form, has a section titled “Other Receipts.” Ms. Kaough admitted that it was possible that “Other Receipts” would include rents from the building. *Brown testimony; Kaough cross-examination; Resp’t. Ex. 4.*
43. The Respondent’s representative contends that the Petitioner’s property does not qualify for an exemption as charitable or educational or otherwise under Indiana Code § 6-1.1-10-16(a). According to Ms. Brown, even if Petitioner does donate to certain causes, businesses make it a practice to be charitable or give donations in general. The county found no grounds that qualify the Petitioner for property tax exemption as a predominantly charitable entity. The Petitioner does not provide educational benefits to the public. It is common for any business corporation to educate its members through different means, whether it is meetings, literature, or otherwise. This does not qualify the Petitioner for tax exemption. *See, e.g., Steelworkers Hall, Inc. v. Porter County PTABOA*, Petition Number 64-016-06-2-8-00113 (May 8, 2009). In *Steelworkers Hall, Inc.*, the Board stated that “[w]hile the union activities may have some charitable and educational aspects, the union’s main function ... is to promote the member’s interests in their employment...” That Board further stated that “if the legislature intended union activities to be exempt, it would have provided a specific exemption for that use.” Petitioner failed to raise a prima facie case that its property is predominantly used for educational and charitable purposes unrelated to the union activities. *Brown argument; Resp’t. Ex. 7.*
44. Pursuant to Ind. Code §6-1.1-10-23(b), the fraternal benefit associations exemption does not apply to real property unless it is occupied and *exclusively* used by the association in carrying out the purpose for which it was incorporated, organized, or licensed. *See, e.g., International*

*Union of Operating Engineers, Local 150, Building Corporation v. Lake County PTABOA*, Petition Number 45-030-00-2-8-00005 (October 9, 2007). According to Petitioner’s witnesses, the subject property is not used exclusively by the union. Therefore, under the fraternal benefit associations statute, the union does not qualify for tax exemption. *Brown argument; Resp’t. Ex. 8; Resp’t. Ex. 9.*

#### ANALYSIS

45. Although tangible property in Indiana is generally taxable, the legislature has exercised its constitutional power to exempt certain types of property. *Indianapolis Osteopathic Hospital, Inc. v. Dep’t of Local Gov’t Fin.*, 818 N.E.2d 1009, 1014 (Ind. Tax Ct. 2004) (citing Ind. Code §6-1.1-2-1). A taxpayer, however, bears the burden of proving that its property qualifies for exemption. *Id.*
46. On its Form 132 Petitions, Local 871 UAW claimed that the subject parcels were exempt pursuant to Ind. Code §6-1.1-10-16 because the property was predominantly used for educational or charitable purposes and under Ind. Code §6-1.1-10-23 because the property was exclusively used as a fraternal benefit association.
47. Indiana Code §6-1.1-10-16(a) provides that “All or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.” Further, “a tract of land ... is exempt from property taxation if: (1) a building that is exempt under subsection (a) or (b) is situated on it; [or] (2) a parking lot or structure that serves a building referred to in subdivision (1) is situated on it.” Ind. Code §6-1.1-10-16(c). “Personal property is exempt from property taxation if it is owned and used in such a manner that it would be exempt under subsection (a) or (b) if it were a building.” Ind. Code §6-1.1-10-16(e). Under Ind. Code §6-1.1-10-16, an exemption requires probative evidence that a property is owned, occupied, and used for an exempt purpose. *Knox County PTABOA v. Grandview Care, Inc.*, 826 N.E.2d 177, 183 (Ind. Tax Ct. 2005). Once these three elements are met, the property can be exempt from property taxation.

