

# **LIUNA!**

*Feel the Power*

# **POLICIES**

# **2019**



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## **INTRODUCTION**

The words “Justice,” “Honor,” “Strength” embody the core values that have made the Laborers’ International Union of North America the most progressive and innovative Union in North America. With those values in mind, the General Executive Board has developed these Policies, setting forth a set of best practices that guarantee a strong, proud and democratic organization. The purposes of these Policies is to ensure that the best interests of our members are promoted as our first priority, and to protect our members against improper influences whether from within or outside the Union. While recognizing that there are differences in the legal systems of the United States and Canada, our goal is to create consistent standards of responsibility among all our members, officers, representatives and employees.

International Union Constitution, Article I, Section 1, declares that the organization is governed by “laws, rules, regulations, policies, practices and lawful orders and decisions of the said International Union.” These Policies set forth many of the core policies governing the organization. They are not intended to be exhaustive but are supplemented by other policies and practices embedded in the traditions of the organization. These policies are to be interpreted and applied in a manner consistent with the Constitutions of the Laborers’ International Union of North America.

### **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, it is hereby declared to be the policy of the General Executive Board that all proposed contracts in excess of three hundred fifty thousand (\$350,000.00) dollars to be entered into by LIUNA or any of its affiliated or subordinate bodies shall be submitted to the General President. If the General President determines that entry into such contract is inconsistent with the objectives and purposes of these Policies, he shall bar LIUNA or its affiliated or subordinate body from entering into such contract. No proposed contract shall be subdivided or apportioned in order to avoid the intent and purposes of this policy. The General President should be provided with such advance notice

of and information about the proposed contract as may be reasonable in the circumstances to allow him to form an informed judgment.

It is further declared to be LIUNA's policy that all major contracts be put out to competitive bid where appropriate.

### **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, 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 twenty-five thousand (\$25,000.00) dollars shall be reported to the General President. The General President may disapprove thereof upon his determination that such gift or donation is inconsistent with the Union's objectives and purposes. No proposed gift or donation shall be subdivided or apportioned in order to avoid the intent and purposes of this policy. If the General President determines that such gift or donation is inconsistent with the objectives and the purposes of the Code, he shall so advise the trustees.

### **GENERAL EXECUTIVE BOARD'S AMENDED POLICY ON REPORTING 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 to ensure compliance with Section 504 of the Labor-Management Reporting and Disclosure Act and 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 General President whenever it shall come to their attention that any 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 notice to be provided within five (5) calendar days of receiving notice of

such arrest, indictment, or charge, whichever may occur soonest. The General President shall advise the Special Counsel of any arrest or indictment involving organized crime.

### **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, it is hereby declared to be the policy of the General Executive Board that funds of the Union may not be used for the payment of the legal fees or expenses for the representation of any Union officer, member, or employee indicted or formally charged criminally for an offense involving performance of duties for the Union, or for the representation of any Union officer, member, or employee defendant in a civil action alleging a breach of fiduciary duties after good cause has been shown for the action; provided: if the Union officer, member, or employee successfully defends against the indictment, criminal charges, or allegations in a civil action, or if such charges or allegations are not or cannot be sustained or are dismissed or withdrawn, the Union in its discretion and consistent with fiduciary principles may reimburse the legal fees and expenses of the officer, member, or employee in such amount and manner as the Union finds properly allocable to the defense against those charges or allegations which are not found or not sustained or dismissed or withdrawn.

It is further hereby declared the policy of the General Executive Board that the funds of the Union may not be used to pay the legal fees or expenses of Union officers, members, and employees to defend against investigations and charges of barred conduct brought under these Policies; provided: If the investigation for any reason does not result in charges of barred conduct, or if charges of barred conduct are not sustained or are dismissed or are withdrawn, in whole or in part, the Union in its discretion and consistent with fiduciary principles may reimburse the legal fees and expenses of the officer, member, or employee in such amount and manner as the Union finds properly allocable to the defense during the investigation against those charges which are not found or not sustained or dismissed or withdrawn.

