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February 6, 1992

VIA UPS OVERNIGHT

Robert Sasso
President
IBT Local Union 282
1975 Linden Blvd.
Elmont, NY 11003

Walter Shea
c/o Robert Baptiste, Esquire
Baptiste & Wilder
1919 Pennsylvania Avenue, N.W.
Suite 505
Washington, D.C. 20006

Re: Election Office Case No. P-1150-IBT Eastern Conf.- 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 Robert Sasso, President of IBT Local 282, an appointed IBT International Representative and a former independent candidate for International Union Vice President from the Eastern Conference. Mr. Sasso alleges that he was removed from his appointed position as Director of the Construction and Building Trade Division of the IBT Eastern Conference in retaliation for his refusal to support Walter Shea for IBT General President in the recently concluded International Union officer election. The protest was investigated by Regional Coordinator Amy Gladstein.

I. Facts

The Eastern Conference of the IBT is an Area Conference established under and pursuant to Article XVI of the International Union Constitution. In accordance with the International Constitution, it is governed by a Policy Committee elected by the delegates to the IBT Eastern Conference and in accordance with By-Laws adopted by the Conference and approved by the IBT General President.

The By-Laws of the Eastern Conference provide for a seven-member Policy Committee which governs the Eastern Conference between quadrennial Conference meetings. The Policy Committee is empowered by the By-Laws to fill any vacancies

Robert Sasso
February 5, 1992
Page 2

which occur between quadrennial Conference meetings and to elect a Chair and appoint a Secretary-Treasurer.

Article XIII of the Eastern Conference By-Laws provides for the establishment of trade divisions, intra-Conference groupings organized along trade or craft lines consisting of those Local Unions which are members of the Eastern Conference and which represent members in such trades or crafts. "Each Trade Division shall have a Director, appointed by the Policy Committee of the Conference . . ." Eastern Conference By-Laws, Article XIII, § 2. Under the By-Laws, the Trade Division Director, subject to the approval of the Chair of the Policy Committee, calls all Trade Division meetings where policies and practices affecting the particular trade or craft may be adopted. According to Mr. Sasso, one of the major responsibilities of a Trade Division Director is to resolve jurisdictional disputes arising IBT Local Unions within the Conference and non-IBT affiliated labor organizations with jurisdiction--or seeking jurisdiction--in the same trade or craft.

Other than the members of the Policy Committee itself, Trade Division Directors are the only agents, representatives or employees required in the Eastern Conference. The trade or craft divisions over which the Directors have responsibility are entitled under the Eastern Conference By-Laws to determine all policies, practices and regulations governing the operation of such trade or craft within the Conference. The Directors, having the authority under the Eastern Conference By-Laws to call, subject only to the approval of the Policy Committee Chair, such trade division meetings as the Director deems necessary and to preside at all such meetings, clearly have policy-making roles within the Eastern Conference.

Mr. Sasso was appointed the Director of the Building and Construction Trade Division of the Eastern Conference in April, 1988. His appointment as Director occurred at the same time that he became an International Representative, appointed by then-International General President Jackie Presser and assigned by Mr. Presser to the geographical area of the Eastern Conference.¹ In accordance with Article V, Section 1(g) of the International Union Constitution, Mr. Sasso receives a salary and expense allowance as an International Representative. He received no additional compensation by reason of his appointment as Director of a trade division in the Eastern Conference.

¹ Apparently, Mr. Presser, at the time he made Mr. Sasso an International Representative, notified Mr. Sasso that he would also be the Director of the Building and Construction Trade Division of the Eastern Conference; the press release announcing his appointment as International Representative also announced his appointment as Director of the Trade Division. Mr. Sasso subsequently received a letter from the then-Chair of the Eastern Conference Policy Committee appointing him as Director of the Building and Construction Trade Division.

1 ■ ■
Robert Sasso
February 5, 1992
Page 3

Despite his removal as Director of the Building and Trade Division of the Eastern Conference, Mr. Sasso remains as an International Representative and continues to receive the designated compensation for such position. Only the IBT General President has the authority to appoint or remove International Representatives.

