

HEARING MANUAL FOR INTERNAL DISCIPLINARY TRIALS



Prepared by the Office of the General Counsel
in consultation with the Legal Rights Committee of the National Executive Council

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DO and DON'T

DO

- (1) Do file charges on disciplinary matters.
- (2) Do specifically describe the alleged misconduct.
- (3) Do complete the investigation and either dismiss the charges or prefer the charges within 120 days of the filing of the charges.
- (4) Do send notice of the charges to the charged party by certified mail.
- (5) Do select for the committee of investigation members who do not include the charged party, the charging party, any member of the Executive Board, or anyone directly or indirectly involved in the matter.
- (6) Do use all the members of the Executive Board as the trial committee (excluding involved officers) *or* elect the trial committee at the next regular membership meeting *or* at a special meeting at least five days after the charges have been filed with the local.
- (7) Do have 3, 5, or 7 members on the elected trial committee.
- (8) Do send the notice of trial to the charged party by certified mail at least two weeks before the trial.
- (9) Do hold the trial within 180 days after preferring the charges.
- (10) Do select a member/union employee as prosecutor (who can be a member of the committee of investigation, the charging party, etc., but not a member of the hearing authority, or a representative of another labor organization).
- (11) Do allow the charged party to have a representative of his/her choice and to present witnesses and documents.

- (12) Do give the charged party an audio tape recording or transcript or minutes of the trial.
- (13) Do give the charged party the trial committee report.
- (14) Do present the report in writing to the members of the local at the next regular meeting.
- (15) Do allow the charged party to address the membership.
- (16) Do vote without debate solely on whether to accept or reject the report.
- (17) Do leave the officer in office or the member in good standing until after the trial and the vote of the membership.
- (18) Do inform the charged party of the local's decision and appeal rights by certified mail.

DON'T

- (1) Don't file charges on conduct related to elections.
- (2) Don't file charges by just reciting the list in Article XXIII, Section 2.
- (3) Don't ignore time limits.
- (4) Don't send charges and notices by regular mail.
- (5) Don't use the same people to both investigate and adjudicate the case.
- (6) Don't use members of the hearing authority to prosecute.
- (7) Don't suspend the duties of the officer, or suspend the member from membership, before the vote of the membership.

INTRODUCTION

Disciplinary actions should be undertaken only as a last resort, and only after the concerned members have made an honest effort to resolve their differences in other ways, such as by conflict resolution, by mediation through an outside party, or with the assistance of the District Office. The 2006 AFGE National Convention amended the AFGE National Constitution to provide for a conflict resolution program administered by the Office of the National Vice President for Women and Fair Practices. When other means have failed, this *Manual* is designed to assist each person involved in a disciplinary action.

We also begin with a caution. The Labor-Management Reporting and Disclosure Act (LMRDA), Section 101(a)(5) (29 U.S.C. §411), and Department of Labor Regulation 29 CFR §458.2(a)(5), provide *safeguards against improper disciplinary action*: (a) No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined, except for nonpayment of dues by such organization, or by any officer, unless such member has been (i) served with written specific charges; (ii) given a reasonable time to prepare his defense; (iii) afforded a full and fair trial.

Based on the LMRDA and Department of Labor regulations, Article XXIII of the AFGE National Constitution provides procedures for filing charges, investigating charges (see AFGE's *Committee of Investigation Guidelines and Procedures Manual*), preferring charges for trial, imposing discipline, and filing appeals. Charges against national officers are processed in accordance with Article XIII, Section 7 of the AFGE National Constitution.

Failure to follow these steps may be grounds for overturning the disciplinary action.

The conduct of a disciplinary trial is a serious undertaking, for it can affect a union member's right to hold office and an individual's right to hold union membership. The charged party has a statutory right to, and deserves, an impartial trial on the charges. We hope that this *Manual* will assist hearing authorities (local and council trial committees

and arbitrators) in developing the facts of the matter in a fair and equitable manner and reaching a just decision and recommendation. This *Manual* also should be of assistance to the prosecutor, and to the charged party, in understanding both the process and the rights incorporated into the process.