## **CODE OF BEST PRACTICES**

The following Code of Best Practices shall apply to the International Union, and all affiliates, including District Councils, Organizing Funds, Local Union, and to every employee, member and officer thereof.

### **Financial Best Practices**

To provide advice, guidance and assistance with regard to financial matters, the International Union maintains a comprehensive audit compliance program, which is overseen and supervised by the General Secretary-Treasurer. In addition to providing a staff of experienced auditors, the program includes regular educational presentations, written materials or manuals and advice on as-needed or requested basis.

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.

### **Barred Conduct**

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

“Barred conduct” is defined as: a) any conduct that would constitute an act of racketeering, as such conduct is described in Title 18 of the United States Code, Section 1961(1) [set forth in Appendix A], that involves the participation of any member or associate of organized crime when such act of racketeering relates directly or indirectly to the affairs of the union; b) knowingly associating with any member or associate of organized crime; c) knowingly permitting any member or associate of organized crime 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, or the Appellate Officer.

The term “knowingly associate” shall mean that 1) an individual knew that the person with whom he or she was associating was a member or associate of organized crime; 2) the association related directly or indirectly to the affairs of the Union; and 3) the association is more than fleeting or casual. “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; (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.

#### **Appendix A – 18 U.S.C. §1961(1) - Definitions**

“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 phone records, 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).

## **Special Procedures Applicable to Barred Conduct Cases or Cases Assigned by the General President**

### **1. Positions**

The General Executive Board hereby recognizes the following positions: the Special Counsel, the LIUNA Inspector General, the Independent Hearing Officer(s) and the Appellate Officer. Upon appointment by the General Executive Board, these officials shall have a duty to account to the Union for their activities and expenditures and may be removed from office by the General Executive Board for conduct detrimental to the best interests of the labor movement or otherwise for cause which is not arbitrary, capricious or in bad faith. Further, the General Executive Board shall have the right at any time to eliminate, abolish, reorganize or restructure these positions for reasons of economy, efficiency or other good cause.

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 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 Code.

## **A. 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/her representatives shall be persons who have demonstrated an understanding and respect for the labor movement and for the causes of working families.

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 in cases involving charges or allegations of barred conduct.

The Special Counsel shall have the authority and duty to investigate and prosecute disciplinary charges involving barred conduct or upon assignment from the General President, for violations of the Constitution, or any other rule, policy, regulation, practice, or procedure adopted by the General Executive Board.

In exercising his/her jurisdiction with regard to barred conduct or upon assignment from the General President, the Special Counsel shall be sensitive to the potential harm to a person resulting from unresolved allegations during union political campaigns. Further, to avoid the possibility of interference with other investigations and to avoid a duplication of efforts and waste of resources, the Special Counsel shall attempt to coordinate efforts with law enforcement agencies or other governmental authorities regarding allegations of criminal conduct or other violations of federal or state laws as they come to the attention of the Special Counsel and which, upon review and investigation, appear credible. Where possible, the Special Counsel shall rely upon the government to prosecute the most serious cases.

Upon assignment by the General President, the Special Counsel may be authorized to impose trusteeships or supervisions over any District Council, Local Union or other entity within the Union for violating the Constitution, these Policies, or any other rule, policy, regulation, practice, or procedure adopted by the General Executive Board.

In prosecutions for barred conduct or upon assignment from the General President, for violations of the Constitution, the Code of Best Practices, or any other rule, policy, regulation, practice, or procedure

adopted by the General Executive Board, the Special Counsel may recommend discipline, including, but not limited to, suspension, removal from Union office, permanent expulsion from the Union, and fine. In trusteeship or supervision proceedings, the Special Counsel 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.

Barred conduct investigations shall be initiated and completed and any resulting charges shall be filed within six (6) months of the time the Special Counsel knew or reasonably should have known of the relevant facts and circumstances giving rise to the charge(s), except that the General President may extend the time for good cause; disciplinary charges once filed shall be determined as expeditiously as the circumstances of the case permit.

As determined by the General Executive Board and taking into account its other priorities and resources, LIUNA will provide the Special Counsel with reasonable funding to fulfill his or her mandate. The Special Counsel shall have complete access to, and the right to make copies of, all books, records, accounts, correspondence, files, and other documents of any individual or entity, subject to the right of any individual or entity to apply to the Independent Hearing Officer for a protective order.

