

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE
TEAMSTERS HEALTH & WELFARE FUND OF PHILADELPHIA AND VICINITY
ESTABLISHING A POLICY FOR THE RETURN OF
CONTRIBUTION OVERPAYMENTS TO PARTICIPATING EMPLOYERS**

WHEREAS, the Teamsters Health & Welfare Fund of Philadelphia and Vicinity ("FUND") is a trust fund that is established and maintained pursuant to the provisions of Section 302(c)(5) of the Labor Management Relations Act of 1974, as amended, 29 U.S.C. §186(c)(5); and,

WHEREAS, the Agreement and Declaration of Trust establishing the Fund, as amended, provides that the Fund's Board of Trustees are vested with the exclusive power and responsibility to establish policy and rules pursuant to which the Fund and its Plan of Benefits are to be operated and administered; and,

WHEREAS, the Agreement and Declaration of Trust establishing the Fund, as amended, provides that said Board of Trustees shall have the exclusive authority and discretion to manage and control the assets of Fund; and,

WHEREAS, the Board of Trustees recognizes that participating Employers have from time to time remitted contractually-mandated contributions to the Fund in excess of the amounts that are contractually required of said Employers; and,

WHEREAS, the Board of Trustees recognizes that said overpayments may have been made as a result of mistake of fact or law; and,

WHEREAS, Section 403(c)(2)(A)(ii) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1103(c)(2)(A)(ii) vests the Board of Trustees with the discretion to return such contribution overpayments that are made by participating Employers

pursuant to a mistake of fact or law if such refund is consistent with the Trustees' fiduciary obligations; and

WHEREAS, in the exercise of said discretion, the Board of Trustees' sole and exclusive concern is the protection of the interests of the Fund's participants and beneficiaries; and

WHEREAS, the Board of Trustees recognizes that under certain limited circumstances a policy with regard to the return of contribution overpayments may be constructed that is consistent with the protection of the interests of the Fund's participants and beneficiaries, with the protection of the Fund's financial and actuarial soundness and with the Fund's ability to reasonably administer its Plan of Benefits while avoiding unnecessary hardship upon such contributing Employers who have inadvertently made an excess contribution as a result of a mistake of fact or law; and

WHEREAS, the Board of Trustees recognizes that a policy for the return of contribution overpayments that is consistent with the interests of the Trust Fund's participants and their beneficiaries must include a reasonable time limitation upon employer requests for such refunds so as to protect the Trust Fund from the financial and actuarial unsoundness that can result from unreasonable delay in the initiation of the Employer's request for the return of such contributions; and

WHEREAS, in an effort to accommodate the interests of participating Employers to the primary and controlling interests of the Trust Fund's participants and beneficiaries, the Trustees deem it desirable and in the best interests of all concerned to adopt and implement a reasonable and comprehensive Policy to provide for the limited return of contribution overpayments made as a result of a mistake of fact or law;

NOW, THEREFORE, on this the 10th day of July, 1984, it is hereby resolved by the Board of Trustees of the Teamsters Health and Welfare Fund of Philadelphia and Vicinity as follows:

1. Subject to the terms and conditions of this Policy, a participating Employer who makes a contribution to the Trust Fund in excess of the amount required by the terms of that Employer's collective bargaining agreement and under a mistake of fact or law may request a refund of only the principal amount of such excess contribution (less the set-offs and expenses described herein) that have been made to the Fund within the one (1) year period immediately preceding the Fund's receipt of a written request made pursuant to this Policy.

2. No refund of excess contributions shall be granted by the Fund without a written request for such refund having been received within one (1) year after the date that such excess contributions were received by the Fund.

3. The obligation to discover and delineate the amount of excess contributions within the time limits provided within this Policy is the sole and exclusive responsibility of the Employer.

4. In the event that an Employer should timely request the return of excess contributions pursuant to the terms of this Policy, the following rules shall apply:

(a) Such request must be made in writing and shall not be effective until it is received by the Fund.

(b) Such submission must contain copies of all documentation upon which the Employer relies to substantiate its request and that is reasonably necessary for the Fund to verify with precision the exact amount of the excess contribution. Any assertions of fact underlying the Employer's request must be submitted to the Fund

in the form of a notarized affidavit or affidavits authored by the individual or individuals who have personal knowledge of such facts.

(c) The Fund in its sole and exclusive discretion may either demand such further documentation as it deems necessary to ascertain with precision the amount of and reasons for the excess contributions or may direct Fund personnel to conduct an audit of the Employer's books and records relative to the period of time covered by the request. If the Fund in its discretion shall determine to conduct such audit, the costs of such audit as determined by the Fund shall be deducted from the amount of monies, if any, that are subsequently refunded to the Employer.

(d) Regardless of whether the Fund determines to conduct an audit as described in the immediately-preceding subparagraph, the Fund shall deduct from such excess contributions, if any, returned pursuant to an Employer's request, all administrative expenses incurred in processing the request. Such administrative expenses shall consist of all direct and indirect costs as the Fund may determine to be attributable to the processing of the Employer's request for a refund.

(e) The failure and/or refusal of the Employer to promptly and fully comply with any or all of the provisions of this Policy shall result in the denial of the request for the refund of excess contributions.

6. As used in this Policy, the term "refund" shall include the offset of previously-submitted excess contributions against currently-due contributions (credits). As such, an Employer may be permitted to credit excess contributions (less the Fund's setoffs described in this Policy) against current contributions only to the same extent and under the same terms and conditions as such Employer may be entitled to a refund under this Policy. In the event that an

Employer should attempt to unilaterally credit alleged excess contributions that are not refundable pursuant to this Policy against current contributions, the Employer shall be deemed to be delinquent in the performance of its current contributory obligation. In that circumstance, the Fund shall take such action to compel compliance with the Employer's contributory obligation as is required pursuant to the Fund's delinquency policy.

7. If the Fund has incurred a direct or indirect cost, expense or liability (whether asserted or capable of subsequent assertion) as a result of an excess contribution, any refund of such contribution shall be reduced by the full value or potential value of such cost, expense or liability.

8. All questions or disputes relating to the interpretation, meaning and/or application of this Policy shall be finally and exclusively resolved by the Board of Trustees in the exercise of its discretion and in the performance of its fiduciary obligations to the Fund's participants and beneficiaries. In that regard, all such questions or disputes shall be resolved in favor of protecting and fostering the interests of the Fund's participants and beneficiaries, in the protection of the financial integrity and actuarial soundness of the Fund and the efficient and effective administration of the Fund.

9. This Policy may be terminated, amended or otherwise modified without notice in any manner by the Board of Trustees in its sole and exclusive discretion.

10. This Policy shall be first effective with respect to excess contributions made by mistake of fact or law within one (1) year or less and thereafter from the date on which this Policy is adopted by the Board of Trustees.

**BOARD OF TRUSTEES OF THE TEAMSTERS HEALTH & WELFARE
FUND OF PHILADELPHIA AND VICINITY**

By:

 /s/ William J. Lemon
WILLIAM J. LEMON

 /s/ Maurice R. Schurr
MAURICE R. SCHURR

 /s/ Frederick W. Fox, Jr.
FREDERICK J. FOX, JR.

 /s/ Joseph Cimino, Jr.
JOSEPH CIMINO, JR.

 /s/ Vincent R. Dagen
VINCENT R. DAGEN

 /s/ Peter P. Coyle
PETER P. COYLE