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### Introduction

On January 18, 1995, the General Executive Board of the Laborers' International Union of North America (LIUNA) amended its three Constitutions (the International Union Constitution, the Uniform District Council Constitution, and the Uniform Local Union Constitution) to adopt a new Ethics and Disciplinary Procedure. It includes two parts, the Ethical Practices Code, which defines common standards of conduct applicable to all officers, members and employees of LIUNA and its affiliates, and the Ethics and Disciplinary Procedure, which sets up a process to ensure that potential violations are investigated and decided by experienced, neutral and independent officials in accordance with procedures that are fair and impartial. These independent officers include the Special Counsel, the Inspector General, the Independent Hearing Officer, the Special Elections Officer and the Appellate Officer. Their respective duties and responsibilities are set out in the Ethics and Disciplinary Procedure. These amendments to the LIUNA Constitutions have worked to promote honesty, integrity and fairness throughout the Union. The Code and the EDP have been considered and upheld by several federal courts, which ruled that the GEB acted properly in adopting these provisions and that these procedures fairly safeguard the interests of the Union and its members.

Both the Independent Hearing Officer and the Appellate Officer have issued rules to govern the proceedings before them. In addition, these constitutional provisions have been supplemented

by certain policies adopted by the General Executive Board, copies of which are also included in this booklet. A similar Canadian Ethical Practices Code has been adopted to govern our members and affiliates in Canada.

In the time that the Code, the EDP and our other reform programs and policies have been in effect, LIUNA has achieved remarkable success in strengthening our Union from within and building LIUNA into one of the most progressive and democratic organizations in the entire trade union movement.

Given our substantial experience and progress since the Code was first adopted, the General Executive Board now has revised the Code and Procedure to reflect that experience, to improve them where appropriate, and to strengthen our Union as an institution.

## **ETHICAL PRACTICES CODE**

The following Ethical Practices shall apply to the International Union, all District Councils, every Local Union, to every employee, member and officer thereof, and to every union trustee of any benefit fund or political action committee.

### **Democratic Practices**

LIUNA's traditions, its Constitution, and federal law all protect the democratic rights of LIUNA's members to participate fully, without fear, abuse, or intimidation in all Union affairs. To that end, the following principles shall be respected.

1. Each member shall be entitled to a full share in Union self-government. Each member shall have full freedom of speech and the right to participate in the democratic decisions of the Union. Subject to reasonable rules, regulations and qualifications, each member shall have the right to run for office, to nominate through duly established constitutional procedures, and to vote in free, fair and honest elections. In a democratic union, as in a democratic society, every member has certain rights but he/she also must accept certain corresponding obligations. Each member shall have the right freely to criticize the policies and personalities of Union officials; however, this does not include the right to undermine the Union as an institution; to vilify other members of the Union and its elected officers or to carry on activities with complete disregard of the rights of other members and the interests of the Union; to subvert the Union in collective bargaining or to advocate or engage in dual unionism.

2. Local Union membership meetings, District Council delegate meetings, and International Conventions shall be held regularly, with proper notice of time and place and shall be conducted in an atmosphere of fairness.

3. All Union rules and laws must be fairly and uniformly applied and disciplinary procedures shall be fair and afford full due process to each member.

4. The Union shall ensure that its operations shall be conducted in a democratic and fair manner. Corruption, discrimination or anti-democratic procedures shall not be permitted under any circumstances.

## **Financial Practices**

Union funds are held in trust for the benefit of the membership. The membership is entitled to assurance that Union funds are not dissipated and are spent for proper purposes. The membership is also entitled to be reasonably informed as to how Union funds are invested or used.

1. The Union shall conduct its proprietary functions, including all contracts for purchase or sale or for rendering housekeeping services in accordance with the practice of well-run institutions, including the securing of competitive bids for major contracts where appropriate.

2. The Union shall not permit any of its funds to be invested in a manner which results in the personal profit or advantage of any officer or representative of the Union.

3. There shall be no contracts for purchase or sale or for rendering services that result in the personal profit or advantage of any officer or representative of the Union. Nor shall any officer, representative or employee of the International Union, District Council, or any Local Union accept personal profit or special advantage from any action of any officer or representative of the Union.

4. Neither the International Union, District Council or any Local Union shall make loans to its officers, representatives, employees or members, or members of their families, for the purpose of financing the private business of such persons.

## **Health, Welfare and Retirement Funds**

1. No official, representative or employee of the International Union, District Council or a Local Union, nor any union trustee of a benefit fund, shall receive fees or salaries of any kind from a fund established for the provision of health, welfare or retirement benefits, except for reasonable reimbursement provided for in a collective bargaining agreement or trust agreement and expressly approved by the General President or the Board of Trustees, respectively.

2. No official, employee or other person acting as an agent or representative of the International Union, who exercises responsibilities or influence in the administration of health, welfare and retirement programs or the placement of insurance contracts, shall have any compromising personal ties, direct or indirect, with outside agencies such as insurance carriers, brokers or consultants doing business with the health, welfare and retirement plans.

3. Complete records of the financial operations of all health, welfare and retirement funds and programs shall be maintained in accordance with the best accounting practice. Each Union trustee shall require that each such fund be audited regularly.

4. The Union trustees or administrators of such funds shall make a full disclosure and report to the members covered by the fund at least once each year.

## **Business and Financial Activities of Union Officials**

Any person who represents LIUNA and its members, whether elected or appointed, has a sacred trust to serve the best interests of the members and their families. Therefore, every officer and representative must avoid any outside transaction which creates an actual or potential conflict of

interest. The special fiduciary nature of Union office requires the highest loyalty to the duties of the office.

1. The mailing lists of the Union are valuable assets. In order to protect the interests of our membership, Union officers and representatives shall not, under any circumstances, without the express prior written consent of the General President, turn over a Union mailing list to an outsider for use in the promotion or sale of any goods or services that benefit an individual or private concern. Mailing lists are to be used only to promote the necessary legitimate functions of the Union and for no other purpose. It is improper for any official or representative of the Union, without the express prior written consent of the General President, to permit the use of any mailing list by any third party to promote the sale of any goods or services, or to enable professionals to solicit the membership.

2. No officer or representative of the Union shall have a personal financial interest which conflicts with his/her Union duties.

3. Except for stock purchase plans, profit sharing or retirement plans, no officer or representative of the Union shall have any substantial interest in a business with which LIUNA bargains collectively.

4. No officer or representative shall accept “kickbacks”, under-the-table payments, valuable gifts, lavish entertainment or any personal payment of any kind, other than regular pay and benefits for work performed as an employee, from an employer with which the Union bargains collectively or from a business or professional enterprise with which the Union does business.

5. The principles of this Code apply to investments and activities of third parties where they amount to a subterfuge to conceal the financial interests of such officials or representatives.

## **Barred Conduct**

No Union officer, representative or employee, and no union trustee of any benefit fund, shall engage in “barred conduct.”

“Barred conduct” is defined to include: a) committing any act of racketeering, as defined in Title 18 of the United States Code, Section 1961(1) [set forth in Appendix A to the LIUNA Ethics and Disciplinary Procedure]; b) knowingly associating with any member or associate of the organized crime syndicate known as La Cosa Nostra (LCN); c) knowingly permitting any member or associate of the LCN to exercise control or influence in the conduct of the affairs of the Union; or d) obstructing or interfering with the Inspector General, the Special Counsel, the Independent Hearing Officer, the Appellate Officer or the Special Elections Officer, as those parties are described in the LIUNA Ethics and Disciplinary Procedure. The term “knowingly associate” shall mean that a) an individual knew that the person with whom he or she was associating was a member or associate of the LCN; b) the association related directly or indirectly to the affairs of the Union; and c) the association was more than fleeting or casual. The definition of “knowingly associate” in this Code also provides for, and incorporates by reference, certain additional exceptions as they appear and are defined in the Consent Decree entered in the case of *United States v. District Council of New York and Vicinity of the United Brotherhood of Carpenters and Joiners of America*, 90 Civ. 5722 [set forth in Appendix B to the LIUNA Ethics and Disciplinary Procedure].

## **LIUNA Ethics and Disciplinary Procedure**

The General Executive Board hereby adopts the following revised disciplinary procedure:

### **1. Ethical Practices Code**

The General Executive Board, pursuant to the powers provided for in Article VIII, Section 2(b) of the International Union Constitution of the Laborers' International Union of North America, hereby amends the LIUNA Constitution to incorporate fully the revised Ethical Practices Code.

### **2. Positions**

The General Executive Board hereby recognizes the following positions: the Special Counsel, the LIUNA Inspector General, the Independent Hearing Officer, the Appellate Officer, and the Special Elections Officer.