In investigating matters coming within his/her jurisdiction, the Special Counsel shall have the right to require and take 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 or required to provide a sworn statement or participate in any interview or interrogation shall have the right to have legal counsel present and participate during the interview, interrogation or deposition. If any person on the basis of the privilege against self-incrimination refuses to testify or to provide evidence before the Special Counsel, the Inspector General or the Independent Hearing Officer and it is determined after investigation and proved by a preponderance of the independent evidence that the 5th Amendment privilege was invoked as a shield to avoid discovery of corruption or barred conduct on his/her part, then such individual may be subject to discipline for that reason alone.

Further, in disciplinary proceedings before the Independent Hearing Officer based upon an allegation of barred conduct or upon assignment from the General President, for violating the Constitution, the Code of Best Practices, or any other rule, policy, regulation, practice, or procedure adopted by the General Executive Board, the Independent Hearing Officer may draw an adverse inference from a witness' invocation of the privilege against self-incrimination provided that credible independent evidence exists that supports the facts or allegations as to which the witness refuses to answer. Accordingly, if no credible evidence is put forward to support the facts or allegations as to which the witness refuses to answer, no adverse inference shall be permitted. Except as provided herein, the right to invoke privilege against self-incrimination shall not be impaired or abridged.

Should the Special Counsel or the Inspector General demand or require that any person subject to the Code of Best Practices produce any document, record or writing, that person may apply to the Independent Hearing Officer for a protective order on the ground that the material sought is not reasonably calculated to lead to the discovery of admissible evidence, or is privileged material, or will cause the person annoyance, embarrassment, oppression or undue burden or expense as these terms are used in Fed.R. Civ.P 26 (b)(5)(c) and shall be interpreted and applied consistently to investigations and hearings in Canada.

## **B. The LIUNA Inspector General**

LIUNA shall retain an individual, highly regarded for his or her integrity, competence and experience, to serve as Inspector General. The Inspector General and his/her representatives shall be persons with a demonstrated 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 of barred conduct or such other matters as may be delegated by the General President or General Executive Board. As to any matter within the jurisdiction of the LIUNA Inspector General, the Inspector General may refer such matter to the General President.

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 on his/her activities and recommendations in that regard.

As determined by the General Executive Board and taking into account its other priorities and resources, LIUNA will provide the Inspector General with reasonable staff, funding, and office space, to fulfill his/her mandate. The Inspector General shall have complete access to, and the 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, subject to any right to apply to the Independent Hearing Officer for a protective order.

The Inspector General shall have the right under the same conditions as are applicable to the Special Counsel 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 or to participate in any interview or interrogation shall have the right to have counsel present and participate in the deposition, interview or interrogation and to invoke the privilege against self-incrimination as provided above.

### **C. The Independent Hearing and Appellate Officers**

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

The Independent Hearing Officer(s) shall preside over and provide rulings in a) all cases of barred conduct brought by the Special Counsel, pursuant to this Code; and b) such disciplinary cases, trusteeships, supervisions, trial boards or other matters as may be assigned by the General President or by the Special Counsel after referral by the General President; otherwise, supervision or trusteeship matters may be assigned by the General President for hearing to a Special Hearings Panel pursuant to Article VIII, Section 2(a-vii) of the International Union Constitution. In the event that the General Executive Board appoints more than one (1) Independent Hearing Officer, then cases shall be assigned by the General President.

The Appellate Officer shall hear all appeals in all disciplinary matters brought by the Special Counsel before the Independent Hearing Officer.

