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Michael H. Holland
Election Officer

November 12, 1991

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VIA UPS OVERNIGHT

Anthony Veltry
88-41 62nd Drive
Rego Park, NY 11374

Dennis M. Silverman
President
IBT Local Union 810
10 E. 15th St.
New York, NY 10003

Re: Election Office Case No. P-1034-LU810-NYC

Gentlemen:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Anthony Veltry, a member of Local Union 810 and a supporter of Ron Carey for International General President and the other candidates on the Ron Carey Partnership Slate. The protest alleges that the executive board of Local Union 810 has attempted to disqualify certain members of Local Union 810 from voting in the 1991 International Union officer election by returning dues payments made by employers pursuant to members' check-off authorizations, advising employers to refund those dues and to refrain from checking off any further dues because the Local and the employer do not presently have a current collective bargaining agreement.

This protest was investigated by Regional Coordinator Amy Gladstein. The investigation revealed that on or about June 11, 1991, a letter was sent to all employers by Steven Silverman, Secretary-Treasurer of Local 810, concerning dues and dues check-off. The letter advises employers that when a contract expires without a renewal or extension agreement being executed by the parties (the Local and the employer), the law requires that dues check-off must cease and individual members must arrange to personally pay dues directly to the Local. Subsequent to the June 11, 1991 notice, several contracts between Local Union 810 and employers of its members expired. The expired agreements included agreements with New York University Medical Center, New York University and Phelps Memorial. New York University Medical Center employs 114 members of Local 810, New York University 169 members and Phelps Memorial 17 members.¹

¹ At all other locations where collective bargaining agreements have expired, the Local has either signed a contract extension or interim agreement with the employer or

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At each of these employers, IBT members continue to work without a current collective bargaining agreement. Negotiations for a new collective bargaining agreement continue between all of these employers and Local Union 810. Upon remittance of dues checked off by these employers after the termination of the collective bargaining agreement, Local Union 810 returned the remittance to the employer and requested that the employer refund the dues payment to the individual members.

With respect to New York University Medical Center, the employer of Mr. Veltry, Local 810, by letter dated August 19, 1991 returned the dues deductions made by the Medical Center for July 1991 and advised the Medical Center that the dues payment could not be accepted by the Local since there was no current signed agreement between the Local and New York University Medical Center. The collective bargaining agreement between Local 810 and the Medical Center did not expire until July 31, 1991.

Sometime in September of 1991, Local Union 810 posted a notice on the Union bulletin board at New York University Medical Center stating that dues must be paid in cash by members individually for the members to retain good standing status with the Local. The Local agrees that the same action was taken for members employed by New York University and members employed by Phelps Memorial.

Mr. Veltry is a politically active member of Local 810. He is employed by New York University Medical Center. During the delegate election process, Mr. Veltry and several other Local 810 members who were also employed at New York University Medical Center were nominated and formed a slate of candidates to run in opposition to a slate of candidates headed by the incumbent Local Union officers. Based on a protest filed by Steven Silverman, the Independent Administrator held that Mr. Veltry and other members of his slate were ineligible to seek delegate or alternate delegate positions.

Mr. Veltry, however, remains an active participant in the International Union election process, supporting General President candidate Ron Carey and the other members of the Ron Carey Partnership Slate. None of the Local Union officers of Local 810 share Mr. Veltry's political position with respect to the 1991 International Union officer election. Some members of the Local's executive board have publicly declared their support for the candidates on the Shea-Ligurotis Action Team.

Mr. Veltry and other members of the slate on which he attempted to seek a delegate position are presently seeking election to Local Union office in Local 810. Mr.

the employees are not presently working for the employer but have commenced a work stoppage.

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Veltry himself is seeking the position of Secretary-Treasurer, running against the incumbent Secretary-Treasurer, Steven Silverman.

The locus of Mr. Veltry's political support within Local 810 is New York University Medical Center and New York University. All the candidates attempting to seek delegate or alternate delegate positions on Mr. Veltry's slate were employed by New York University Medical Center. Other candidates besides Mr. Veltry seeking election to Local Union officer positions are employed by New York University Medical Center. At the time its June 11, 1991 letter was distributed notifying employers to cease dues check-off when a collective bargaining agreement expires, Local 810 was aware that Mr. Veltry was seeking a Local Union officer position. For instance, on July 14, 1991, Mr. Veltry was permitted as a candidate for Local Union to inspect collective bargaining agreements covering Local 810 members. See Election Officer Case No. P-1003-LU810-NYC. Further, given that collective bargaining agreements are for finite, definite durations, Local 810 was aware at the time of the June 11, 1991 letter that the contracts in effect between it and New York University and New York University Medical Center would be expiring prior to the 1991 International Union officer election and prior to the Local 810 Local Union officer election.

