

July 19, 1996

VIA HAND DELIVERY

Roni German
Mt. Laurel Clarion
Mt. Laurel, NJ

VIA UPS OVERNIGHT

Larry Wilson, Secretary-Treasurer
Teamsters Local Union 81
1874 N.E. 162nd Avenue
Portland, OR 97230

Re: Election Office Case No. CONV-5-LU81-PNW

Gentlepersons:

A protest was filed under Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election* (“*Rules*”) by Roni German, an elected delegate from Local Union 81 to the 1996 IBT International Convention. The protester contends that Local Union 81’s failure to pay her lost wages, including health and welfare and pension contributions, for the week of the Convention, is a violation of the *Rules*.

The protest was investigated by New York City Protest Coordinator Barbara C. Deinhardt.

The protester was discharged by Local Union 81 on February 12, 1996. She filed appeals with the Local Union Executive Board, Joint Council 37 and the IBT’s Ethical Practices Committee (“EPC”) regarding her discharge. The appeals to the Local Union Executive Board and Joint Council 37 have been denied. The appeal to the EPC is still pending. The protester was receiving unemployment compensation prior to her current work as a self-employed real estate agent. During

the week of the Convention, the protester alleges that she is unable to pursue two prospective real estate transactions and has consequently hired a third party to pursue these two sales in her absence while she is attending the Convention in Philadelphia. Ms. German has agreed that if the sales occur, she will pay 20 percent of the commission to this third party.¹ The protester argues that the local union should pay her lost wages in accordance with one of the following four options: (1) her regular weekly salary from the local union prior to her discharge; (2) the amount of weekly unemployment compensation benefits that she received prior to selling real estate; (3) 20 percent of her commission, estimated at \$500-\$600, that she will pay her subcontractor if the two real estate deals occur; (4) the rate of pay the other delegates from Local Union 81 are receiving; or (5) 40 hours at federal minimum wage.

The *Advisory Regarding Convention Expenses*, issued May 2, 1996, which sets forth the obligations of local unions under the **Rules** with respect to what is considered convention expenses. The *Advisory* provides that:

[r]easonable expenses shall include the salary or wages of the delegates . . . Delegates and alternates receiving a salary shall receive their regular weekly salary for one week, which will be deemed to cover the period of time spent at the Convention. Delegates and alternate delegates who are paid on an hourly basis shall receive their straight time hourly wages, excluding overtime, mileage or other premiums for forty (40) hours, which shall be deemed to cover the period of time spent at the Convention. No delegate or alternate delegate will be required to use his or her vacation for purposes of attending the Convention.

Since the delegates attending the 1996 Convention are conducting “union business” on the local union’s behalf, instead of working at their regular jobs for employers or the local union, the *Advisory* requires local unions to reimburse delegates in the amount of their regular salary or wages that the delegates would have received, but for the fact that the delegates are in attendance at the Convention. The *Advisory*’s purpose in this regard is to reimburse the delegates for salaries or wages they would lose by attending the Convention. This purpose was further exemplified by the policy established for the 1991 Convention for unemployed delegates. In Hasegawa, P-773-LU174-PNW (May 29, 1991), the Election Officer stated:

¹The protester predicts that this will be about \$500-\$600.

[T]o the extent that a delegate is unemployed due to accident, injury, lay-off or otherwise, the Local is responsible for paying the benefit monies actually lost by the delegate for his attendance at the 1991 IBT International Union Convention. Thus, with respect to a member receiving unemployment benefits, the Local would be responsible for paying the unemployment benefits actually not received because of such Convention attendance. Similarly with members receiving worker's compensation or health and welfare benefits, the Local is responsible for reimbursing the amount of benefits actually not received because of Convention attendance.

For a member who does not have regular employment but, for instance, works as a causal or on a hiring hall-call basis, the average, for the three months preceding the Convention week, of the actual straight hourly wages received by him in a calendar week shall be deemed his wages for the Convention week. The Local is thus obligated to pay this amount as part of the expenses for which it is responsible. If the Local itself has no records or access to records, it may require that the member produce documents evidencing the wages earned during the three month averaging period.

In line with the *Advisory's* policy and precedent established in 1991 that delegates are entitled to the salary or wages for a week they will lose by virtue of their attendance at the Convention, the local union is not obligated to pay the protester the amount of her regular weekly salary prior to her discharge or the weekly amount that she received as unemployment compensation prior to selling real estate. The protester is neither presently employed by the local union nor entitled to receive unemployment compensation during the week of the Convention.

The local union is responsible for reimbursing delegates for the value of a *week's worth of work* or benefits in the case of unemployed or laid off delegates that they will not receive due to their attendance at the Convention. In this instance, the protester is a real estate agent and her income, *i.e.*, commission, is based on a percentage of the purchase price of any property she sells. Accordingly, an agent's commission would be an inappropriate standard for determining the value of a week's worth of work since it is arbitrarily based on the value of property that is sold. Furthermore, whether the protester would have sold property during the week of the Convention and did not because she was attending the Convention, would be speculative. Therefore, the Election Officer will not require the local union to reimburse the protester for 20 percent of her commission, estimated at \$500-\$600, that she will pay her subcontractor if the two real estate transactions occur.

Furthermore, the lost wages received by another delegate representing Local Union 81 at the Convention does not represent an appropriate standard since the amount of a delegate's lost wages is

based on the specified actual salary or hourly wages that an individual delegate would have received but for his/her attendance at the Convention. The protester's request for lost wages based on the minimum wage is similarly inappropriate.

Accordingly, the protest is DENIED.

However, if the protester's appeal to the EPC is granted and, as a result, she is reinstated with back-pay for a period which includes the week of the Convention, the local union will be obligated to reimburse the protester for the Convention week in the amount of her regular weekly salary prior to her discharge.²

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of 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:

Kenneth Conboy, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, Pennsylvania Convention Center, Room 204, Facsimile (202) 418-2426. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

²Under Article VII, Section 2(b) of the *Rules*, although the protester is working outside the craft of any collective bargaining agreement involving an IBT entity, she is still eligible to serve as a delegate on behalf of Local Union 81. The active unemployment at the craft requirement is exempted since she is actively pursuing an unresolved grievance or other legal action challenging suspension or discharge with the EPC.

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cc: Kenneth Conboy, Election Appeals Master
Barbara C. Deinhardt, New York City Protest Coordinator