### **Special Hearing Rules of Procedures for Barred Conduct Cases, Cases Assigned to the Special Counsel from the General President, and Cases Heard Before the Independent Hearing Officer**

The following procedures shall apply at any hearing brought before the Independent Hearing Officer (“IHO”) by the Special Counsel on disciplinary charges of barred conduct or, upon assignment from the General President, of violations of the Constitution, the Policies of the Laborers’ International Union of North America, or any other rule, policy, regulation, practice, or procedure adopted by the General Executive Board:

#### **1. Notice of Charges**

- a. Hearings shall be initiated by the filing of a written specific charge, which shall be served upon the charged party.
- b. The Union’s notice of charges or any other documents shall be delivered to the member’s address by reasonable means, including by mail. Upon delivery, the Union’s notice obligation shall be complete. 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 or any other address where the Union has reason to believe the union member resides, if different from the address listed on the member’s LIUNA Membership Standing Form.
- c. Member are entitled to fair notice of the charges against them in sufficient time to enable the member to defend himself/herself in accordance with labor due process standards. To ensure such due process:
  - i. The charged party shall have at least thirty days, prior to the hearing, to prepare a defense.
  - ii. The charges should be specific enough to inform the member of the offense(s) of which he/she has

been charged. The standards of particularity of Title 29 U.S.C. Sec. 411 (a)(5) 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 ask the IHO for further disclosure (in the nature of a bill of particulars).

- (a) The request must be filed with the IHO within ten business days of the receipt of the charge(s) by the member. A copy of the request shall be sent to the Special Counsel.
- (b) The Special Counsel shall respond within seven business days by formal reply to the IHO. A copy shall be sent to the charged party.
- (c) The IHO will rule upon the request applying the principles of Title 29 U.S.C. Sec. 411 (a)(5).

## **2. Discovery**

- a. 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, labor due process standards must be met. In hearings the following discovery procedures will be followed:
- b. Documents Disclosures. Within fifteen business days of the filing of charges the Special Counsel shall identify to the charged party 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 after the initial filing. In the event the Special Counsel determines that additional documents may be offered in

evidence, he/she will promptly notify the charged party of the additional documents so that the member may request copies, seek to examine and inspect them, or seek any other relief he or she thinks appropriate

- 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.

### **3. Motions**

All motions must be filed with the IHO and served on the opposing party. Opposition to a motion shall be filed within seven business days of service. Upon petition the IHO may grant additional time to answer a motion. For purposes of this section, a “motion” is simply a request to the IHO for something—whether it is a request for a continuance, a request for a ruling on an issue, or any other request.

### **4. Hearing Proceedings**

- a. A fair and impartial hearing shall be conducted before an IHO. The hearing shall be conducted under the rules and procedures generally applicable in labor arbitration proceedings. Decisions shall be made based on a “just cause” standard. Individuals shall have the right to invoke their privilege against self-incrimination and not testify, but may be subject to an adverse inference in accordance with the terms set forth in the Special Procedures Applicable to Barred Conduct Cases or Cases Assigned by the General President, Section 1(A) above.
- b. The hearings will be conducted in a courtroom-like manner 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.

- c. The party charged may be represented by counsel throughout the proceeding.
- d. Evidence. Strict evidentiary rules which are ordinarily followed by common law courts will not be applied.
  - i. 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.
  - ii. Documents admitted in evidence will be properly marked and made part of the record.
  - iii. All testimony and other evidence shall be received by the IHO under oath. All witnesses will swear or affirm their testimony will be truthful and testimony will be transcribed by an accredited court reporter.
  - iv. Testimony of witnesses will consist of direct examination, cross-examination, redirect and recross.
  - v. 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.
  - vi. The IHO may receive and consider evidence of witnesses by affidavit in accordance with the custom and practice of labor arbitrations.
  - vii. A charged party shall be entitled to know the identity of any confidential informant upon whose evidence or testimony a witness relies, except where the IHO determines that the identity of a confidential informant must be protected due to credible and reasonable threat of bodily harm.
- e. Burden of Proof. The Special Counsel must convince the IHO by a preponderance of the evidence that just cause exists to discipline the charged party.

- f. Production of Documents. Upon the request of the Special Counsel or the charged party, the IHO 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 if the IHO is convinced that the documents or testimony sought are probative and admissible. Any failure to comply with the request of the IHO may be considered by the IHO in assessing whether such individual or entity should be subject to the imposition of discipline.

This section in no way limits the investigatory power granted independently to the Special Counsel by the Policies of the Laborers' International Union of North America, formerly titled Code of Best Practices.