HEARING AUTHORITY

A question frequently arises as to who may serve on a trial committee. No one may serve on a trial committee who is directly or indirectly involved in the matter which gave rise to the charges upon which the charged party is to be tried. No one can serve on both the committee of investigation and the trial committee. No one who will be called as a witness may serve on the trial committee. The trial committee must consist of either:

- (1) The entire Executive Board (all Executive Board members except those who (a) are charged, (b) filed the charges, or (c) are directly or indirectly involved in the matter which gave rise to the charges, or
- (2) A trial committee elected by the membership of the local, consisting of not less than three or more than seven members, at the next regular meeting after the charges have been filed (or at a special meeting not less than five days after a copy of the charges has been filed with the local).

If the National President appoints a trial committee or an arbitrator pursuant to Article IX, Section 5(d) or 5(e) of the AFGE National Constitution, then the hearing authority will consist of either three members or employees of the Federation, and these members will be independent of the local, or an independent arbitrator.

GROUNDINGS FOR TRIAL

Any member may bring or file charges against another member with the local where the charged party holds membership. (Charges alleging misconduct in the performance of a council officer's duties are filed

with the council.) The Executive Board appoints a committee of investigation pursuant to Article XXIII, Section 3, to investigate those filed charges. (See AFGE's *Committee of Investigation Guidelines and Procedures Manual*.) If the committee of investigation finds probable cause to go forward, that is, sufficient evidence to support the charges against the charged party, and cannot settle the matter with the charged party informally or through the conflict resolution process, it prefers those charges against the charged party. To "prefer" charges is a term of art meaning the referral for trial of charges that have been investigated and found to be supported by sufficient evidence to constitute probable cause, that is, some credible evidence that the charged act occurred and if so, that the act violated the AFGE National Constitution. Besides a committee of investigation, the National President, the National Executive Council, or the National Vice President having jurisdiction over the local of which the charged party is a member also may prefer charges. In a council, the council Executive Board will appoint a committee of investigation. Specific grounds for preferring charges to a trial are set forth in Attachment E.

THE PROSECUTOR

Any member of AFGE, or employee of AFGE, may be the prosecutor. Usually, a member of the

local holding the trial is designated by the Local President (or by the Executive Board if the Local President is the charged party) to be the prosecutor. Often, the chair of the committee of investigation, after charges have been preferred, or even the charging party, may serve as prosecutor. The prosecutor has the initial responsibility of: (1) assuring that the record of the trial includes (a) the documentation of the authority of the hearing authority; (b) all documents accepted into evidence; (c) the minutes of the trial; and (2) establishing a trial date, place, and time with the hearing authority.

RIGHTS OF THE CHARGED PARTY

Article XXIII, Sections 4 and 5 contain specific steps for the conduct of a trial, and under Article XXIII, the charged party has the right to:

- (1) written specific charges in sufficient detail to enable a defense;
- (2) a reasonable time, not less than two weeks, to prepare a defense;
- (3) a representative selected by the charged party (who may not be a member of a rival union);
- (4) a full and fair trial within 180 days of the preferring of the charges;
- (5) at the trial, after a witness has provided direct testimony, a copy of the witness' previous statements.

PRE-TRIAL PROCEDURES

If a trial committee is conducting the hearing, the chair should contact the other members of the committee prior to the trial date to arrange a time and place to meet before the trial. The purpose of this meeting is to introduce each member to the others, to discuss the conduct of the trial and the functions and responsibilities of each member, and to define the procedure for the trial committee in preparing its findings and recommendations.

The chair should delegate to one member the duty of recording the trial, and to the other the duty of correlating and recording the evidence produced during the trial. If an arbitrator is conducting the hearing, the arbitrator will keep an adequate record of the proceedings. The hearing authority has the

responsibility of conducting the trial, including setting times for breaks and lunch, and ruling on the questions of testimony and evidence during the trial.

The hearing authority should review and understand the notice of charges to the charged party and the pertinent Articles and Sections of the AFGE National Constitution. All intra-committee questions and discussion should take place during a pre-trial meeting. The hearing authority may bring questions concerning trial procedures or the AFGE National Constitution to the respective district office or the Federation's Office of the General Counsel (202) 639-6424 any afternoon 1:30-3:00 p.m. ET.

Prior to the trial date, the hearing authority should confirm the meeting place and all arrangements for

the meeting: the room will be unlocked, lighted, and heated/cooled, contain at least one table and a sufficient number of chairs, a convenient electrical outlet

for recording devices, and have appropriate supplies, such as water.