48. Exemption statutes are strictly construed against the taxpayer. *See New Castle Lodge #147, Loyal Order of Moose, Inc. v. State Bd. of Tax Comm'rs*, 733 N.E.2d 36, 38 (Ind. Tax Ct. 2000). Regardless, the term “charitable purpose” is to be defined and understood in its broadest constitutional sense. *Knox County PTABOA*, 826 N.E.2d at 182 (*citing Indianapolis Elks Bldg. v. State Bd. of Tax Comm'rs*, 251 N.E.2d 673,682 (1969)). A charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *Indianapolis Osteopathic Hospital, Inc. v. Dep't of Local Gov't Fin.*, 818 N.E.2d 1009, 1011-1012 (Ind. Tax Ct. 2004).
49. “[P]roperty is predominantly used or occupied for one (1) or more stated purposes if it is used or occupied for one (1) or more of those purposes during more than fifty percent (50%) of the time that it is used or occupied in the year that ends on the assessment date of the property.” Ind. Code §6-1.1-10-36.3(a). Further, “property that is predominantly used or occupied for one (1) or more of the stated purposes by a person other than a church, religious society, or not-for-profit school is exempt under that section from property tax on the part of the assessment of the property that bears the same proportion to the total assessment of the property as the amount of time that the property was used or occupied for one (1) or more of the stated purposes during the year that ends on the assessment date of the property bears to the amount of time that the property was used or occupied for any purpose during that year.” Ind. Code §6-1.1-10-36.3(c).
50. “The evaluation of whether property is owned, occupied, and predominately used for an exempt purpose is a fact sensitive inquiry; there are no bright-line tests.” *Jamestown Homes of Mishawaka, Inc. v. St. Joseph County Assessor*, 914 N.E.2d 13 (Ind. Tax Ct. 2009). Thus every exemption case “stand[s] on its own facts” and on how the parties present those facts. *See Indianapolis Osteopathic Hospital, Inc.*, 818 N.E.2d 1009, 1018 (Ind. Tax Ct. 2004); *See also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that in every case a taxpayer has a duty to walk the Indiana Board through every element of its analysis; it cannot assume the evidence speaks for itself).



51. Here, the Petitioner failed to support its claim that the Petitioner's property qualified for an exemption based on charitable use. As previously stated, a charitable purpose will generally be found to exist if: (1) there is evidence of relief of human want manifested by obviously charitable acts different from the everyday purposes and activities of man in general; and (2) there is an expectation that a benefit will inure to the general public sufficient to justify the loss of tax revenue. *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 908 (Ind. Tax Ct. 2006). Ms. Kaough testified about the several committees within the union. While some of the community services provided involve individuals outside the Local 871 UAW, almost all of the activities conducted by these committees pertain to Petitioner's members only. Petitioner, however, failed to establish how often the other groups use the property. While some of the events did benefit more than just the union members themselves, charitable services in no way could be said to be the "predominant use" of the subject property. Because these activities do not meet the requirements of Ind. Code §6-1.1-10-16, the Petitioner failed to prove that its property was predominantly used for charitable purposes.
52. Petitioner also contends that the Petitioner's property qualified for an educational exemption in 2010. Mr. Hicks presented no meeting agendas and no training materials. Based on all of the examples that Ms. Kaough and Ms. Sturgill gave, the majority, if not all, of the Petitioner's educational use is related to union business. This falls far short of the evidence necessary to show that the facility was used for educational purposes. Therefore, the testimony of Petitioner's witnesses fails to sufficiently prove that the Petitioner's property is entitled to an exemption for any educational use.
53. Even if the small amount of charitable and educational uses that might be occurring is considered, Ms. Kaough admitted that the primary functions of Local 871 UAW are to negotiate contracts for union members, educate them on different labor laws, obtain better benefits for members, and make their jobs better overall. This testimony alone demonstrates that the subject property was not *predominately* used to inure a benefit to the general public. While Ms. Kaough testified that approximately 70-75% of the events that take place at the

subject property involve some form of community service, Petitioner failed to prove this was an accurate statement.

54. The Petitioner also argued for an exemption based on Ind. Code §6-1.1-10-23(a). That statute provides that “tangible property is exempt from property taxation if it is owned by a fraternal beneficiary association which is incorporated, organized, or licensed under the laws of this state.” Ind. Code §6-1.1-10-23(a). As Ms. Brown correctly pointed out, the fraternal benefit association exemption “does not apply to real property unless it is actually occupied and exclusively used by the association in carrying out the purpose for which it was incorporated, organized, or licensed.” Ind. Code §6-1.1-10-23(b). Similarly, Ind. Code §27-11-7-4 states “Every society organized or licensed under this article is declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax other than taxes on real estate not occupied by a society in carrying on its business.” Ind. Code §27-11-7-4.
55. While Ind. Code §6-1.1-10-23 does not define the term “fraternal beneficiary association,” at least one case has defined the term in interpreting the predecessor statute to Ind. Code §6-1.1-10-23. *See State Bd. of Tax Comm’rs v. Fort Wayne Sports Club, Inc.*, 258 N.E.2d 874, 880 (Ind. Ct. App. 1970). In *Fort Wayne Sports Club*, the court explained that the term “fraternal beneficiary association” has a “very limited and definitive meaning.” *Id.* The court applied the meaning set forth in Ind. Statutes Annotated §39-4401(b), which was part of a larger statute governing the regulation of fraternal beneficiary associations under Indiana’s insurance laws. *See Id.* Ind. Statutes Annotated §39-4401(b) provided, in relevant part:

The term ‘fraternal benefit society’ or ‘fraternal beneficiary association’ shall mean any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit and having a lodge system and representative form of government, and which shall make provision for the payment of [death] benefits in accordance with this act.

*Fort Wayne Sports Club*, 258 N.E.2d at 880 (quoting Ind. Stat. Anno. §39-4401(b)).

56. In many ways, the definition of “fraternal beneficiary association” set forth in Ind. Statutes Annotated §39-4401(b) mirrors the language currently found in its successor statute, Ind. Code §27-11-1-1, which provides “This article applies to any incorporated society, order, or supreme lodge without capital stock, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not-for-profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and that provides benefits in accordance with this article.” Although Ind. Code §27-11 now refers to those organizations as “fraternal benefit societies,” the legislative intent behind Ind. Code §6-1.1-10-23 appears to have been to provide an exemption to fraternal organizations covered by the Indiana insurance laws. That remains true despite the slight difference in terminology between Ind. Code §27-11 and its predecessor statutes.
57. Thus, in order to demonstrate it is entitled to an exemption under Ind. Code §6-1.1-10-23, a taxpayer must prove (1) that it is an organization described in Ind. Code §27-11-1-1, and (2) that it occupies and uses the property sought to be exempted *exclusively* for the purposes for which the taxpayer was organized or incorporated. The requirements for a “fraternal benefit association” are specific. A society has a “representative form of government,” if it meets all of the following conditions:

(1) It has a supreme governing body constituted in one (1) of the following ways:

(A) The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than a majority of the votes and not less than the number of votes required to amend the society's laws. The assembly shall meet at least once every four (4) years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws.

(B) The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term

of a board member may not exceed four (4) years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. Those persons elected to the board constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member is considered to be an elected member. The board shall meet at least quarterly to conduct the business of the society.

(2) The officers of the society are elected either by the supreme governing body or by the board of directors.

(3) Only benefit members are eligible for election to the supreme governing body, the board of directors, or any intermediate assembly.

(4) Each voting member shall have one (1) vote and no vote may be cast by proxy.

Ind. Code §27-11-2-2.

58. Here, Petitioner's witness, Ms. Kaough, merely testified that the Articles of Incorporation and Bylaws outline the voting rights that members of Local 871 UAW have with respect to the union. Under Ind. Code §27-11-2-2(2) either the supreme governing body or the board of directors must elect its officers. Petitioner provided no evidence as to how its officers were elected. Moreover, the Petitioner provided no evidence that it was "operated on a lodge system with ritualistic form of work." Ind. Code §27-11-1-1.
59. Further, the Local 871 UAW bears the burden of showing that it pays benefits in accordance with Ind. Code §27-11. Thus, Petitioner was required to demonstrate that it acted as an insurer regulated by the Indiana Department of Insurance. If this were true, Petitioner easily could have done so by presenting a copy of a certificate of authority authorizing it to transact business under Ind. Code §27-11. Such a certificate would have constituted prima facie evidence of the existence of the Petitioner as a fraternal beneficiary association as of the date of that certificate. *See* Ind. Code §27-11-4-6 ("Upon presentation of satisfactory evidence that the society has complied with all the provisions of the law, the commissioner shall issue to the society a certificate of authority authorizing the society to transact business under this article. The certificate of authority is prima facie evidence of the existence of the society at the date of the certificate."). But the Petitioner failed to do so. Ms. Kaough merely testified that the Petitioner negotiates benefits for its members through collective bargaining

agreements. Petitioner failed to meet its burden of proving that it is a fraternal beneficiary association within the meaning of Ind. Code §6-1.1-10-23 or Ind. Code §27-11-7-4.