LIUNA shall purchase a policy of insurance and/or bonds, in an appropriate amount, to protect each person holding one of these positions, and any persons hired by or acting on his behalf, from personal liability for any of the actions under this Disciplinary Procedure. If such insurance is not available, or if the General Executive Board so elects, LIUNA shall indemnify these persons, and any persons hired by or acting on their behalf, from personal liability (and costs incurred to defend against any claim of liability) for any of their actions under this Disciplinary Procedure.

### **3. The Special Counsel**

LIUNA shall engage the services of an outside attorney, highly regarded for his or her competence, integrity and experience. The Special Counsel and his representatives shall be persons who have an understanding and respect for the labor movement and for the causes of working families.

For the purpose of fulfilling the mandate of the GEB and General President, all of the investigative and disciplinary powers described in the LIUNA Constitution, the Uniform Local Union Constitution, and the Uniform District Council Constitution (hereinafter the three constitutions are referred to together as "the Constitution") are delegated to the Special Counsel.

The Special Counsel shall have the authority and duty to investigate and prosecute charges (or otherwise impose discipline, as provided for by the Constitution) against any officer, agent, representative, employee, or member of the Union for engaging in barred conduct. The Special Counsel also shall have the authority to investigate and prosecute charges (or otherwise impose discipline, as provided for by the Constitution) against any officer, agent, representative, employee, or member of the Union for committing a felony violation under federal or state law; for violating any federal or state law relating to the conduct of the affairs of a labor organization or employee benefit or pension plan; or for violating the Constitution, the Ethical Practices Code, the Job

Referral Guidelines or any other disciplinary rule, regulation, practice, or procedure adopted by the General Executive Board.

The Special Counsel shall have the same authority as the General President to impose and review the imposition of trusteeships over any district council, local union or other entity within the Union. All disciplinary actions or trusteeships initiated by the Special Counsel shall be heard by the Independent Hearing Officer in accordance with the terms of Paragraph 5 below and shall proceed as expeditiously as the circumstances of the case permit.

In any such proceeding, the Special Counsel may, in disciplinary proceedings, recommend discipline, including, but not limited to, suspension, removal from Union office, permanent expulsion from the Union, and fine, and, in trusteeship proceedings, may recommend the imposition of a trusteeship or supervision over a district council, local union, or other entity of the Union, or the revocation of the charter of a district council, local union, or other entity of the Union.

As long as the offending conduct at issue is relevant to an accused's current membership in, or service to, the Union, the Special Counsel may bring charges, regardless of when the conduct at issue occurred. Disciplinary investigations shall be initiated and completed and any resulting charges shall be filed and determined as expeditiously as the circumstances of the case permit.

Any officer or member of this International Union, or any person or entity having a business or contractual relationship with this International Union, or any Trustee of any of the International Union's Taft-Hartley Benefit Funds, or the United States Departments of Labor and/or Justice may refer any individual or entity to the Special Counsel for investigation and possible discipline. In making such referral, the referring party (to the extent lawful and appropriate) shall provide the Special Counsel with information relating to misconduct by the individual or entity at issue. The Special Counsel shall, thereafter, investigate the matter and, if charges are warranted, file the charges within a reasonable period.

LIUNA will provide the Special Counsel with sufficient staff, funding, and office space to fulfill his mandate. The Special Counsel shall have complete and unfettered access to, and the right to make copies of, all books, records, accounts, correspondence, files, and other documents of any individual or entity.

The Special Counsel shall have the right to take and require the sworn statement, or sworn oral deposition, of any officer, agent, representative, employee, or member of the Union. Any person subject to such a deposition shall have the right to have legal counsel present and participate during the deposition. If any person refuses to testify or to provide evidence before the Special Counsel on the basis of his privilege against self-incrimination, discipline may be imposed on such person for that reason alone.

The Special Counsel also shall report concerning his or her activities, and the progress he or she is making towards achieving the objectives and purposes of this Disciplinary Procedure.

The Special Counsel and the Inspector General may review and report on Union operations and policy to the General Executive Board and to panels established under the General Executive Board's authority.

#### **4. The LIUNA Inspector General**

LIUNA shall hire an individual, highly regarded for his or her integrity, competence and experience, to serve as a full-time Inspector General. The Inspector General and his/her representatives shall be persons with an understanding of and respect for the labor movement and the causes of working families.

The Inspector General will work cooperatively with the Special Counsel to investigate complaints arising under the Constitution, the Ethical Practices Code, or any other disciplinary rule, regulation, practice, or procedure adopted by the General Executive Board. As to any matter within the jurisdiction of the LIUNA Inspector General, the Inspector General may refer such matter to the appropriate constitutional authority for further proceedings.

The General Secretary-Treasurer shall oversee and supervise LIUNA's audit program and auditors, who shall report to him, and shall provide copies of audit reports to the Inspector General. As may be directed and assigned from time to time by the General President, the Inspector General also may supervise the implementation and operation of other lawfully adopted procedures and policies of this International Union and shall report to the General President his activities and recommendations in that regard.

LIUNA will provide the Inspector General with sufficient staff, funding, and office space, to fulfill his/her mandate. The Inspector General shall have complete and unfettered access to, and right to make copies of, all books, records, accounts, correspondence, files, and other documents of any individual or entity that pertain to any matter under investigation.

The Inspector General shall have the right to take and require the sworn statement, or sworn oral deposition, of any officer, agent, representative, employee, or member of the Union. Persons required to provide a sworn statement shall have the right to consult counsel. If any person refuses to testify, or to provide evidence, before the Inspector General on the basis of his privilege against self-incrimination, discipline may be imposed on such person for that reason alone.

The Inspector General shall provide periodic reports to the GEB and the Special Counsel concerning his/her activities.

The General Executive Board in its discretion may discontinue the position of Inspector General and assign its duties and responsibilities to the Special Counsel.

#### **5. The Independent Hearing, Special Elections and Appellate Officers**

Persons of high integrity, competence and experience shall serve as the Independent Hearing Officer, the Appellate Officer and the Special Elections Officer. These officers and their representatives shall be persons with an understanding of and respect for the labor movement and the causes of working families.

The Independent Hearing Officer shall preside over and provide rulings in a) all cases brought by the Special Counsel, pursuant to this Disciplinary Procedure; and b) such trusteeships,

supervisions or trial boards as may be assigned by the General President or by the Special Counsel; otherwise, supervision or trusteeship matters may be assigned for hearing to a Special Hearings Panel pursuant to Article VIII, Section 2(a-vii) of the International Union Constitution.

The Appellate Officer shall hear all appeals from local union or district council trial boards and in all disciplinary matters brought by the Special Counsel before the Independent Hearing Officer. Such appeals shall be decided under appropriate appellate standards of review.

The Special Elections Officer shall preside over and provide rulings on all election protests brought by any member, officer, or candidate for office within the Union except for such matters pertaining to the nomination and election of Convention delegates and members of the LIUNA General Executive Board, which shall be within the exclusive jurisdiction of the LIUNA Election Officer.

At any hearing conducted before the Independent Hearing Officer by the Special Counsel, the following procedures shall apply:

- a. Hearings shall be initiated by the filing of a written specific charge, which shall be served upon the charged party.
- b. The charged party shall have at least thirty days, prior to the hearing, to prepare a defense.
- c. The party charged may be represented by counsel at the hearing.
- d. A fair and impartial hearing shall be conducted before an Independent Hearing Officer.
- e. The hearing shall be conducted under the rules and procedures generally applicable in labor arbitration proceedings, and decisions shall be made based on a “just cause” standard.
- f. The Independent Hearing Officer may require any officer, agent, representative, member, or employee of, or entity within, the Union to produce any book, paper, document, record or other tangible object, for use in any hearing. Any failure to comply with the request of the Independent Hearing Officer shall be considered by the Independent Hearing Officer in assessing whether such individual or entity should be subject to the imposition of discipline.
- g. All testimony and other evidence shall be received by the Independent Hearing Officer under oath.
- h. If any person refuses to testify or to provide evidence before the Independent Hearing Officer on the basis of his privilege against self-incrimination, or for any other reason not supported by a valid claim of privilege, discipline may be imposed by the Independent Hearing Officer on such person for that reason alone.
- i. Any discipline imposed by the Independent Hearing Officer, or other final decision of the Independent Hearing Officer, shall be subject to appeal by the party disciplined to the Appellate Officer.

Notwithstanding the above procedures, whenever the General President determines that an emergency situation exists in which the welfare or preservation of the Union is at stake, he may suspend without pay any officer or elected union official, at any level of the organization, including without limitation all officers and/or Executive Board members of any local union, any district council, or the International Union, including members of the General Executive Board, pending the filing of formal charges in or within ten days of the date of suspension, and a hearing thereon pursuant to the provisions of sections (a) through (i) of this paragraph.