During the recently concluded IBT International Union officer election, Mr. Sasso unsuccessfully sought the position of IBT International Union Vice President from the Eastern Conference. While he competed for that office as an independent candidate, not affiliated with any slate, he nonetheless openly supported the candidacy of R. V. Durham for IBT General President. See, e.g., the November 1991 issue of The International Teamster at page 37. Subsequent to the IBT International Union officer election, on December 18, 1991, the Court-appointed Investigations Officer, Charles M. Carberry, brought charges against Mr. Sasso alleging that he violated his obligations under the International Union Constitution and to the members of the IBT by associating with members of organized crime, failing to investigate allegations that the then-principal officer of Local 282 associated with members of organized crime and retroactively increasing the salary of the then-principal officer of Local 282 after his federal felony conviction.

Mr. Sasso was removed as the Director of the Building and Construction Trade Division of the Eastern Conference by the Eastern Conference Policy Committee at its meeting on January 13, 1992. All members of the Policy Committee were in attendance at the meeting: Walter Shea, Chair of the Policy Committee, elected to that position in October, 1991, replacing Joseph Treretola who retired on October 14, 1991 as the Chair and as a member of the Policy Committee; Frank Carracino, Secretary-Treasurer of the Policy Committee, appointed to that position in October, 1991 to fill the vacancy created when Mr. Shea was elected the Chair of the Policy Committee; R. V. Durham, John Morris; Barry Feinstein; Howard Bennett; and Eddie Kornegay, elected to the Policy Committee in October, 1991 to fill the vacancy created by Mr. Treretola's resignation. With the exception of Mr. Durham, whose candidacy for IBT General President he supported, Mr. Sasso was politically aligned with no other members of the Eastern Conference Policy Committee during the recently concluded International Union officer election. Messrs. Shea, Carracino, Morris and Feinstein were all candidates for International Union officer positions on the Shea-Ligurotis Action Team. Both Messrs. Carracino and Morris competed directly against Mr. Sasso for the position of International Union Vice President from the Eastern Conference, Mr. Morris being elected to one of such three available positions. At the 1991 IBT International Union Convention, Mr. Kornegay ran for International Union Trustee on the Shea-Ligurotis

Robert Sasso
February 5, 1992
Page 4

Action Team.² Mr. Bennett openly supported the Shea-Ligurotis Action Team during the recently concluded International Union officer campaign.

In addition to their varying political positions with respect to the 1991 IBT International Union officer election, Mr. Sasso has been at odds with members of the Eastern Conference Policy Committee over the governance of Joint Council 16, a Joint Council with jurisdiction in New York with which Mr. Sasso's Local is affiliated. Mr. Treretola was President of Joint Council 16 prior to his resignation from that position, also occurring in October, 1991. Mr. Sasso objected to the notice for and conduct of the Joint Council meeting at which Mr. Treretola resigned. Mr. Sasso objects to the replacement of Mr. Treretola with Mr. Feinstein as President of the Joint Council, contending that Mr. Feinstein's election was accomplished in violation of the International Union Constitution and the constitution and by-laws of Joint Council 16. By letter dated October 31, 1991, Mr. Sasso proffered internal Union charges against Mr. Feinstein and three other members and officers of the Joint Council.

Mr. Sasso objected to the contents of a letter from the Secretary-Treasurer of the Joint Council to General President McCarthy urging the appointment of Mr. Feinstein as an International Union Vice President to fill the vacancy created by Mr. Treretola's resignation from that position. Mr. Sasso contends that the letter erroneously and wrongfully implied that the request was that of the Joint Council 16 Executive Board. The letter was subsequently amended to reflect that no formal action had been taken by the Joint Council Executive Board; the amendment also stated, however, that the prior letter suggesting Mr. Feinstein's appointment as an International Union Vice President reflected the position of the "overwhelming majority of the members of the Executive Board of Joint Council 16." Mr. Sasso does not support Mr. Feinstein holding the position of President of Joint Council 16 and did not support his appointment as an International Union Vice President.³

Mr. Shea recommended the removal of Mr. Sasso as Director of the Building and Construction Trade Division of the Eastern Conference. He states that he did so, as he told the members of the Policy Committee on January 13, 1992, based on his conclusion that all Trade Division Directors should have offices in and operate from the Eastern Conference headquarters in Bethesda, Maryland. Mr. Sasso was the only Trade

² Mr. Treretola, prior to his withdrawal as a candidate for International Union Vice President from the Eastern Conference in October, 1991, had also been a member of the Shea-Ligurotis Action Team.