PURPOSE OF THE TRIAL **AND EVIDENTIARY GUIDELINES**

For the prosecutor, the purpose of the trial is to draw out the complete facts involved in the charges, to develop a clear, complete and accurate record, and to assist the hearing authority in reaching its findings, recommendations and/or decisions on those charges. The prosecutor must meet the union's burden of proof, by establishing both the procedural correctness of the proceedings up to and including the trial, and the validity of those charges. The prosecutor should present the case in the most favorable light to enable the hearing authority to reach a finding of guilt.

For the charged party, the purpose of the trial is to obtain dismissal of all charges with prejudice (so that the charges cannot be brought again).

Following the hearing, the hearing authority will write its findings and recommendations from the record of the proceeding, specifically affirming or dismissing each charge.

The most important element of the hearing is the development of a clear, complete and accurate record. The record is that oral or documentary evidence submitted by either party. Since the hearing authority has received only a copy of the charges and does not familiarize itself with the facts of the case prior to the hearing, it should facilitate the parties' presentation of their cases in the most logical and complete manner possible.

The hearing authority should inquire fully into all matters which are relevant to the issues of the hearing, in order to obtain a full and complete record upon which the hearing authority may make its findings and recommendations.

TYPES OF EVIDENCE

Evidence is anything that establishes or disproves a fact. There are many kinds of evidence, but for internal trial purposes, the most common are oral testimony and written documentation. Oral evidence is what the witnesses will say, and written evidence is the documents submitted into the record. The record is the hearing authority's notes, recording, or transcript of the hearing itself, including the evidence both sides submit.

The Federation has the burden of proof in establishing the validity of the charges by a preponderance of the evidence. Preponderance of the evidence is that degree of relevant evidence which a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue (5 CFR §1201.56(c)(2)), or, evidence which is more credible and convincing to the mind, even if only by 50.1%. The rules of evidence prevailing in courts of law do not control.

Evidence should be material -- adding something to help understand the case. Material evidence has importance and weight, and will influence the hearing authority to accept a position as more probable than not.

The evidence also should be relevant -- having something to do with the case. The hearing authority should admit all relevant evidence, except facts that only repeat what has gone before. Irrelevant evidence is useless or unrelated, and the hearing authority may exclude it. For example, evidence of events or documents that post-date the filing of charges are irrelevant to the reasons for the disciplinary action.

Speculative, "second-hand", or statements of opinion, known as hearsay, should carry little weight, for they are not produced from the personal knowledge of witnesses. The hearing authority

should admit hearsay evidence, however, even though it holds limited value. Parties may object to

evidence submitted as being irrelevant or repetitive, or may object to confusing questions.

INFORMATION FOR THE FEDERATION'S AND THE CHARGED PARTY'S REPRESENTATIVE¹

PRE-TRIAL OUTLINE

(1) Write a pre-hearing outline, including a statement of the issues, and state the issues as clearly and simply as possible. The outline also will include the points you want to make in your opening statement and the facts you want to establish by your witnesses' testimony.

(2) Decide what facts you must offer to prove your case, and what proof you need to support the charges.

(3) Think how you will prove those facts, what evidence you will need to submit, whom you will call as witnesses, and what documents you need to include. Make sure you have all the necessary documents. The record of the hearing must include a copy of the hearing authority appointment and the notice to the charged party. The Federation representative should contact the National Vice President for more information, witnesses, and documents that he or she will need in meeting the burden of proof.

(4) Write what you think will be the opposing side's position, and write out questions that you think may come up during the hearing. Write out how you will respond to them.

DISCOVERY

Neither side has the right to find out what the other side has in the way of witnesses or documents (discovery), so neither representative will have to give any information before the hearing to the other side. Of course, when a representative introduces a document, he or she will give a copy to the others.

PREPARING THE WITNESSES

A witness is a person who gives testimony under oath or swears to a fact. The Federation and charged party's representative must choose their witnesses and prepare them. The representative should talk to every witness, and decide whether or not to use a particular witness to make the direct case, or to use one to rebut, or contradict, the opposite side's witness. Call people who can tell the story truthfully, simply, and well, and call them in logical order so that the story makes sense. If they have direct knowledge of facts about the charged misconduct, they will be key witnesses for the case. Next, put on those who know important facts, who can fill in blanks, or who can support the previous witness. Save the rest for rebuttal, or do not use them at all. The witnesses must have personal knowledge of the critical events, or know about affiliate matters.