## 6. Suspension of Indicted Officers

Upon receipt of notice that any officer, agent, representative, or employee of any entity within the Union has been indicted for any felony violation of any federal or state law, or for violating any federal or state law, relating to the conduct of the affairs of a labor organization or employee benefit or pension plan, the General President or the Special Counsel shall place the accused individual on a temporary leave of absence with pay. The Special Counsel shall promptly institute a hearing before the Independent Hearing Officer, who shall determine whether and for how long to continue the suspension.

### Appendix A

"Racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of Title 18, United States Code: Section 201 (relating to bribery), Section 224 (relating to sports bribery), Sections 471, 472, and 473 (relating to counterfeiting), Section 659 (relating to theft from interstate shipment) if the act indictable under Section 659 is felonious, Section 664 (relating to embezzlement from pension and welfare funds), Sections 891-894 (relating to extortionate credit transactions), Section 1028 (relating to fraud and related activity in connection with identification documents), Section 1029 (relating to fraud and related activity in connection with access devices), Section 1084 (relating to the transmission of gambling information), Section 1341 (relating to mail fraud), Section 1343 (relating to wire fraud), Section 1344 (relating to financial institution fraud), Section 1425 (relating to the procurement of citizenship or nationalization unlawfully), Section 1426 (relating to the reproduction of naturalization or citizenship papers), Section 1427 (relating to the sale of naturalization or citizenship papers), Sections 1461-1465 (relating to obscene matter), Section 1503 (relating to obstruction of justice), Section 1510 (relating to obstruction of criminal investigations), Section 1511 (relating to the obstruction of State or local law enforcement), Section 1512 (relating to tampering with a witness, victim, or an informant), Section 1513 (relating to retaliating against a witness, victim, or an informant), Section 1542 (relating to false statement in application and use of passport), Section 1543 (relating to forgery or false use of passport), Section 1544 (relating to misuse of passport), Section 1546 (relating to fraud and misuse of visas, permits, and other documents), Sections 1581-1592 (relating to peonage, slavery, and trafficking in persons), Section 1951 (relating to interference with commerce, robbery, or extortion), Section 1952 (relating to racketeering), Section 1953 (relating to interstate transportation of wagering paraphernalia), Section 1954 (relating to unlawful welfare fund payments), Section 1955 (relating to the prohibition of illegal gambling businesses), Section 1956 (relating to the laundering of monetary instruments), Section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), Section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), Section 1960 (relating to illegal money transmitters), Sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), Sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), Sections 2314 and 2315 (relating to interstate transportation of stolen property), Section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), Section 2319 (relating to criminal infringement of a copyright), Section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical

performances), Section 2320 (relating to trafficking in goods or services bearing counterfeit marks), Section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), Sections 2341-2346 (relating to trafficking in contraband cigarettes), Sections 2421-24 (relating to white slave traffic), Sections 175-178 (relating to biological weapons), Sections 229-229F (relating to chemical weapons), Section 831 (relating to nuclear materials), (C) any act which is indictable under Title 29, United States Code, Section 186 (dealing with restrictions on payments and loans to labor organizations) or Section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under Title 11 (except a case under Section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in Section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, Section 274 (relating to bringing in and harboring certain aliens), Section 277 (relating to aiding or assisting certain aliens to enter the United States), or Section 278 (relating to importation of alien for immoral purpose) if the act indictable under such Section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in Section 2332b(g)(5)(B).

## **Appendix B**

“Knowingly associating” does not include (a) a Union member, representative or official meeting or communicating with a “barred person” who is an employer to discuss the negotiation, execution or management of a collective bargaining agreement, or a labor dispute, when the Union member, representative or official represents, or seeks to represent, or would admit to membership the employees of that employer; (b) a Union member, representative or official meeting or communicating with a “barred person” who is a representative of a labor organization to discuss Union matters; (c) a Union member, representative or official meeting or communicating with an officer, employee or member of LIUNA and its affiliated entities; and (d) a Union member, representative or official meeting or communicating with a relative by blood or marriage solely for social purposes. As used in this paragraph, the term “relative” shall mean a lineal descendent, stepchild, ancestor, sibling or spouse or child of a lineal descendent, stepchild, ancestor, or sibling.

### **AMENDED RULES OF PROCEDURE FOR ARBITRATIONS INVOLVING DISCIPLINARY MATTERS FOR INDIVIDUALS BEFORE THE LIUNA INDEPENDENT HEARING OFFICER**

Pursuant to the LIUNA Ethics and Disciplinary Procedure adopted on January 18, 1995, the following procedural rules are hereby adopted.

#### **1. Pleadings**

All pleadings regarding disciplinary matters before the Independent Hearing Officer (IHO) including the list of charges, motions and briefs shall be filed with the Independent Hearing Officer consisting of an original and one copy. The IHO should be served at Vaira & Riley, 1600 Market Street, Suite 2650, Philadelphia, PA. 19103. A separate copy must be served on the opposing party. The IHO will hold the pleadings confidential and permit no one except the parties and their authorized representatives to examine them during the pre-hearing and hearing stages of the proceedings. A person other than those authorized by this order who wishes to examine the

pleadings at the pre-hearing and hearing stages of the proceedings must file a motion with the IHO which demonstrates a particularized need to examine the documents. The need to examine the pleadings cannot prejudice the right of all parties to a fair hearing.

Upon a final decision by the IHO which concludes an arbitration, the original record containing the pleadings and other documents will be forwarded to the General Secretary-Treasurer of LIUNA who will enter it on a formal docket as described below.

## **2. Notice of Charges, Pleadings, and Proceedings**

(a) A member is entitled to fair notice of charges, pleadings and proceedings in sufficient time to enable the member to defend himself/herself or otherwise comply with the member's obligations under the Ethical Practices Code and the Ethics and Disciplinary Procedure.

(b) The Union's notice obligation is complete upon transmittal of the relevant charges, pleading, hearing notice or subpoena to the member's address by reasonable means, including by mail. For purposes of this rule the union member's "address" is the address listed on the member's LIUNA Membership Standing Form contained in the International database.

## **3. Formal Docket**

(a) The General Secretary-Treasurer of LIUNA shall establish a formal docket at a secure location within the General Headquarters of the Union.

(b) The security of the docket will be the responsibility of the General Secretary-Treasurer.

(c) The docket will contain all charges, pleadings, and other papers filed with the IHO, as well as all opinions and orders of the IHO, arbitration transcripts, and other documents ordered by the IHO to be docketed.

(d) A separate file will be maintained for each matter, with a separate number. The details of this numbering system will be formulated at a future date. The General Secretary-Treasurer shall maintain a separate docket summary sheet, similar to those maintained by federal courts, which indicates the matter number, the date the document is entered on the docket, and a brief description of the document.

(e) The original documents placed on the docket shall not be removed except upon order by the IHO or the Appellate Officer.

(f) The documents on the docket and the docket entry sheet may be examined by members of LIUNA or their representatives upon request made to the General Secretary-Treasurer, but may not be removed from the premises of the General Headquarters except upon a written order by the IHO or the Appellate Officer. It is the responsibility of the General Secretary-Treasurer to insure that no one examining the docketed materials destroys or damages the records.

(g) Copies of the documents on the docket may be made at any time upon request of those persons who are authorized to examine the material.

(h) Persons, other than those authorized to examine the docket by these rules, who wish to examine the docket must request permission from the General Secretary-Treasurer.

#### **4. Discovery**

As a general rule, labor arbitration proceedings do not maintain the formal discovery procedure of common law courts of the United States, nor of many proceedings before administrative law judges in various state and federal agencies. Notwithstanding the informality, due process standards must meet, in the context of the types of hearings and their purposes.

In disciplinary hearings the following discovery procedures will be followed:

(a) Motion for Full Disclosure. Title 29 U.S.C. Sec. 411 (a)(5) requires fair notice of the charges in sufficient time to enable the member to defend himself/herself. The charges should be specific enough to inform the member of the offense(s) of which he/she has been charged, but need not be as specific as a criminal indictment. The standards of particularity of Title 29 U.S.C. Sec. 411 (a)(5), as construed by the courts, will be followed. A member who believes that a charge filed against him/her is not specific enough to enable him/her to defend against it may file for full disclosure (in the nature of a bill of particulars). A motion for a full disclosure must be filed with the IHO within ten business days of the receipt of the charge(s) by the member. A copy of the motion shall be served upon the Special Counsel. The Special Counsel shall respond within seven business days by formal reply to the IHO with a copy served on the opposing party. The IHO will rule upon the contested portions of the motion.

(b) Documents. Within fifteen business days of the filing of charges the Special Counsel shall identify to the member served with charges the documents which the Special Counsel intends to offer into evidence at the hearing. Upon request of the member, the Special Counsel shall make the documents available to the member by providing copies, or in the event the documents are too voluminous, the Special Counsel shall make the documents available for inspection by the member.