- 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 requesting 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. Post-Hearing Briefs. The IHO may request written submissions and arguments on questions that arise during the hearing and may request proposed findings and conclusions. The parties may make summary arguments and submit summary briefs in conclusion.
- i. Decision in Writing. The IHO will render a decision in writing. The IHO need not await the transcription of the record to render a final decision.
- j. Appeals. Any discipline imposed by the IHO, or other final decision of the IHO in disciplinary cases, shall be subject to appeal by the party disciplined to the Appellate Officer; the Special Counsel shall not have the right to appeal any such decision by the IHO.

## 5. Applicability of Rules

- a. These Special Hearing Rules of Procedures shall apply to all cases charged by the Special Counsel after the date of enactment.
- b. These Special Hearing Rules of Procedure shall not govern in any proceedings to impose a supervision or trusteeship.
- c. Proceedings in Canada shall conform with the requirements of applicable Canadian federal or provincial law.

### **RULES OF APPEALS TO THE LIUNA APPELLATE OFFICER**

The following rules of procedure are set forth to provide the parties appearing before the Appellate Officer (“AO”) with information about how the proceedings will be conducted. This announcement is for informational purposes only, and the AO reserves the right to change the procedures in any given case in his discretion to improve the effectiveness or efficiency of the proceedings, at the request of the parties, or as the need may arise.

**Rule 1. Scope of Rules.** Pursuant to the LIUNA Code of Best Practices, the following rules are hereby adopted. The rules shall apply to all appeals to the AO from decisions rendered by the Independent Hearing Officer (“IHO”).

#### **Rule 2. Pleadings.**

(a) Address for filing. All pleadings referred to in these rules, including notices of appeals, motions, briefs, and appendices, shall be filed with the AO at this address: Robert Weinberg, Bredhoff & Kaiser, 805 15th Street, N.W., Suite 1000, Washington, DC 20005.

(b) Number of copies to be filed; requirement of service. Only one copy of any pleading shall be filed with the AO. In all cases, the party submitting any pleading or documents to the AO must serve a separate copy on the opposing party or parties as provided in AO R. 3.

(c) Confidentiality of pleadings. The AO will hold the pleadings confidential and permit no one except the parties, their authorized

representatives, or others who in the discretion of the AO would contribute to the resolution of the matter, to examine the pleadings during the pendency of the proceedings.

### **Rule 3. Filing and Service.**

(a) Method of filing. Filing of pleadings or other documents may be accomplished by mail or courier to the AO. The AO will also accept filing of pleadings by facsimile so long as the party filing by facsimile also arranges for an original copy to be delivered to the Appellate Officer by mail or courier. Pleadings will be treated as filed on the day of mailing or transmittal.

(b) Materials must be served on other parties. Any pleadings, materials, letters, or other documents that are submitted to the AO while an appeal is pending first must be sent via first-class mail to all other parties involved in the matter at their last known address. Any materials transmitted to the AO by facsimile must also be first transmitted by facsimile to the other parties involved in the case, unless it is not possible to do so, in which case the materials must be provided to all the other parties in an expeditious fashion.

### **Rule 4. Notice of Appeal.**

(a) Time for filing. A party wishing to appeal a final decision or appealable order of the IHO must file a notice of appeal with the AO within ten (10) days of the filing of the decision or order sought to be appealed.

(b) Content of the notice of appeal. The notice must indicate: (1) the party or parties taking the appeal; (2) the date of the decision below; and (3) the names of counsel for or other authorized representative of each party, if any.

(c) Cross-Appeals. Within ten (10) days after the date of filing of any timely notice of appeal, any other party in the case may file a cross-appeal containing the same information specified in AO R. 4(b).

**Rule 5. Appeal Forms.** Upon receipt of a notice of appeal, the AO will send an appeal form to the appealing party requesting basic information about the matter being appealed and whether or not the party requests a hearing for oral argument. The party appealing should fill out the form and send copies to the AO and all other parties within ten (10) days of

receiving the form. The AO may dispense with the requirement of an appeal form in particular cases.