³ The matter of appointment as the International Union Vice President is, of course, now moot, given the recent certification by the Election Officer of the 1991 IBT International Union officer election.

Division Director who was not an employee of the Conference and who did not maintain his principal place of office at the Eastern Conference headquarters. Mr. Sasso was replaced by an Eastern Conference employee headquartered at the Eastern Conference offices in Bethesda, Maryland who is also the Director of the Bakery Trade Division and the Dairy Employees Trade Division.⁴ Mr. Shea does not claim that Mr. Sasso's removal was either performance-related or caused by the charges brought against him by the Investigations Officer. No one dissented from Mr. Shea's recommendation, including Mr. Durham, who had been supported by Mr. Sasso during the recently concluded International Union officer election.

Mr. Shea claims that his recommendation that all Directors work at the Eastern Conference headquarters was made as part of his efforts--as the newly-elected Chair of the Eastern Conference Policy Committee--to review, reorganize and revitalize the activities of the Conference. Since Mr. Shea's election as Chair of the Policy Committee, the Policy Committee has met twice, in November, 1991 and January, 1992⁵; Mr. Shea states that he plans to hold monthly meetings of the Policy Committee. Prior to Mr. Shea's election, the Policy Committee had met only two other times in calendar year 1991, in June, 1991 and October, 1991, when Mr. Treretola resigned as Chair and as a member of the Policy Committee. The Policy Committee has also contracted with a certified public accountant to audit the IBT Eastern Conference and its health, welfare and pension plans, and to review and make recommendations with respect to personnel policy, practices and structure.

II. Analysis

The issue before the Election Officer is whether Mr. Sasso's removal as Director of the Building and Construction Trade Division of the IBT Eastern Conference violated the *Rules*.⁶ Accordingly, the Election Officer must determine whether Mr. Sasso's

⁴ All Eastern Conference Trade Division Directors have multiple directorships, with the exception of Mr. Schmidt, who, however, in addition to being Director of the Miscellaneous Trade Division, also has responsibilities with respect to United Parcel Service and "AAPGC."

⁵ Mr. Shea also chaired the October, 1991 meeting.

⁶ Mr. Sasso's removal from this position occurred after the conclusion of the 1991 IBT International Union officer election and therefore did not affect the outcome of that election. *Rules*, Article XI, § 1(b)(2). However, given the allegation of retaliation for exercise of political rights protected by the *Rules*, the Election Officer retains jurisdiction to decide this protest on the merits despite the absence of any effect on the concluded International Union officer election. See, e.g., Election Office Case. P-399-LU810-

removal was grounded upon--and in retaliation for--his refusal to support Mr. Shea for IBT General President and, if so, whether the removal of an appointee as the director of a trade division of an IBT Area Conference for such reason is forbidden by the *Rules*.

With respect to the first issue, the Election Officer concludes that Mr. Sasso's removal was not in retaliation for his political positions with respect to the International Union officer election. The evidence demonstrates that Mr. Shea has been involved in an ongoing effort to restructure the operations of the Eastern Conference since his election as Chair of the Conference on October 15, 1991. His reasons for suggesting the removal of Mr. Sasso--that he wanted all Trade Division Directors to operate centrally in and through the headquarter office of the Eastern Conference--is reasonably related to the other reorganization activities recommended by Mr. Shea. Further, it is not irrational to require that all Trade Division Directors maintain their principal offices at the Eastern Conference headquarters and perform their work from such offices. By the terms of the Eastern Conference By-Laws, Trade Division Directors occupy important policy-making roles within the Eastern Conference; Trade Divisions have the authority to bind all Eastern Conference IBT Local Unions and all Eastern Conference IBT members with respect to policies and practices affecting the particular trade or craft. Under such circumstances, a desire to have the Directors work in the headquarters office, where they are subject to more direct supervision and control by the Policy Committee Chair, is understandable. That Mr. Sasso was the only Trade Division Director affected does not demonstrate that the policy was instituted for retaliatory reasons.