This provision is not intended to limit the Special Counsel from obtaining and utilizing additional documents other than those specified within the time limits set out above. In the event the Special Counsel determines that additional documents may be offered in evidence, the Special Counsel will promptly notify the opposing party of their identity to permit examination and inspection.

(c) Witness List. No later than seven business days prior to the scheduled date of the hearing, the Special Counsel shall provide the member with a list of the names of the witnesses the Special Counsel intends to call at the hearing. In the event that other witnesses become available the Special Counsel shall promptly notify the opposing party of their identity.

#### **5. Motions**

All motions must be filed with the IHO pursuant to paragraph (1) of these rules. Opposition to a motion shall be filed within seven business days. Upon petition the IHO may grant additional time to answer a motion.

#### **6. Hearing Procedure**

(a) The member charged is entitled to be represented by a lawyer or other non-lawyer representative of his/her choice, at all stages of the proceedings.

(b) The hearings will be conducted in a courtroom-like manner, although strict evidentiary rules which are ordinarily followed by common law courts will not be applied. Hearsay may be admitted provided that it is corroborated by other independent and credible evidence, is self-authenticating or there are other circumstantial guarantees of trustworthiness.

Documents admitted in evidence will be properly marked and made part of the record. All witnesses will be sworn and testimony will be transcribed by an accredited court reporter. A transcript will be filed with the IHO for inclusion in the record. Testimony of witnesses will consist of direct examination, cross-examination, redirect and recross. A witness once excused may be recalled with permission of the IHO. Objections and motions during the hearing shall be made according to normal courtroom procedure. Unless otherwise directed by the IHO, witnesses will be sequestered from the hearing room except during their testimony.

(c) Evidence by Affidavit. The IHO may receive and consider evidence of witnesses by affidavit in accordance with the custom and practice of labor arbitrations.

(d) The hearings will be conducted at a location designated by the IHO. An attempt will be made to hold the hearings at locations convenient to all parties. Attendance at the hearings will be limited to the parties, their attorneys or representatives.

(e) The burden of proof is upon the Special Counsel to convince the IHO by a preponderance of the evidence that just cause exists to discipline the accused.

(f) Subpoenas. Either party may request the IHO to issue a subpoena *duces tecum* (for documents) or ad *testificandum* (for testimony) to a member or officer of LIUNA pursuant to Section 5(f) of the amended disciplinary rules. If the IHO is convinced that the documents or testimony sought are probative and admissible, a subpoena will be issued. Failure to comply with the subpoena will be dealt with in the manner set forth in Section 5(f) of the LIUNA Ethics and Disciplinary Procedure pertaining to such refusals.

This section in no ways limits the subpoena power granted independently to the Special Counsel by the LIUNA Ethics and Disciplinary Procedure.

(g) Depositions. In the event that a non-LIUNA member is willing to offer testimony, but is unavailable to appear at the hearing, either party may petition the IHO for permission to take the deposition of the person. If the moving party convinces the IHO that the testimony of the witness is probative and admissible a deposition may be taken for evidentiary purposes, following as closely as possible the Federal Rules of Civil Procedure. The transcript of the deposition may be offered in evidence as part of the hearing.

(h) The IHO may request briefs and arguments on questions that arise during the hearing and may request proposed findings and conclusions.

(i) The parties may make summary arguments and submit summary briefs in conclusion.

(j) The IHO will render a decision in writing. The IHO need not await the transcription of the record to render a final decision.

(k) Following the IHO's written decision, the IHO will transmit the original record to the General Secretary-Treasurer for inclusion on the docket.

## **AMENDED RULE OF PROCEDURE FOR ALL LIUNA LOCAL UNION TRIAL BOARD HEARINGS**

Pursuant to the LIUNA Ethics and Disciplinary Procedure adopted on January 18, 1995, the following rules are hereby adopted. The rules shall take effect on May 20, 1996 and shall apply to all LIUNA Local Union Trial Board Hearings.

### **Rule 1. Scope and Purpose of Rules**

These rules govern the procedure in all Local Union Trial Board Hearings conducted by Local Unions and District Councils of the Laborers' International Union of North America (hereafter, "LIUNA" or "the Union"). They shall be construed and administered to secure the just and speedy determination of every matter brought before a Local Union Trial Board (hereafter, "the Trial Board"), and to ensure uniformity of disciplinary process throughout the Union. The following rules shall in no way be construed to conflict with the Constitutions of LIUNA or the aforementioned LIUNA Ethics and Disciplinary Procedure.

### **Rule 2. Commencement of Trial Board Process**

Pursuant to Article XI, Section 1 of the Uniform Local Union Constitution ("Local Union Constitution"), any officer or member in good standing of a Local Union may bring charges against any other officer or member of a Local Union, by filing written charges in duplicate with the Recording Secretary of the Local Union of which the accused is a member. These charges must be signed by the person preferring them and indicate the provisions of the Constitutions to be relied upon, or the agreement or rule alleged to have been violated. The charges must set forth the violation or wrong charged and the date on which it allegedly occurred with a level of specificity and particularity that will enable the charged party to understand the conduct with which he or she is charged and, therefore, to prepare adequately a defense against such charges.

### **Rule 3. Notification of Preferment and Hearing**

In accordance with Article XI, Section 2 of the Uniform Local Union Constitution, the Recording Secretary, upon receipt of written charges against a member or officer of the Local Union, shall promptly notify the members of the Executive Board that charges have been filed, and after consultation with them, shall promptly set a date for a hearing and trial on the charges. Immediately thereafter, a copy of the charges shall be mailed to the accused at his or her last-known address. A written notice of the time and place where the hearing and trial will take place before the Trial Board shall be mailed to the accused and to the charging party not less than seven days nor more than twenty-one days before the date of the hearing and trial.

### **Rule 4. Service of Materials Upon Other Parties**

Any materials relating to the Trial Board Hearing that are submitted by a party to the Recording Secretary or Trial Board before, during or after the Trial Board Hearing shall also be provided at or before the time of such submittal to all other parties involved in the matter at their last-known address.

## **Rule 5. Computation of and Extensions of Time**

### **(a) Computation of Time**

In computing any period of time prescribed by these rules, only business days shall be included. The day of the act or event from which the designated period of time begins to run shall not be included.

### **(b) Enlargement of Time**

The Trial Board may enlarge the time prescribed by these rules on request of any party. A request for more time shall be set forth in a letter submitted to the Recording Secretary, stating the reasons for the request. A copy of any letter requesting an extension shall be served on all other parties in accordance with Rule 4 of these Rules of Procedure.

### **(c) Requests for Delay of Hearing**

Pursuant to Article XI, Section 3 of the Uniform Local Union Constitution, where the charging party or the accused makes a request for a delay of the Trial Board Hearing, the Trial Board may grant a postponement, for good cause shown. Such requests shall be set forth in a letter submitted to the Recording Secretary, stating the reasons for the request. A copy of the letter shall be served on all other parties in accordance with Rule 4 of these Rules of Procedure.

## **Rule 6. Changes to Charges**

After preferring charges, if the charging party wishes to amend or supplement the charges, he or she shall make such changes in writing and mail them to the Recording Secretary. A copy must be mailed to all other parties in accordance with Rule 4 of these Rules of Procedure. Once a Trial Board Hearing has been scheduled, no changes may be submitted except with the consent of the President, or, if the President is disqualified from the Trial Board, the Vice-President. If both officers are disqualified, changes in the charges may be submitted only with the consent of the remaining members of the Trial Board.

## **Rule 7. Answer to Charges**

The accused may, but is not required to, submit to the Recording Secretary a written answer to the charges any time after receiving a copy of the charges from the Recording Secretary, up to and through the time of the Trial Board Hearing.

The answer may set forth why the accused should be found not guilty of the charges by the Trial Board, including any defenses the accused may wish to assert. Failure to raise any claim, defense or issue in the answer shall not constitute a waiver of any kind.

Such an answer shall be served on the charging party in accordance with Rule 4 of these Rules of Procedure.

## **Rule 8. Charges Preferred Against Multiple Members**

Charges preferred against more than one member or officer of the Local Union may be heard by the Trial Board at a single hearing if the charges arise from the same alleged conduct or scheme. An accused, however, may request in writing to the Recording Secretary, not less than seven days before his or her scheduled Trial Board Hearing, that the charges against him or her be heard separately from those against another accused. The Trial Board shall grant such a request for good cause shown.

### **Rule 9. Requests for Documents**

Either the charging party or the accused may request documents from the Local Union. The Local Union shall honor such requests if: (1) made not less than seven days prior to the scheduled date of the Trial Board Hearing; (2) the requests are not substantially burdensome on the Local Union; (3) the documents requested are narrowly relevant to the dispute at issue; and (4) or honoring such requests would not compromise the goals, security, privileged relationships or other important interests of the Local and International Unions.