**Rule 6. Briefing Schedule.** In cases in which the AO believes it would be useful for the parties to submit written briefs stating their positions, the AO will set a briefing schedule upon each party indicating when each party's briefs are to be filed. The briefing schedule may also set forth the page or word limits applicable to each party's briefs. In appropriate cases, the AO, upon the motion of any party or on his own motion, may order expedited briefing and argument. The AO may dispense with written briefing in particular cases and resolve the appeal based on the preexisting record.

**Rule 7. Briefs.**

(a) Principal Briefs. 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 where the fact appears.
- (3) An argument.
- (4) A short conclusion stating the relief sought.

(b) Reply Brief. The appellant may file a reply brief responding to the appellee's brief.

**Rule 8. Record on Appeal; Appendix to the Briefs.**

(a) Appeal to be Decided on Record Developed Below. The AO ordinarily will decide any appeal based on the record compiled before the IHO in the particular case. Upon receipt of the notice of appeal or the establishment of a briefing schedule, the AO will request that the record be forwarded by the tribunal whose decision is under review.

(b) Appendix. In particular cases, the AO may elect to require the parties to prepare and submit an appendix to their briefs. If so ordered by the AO, the appellant shall submit, bound separately from the principal brief, one copy of an appendix containing any opinion, memorandum of decision, report or finding of facts and conclusions of law issued

by the lower tribunal in support of its 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.

**Rule 9. Computation and Extensions of Time.**

(a) Computation of Time. In computing any period of time of fifteen (15) days or fewer prescribed by these rules or a briefing schedule, only business days shall be included. In computing any period of time of sixteen (16) days or more prescribed by these rules or a briefing schedule, all calendar 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 was mailed or otherwise transmitted. If the calculation of time established under these rules would otherwise require a document to be filed on a date that is a Saturday, Sunday, or legal holiday, the deadline to file such document shall be extended to the next date that is not a Saturday, Sunday, or legal holiday.

(b) Enlargement of Time. The AO may enlarge the time prescribed by these rules on request of any party or in his own discretion. A party wishing to request an enlargement of time shall set forth its request in a letter submitted to the AO stating the reasons for the request, and a copy of such letter shall be served on all other parties as provided in Rule 3.

**Rule 10. Oral Argument.** Any appealing party may request a hearing for oral argument in its appeal form. Either the party appealing or any other party involved in the appeal may request a hearing for oral argument in their principal briefs. The AO may also request oral argument, to be held by telephone or in person, on his own motion in the absence of a request by either party. If oral argument is requested, the AO will notify each party within a reasonable time of the date, method and location for the argument. In the event the argument is to be held in person, an attempt will be made to hold oral argument at a location convenient to all parties. Any interested LIUNA member or officer may attend the hearing.

**Rule 11. Hearing Room.** The hearing room will typically be set up as a conference table. The AO and any assistant will sit at the head table.

Each of the parties to the appeal and any related or interested parties will sit respectively on either side of the table.

**Rule 12. Record.** All appellate hearing will ordinarily be transcribed. The lack of a court reporter shall not be cause for delay in the hearing except as the AO may determine in his own discretion. The AO may dispense with transcription in appropriate cases.

**Rule 13. Appellate Counsel.** Parties appearing before the AO may, in the discretion of the AO, be represented by a representative who is a member in good standing of the Laborers' International Union of North America or an attorney subject to the ethical obligations and professional standards of the legal profession. Any attorney who intends to represent any party to an appeal is requested to enter his or her appearance with the AO at the earliest practicable opportunity.

**Rule 14. Commencing the Hearing.** The AO will open the session with brief introductory remarks describing the scope of the appeal, the nature of the proceeding and determining whether any of the parties have any questions concerning the proceeding.

**Rule 15. Hearing.** The appealing party will generally be given the opportunity to speak first. That party should state the reasons for appealing the conclusions reached by the trial tribunal. The responding party (appellee) will then have the opportunity to address the AO and explain why the decision of the trial tribunal was correct and should be affirmed. The AO controls the order, duration, and method of presentation of argument.

