

August 26, 1996

VIA UPS OVERNIGHT

Lillian Morisky
1209 Clay Court
Brunswick, OH 44212

Sam Theodus, President
Teamsters Local Union 407
3150 Chester Avenue
Cleveland, OH 44114

Re: Election Office Case No. P-879-LU407-EOH

Gentlepersons:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the IBT International Union Delegate and Officer Election ("Rules")* by Lillian Morisky, a member of Local Union 407. Ms. Morisky alleges that Local Union 407 failed to reimburse her for 40 hours of straight time wages for the time she spent at the IBT Convention as an elected delegate as required by the Election Officer's *Advisory Regarding Convention Expenses*, ("Advisory") issued on May 2, 1996. Further, Ms. Morisky alleges that the local union failed to properly compute her average weekly work hours upon which it based her level of compensation.

The local union responds that, because Ms. Morisky is a part-time worker for UPS, her compensation level was determined by the average number of hours she worked per week for the three months prior to the Convention. The local union states that it made this determination in accordance with Election Officer policy.

Election Office Staff Attorney Jonathan K. O'Neill investigated the protest.

The facts underlying this protest are not in dispute. Ms. Morisky attended the Convention as

an elected delegate. On or about July 23, 1996, she was contacted by Joe Pierani, secretary-treasurer of Local Union 407, who requested that she provide the local union with her weekly hours for three months so that her average weekly hours could be determined. She submitted pay slips and records indicating her work history from the week of April 20, 1996 to the week of July 13, 1996. She included with these records a computation of 29.59 hours as her average number of hours per week. This computation included 40 hours per week for the two weeks Ms. Morisky served on the IBT's Grievance Arbitration Committee.¹

Mr. Pierani examined the protester's weekly pay slips dating from April 20, 1996 to July 6, 1996 and determined that Ms. Morisky worked an average of 27.69 hours a week. Mr. Pierani did not include the two weeks Ms. Morisky was compensated by the IBT in his computation. On August 14, 1996, the local union issued Ms. Morisky a check for 27.69 hours at her straight-time rate of pay minus withholdings.

1. Local Union's Compensation Obligation Regarding Part-time Workers

Ms. Morisky insists that the local union is required to pay her for 40 hours, as stated in the *Advisory*. She states that she is owed 40 hours because she worked a full day each day at the Convention performing the duties of a delegate.

The *Advisory* 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.

¹Ms. Morisky was present at committee proceedings in Washington, D.C., during the week of June 22, 1996 and in Philadelphia during the week of July 13, 1996. She was compensated by the IBT for a full day of work for each day she attended committee proceedings. As a result, she contends that her record should reflect that she worked 40 hours during both weeks.

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 if the delegate had not been 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. German, CONV-5-LU81-PNW (July 19, 1996). 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:

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.

The *Advisory*’s policy and precedent from 1991 established that delegates are entitled to the salary or wages for a week they will lose by virtue of their attendance at the Convention, and not automatically for 40 hours of lost time. The examination of the protester’s employment records indicates that the local correctly reimbursed her for 27.69 paid hours. In line with this policy, Ms. Morisky’s contention that she worked full time at the Convention and therefore deserves 40 hours’ pay cannot be sustained.

2. Computation of Average Weekly Hours

Ms. Morisky contends that, even were the local union correct in using an average of her past weekly hours to determine its compensation obligation, the local union computed the average incorrectly. She argues that, because the local union failed to include the two weeks in which she worked full time on IBT business in its analysis, its determination of her average weekly hours is too low.

The policy behind the *Advisory* does not support the protester’s claim. The purpose of computing the average weekly hours of a part-time employee is to determine a reasonable estimate of what the member would lose by attending the Convention. Hours spent on union business are thus not relevant to the computation because they do not reflect the level of hours worked at the member’s employer. As a result, the local union correctly computed her hours based on an average of the 11 weeks covered by the documents submitted by Ms. Morisky during which she worked part time for UPS.

Accordingly, the protest is DENIED.

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, 400 N. Capitol Street, Suite 855, Washington, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master