If the Local Union has concerns about the confidentiality of documents, the Local Union may make the documents available to the requesting party at the offices of the Local, but not permit the requesting party to retain or copy the documents.

If required to honor a request for documents pursuant to this Rule, the Local Union shall make such documents available not less than three days prior to the scheduled date of the Trial Board Hearing.

### **Rule 10. Establishment of a Trial Board**

In accordance with Article XI, Section 3 of the Uniform Local Union Constitution, the members of the Executive Board shall constitute the Trial Board; except that neither the charging party, nor the accused, nor any member directly interested or involved in the charges may sit as a member of the Trial Board.

In such cases, the President of the Local Union shall appoint a substitute or substitutes from the members in good standing reasonably soon after the need for such substitution(s) is apparent. If the President is to be disqualified, then the Vice-President shall appoint a substitute or substitutes; and if he is also to be disqualified, then the substitute shall be appointed by the remaining Trial Board members.

The impartiality of the Trial Board is particularly at risk when relatives, close friends or close political allies of either the charging party or the accused, or members who are directly involved in the conduct at issue sit on the Trial Board. When deciding the composition of the Trial Board, great care must be used in selecting substitutes to ensure that the substitutes are selected in a neutral fashion and can be fair to both parties.

If a Trial Board is convened to hear charges that were previously heard by an earlier Trial Board, as in the case of a remand for a new hearing by the Appellate Officer, no members of the earlier Trial Board may serve on the new Trial Board.

Where the entire Executive Board of a Local Union appears to be disqualified, the matter may be referred to the General President, who shall be entitled to investigate to determine whether grounds for such disqualification exist. Upon a finding of grounds for disqualification, the General President shall have discretion to assume original jurisdiction over such charges, in which case he shall refer the matter to the Independent Hearing Officer, or, in his discretion, to the appropriate District Council for trial. Matters referred to the Independent Hearing Officer or the District Council by the General President are subject to appeal to the Appellate Officer. In the event the General President refers the matter to the District Council, an appeal may be made to the Appellate Officer.



**Rule 11. Decisions by Executive Board in Absence of Trial Board**

Any decision to be made by the Trial Board pursuant to these Rules shall be made by the Executive Board if a Trial Board has yet to be established. No officer of the Executive Board may partake in any such decision if he or she is also the charging party, the accused, or has a direct interest in the matter to which the decision pertains.

**Rule 12. Commencement of Trial Board Hearing**

Both the charging party and the accused shall be ready and able to present all evidence they wish to present to the Trial Board, including the testimony of witnesses, upon the commencement of the Trial Board Hearing, unless the Recording Secretary or the Trial Board specifically indicates in writing to all parties not less than three days prior to the scheduled date of the Hearing that they will not be bound by such a requirement.

**Rule 13. Attendance at Trial Board Hearings**

The entire Trial Board Hearing may be attended by the Trial Board, the charging party, the accused, a licensed court reporter, and any attorney or other person authorized by the Trial Board to represent a party pursuant to Rule 15 of these Rules of Procedure. In matters tried before a Local Union Trial Board or Executive Board, any member in good standing of that Local may attend the hearing. In matters tried before a District Council Trial Board, any member in good standing of any Local Union involved in the case may attend the hearing.

**Rule 14. Failure of a Party to Attend Trial Board Hearing**

Pursuant to Article XI, Section 4 of the Uniform Local Union Constitution, if the charging party fails to appear, the charges shall be dismissed. If the charging party ceases attending the Trial Board Hearing after it has commenced but before the hearing is completed, the charges shall be dismissed. If the accused fails to appear, the Trial Board shall proceed with the hearing and receive all the facts and evidence available.

**Rule 15. Representation By One Other Than A Party**

Either the charging party or the accused may be represented at the Trial Board Hearing by a fellow member in good standing of the Local Union. The charging party or the accused may be represented by an attorney only in the discretion of the Trial Board.

**Rule 16. Recording of the Trial Board Hearing**

The Trial Board Hearing should be recorded by a licensed court reporter. The Trial Board's deliberations shall not be recorded. The Local Union shall pay for the court reporter's services.

Such recording by a licensed court reporter shall constitute compliance with the requirement of Article XI, Section 5 of the Uniform Local Union Constitution that the Trial Board record minutes of its meetings and proceedings. The transcript of the Hearing, together with any documents submitted, shall constitute the official record of the Trial Board.

The Local Union should generally not seek to satisfy this requirement by tape recording the proceedings.

Any Trial Board may obtain a waiver of the duty to transcribe its proceedings upon the prior written approval of the Appellate Officer.

**Rule 17. Trial Board Hearing**

In accordance with Article XI, Section 4 of the Uniform Local Union Constitution, the Trial Board Hearing shall be conducted in an orderly, fair, and impartial manner and should assure the full presentation of all the facts to the Trial Board.

The burden of proof shall be on the charging party. The charging party shall first present whatever evidence he or she possesses to substantiate the charges. The accused shall have the right to be present throughout the hearing and to cross-examine the charging party and any of the witnesses upon completion of his or her testimony.

After the evidence in support of the charges has been received, the accused shall present his or her defense. The charging party shall have the right to cross-examine the accused and any of the witnesses upon completion of his or her testimony.

The Trial Board should be chaired by the President, or the next highest official of the Local Union if the President has been disqualified. If no Local Union officials are serving on the Trial Board, the Trial Board should select a chairperson from among its members. The chairperson of the Trial Board should conduct the Hearing leading the parties through the proceedings and maintaining order.

**Rule 18. Evidence**

The charging party and the accused may offer such evidence as is relevant and material to the charges and necessary to an understanding and determination of the allegations.

The charging party and the accused may offer witnesses to testify during the Hearing. Neither the charging party, the accused, nor the Trial Board may compel a witness to testify. Exhibits, when offered by the parties, may be received in evidence by the Trial Board.

Either the charging party or the accused may offer signed statements from witnesses who cannot attend the Hearing, as well as any other hearsay. The Trial Board may consider such materials and enter them as evidence in the record if they are found reliable; except that if hearsay evidence is critical to proving the charges and little or no corroborative evidence is offered, the hearsay evidence shall be deemed inadmissible.

The Trial Board shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence is not necessary. All evidence shall be taken in the presence of all members of the Trial Board and all of the parties, except where any of the parties is absent and has waived his or her right to be present.

**Rule 19. Closing of Trial Board Hearing**

The Trial Board shall specifically inquire of all parties present whether they have any further proofs to offer or witnesses to be heard. If satisfied that the record is complete, the Trial Board shall declare the Trial Board Hearing closed.

**Rule 20. Reopening of Trial Board Hearing**

The Trial Board Hearing may be reopened on the Trial Board's initiative, or upon application by the charging party or the accused, at any time before the Trial Board issues its Report. The decision whether to reopen a Trial Board Hearing is in the discretion of the Trial Board.

**Rule 21. Dismissal of Charges****(a) Voluntary Dismissal**

The charging party may withdraw the charges at any time prior to the Trial Board Hearing by letter to the Recording Secretary or by oral communication during the Trial Board Hearing. If a charging party voluntarily dismisses the charges, he or she may not subsequently prefer the same charges.

**(b) Involuntary Dismissal**

Except pursuant to Rule 14 of these Rules of Procedure, the Trial Board shall not dismiss the charges until all the evidence has been presented to it by all the parties, and the Trial Board Hearing has been otherwise completed.

**Rule 22. Trial Board's Findings and Decision**

In accordance with Article XI, Section 5 of the Uniform Local Union Constitution, upon conclusion of the hearing, the Trial Board shall consider all of the evidence and argument submitted and proceed to make its findings and decision. It shall prepare a Report of said findings and decision, which shall set forth specifically the grounds for its findings and decision and which shall be signed by all the members of the Trial Board. The Recording Secretary shall forthwith mail a copy of said Report to the charging party and the accused at their last-known addresses.

**Rule 23. Sanctions**

If the Trial Board finds the accused guilty of any of the charges, it shall promptly determine appropriate sanctions, if any. Appropriate sanctions include, but are not limited to, a letter of reprimand to be published in the local newsletter, a fine, suspension from office, suspension from the Local or International Union, and expulsion. The Trial Board may also conclude that no sanction is appropriate, even if it finds against the accused.

**Rule 24. Costs**

The costs of any Trial Board Hearing, including the cost of the court reporter, shall generally be paid by the Local Union. The Trial Board may impose the costs on the charging party only on a unanimous finding that the charges were filed in bad faith, for the purpose of harassment, and were entirely frivolous and without any basis. The assessment of costs on the charging party is highly disfavored, and is expected to be quite rare.