**Rule 16. Multiple Issues.** In those appeals raising several issues, the parties and the AO may decide to address one issue at a time: that is, the appellant may raise one issue and hear the response from the other party before continuing to the next issue. On those appeals presenting fewer issues, the AO may decide that it would be more efficient for the appealing party to address all of the issues in his or her initial presentation followed by a response on all the issues from the appellee.

**Rule 17. Non-parties.** The AO may entertain arguments or comments from others attending the proceedings as long as, in the judgment of the Appellate Officer, their participation would be helpful in rendering a decision.

**Rule 18. Additional Testimony.** Although it is discouraged, the AO retains the discretion to permit additional testimony or the receipt of

additional documents not considered by the trial body in an appropriate case. The AO is substantially more likely to reject a party's request to present such testimony or new documents where the AO and the opposing side have not been informed in advance of such additional information.

**Rule 19. Terminating the Hearing.** The AO retains the discretion to terminate the hearing if he determines that further argument or the receipt of additional evidence would not be helpful to the resolution of the appeal.

**Rule 20. Petition for Reconsideration.** A petition for reconsideration may be filed within ten (10) days after the AO renders a decision. The petition shall state the points of law or fact which, in the opinion of the petitioner, the AO has overlooked. There will ordinarily be no oral argument in support of a petition. No answer to a petition will be received unless requested by the AO. If a petition for reconsideration is granted, the AO may make a final disposition of the case without reargument.

**Rule 21. 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 AO, any party may file a response in opposition to a motion within seven (7) days after the motion is mailed or otherwise transmitted. No oral argument will be heard on motions unless otherwise ordered by the AO.

**Rule 22. Permissive Appeals.** An appeal from a ruling other than a final disposition by the IHO, CIHO, or SEO may be sought by filing with the AO a petition for leave to appeal. Allowance of such an appeal is disfavored, and is within the discretion of the AO. The petition shall be filed within ten (10) 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: (1) a statement of the facts necessary to an understanding of the issues to be presented by the appeal; (2) a statement of those issues and of the relief sought; (3) a statement of the reasons why in the opinion of the petitioner the appeal should be allowed; and (4) 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 AO.

**Rule 23. Remand or Referral for Further Investigation.** The AO reserves the right to remand any matter to the IHO for further investiga-

tion or fact-finding. The AO may also refer any matter for inquiry by the LIUNA Inspector General or Special Counsel.

**Rule 24. Substantial Compliance.** The AO may, in his discretion, consider pleadings that are untimely or otherwise not in technical compliance with these rules.

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

On September 14, 2011, Rules of Procedure for All LIUNA Local Union Trial Board Hearings were adopted. Those Rules are hereby amended, deleting Rules that were duplicative of or inconsistent with ULUC, Article XI, Charges, Trials and Appeals. The following rules shall apply to all LIUNA Trial Board Hearings.

**Rule 1. 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 2. Establishment of a Trial Board.** 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 General Executive Board, no members of the earlier Trial Board may serve on the new Trial Board.

**Rule 3. Failure of a Party to Attend Trial Board Hearing.** Pursuant to Article XI, Section 4 of the Uniform Local Union Constitution or Article XII, Section 4 of the Uniform District Council 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 4. 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 5. 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 or District Council 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 and Article XII, Section 5 of the Uniform District Council 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 or District Council 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 General President.

**Rule 6. 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 or read to the membership, 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.

## **JOB REFERRAL GUIDELINES**

In order for the Local Unions and District Councils affiliated with the Laborers' International Union of North America to maintain and administer systems for referral of applicants to employment in a fair and equitable manner, and to establish records and procedures which will be adequate to fully explain the basis on referrals are made, the following guidelines shall be followed by affiliates that operate a hiring hall or similar job referral system.

These Guidelines apply only to exclusive job referral systems. ("Exclusive" hiring halls are those that one or more signatory employers use as the exclusive source for labor on any of their jobs, whether that exclusivity is required by contract or only established by practice.) These Guidelines do not apply to non-exclusive job referral systems. Affiliates with non-exclusive job referral systems are encouraged to follow

these Guidelines, but are required only to comply with applicable state and federal law.