60. Petitioner also argued that the property has been found to be tax exempt for several years prior to the 2010 assessment year. In original tax appeals, however, each assessment and each tax year stand alone. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Thus, evidence that Petitioner's property was exempt in the past does not raise a prima facie case that the property is exempt in a different tax year. *Id.*
61. Similarly, Petitioner argues that a long history of cases granting or ordering property tax exemptions for union property precludes the Board from denying an exemption in this case.
62. First, Petitioner requested that the Board take judicial notice of several injunctions issued by the Marion County Superior Court in the 1970's and also requested the Board to follow the decision in *Union Building Corporation v. State Bd. of Tax Comm'rs, et al.*, Marion County Superior Court, No. 23570 (1973). These decisions are not controlling. "In an effort to channel tax disputes to a specialized tribunal, the Indiana Legislature created the Tax Court in 1986." In *Marion County Auditor v. Revival Temple of Apostolic Church*, 898 N.E.2d 437 (Ind. Ct. App. 2008), the Indiana Court of Appeals stated: "The General Assembly created the Indiana Tax Court for the purpose of consolidating tax-related litigation in one court of expertise. The two general prerequisites to the Tax Court acquiring exclusive subject matter jurisdiction over a case are that the case must arise under the tax laws of Indiana and that there is a final determination made by a relevant agency." 898 N.E.2d at 445.<sup>1</sup> The Indiana Tax Court has exclusive jurisdiction over any case that arises under the tax laws of Indiana. Petitioner failed to explain how decisions from a court with no jurisdiction over property tax matters could be binding on the Respondent, the LaGrange County PTABOA or the Indiana Board of Tax Review.

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<sup>1</sup> The property owner, a church, sought to recover its "repurchase price" from Marion County after the county sold its property at tax sale. 898 N.E.2d at 440. The Court of Appeals held that the Marion County Superior Court lacked jurisdiction to hear the matter because the Indiana Tax Court has "exclusive jurisdiction over tax appeals." 898 N.E.2d at 445 ("Because the statutorily prescribed mechanism for filing a claim for a refund of property taxes already paid is through administrative proceedings that the Legislature has provided may end with judicial review by the Indiana Tax Court, the trial court lacked subject matter jurisdiction to order a refund.").

63. Furthermore, in the majority of the cases cited by the Petitioner, the court either entered a default judgment against the defendants or the defendants agreed to the injunction by stipulation. While collateral estoppel “bars the subsequent litigation of a fact or issue which was necessarily adjudicated in a former lawsuit if the same fact or issue is presented in the subsequent lawsuit...the former adjudication will only be conclusive as to those issues which are *actually litigated and determined therein.*” *Bartle v. Health Quest Realty VII*, 768 N.E.2d 912, 917 (Ind. Ct. App. 2002) (emphasis added). The Petitioner failed to establish how cases issued by the Marion County Superior Court that were the result of a default judgment or a stipulated entry could be or should be binding on the Indiana Board of Tax Review almost forty years later.
64. Similarly, Petitioner requested that the Board follow the decision in *Union Building Corporation v. Wayne County PTABOA*, Indiana Board of Tax Review, Petition No. 89-011-02-2-8-00016 (February 4, 2005). While the final determination in *Union Building Corporation v. Wayne County PTABOA* was issued by the Indiana Board of Tax Review, that decision specifically found that “retirees, widows of union members, and the ladies auxiliary use it for educational purposes, such as aerobic classes and computer orientation classes... The Red Cross has monthly meetings there and the Girl Scouts have weekly meetings there. The Red Cross and the Girl Scouts are allowed to use the building at no cost.” *Id.* Thus, the Board found that the petitioner in that case made a prima facie showing that its property was predominantly used for educational and charitable purposes. Here, Petitioner made no such showing. And it has been decided in many cases that these are fact sensitive determinations.
65. To the extent that the Petitioner argues the prior cases issued by the State Board of Tax Commissioners or the Indiana Board of Tax Review can be read as finding property is exempt simply because it is used for union purposes, the Indiana Tax Court has since clarified that is not the case. In *6787 Steel Workers Hall, Inc. v. John R. Scott, Assessor of Porter County*, 933 N.E.2d 591 (Ind. Tax Ct. 2010), the Tax Court upheld the Board’s determination that a banquet hall owned and operated by a union was not exempt. According to the Tax Court, “First, as the Indiana Board recognized, Local 6787 provided no citation to Indiana statutes, case law, or any other persuasive authority for the proposition that unions are inherently charitable... [and] while Local 6787’s by-laws evidence some

charitable/educational intent as to the organization, intent does not establish predominant use.” 933 N.E.2d at 596. The Tax Court found that “because the use of the property for union activities was not a *per se* exemption qualifier under Ind. Code §6-1.1-10-16, Local 6787 needed to provide additional support in order to demonstrate that those activities were indeed educational/charitable in nature.” *Id.*, fn. 10.

