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**M E M O R A N D U M**

TO: Mary Landolfi, President, Local 802, AFM  
Bill Dennison, Recording V.P., Local 802, AFM  
Jay Blumenthal, Financial V.P., Local 802, AFM  
Executive Board

FROM: Harvey S. Mars, Esq.

RE: Appeal Procedure Under Article V, Section 8 With  
Regard to Procedural Rejections of Bylaw Charges

DATE: November 18, 2008

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On September 23, 2008, pursuant to Article V, Section 4(a), the Local 802 AFM Executive Board rejected charges filed on September 21, 2008 by Union Member David Finck against Union Officers Mary Landolfi and Jay Schaffner on the basis that those charges were untimely. The Executive Board's decision was not appealed or otherwise challenged by Mr. Finck.

On October 7, 2008, the Executive Board again rejected as untimely new charges filed by Mr. Finck, dated September 25, 2008 that cited and relied upon the same facts as set forth in his rejected September 23, 2008 charge. Mr. Finck, via his attorney, Arthur Z. Schwartz, objected to the Executive Board's procedural rejection of his client's charge and requested that it be reconsidered by the Executive Board. See attachment 1. Mr. Schwartz's letter also contained a proposed resolution for submission to the membership during a general membership meeting. See attachment 1.

In response to Mr. Schwartz, Union counsel wrote to him asserting that the Executive

Board was justified in reviewing Mr. Finck's charges for procedural defects in accordance with its interpretation of the scope of Article V, Section 4(a). See attachment 2. Mr. Schwartz then replied, requesting confirmation that his client's appeal would be permitted. Union counsel stated that the next course of action for Mr. Finck was for him to appeal the Executive Board's decision to the AFM's IEB and that an appeal to the membership was not available. See attachment 3.

The issue now presented is whether under Article V, Section 8 of the Union's Bylaws Mr. Finck has the right to appeal to the Union's membership the Executive Board's procedural rejection of his charges. Union counsel concludes that under the Bylaws, as they are presently written, Mr. Finck is not entitled to appeal to the membership. However, in an abundance of caution to avoid any possible appearance of impropriety or constraint of Bylaw procedures and because over 100 Union members have requested a special membership meeting to consider Mr. Finck's appeal, counsel recommends, on a non-precedential basis, to schedule such a meeting.

It is clear that under Article 4(b) an appeal of a procedural rejection of a charge is available to a complainant. What is not clear, however, is what the complainant's appeal rights are in this instance.

Article V, Section 8 provides a claimant several avenues of appeal. From the specific language used in both Section 4(b) and Section 8, it appears to me that only an appeal to the IEB is available to a complainant whose charge is rejected on procedural grounds. Section 8(b) provides that an appeal may be taken to the IEB from any **ruling, decision or determination** of the Executive Board, subject to a rehearing. It is clear that this language is comprehensive and pertains to interim rulings, procedural determinations, as well as decisions on the merits of any charge. Generally speaking, the use of the terms **ruling, decision or determination** should be read to have meaning and the drafter is not to be assumed to have meant those terms to apply to or mean the same thing.

Furthermore, Section (c)(1) refers only to **decisions** of the Executive Board as being appealable to the general membership. Here the word decisions should be read to mean decisions regarding the merits of a complaint. Further support for this interpretation is found in Section 4(b)'s use of the term **determination** with respect to procedural issues. It is evident that the

drafters of the Bylaws intended the term determination to have a different application and meaning than the term decision or ruling. In this case, decision is used with respect to the merits of a complaint whereas determination applies to procedural issues that do not involve consideration of the merits. Finally, the term ruling means any ruling involving an interim issue, such as admissibility of evidence and/or testimony.

However, because the charges in this instance are now subject to a petition requesting a special meeting and to avoid any possible contention that democratic processes in the Union are being thwarted, it is prudent now to permit in this exceptional circumstance the consideration of the procedural issue before the membership at a special membership meeting.

It must be made clear that this is an exceptional circumstance and that the appellant has no entitlement to such a meeting.