**Vote.** Affiliates must adopt and amend their hiring hall rules by majority vote at a meeting of the membership, and submit changes to the General President, through their Regional Offices, for review and approval.

**Negotiated Rules.** While employers' rights and obligations concerning the use of the hiring hall should be spelled out in collective bargaining agreements, affiliates are encouraged to maintain the actual rules for referring workers as an internal union matter, rather than including them in agreements. Where rules are included in the agreement, and cannot be removed, affiliates should seek hiring hall provisions during bargaining that reflect these Guidelines.

**Multiple Industries, Agreements.** Affiliates servicing more than one industry or market sector, or that have multiple pattern labor agreements, may have different hiring hall systems to accommodate the characteristics of each market sector or agreement, so long as applicants registered for one industry may register on lists for other industries for which they qualify.

**Posting.** Current hiring hall rules must be posted at all Local Union offices in a location accessible to members and other applicants that use the hiring hall. Out-of-work lists shall be conspicuously posted, or otherwise immediately available for inspection, at all Local Union offices on a weekly basis.

**Discrimination.** Referrals to jobs will be on a nondiscriminatory basis and will not be based on, or affected by, race, gender, national origin, sexual orientation, disability, religion, lawful union-related activity or any other status protected by applicable law.

**Order of Referrals.** Affiliates may establish preferential lists for a single industry which are based on experience in the industry, including experience under the affiliates' collective bargaining agreements, geographic areas, and/or based on similarly objective measures; and for apprentices. Referrals from within a list must be made in the order in which applicants registered on the list unless made pursuant to an exception set forth in the referral rules. Such exceptions may include designated shop stewards; employer requirements concerning skills, training, certifications, license, experience or security clearance; gov-

ernmentally-imposed affirmative action requirements; history with the employer; or key workers.

**Record retention.** Affiliates with hiring halls must keep written or electronic records for all dispatches for a period of six months.

**Inspections.** Upon a showing of reasonable cause, hiring hall applicants are entitled to inspect, and to obtain copies of, hiring hall records pertaining to periods during which the applicant was registered for referral, unless the request is unduly burdensome or abusive. Access to Social Security Numbers, phone numbers, email addresses, medical information, and other private information should be restricted, so long as sufficient information is provided to determine the identity of all individuals registered, contacted, or dispatched for employment. Appointments for inspection shall be scheduled promptly, within two weeks of the request. Copies shall be provided promptly, subject to reasonable copying costs.

**Complaints.** Any complaints or concerns regarding alleged violations of these Guidelines or of hiring hall procedures should first be directed to the Business Manager of the Local Union, or through the grievance process of the collective bargaining agreement, if applicable. Thereafter, aggrieved applicants may write to the Office of the General President, Laborers' International Union of North America, 905 16th St., NW, Washington, D.C. 20006.

## **INTERNATIONAL UNION POLICY ON APPRENTICE MEMBER TRANSFER RIGHTS**

At its September 15-17, 1997 meeting, the General Executive Board took the following minuted action:

It has come to the attention of the General Executive Board that subsequent to the enactment of Article III, Section 4, of the Uniform Local Union Constitution, a common question has arisen as to what right to transfer, if any, should be accorded to the class of apprentice members and, more particularly, whether such class of apprentice members does or should enjoy the same right to transfer membership as is granted to regular members pursuant to Article III, Section 2(d), and Article X of the Uniform Local Union Constitution.

Having given the matter due consideration, and after motion and second, it is hereby

VOTED:

That the International Union policy, intent and interpretation of the General Executive Board that the class of apprentice members does not and should not enjoy the right to transfer membership. Rather, when an apprentice member requests a transfer to another affiliated Local Union such application should then be submitted to the home Local's Executive Board for its consideration. If such home Local approves of such transfer application, such application should be forwarded to the affiliate to which the apprentice seeks to transfer. Such transferee Local affiliate shall have no obligation to accept the transfer, but the Executive Board may do so if it so chooses.









# **LiUNA!**

*Feel the Power*

Laborers' International Union of North America, AFL-CIO  
905 16th Street NW, Washington, DC 20006-1765