66. Thus, even if the decisions of the State Board of Tax Commissioners or *Union Building Corporation* could be read to support the Petitioner’s contention that union property is exempt when it is used for union purposes, the Tax Court’s decision in *6787 Steel Workers Hall* held to the contrary and is now binding. 933 N.E.2d 591. *See State Bd. of Tax Comm’rs v. Fraternal Order of Eagles, Lodge No. 255*, 521 N.E. 2d 678, 679 (Ind. 1988), citing *Baker v. Compton*, 211 N.E.2d 162 (Ind. 1965) (An administrative interpretation “would not be binding if it were incorrect.”).
67. The Petitioner’s interpretation of the *Union Building Corporation* decision is contrary to decisions the Board has issued on union property since 2005. *See Local 692 Operative Plasterers and Cement Masons International Association v. Porter County PTABOA*, Indiana Board of Tax Review, Petition No. 64-026-06-2-8-00001 (June 11, 2007). In *Local 692*, the Board explained, “Here, the Petitioner failed to submit any evidence supporting the claim for exemption. The Petitioner did not identify any statute that exempts the property of labor union representatives from taxation. Nor are we aware of any such statute. Further, the Petitioner failed to show that its property is “owned, occupied, and used” for “educational, literary, scientific, religious or charitable purposes.” *Id.*
68. Similarly, in *International Union of Operating Engineers, Local 150 Building Corporation*, Indiana Board of Tax Review, Petition No. 45-030-02-2-8-00001 *et al* (October 9, 2007), the Board stated, “Petitioner assumes that, because IUOE is a union and a non-profit entity, its union offices, land, and outbuildings are exempt. The Petitioner, however, has offered no statute to support a finding that property used for union purposes is exempt.”
69. Finally, in *Steelworkers Hall, Inc. v. Porter County PTABOA*, Indiana Board of Tax Review, Petition No. 64-016-06-2-8-00113 (May 8, 2009) and *United Brotherhood of Carpenters and*

*Joiners of America, Local #1043 v. Porter County Assessor*, Indiana Board of Tax Review, Petition No. 64-025-08-2-8-00001 (Dec. 11, 2009), the Board held that, absent a showing that the property is owned, occupied and predominantly used for an exempt purpose, union property is not exempt. Also, in *Steelworkers*, the Board stated, “The Petitioner’s assumption that because Steelworkers Hall is a non-profit, labor organization its activities are exempt is incorrect...[I]f the legislature intended union activities to be exempt, it would have provided a specific exemption for that use.”

70. In a much more recent and remarkably comparable case, the Board addressed similar claims and determined that these kinds of uses do not qualify for an exemption. In *Local Union 414 International Brotherhood of Teamsters v. Allen County Assessor*, Indiana Board of Tax Review, Petition No. 02-074-08-2-8-00014 (November 30, 2012), the Petitioner/union argued that the property at issue was entitled to an exemption because it was predominantly used for educational and/or charitable purposes, or as a fraternal beneficiary association. The Petitioner in *Local Union 414*, just like Petitioner in the instant case, argued that the property had been tax exempt for numerous years prior to the assessment year at issue, and thus, should continue to be exempt. Also, the majority of the cases cited by the Petitioner in *Local Union 414* were cited by the Petitioner in the case at hand. The Board ultimately held that the majority of activities that took place at the property were union business activities, and therefore, did not qualify for an exemption. The Petitioner in *Local Union 414* also failed to meet its burden of proving that it was a fraternal beneficiary association.
71. The Petitioner failed to sufficiently show that its property was entitled to an exemption under Ind. Code §6-1.1-10-16 or under Ind. Code §6-1.1-10-23. Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).



**SUMMARY OF FINAL DETERMINATION**

72. The Board finds in favor of the Respondent and holds that the Petitioner's real and personal property is 100% taxable for the 2010 assessment year.

This Final Determination of the above captioned matter is issued on the date first written above.

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>