It is proper and necessary for the representatives to:

- (1) Explain to each potential witness what a disciplinary proceeding is, and what the trial is about;
- (2) Find out how much the witness knows in order to write the questions which will draw out that information when the witness is on the stand; and
- (3) Tell the witness what questions will be asked. It is improper to change or influence the witness' testimony.

Write out the questions for each witness. Give each witness a dry run. Instruct the witness to listen to the question, take a deep breath, and give a short and truthful responsive answer. Write out the questions so that the hearing authority will be shown through the witness:

¹ Retained attorneys or representatives who are not members of the local or council may represent the charged party in the trial, unless they are employees, representatives, or members of rival unions or associations.

- (1) Who the witness is in relation to the case;
- (2) Why the witness is testifying; and
- (3) What the witness saw, heard, or knows, and/or why a document introduced through the witness as an exhibit is important.

Remember, witnesses offered for direct or rebuttal testimony usually make or break the case.

Expect cross-examination by the other side and prepare the witness for it. Predict some of the questions that the opposing side or hearing authority may ask your witness on cross-examination, and practice them. Also, tell your witness:

- (1) Not to argue or take sides;
- (2) To answer only the question asked;
- (3) Never to volunteer information; and
- (4) To be brief, absolutely accurate and truthful, and entirely calm.

Tell your witness to answer "yes" when the opposing side asks during the cross-examination if you had discussed his testimony with him before the hearing. Also, tell the witness to say that you advised him "to be brief, accurate, and to tell the truth."

PREPARING THE DOCUMENTS

Prepare your written evidence. Collect all important and relevant papers and organize them in logi-

Notes:

cal order. It helps to label or tab them so that you can open quickly to each. Make a copy of each document which you wish to use as evidence for:

- (1) The hearing authority;
- (2) The opposing side;
- (3) A copy the witnesses can use for reference; and
- (4) One for yourself.

A set of these documents will become part of the official record if you introduce them properly.

The prosecutor must have all the necessary documents, including a copy of Article XXIII of the AFGE National Constitution and the local's (or council's) constitution and bylaws, the initial charges filed by the member and the report of the committee of investigation (or the charges filed by the NVP), the notice to the charged party of the preferred charges and the trial place and date, and either the minutes of the meeting at which the Executive Board was selected or the trial committee members were elected, or if appropriate the independent committee member or arbitrator appointment letters from the National President. A notice to the charged party will include a listing of each specific charge preferred. The prosecutor should contact the chair of the committee of investigation for more information, including the committee's report, its list of witnesses and their testimony, and documents needed in meeting the burden of proof.

TRIAL

PRETRIAL CONFERENCE

Even before the hearing begins, as the hearing authority is setting up the room, you should approach the opposing side and try to stipulate -- that is, get agreement on introducing the documents without objection from the other side -- as many documents as possible. This is the preferred way to enter documentary evidence into the record, for most documents are official records of the affiliate or the Federation, and should not be open to dispute. If both sides will stipulate to the documents, it will reduce the use of witnesses for introducing the papers. Most documents are official records of the local, council or the National Office and should not be open to dispute, such as trial committee appointment letters, local bylaws, and even the notice to the charged party. The chair also may take official notice of (accept as part of the record) generalized knowledge without consent of the parties, that is, facts which are universally known and cannot reasonably be the subject of dispute (for example, Department of Labor regulations).

Before the hearing begins, there should be a brief off-the-record pre-hearing conference with the hearing authority. The chair should ask both the prosecutor and the charged party's representative to meet.

The charged party may offer to settle the matter at this time, rather than proceed with the trial. If a local committee of investigation had preferred the charges, and the prosecutor and charged party reach a mutual settlement agreement, it is within the discretion of the hearing authority to accept the settlement. If a National Officer has preferred the charges, any settlement agreement is subject to the acceptance of the National Officer.

Once the hearing authority has been appointed or elected, it has jurisdiction over the preferred charges. Even at this late date, the hearing authority may allow the charging and the charged parties to enter into a conflict resolution program. If the hearing authority chooses to do so, it must approve any settlement reached by the parties. However, once the trial has commenced, no conflict resolution program is available.