**Rule 25. Majority Decision**

Unless specifically stated otherwise in these Rules of Procedure or the Constitutions, all decisions of the Trial Board must be by a majority.

**Rule 26. Substantial Compliance**

The Trial Board, within its discretion, may consider pleadings that are untimely or otherwise not in technical compliance with these Rules.

**Rule 27. Submission of Trial Board's Report at Next Local Union Meeting**

In accordance with Article XI, Section 6 of the Uniform Local Union Constitution, a copy of the Trial Board Report shall be submitted at the next regular meeting of the Local Union. The findings and decision of the Trial Board shall be binding unless and until two-thirds of the members present and voting at said meeting reverse or modify the findings and decision of the Trial Board. The Recording Secretary shall forthwith mail a copy of said action to the charging party and the accused at their last-known addresses.

**Rule 28. Appeal of Trial Board Decision**

In accordance with Article XI, Section 7 of the Uniform Local Union Constitution, if either the charging party or the accused is aggrieved, he or she may, within thirty days from the date of the notice of said action, appeal therefrom to the General Executive Board by filing such appeal with the General Secretary-Treasurer at LIUNA Headquarters in writing. The appeal shall clearly and specifically set forth the grounds for support of said appeal and shall contain a copy of the findings and decision, and action.

All appeals received by the General Executive Board shall be promptly reviewed by the Inspector General for determination as to whether the appeal will be forwarded to the Appellate Officer. Such determination is at the Inspector General's discretion.

After notice of such appeal from the General Secretary-Treasurer or the Appellate Officer, the Local Union shall then submit promptly to the General Secretary-Treasurer or the Appellate Officer, whichever sent the notification, the following:

1. Copy of the charges
2. Copy of the notice for hearing
3. Record of the Trial Board Hearing
4. Copy of Report of the Trial Board
5. Copy of notification of the Trial Board's decision
6. Copy of minutes of regular meeting at which the Trial Board reported to the Local Union
7. Copy of notification of Local Union action

**Rule 29. Effect of Appeal of Trial Board Decision**

If an appeal is seasonably taken, it shall have the effect of staying the decision and sentence of the Trial Board, and no fine, suspension or expulsion shall be effective pending the outcome of the appeal, provided, however, that where any officer has been found guilty and suspended from office because of negligence, incompetence or dishonesty in the performance of his or her duties, the officer shall remain suspended from holding such office pending the decision of the Appellate Officer or the General Executive Board on his or her appeal.

**Rule 30. Harmless Error**

No error in either the admission or exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted to be done by the Trial Board or by any of the parties is grounds for granting a new Trial Board Hearing or for otherwise disturbing the Trial Board's Decision, unless refusal to take such action appears to the Trial Board to be inconsistent with substantial justice. The Trial Board at every stage of the proceedings may disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

W. Neil Eggleston  
LIUNA Appellate Officer

Rule 13 was amended on August 22, 1996, to clarify that only members of a Local Union that is connected to the case may attend a Trial Board proceeding. Thus, in the case of a Trial Board conducted before a Local Union, only members of that Local may attend. In case of a Trial Board conducted before a District Council, only members of the Local Unions involved in the dispute may attend.

Rule 16 was amended on August 22, 1996, to clarify that a Trial Board may request from the Appellate Officer a waiver of the Rule's provision for transcription by a licensed court reporter. This amendment is intended to provide a limited exception for small Locals for which the cost of transcription would be prohibitively expensive. The Appellate Officer will not ordinarily grant a waiver except on a clear and convincing demonstration of hardship. A waiver of transcription, if granted, does not waive the Trial Board's constitutional obligation under Article XI, Section 5 to make some record of its proceedings.

These amendments are not intended to, nor should they be interpreted to, expand or restrict any substantial right of a party to a Trial Board proceeding.

**OFFICE OF THE APPELLATE OFFICER  
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA**

Rules of Procedure for Appeals to the Appellate Officer.

**Rule 1. Scope of Rules**

Pursuant to the LIUNA Ethics and Disciplinary Procedure adopted on January 18, 1995, the following rules are hereby adopted. The rules shall take effect on May 10, 1995 and shall apply to all appeals to the Appellate Officer from decisions rendered after May 10, 1995 by the Independent Hearing Officer ("IHO").

**Rule 2. Pleadings**

All pleadings referred to in these rules, including notices of appeals, motions, briefs, and appendices, shall be filed with the Appellate Officer in care of the following: W. Neil Eggleston, Appellate Officer, Debevoise & Plimpton, LLP, 555 13th Street, N.W., Washington, D.C. 20004. The original and one copy of each pleading shall be filed. A separate copy must be served on the opposing party. Filing of pleadings may be accomplished by mail or courier addressed to the Appellate Officer. Pleadings will be treated as filed on the day of mailing or transmittal. The Appellate Officer will hold the pleadings confidential and permit no one except the parties and their authorized representatives to examine them during the pendency of the proceedings.

**Rule 3. Notice of Appeal**

A party wishing to appeal from a final decision of the IHO must file, within 10 days of the filing of a final decision by the IHO, a notice of appeal with the Appellate Officer. The notice shall indicate the party or parties taking the appeal; the date of the decision below; and the names of counsel for or other authorized representative of each party.

#### **Rule 4. Briefing Schedule**

Upon filing of the notice of appeal, the Appellate Officer will serve upon each party a briefing schedule indicating when each party's brief is due to be filed. The briefing schedule will also set forth the page limits applicable to each party's brief. In appropriate cases, the Appellate Officer, upon the motion of any party or on his own motion, may order expedited briefing and argument.

#### **Rule 5. Briefs**

##### **(a) Principal Brief**

The principal briefs of the appellant and appellee shall contain the following:

- (1) A statement of the issues presented for review.
- (2) A statement of the facts relevant to the issues presented for review. All facts stated shall be supported by reference to the page or pages of the record or appendix (see Rule 6, below) where that fact appears.
- (3) An argument.
- (4) A short conclusion stating the relief sought.

##### **(b) Reply Brief**

The appellant may file a brief in reply to the brief of the appellee.

#### **Rule 6. Appendix to the Briefs**

##### **(a) Contents**

The appellant shall submit, bound separately from the principal brief, one copy of an appendix containing any opinion, memorandum of decision, report or findings of facts and conclusions of law issued by the IHO in support of his decision. The appendix shall also contain copies of any other opinions, orders, excerpts from transcripts and other documents relevant to the issues raised on appeal. The appellee may also submit with its brief one copy of an appendix containing any materials not contained in the appellant's appendix.

##### **(b) Hearing of Appeals on the Original Record Without the Necessity of an Appendix**

The Appellate Officer may, upon motion of any party or on his own motion, dispense with the requirement of an appendix and permit appeals to be heard on the original record.

#### **Rule 7. Computation and Extensions of Time**

##### **(a) Computation of Time**

In computing any period of time prescribed by these rules or a briefing schedule, only business days shall be included. The day of the act or event from which the designated period of time begins to run shall not be included. In all instances in which a responsive pleading or brief is required, the time period shall commence running from the date the brief or pleading requiring a response was mailed or otherwise transmitted.

##### **(b) Enlargement of Time**

The Appellate Officer may enlarge the time prescribed by these rules on request of any party. Such requests shall be set forth in a letter submitted to the Appellate Officer stating the reasons for the request, and a copy of such letter shall be served on all other parties.

#### **Rule 8. Oral Argument**

The principal briefs of the appellant and appellee shall state whether oral argument is requested. The Appellate Officer may request oral argument on his own motion in the absence of a

request for oral argument by either party. If oral argument is ordered, the Appellate Officer will notify each party within a reasonable time after the filing of all briefs. Arguments will be heard at a time and place designated by the Appellate Officer. An attempt will be made to hold oral argument at a location convenient to all parties. Attendance at the argument will be limited to the parties and their attorneys or representatives.

#### **Rule 9. Petition for Rehearing**

A petition for rehearing may be filed within 10 days after the Appellate Officer renders a decision. The petition shall state the points of law or fact which in the opinion of the petitioner the Appellate Officer has overlooked. There will be no oral argument in support of a petition. No answer to a petition will be received unless requested by the Appellate Officer. If a petition for rehearing is granted, the Appellate Officer may make a final disposition of the case without reargument.

#### **Rule 10. Motions**

Unless otherwise provided under these rules, an application for an order or other relief shall be made by filing a motion with service on all parties. Unless the time for filing a response is modified by the Appellate Officer, any party may file a response in opposition to a motion within 7 days after the motion is mailed or otherwise transmitted. No oral argument will be heard on motions unless otherwise ordered by the Appellate Officer.