Mr. Sasso's removal as Director was without dissent. That Mr. Durham, presumably Mr. Sasso's political ally given Mr. Sasso's support of him for IBT General President, did not object undermines the validity of the allegation that Mr. Sasso's removal was based upon his failure to support Mr. Shea for IBT General President.

Further, Mr. Sasso has been engaged in an ongoing controversy with members of the Eastern Conference Policy Committee concerning the governance of Joint Council 16. Internal Union charges have been filed by him against Mr. Feinstein, a member of the Policy Committee and a long-standing ally of Mr. Shea and other members of the Policy Committee. Whatever animus against Mr. Sasso that may exist is as likely to emanate from Mr. Sasso's position regarding Joint Council 16 and Mr. Feinstein's role on the Executive Board of the Joint Council as from his political posture in the 1991 IBT

International Union officer election.⁷ Mr. Sasso's removal as a Trade Division Director occurred shortly after the eruption of his dispute with Joint Council 16 but well after public notice of his intention not to support Mr. Shea for IBT General President.⁸

Further, and assuming *arguendo* that Mr. Sasso's removal as Director of the Construction and Building Trade Division of the Eastern Conference was in retaliation for his support of Mr. Durham for IBT General President and concomitant refusal to support Mr. Shea for that position, the Election Officer concludes that his removal from that position does not violate the *Rules*. Mr. Sasso's removal did not occur until after the 1991 IBT International Union officer election was concluded. His removal did not have any impact on the results of that election. His removal had no effect on his ability to campaign for the International Union Vice President position he sought during that election, nor did it affect his ability to garner support for his candidacy from other members of the IBT.

Mr. Sasso's position as the Director of the Construction and Building Trade Division of the IBT Eastern Conference was an appointed position. Under the By-Laws of the Eastern Conference, his appointment was at the pleasure of the Policy Committee, which was entitled to remove him at any time. There is no question but that the position occupied by Mr. Sasso was an important one, involving both policy-making and confidential responsibilities.

Mr. Shea and the other members of the Eastern Conference Policy Committee are the duly elected members and officers of that Committee, properly elected to their positions under and in accordance with the IBT International Union Constitution and the Eastern Conference By-Laws. As such, they are permitted to implement their governance of the Eastern Conference through staff whose views are compatible with their own. Where officers of a labor organization are given authority to appoint staff,

⁷ Mr. Sasso concedes that his dispute with Joint Council 16 may have motivated, at least in part, his removal as Trade Division Director of the Eastern Conference.

⁸ Moreover, as noted above, charges have been filed against Mr. Sasso by the Investigations Officer. While Mr. Shea and the other members of the Policy Committee of the Eastern Conference eschew that reason as the basis for Mr. Sasso's removal, it would appear somewhat inappropriate for the Election Officer to require that the Eastern Conference maintain in a policy-making role someone against whom charges have been brought by the Independent Administrator. See, e.g., In Re Viramontes and IBT Local Union No. 439, 91-Elec. App.-229, modifying Election Office Case No. P-1021, LU439-CCV ("If anything, the work of the Court-appointed officers, and the Consent Order under which they operate, encourages Local Unions to initiate disciplinary action wherever it is justified and appropriate to weed out corruption within the Union").