The investigation of this protest revealed that the action taken by Local 810--refusing to accept dues remittances from an employer after the expiration of its collective bargaining agreement with the IBT--is unique and extraordinary. Local Union 810 has never acted in this manner previously. Indeed, the Local agrees that previously, it accepted dues remittances from employers despite the termination of the collective bargaining agreement between such employer and the IBT and prior to the execution of a successor collective bargaining agreement--whether or not an extension or interim agreement had been signed. Indeed, the Local agrees that previously members of Local 810 employed by New York University Medical Center and New York University who continued to work after the termination of a collective bargaining agreement and prior to the execution of a successor agreement, without an extension or interim agreement being signed, continued to have their dues checked off by their employer and Local 810 accepted such dues.

In the experience of the Election Officer, a former general counsel to the United Mine Workers of America, he is aware of no situation where any labor organization has refused to accept dues check-off remittances from employers, regardless of the existence of a current collective bargaining agreement. The experience of the Election Officer's counsel, who has represented labor organizations in excess of 25 years, is identical. No labor lawyer or union representative on the Election Officer staff has ever heard of a labor organization refusing to accept dues check-off remittances from an employer.

The Local justifies its current refusal to accept dues check-off remittances from

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employers whose current collective bargaining contract has expired on Article XXII, § 4(a) of the International Constitution. A review of Article XXII, § 4(a) of the International Constitution lends no credence to the Local's argument. That provision discusses Local Union officer elections. The only portion of that section of the Constitution which even refers to dues check-off concerns the eligibility to seek election, nominate or second the nomination of a candidate or vote in a Local Union officer election of a member whose dues have been withheld by his employer for payment to the Local Union, i.e. a member on dues check off. By no stretch of the imagination can that provision be interpreted to prohibit a Local from accepting dues remittances from an employer--deducted by that employer from members' wages--because a collective bargaining agreement is no longer in force between the Local and the employer.

Further, the Election Officer finds no support for the Local's assertion in its June 11, 1991 letter to employers that continuing to accept dues remittance payments from an employer without a current collective bargaining agreement in some way violates the law. Section 302 of the National Labor Relations Act, 29 U.S.C., § 186, does not require the existence of a collective bargaining agreement as a prerequisite to dues check-off or remittance of such checked off dues by the employer to a labor organization. The statute does not require that check-off be discontinued because of the expiration of a collective bargaining agreement.

That the individual labor organization member wishing his employer to check off his union dues does so in writing is the only legal pre-condition to an employer validly checking off and remitting such dues, found in 29 U.S.C. § 186 or any other federal statute. While an employer may no longer validly check off dues once the member revokes the authorization, and under federal law a member may revoke such authorization at any time after the collective bargaining agreement has expired, there is no evidence that any Local 810 member has done so. Furthermore, even assuming that some Local 810 members have, in fact, revoked their dues check-off authorization, the employer may validly check-off and the union may validly accept dues from the remaining members. The Election Officer finds no support for Local 810's arguments that its actions were compelled by either substantive law or the IBT International Union Constitution.

The Election Officer cannot fathom any valid reason for the refusal of Local 810 to accept dues remittances of dues money checked off by employers from members for whom a written authorization to do so has been provided, regardless of whether the employers have an effective current collective bargaining agreement or extension or interim agreement with the IBT. Local 810's only possible motivation in this case is to prevent Mr. Veltry's political supporters from voting for the candidates supported by Mr. Veltry in the 1991 IBT International Union officer election, as well as to prevent such members from voting for Mr. Veltry and the other members of his slate in the

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Local Union officer election.² Other than the Local 810 members employed by New York University Medical Center and New York University--the employers whose members constitute Mr. Veltry's political support--only 17 Local 810 members have been affected. However, as a result of Local 810's action, over 50% of the Local's members employed by New York University and New York University Medical Center are presently ineligible to vote in the 1991 IBT International Union officer election and will presumably be ineligible to vote in the Local 810 Local Union officer election.³ As previously noted in this decision by the Election Officer, Local 810 was aware, prior to its decision to cease accepting dues remittances from employers whose collective bargaining agreements with the IBT have expired, that the contracts with New York University Medical Center and New York University were expiring. Local 810 was further aware at that time of Mr. Veltry's partisan political positions with respect to both the 1991 International Union officer election and the Local Union officer election in Local 810.