#### **Rule 11. Permissive Appeals**

An appeal from a ruling other than a final disposition by the IHO may be sought by filing a petition for leave to appeal with the Appellate Officer. Allowance of such an appeal is disfavored, and is within the discretion of the Appellate Officer. The petition shall be filed within 15 days of the ruling from which appeal is sought. A notice of appeal need not be filed. The petition for leave to appeal shall contain a statement of the facts necessary to an understanding of the issues to be presented by the appeal; a statement of those issues and of the relief sought; a statement of the reasons why in the opinion of the petitioner the appeal shall be allowed; and a copy of the ruling complained of and any opinion or memorandum relating thereto. No answer to a petition will be received unless requested by the Appellate Officer.

#### **Rule 12. Remand for Further Investigation**

The Appellate Officer reserves the right to remand any matter to the IHO for further investigation or fact-finding.

#### **Rule 13. Substantial Compliance**

The Appellate Officer, within his discretion, may consider pleadings that are untimely or otherwise not in technical compliance with these rules.

#### **Rule 14. Transmission of Record**

Following the issuance of the Appellate Officer's final written decision and the expiration of time for the filing of any petition for rehearing, the Appellate Officer will transmit the original record to the General Secretary-Treasurer for inclusion in the docket in accordance with the procedure outlined in Rule 2 of the IHO's Rules of Procedure For Arbitrations Involving Disciplinary Matters For Individuals Before the Independent Hearing Officer.

W. NEIL EGGLESTON

Appellate Officer

DATE: May 10, 1995

### **JOB REFERRAL GUIDELINES**

In order for the Laborers' International Union of North America (LIUNA), and its subordinate local unions, to maintain and administer a processing system for referral of applicants to employment in a fair and equitable manner, and to establish records and procedures which will be adequate to disclose fully the basis on which each referral is made, the following guidelines have been promulgated and shall be adopted and implemented by each LIUNA Local Union:

#### **1. Requirements And Review Process**

Each Local Union in the United States shall adopt written referral rules conforming to the revised Hiring Hall Guidelines, set forth below. The purpose of these Hiring Hall Guidelines is to maintain and administer a processing system for referral of applicants to employment in a fair and equitable manner, and to establish records and procedures which will be adequate to disclose fully the basis on which each referral is made.

**All rules and policies pertaining to the referral of applicants must be written and prominently posted in the Local Union office and hiring hall.** All referral issues not specifically mandated by the following Guidelines must be individually approved by membership vote at two consecutive meetings and then submitted, with the relevant minutes, for the Special Counsel's review and approval.

Once approved by the Special Counsel, all referral rules will remain in effect indefinitely; renewed approval is not required.

#### **2. Non-Discrimination in Job Referrals**

Referrals to jobs will be on a nondiscriminatory basis and will not be based on, or in any way affected by, race, gender, national origin, sexual orientation, disability, religion, or lawful union-related activity.

#### **3. Effect on Hiring Hall Guidelines**

All referrals by a Local Union to jobs within its jurisdiction shall be made in accordance with these Guidelines except to the extent that any rule contained herein conflicts with a term of the collective bargaining agreement. Any Local Union that concludes that these Guidelines conflict with the term of a collective bargaining agreement shall submit a Notice of Conflict citing the relevant sections of the agreement and the Hiring Hall Rules to the Special Counsel. The Special Counsel shall advise the Local Union in writing whether such a conflict exists.



#### **4. Registration of Availability for Referral**

A. An applicant seeking referral to a job must file with the Local Union a signed and dated referral form providing name, telephone number, social security number, and stating any skills the applicant possesses and the jobs the applicant is able to perform, including any relevant licenses or certifications. Blank referral forms will be available at the Local Union. The Local Union will compile an out-of-work list, consisting of the applicants who have registered their availability for referral, listed in order of seniority according to their date of registration. The Local Union may confirm any prior employment, licenses, or certifications listed by an applicant. The Local Union may challenge an applicant's representations concerning his prior employment, licenses, or certifications. If the Local Union makes a challenge, it must promptly notify the applicant in writing, who shall have five business days from the receipt of this notice in which to respond and to submit any relevant information. Any applicant who remains aggrieved by a final decision of the Local Union may file a protest with the Independent Hearing Officer, who shall finally resolve all such disputes.

B. Apprentices shall be referred under a separate out-of-work list, in order according to the requirements of the apprenticeship program.

C. Only applicants who are not currently employed at the trade may register their availability for referral.

D. Applicants shall be removed from the out-of-work list upon receiving a job referral, subject to the Local Union's stated short-term referral policy (this may include instituting a policy whereby applicants are removed from the referral list after a single referral, regardless of the duration of the job). An applicant who is laid off or discharged from a job must again register his or her availability for referral by telephone, postcard, or in person, in accordance with the Local Union's written policy, in order to be included on the out-of-work list.

E. Applicants must also register their availability for referral periodically (once each month, ninety days, or half year), in accordance with the Local Union's written policy.

#### **5. Referral Procedure**

A. Applicants on the out-of-work list shall be referred to jobs in the order in which they have registered their availability for referral, with the first registered applicant referred first, provided that the applicant has the qualifications requested by the employer.

B. Requests by an employer for specific applicants should be made in writing or, if made orally, shall be confirmed promptly by the employer in writing.

C. The Local Union shall record all employer requests for laborers, the date and time of the request, the name of the dispatcher, the name of the employer, the location of the job, and the start date of the job.

D. An applicant shall not be referred to an employer if the applicant was previously discharged for cause by the same employer.

## **6. Dissemination of the Referral Rules**

All rules and referral policies must be in writing. These Guidelines and all Local Union referral rules and policies must be posted conspicuously in the office and hiring hall of each Local Union, where they are available for review at all times in which the Local Union is open. Additional copies of these Guidelines and all Local Union referral rules shall be made available to members upon request, subject to the payment of reasonable copying costs. New members shall receive a free copy of the job referral rules upon admission to membership.

## **7. Job Referral Records**

A Local Union shall maintain accurate and current records of all job referrals. The records shall be preserved for a period of three (3) years from the making of each record. The records shall include the following information:

A. Under telephone referral systems where the Local Union calls the applicant, the Local Union must record all referral attempts, including the date and time of the call(s), the name of the person making the call(s), and the outcome of the call.

B. Under telephone bid systems, the Local Union must record every bid received, including the name of the applicant, the time of his or her call, the name of the office employee who took the call, and the job the applicant was bidding for.

C. Under in-person referral systems, the Local Union must record the attendance of every applicant and the outcome of each attempted referral made by the Local Union or bid for referral made by the applicant.

D. Under all referral systems, the Local Union must also record:

- i. All registration by applicants of their availability for referral, including the date of each applicant's registration;
- ii. A current out-of-work list, including all applicants whose registrations of availability for referral are then in effect, listing the date of each applicant's registration, and organized according to seniority;
- iii. All requests from employers for workers, including the date of each request, the name of the employer, the location of the job site, the length of the job (if known), and any request by the employer for applicants with special skills, licenses, or certifications, or a specific applicant pursuant to 5(B), above.
- iv. All job referrals made, including the name of the employer, the applicant referred, the date on which the applicant registered his or her availability for employment, the date of the referral, the location of the job site, the date the applicant was hired, and the date any employment terminated.

## **8. Access to Job Referral Information**

A. The Local Union must promptly respond to any applicant's request for access to any record containing the job referral information described in §7, pertaining to periods during which the applicant was registered for referral. Access to records includes the right to photocopy or take

notes from all referral documents. Local Unions may adopt rules that restrict access to Social Security Numbers and, where there is a concern that such information may be misused in a manner contrary to the interests of the local union, members' telephone numbers. In all cases, however, applicants must be provided sufficient information to determine the identity of all individuals registered, contacted, or dispatched for employment. An appointment for inspection shall be scheduled for within five (5) days of request. Copies shall be provided promptly, subject to reasonable copying costs.

B. Lists containing the information described in §§7D(i) and 7D(ii) shall be conspicuously posted, or otherwise immediately available for inspection, at the offices of a Local Union on a weekly basis, so that the previous week is posted or immediately available by the close of business on the following Monday. The information shall remain posted or immediately available for at least two weeks.

### **9. Alleged Violations of Hiring Hall Rules**

Any complaints or concerns regarding alleged violations of hiring hall procedures should be directed in writing to the Office of the General President, Laborers' International Union of North America, 905 16<sup>th</sup> St., NW, Washington, D.C. 20006. Alleged violations of LIUNA's Code of Ethics should be promptly addressed to Inspector General W. Douglas Gow, (202)942-2360.