Robert Sasso
February 5, 1992
Page 8

they may exercise such appointments authority based upon the internal Union political views of the staff members so appointed or removed. Elected Union officials, like elected government officials, are entitled to have at least policy-making positions filled by individuals whose political views are identical to their own. Finnegan v. Leu, 456 U.S. 431 (1982); Franza v. Teamsters Local 671, 869 F.2d 41 (2nd Cir., 1989); Chehich v. Auto Workers, 710 F.2d 234 (6th Cir., 1983); Cotter v. Owens, 753 F.2d 223 (2nd Cir., 1985). The position held by Mr. Sasso prior to his removal was one over which the Policy Committee of the Eastern Conference had exclusive power of appointment and was clearly a position whose incumbent has a role in both formulating and effectuating policy on behalf of the Eastern Conference.⁹

To provide otherwise would require Union officials to retain in policy-making positions the appointees of their opponents, which would be the antithesis of union democracy, not its furtherance. Under this analysis, Ron Carey, the newly elected IBT General President, would be prohibited from removing from policy-making roles in the International Union his political opponents and their appointees, undermining the very electoral process the March 14, 1989 Consent Order and the Rules were designed to encourage.

Only where the removal is part of a purposeful and deliberate attempt to suppress dissenting views of the membership within a union will courts interfere with union officers' discharge of appointed policy-making employees or agents. Cotter v. Owens, *supra*. However, since any discharge of a Union agent because of such agent's political views carries with it some suppression of dissent, the exception risks eviscerating the undoubted right of Union officers to have their policies carried out by persons whose political views are compatible with their own. Thus, the exception is applied narrowly, only in unusual circumstances, and requires proof by clear and convincing evidence. Cotter v. Owens, 753 F.2d at 229; Franza v. Teamsters Local 671, 869 F.2d at 48-49.

There is no evidence suggesting that Mr. Sasso's removal was part of an orchestrated effort to prevent and suppress the views of IBT members who failed to support Mr. Shea for IBT General President. The Policy Committee removing Mr. Sasso included Mr. Durham, Mr. Sasso's political ally, who did not dissent from the removal decision. Other than Mr. Sasso's removal, neither Mr. Shea nor the Policy

⁹ The issue concerning whether the right to appoint individuals whose political views are compatible was limited to only policy-makers was expressly left unresolved by the United States Supreme Court in Finnegan v. Leu, *supra*. While Franza v. Teamsters Local 671, 869 F.2d at 47, seems to suggest that no non-policy maker exception exists, a Trade Division Director in the Eastern Conference is, under any analysis, a policy-making position.

Robert Sasso
February 5, 1992
Page 9

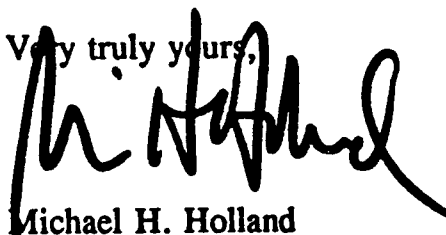
Committee of the Eastern Conference have taken any action to "retaliate" against others in the Eastern Conference who failed--as did Mr. Sasso--to support Mr. Shea's candidacy for IBT General President. The removal of Mr. Sasso was not effectuated during the heat of the election campaign, but only after the 1991 IBT International Union officer election had concluded and the results were known. See and compare Local 1199 v. retail, Wholesale and Department Store Union, 671 F.Supp. 279, 126 LRRM 2824, 2831 (S.D.N.Y., 1987) (removal of an elected Union officer during the midst of a political struggle evidence of an attempt to suppress all political dissent).

Removal of an appointed Union agent from a policy-making position, even if based solely on such member's political position, does not, without more, violate the *Rules*. Here the removal was effectuated after the conclusion of the 1991 IBT International Union officer election. There is no evidence demonstrating that the removal is part of a concerted or orchestrated attempt to prevent members from expressing their political views or otherwise dissenting against the views held by members of the Policy Committee of the Eastern Conference. Accordingly, even assuming that Mr. Sasso's failure to support Walter Shea as IBT General President was--contrary to the findings of the Election Officer--the basis for his removal, his removal would not violate the *Rules*.

In accordance with the foregoing, the protest is DENIED.

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, 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,



Michael H. Holland

MHH/mjv

1 ■ ■ ▽
Robert Sasso
February 5, 1992
Page 10

cc: Frederick B. Lacey, Independent Administrator
Amy Gladstein, Regional Coordinator