The Election Officer's jurisdiction is limited to the 1991 International Union officer election processes. The Election Officer has no jurisdiction with respect to any other elections, including elections of Local Union officers. See *Rules*, Preamble, at pages 1-2. However, the Independent Administrator has directed that the Election Officer examine a Local Union's motivation for the actions it takes. If the Election Officer finds that the Local was motivated in whole or in part by animus resulting from the 1991 International Union officer election participation of its members, the Election Officer is obligated to take remedial action, even where the protest focuses on matters relating to or affecting only a Local Union election. See In Re: Veltry and IBT Local No. 810, 91-Elec. App.-215 (SA), reversing and remanding Election Office Case No. P-958-LU810-NYC. The Election Officer's investigation here disclosed that Local 810's refusal to accept checked-off dues remittances from employers whose collective bargaining agreement had expired was motivated by its desire to prevent members with whom Mr. Veltry exercised some political influence from being eligible to participate in both the 1991 International Union officer election and the Local Union officer election for Local 810. Local 810's motivation was undifferentiated and encompassed both

² This conclusion is buttressed by the fact that Local 810 returned the dues remittances received from New York University Medical Center for the month of July, 1991, a period prior to the expiration of the collective bargaining agreement.

³ The investigation reveals of the 169 Local 810 members employed by New York University, only 74 are presently current in their dues having paid dues through October of 1991; of the 114 members employed by New York University Medical Center, only 57 are current in their dues, having paid dues through October of 1991; and of the 17 members employed by Phelps Memorial, none appear to be current in their duties. With regard to Phelps Memorial, this employer appears to have submitted erratic or improper prior check-offs.

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elections.

The protest is GRANTED. Local 810 is directed to adjust its membership records to reflect that members employed at New York University, New York University Medical Center and Phelps Memorial--and any members employed by any other employers to whom Local 810 has applied or will apply the "policy" contained in its June 11, 1991 letter--to reflect that those members who normally pay their dues by check-off have had their dues paid for all months during which their employer failed to check off their dues--or returned dues previously checked off by reason of the Local's June 11, 1991 "policy."⁴

Since the Election Officer will determine the eligibility of IBT members to participate in the 1991 International Union officer election on the basis of the Union's TITAN record system, the Local shall be required to make appropriate changes to its TITAN records, on or before November 15, 1991, to reflect that its members employed by New York University, New York University Medical Center and Phelps Memorial --who pay their dues through check-off procedures--have fully and timely paid their dues for each and every month during which their dues were not checked off or, after being checked off, later returned. Regional Coordinator Amy Gladstein shall monitor this process and inspect the TITAN records for Local 810 members as maintained by Local Union 810. Because of the exigencies presented by the date of the 1991 International Union officer election, an appeal of this decision shall not stay the remedies herein imposed. *Rules*, Article XI, § 2(z).

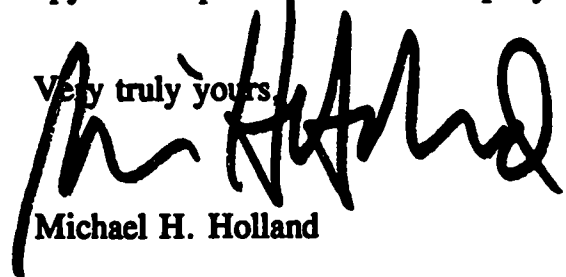
If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing, and shall be served on Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above,

⁴ Local 810--apparently realizing the futility of its position--agreed to so amend its membership rolls for purposes of determining the eligibility of its members to vote in the 1991 International Union officer election. Apparently, believing that the Election Officer had no jurisdiction to determine the eligibility of its members to vote in the Local 810 Local Union officer election, the Local Union did not agree to so redetermine the eligibility of its members to participate in the Local Union officer election.

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as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D.C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is stylized with a large initial "M" and a long, sweeping underline.

Michael H. Holland

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator

Amy Gladstein, Regional Coordinator

Randy Barber, Election Office Count Site