### **GENERAL EXECUTIVE BOARD'S AMENDED POLICY ON APPOINTMENT OF OFFICERS, TRUSTEES AND BENEFIT FUND REPRESENTATIVES**

Pursuant to its authority under Article VIII, Sections 2(c) and (n) of the Constitution of the Laborers' International Union of North America, and in order to accomplish more fully the purposes of the LIUNA Ethical Practices Code, and the Ethics and Disciplinary Procedure and to ensure compliance with Section 411 of the Employee Retirement Income Security Act of 1974, it is hereby declared to be the policy of the General Executive Board that the Special Counsel will be advised of the names of all persons selected by the International Union or any of its affiliated or subordinate bodies to hold the position of Regional Manager, Assistant Regional Manager, International Representative, Special International Representative, Trustee or Supervisor to oversee the affairs of a labor organization pursuant to 29 U.S.C. §162, or labor trustees on any pension benefit plan or welfare benefit plan or other trust fund associated with LIUNA or its affiliated or subordinate bodies, including but not limited to PACs, LECET funds, and training funds.

### **GENERAL EXECUTIVE BOARD'S POLICY ON CONTRACT PROCEDURES**

Pursuant to its authority under Article VIII, Sections 2(c) and (n) of the Constitution of the Laborers' International Union of North America and in order to accomplish more fully the purposes of the LIUNA Ethical Practices Code and the Ethics and Disciplinary Procedure, it is hereby declared to be the policy of the General Executive Board that all proposed contracts in excess of two-hundred fifty thousand (\$250,000.00) dollars to be entered into by LIUNA or any of its affiliated or subordinate bodies shall be submitted to the Inspector General. If the Inspector General determines that entry into such contract is inconsistent with the objectives and purposes of the Code or the EDP, LIUNA or its affiliated or subordinate body may not enter into such contract. No proposed contract shall be subdivided or apportioned in order to avoid the intent and purposes

of this policy. The Inspector General should be provided with such advance notice of the proposed contract as may be reasonable in the circumstances to allow him to form an informed judgment.

### **GENERAL EXECUTIVE BOARD'S POLICY ON GIFTS OR DONATIONS OF UNION ASSETS OR PROPERTY**

Pursuant to its authority under Article VIII, Sections 2(c) & (n) of the Constitution of the Laborers' International Union of North America and in order to accomplish more fully the purposes of the LIUNA Ethical Practices Code and the Ethics and Disciplinary Procedure, it is hereby declared to be the policy of the General Executive Board that any proposed gift or donation of Union property or assets to be made by LIUNA or any of its affiliated or subordinate bodies, where such gift or donation exceeds the fair market value of ten thousand(\$10,000.00) dollars shall be reported to the Inspector General. The Inspector General may disapprove thereof upon his determination that such gift or donation is inconsistent with the objectives and purposes of the Code or the EDP. No proposed gift or donation shall be subdivided or apportioned in order to avoid the intent and purposes of this policy. It shall further be the policy of the General Executive Board that any member who serves as trustee of any pension benefit plan or welfare benefit plan or other fund associated with LIUNA or its affiliated or subordinate bodies, including but not limited to LECET funds and training funds shall recommend to the trustees of such fund that any gift or donation meeting one or more of the thresholds set forth above shall be reported to the Inspector General. If the Inspector General determines that such gift or donation is inconsistent with the objectives and the purposes of the Code or EDP, he shall so advise the fiduciaries.

### **GENERAL EXECUTIVE BOARD'S AMENDED POLICY ON REPORTING FELONY ARRESTS AND INDICTMENTS**

Pursuant to its authority under Article VIII, Sections 2(c) and (n) of the Constitution of the Laborers' International Union of North America and in order to accomplish more fully the purposes of the LIUNA Ethical Practices Code and the Ethics and Disciplinary Procedure, and to ensure compliance with Section 411 of the Employee Retirement Income Security Act of 1974, it is hereby declared to be the policy of the General Executive Board that any member of the GEB, any officer of any affiliated or subordinate body, and all members serving as trustees on any employee benefit plan, fund, or trust shall notify the Inspector General in writing whenever it shall come to their attention that any member, employee, officer or labor trustee is arrested, indicted or otherwise charged with any felony under the laws of Canada or the United States or any province or state thereof or with any offense relating to the conduct of the affairs of a labor organization or employee benefit plan, such written notice to be provided within five (5) calendar days of receiving notice of such arrest, indictment, or charge, whichever may occur soonest.

### **GENERAL EXECUTIVE BOARD POLICY ON ACTIONS AFFECTING SUBORDINATE BODIES**

Pursuant to its authority under Article VIII, Sections 2(c) and (n) of the Constitution of the Laborers' International Union of North America and in order to accomplish more fully the purposes of the LIUNA Ethical Practices Code and the Ethics and Disciplinary Procedure, it is hereby declared to be the policy of the General Executive Board that the Special Counsel will be advised of

all actions by the General Executive Board or the General President to suspend or revoke charters or consolidate or amalgamate subordinate bodies pursuant to Article II, Section 3 of the Uniform Local Union Constitution.

### **REVISED GENERAL EXECUTIVE BOARD'S POLICY ON PAYMENT OF LEGAL FEES WITH UNION FUNDS**

Pursuant to its authority under Article VIII, Sections 2(c) and (n) of the Constitution of the Laborers' International Union of North America and in order to accomplish more fully the purposes of the LIUNA Ethical Practices Code, and the Ethics and Disciplinary Procedure, it is hereby declared to be the policy of the General Executive Board that union funds may not be used for the payment of the legal fees or expenses for the representation of any officer, member, or employee at any stage of a criminal matter or at any stage of a civil action claiming a breach of fiduciary duties prior to the resolution of the allegation or charge.

If the officer, employee, or member is fully exonerated from the alleged misconduct and the conduct arose out of the performance of his or her official duties, the International, District Council, or Local Union may reimburse the individual for such reasonable legal fees and costs as were incurred to defend against the charges as to which the officer, employee, or member has been exonerated. If the officer, employee, or member is substantially exonerated, the International, District Council, or Local Union may apply to the Appellate Officer for permission to reimburse the individual in a proportionate amount for such reasonable fees and costs as were incurred to defend against the charges wherein the officer, employee, or member has been exonerated. Upon consultation with the General Counsel, the Appellate Officer shall have discretion to set the appropriate amount of reimbursement, if any, taking into account among other relevant considerations the nature of the charges from which the individual has been exonerated, the nature and seriousness of any misconduct that has been found, the financial condition of the entity seeking permission to make partial reimbursement, the reasonableness of the fees for which reimbursement is sought, and the best interests of the Union and membership.

Legal fees cannot be paid or reimbursed at any time or in any fashion in connection with an investigation by the Inspector General or charges brought by the Special Counsel under the LIUNA Constitutions, the Ethical Practices Code, or Ethics and Disciplinary Procedure; provided, however, that if an officer, employee, or member is fully exonerated from the alleged misconduct after a hearing before the Independent Hearing Officer, and an appeal, if any, to the Appellate Officer, the International, District Council, or Local Union may elect to reimburse the individual for such reasonable legal fees and costs as were incurred to defend against the charges as to which the officer, employee, or member has been exonerated. If the officer, employee, or member is substantially exonerated, the International, District Council, or Local Union may apply to the Appellate Officer for permission to reimburse the individual in a proportionate amount for such reasonable fees and costs as were incurred to defend against the charges wherein the officer, employee, or member has been exonerated. Upon consultation with the General Counsel, the Appellate Officer shall have the discretion to set the appropriate amount of reimbursement, if any, taking into account among other relevant considerations the nature of the charges from which the individual has been exonerated, the nature and seriousness of any misconduct that has been found, the financial condition of the entity seeking permission to pay reimbursement, the reasonableness of the fees for which reimbursement is sought, and the best interests of the Union and membership. In the event that such reimbursement, if permitted, would exceed \$100,000, the Appellate Officer may obtain a non-

binding opinion from a respected judge or lawyer highly regarded for his or her integrity and experience as to whether such reimbursement complies with this Policy, is consistent with the entity's fiduciary obligations, and is warranted in order to prevent unfairness.

Legal fees also cannot be paid or reimbursed at any time or in any fashion in connection with any civil action arising from or related, directly or indirectly, to any investigation or charge, unless ordered by the court in accordance with law.

Nothing in this policy shall be construed to provide a LIUNA officer, employee, or member with any right to reimbursement of or indemnification for legal fees. Additionally, this policy is not intended, and shall not be construed, to affect or abridge the fiduciary duties that LIUNA officers and employees owe the Union under federal or state law, the LIUNA Constitutions, or the Ethical Practices Code. In determining whether the International, a District Council, or a Local Union will reimburse a person for reasonable legal fees and costs, or will seek permission from the Appellate Officer to make such reimbursement - and in determining the amount of reimbursement that is reasonable, appropriate, and fiscally responsible - the Union officers and employees must exercise informed and independent judgment in a manner consistent with their fiduciary responsibilities, and recognizing that they owe the highest duty of loyalty to the Unions membership rather than to any individual.