The purpose of the conference is to save time in the trial by estimating the anticipated length of the trial and the number of witnesses, and marking as exhibits those documents stipulated to by the representatives. Here the representatives can produce them and explain that they have reached agreement on those papers. The hearing authority can mark them before the hearing even begins.

The hearing authority opens the hearing at the time announced in the notice to the members and introduces itself. The hearing authority rules on the procedural conduct of the hearing, such as when to break for lunch and whether to sequester witnesses. The hearing authority can order witnesses sequestered, which means that they must remain outside the hearing room while other witnesses testify or until it is their turn. The reason for this is to prevent one witness' testimony from tainting the testimony of a following witness. Normally each side may allow the witnesses to remain in the room after their testimony if the representatives agree not to recall them later. The hearing authority also rules on any issue raised regarding affiliate members in attendance. Only relevant witnesses, the representatives, and the National Vice President within whose district the affiliate lies, have a right to attend the trial.

The hearing authority explains the hearing procedure and asks the representatives through whom they intend to give testimony and/or evidence. The representatives should identify those individuals who will testify on their behalf.

After the hearing authority presents the format of the hearing, he or she calls upon the Federation representative. The hearing authority will ask the Federation representative if he or she is prepared to put on its case. Because the Federation has the burden of proof, the Federation representative will go first in presenting the Federation's case and at the closing statement. Normally, the representative of the Federation will begin with an opening statement and then will call witnesses who present oral and documentary evidence in support of the charges of misconduct. The hearing authority may swear in all witnesses.

For the hearing authority, the purpose of the trial is to elicit the complete factual account involved in the charges of misconduct. The hearing authority should facilitate the parties' presentations of their cases in the most logical and complete manner possible. Therefore, the hearing authority should inquire fully into all matters that are relevant to the issues of the trial, in order to obtain a full and complete record upon which it may make its findings, recommendations and decisions. Because the hearing authority has the responsibility of fully developing the facts, at his or her own initiative he may call, examine, and cross-examine witnesses and introduce documentary evidence into the record.

Finally, the hearing authority must be impartial and fair. Nothing taints the proceedings more than a member or members of the trial committee who come to the trial determined to "get" or clear the accused.

OPENING STATEMENT

Normally, the Federation's representative will begin with an opening statement. Here he or she will explain the theory of the case, which must be simple enough to explain in a few sentences. Of course, he or she will find it is most helpful to have organized this presentation, either as fully written or at least in a written outline, prior to the hearing. He or she should not hesitate to read from a written opening statement, if a bit unsure of memory or a little nervous as the hearing begins. The representative is not before a jury, and there is no need for the drama of "off-the-cuff" opening remarks.

- (1) Introduce the case by framing the issue in the way most favorable to the Federation;
- (2) Discuss the relevant Constitutional provisions;
- (3) Summarize the basic facts;
- (4) Talk briefly about the witnesses that will be called to testify, and explain briefly how each will contribute to the case; and
- (5) State the basic arguments.

In similar fashion the affiliate's representative may present an opening statement at this time or reserve the right to make an opening statement at

the commencement of its case.

DIRECT EXAMINATION OF WITNESSES

After the opening statement, the prosecutor will present the direct case by calling witnesses, who will present oral and documentary evidence in support of the charges. In determining the order of witnesses, those who can tell the story best, or most of the story well, in a short, accurate, complete statement of the facts, should be called first. The prosecutor is presenting a "story" to the hearing authority that is unfamiliar with the facts, and should use good judgment in calling witnesses in an order (chronologically or otherwise) that makes sense for a logical and coherent retelling of what occurred.

The hearing authority should swear in each witness. The following instructions are good advice for both sides:

- (1) Let the witness testify. Phrase questions to draw out complete factual statements. Avoid stating the facts with a question that requires only a "yes" or "no" from the witness.
- (2) Be brief and to the point. Do not ask ten questions, when one will produce the best results.
- (3) Don't be repetitive. If there are a number of witnesses to the same material facts, use good judgment in deciding which one to call.
- (4) Don't leave a vague or incomplete statement of fact unclarified in the record, if it is important to the case. Question the witness further on the same topic, until the answer is clear and complete. If a fact is essential to the final decision, it must appear in the record in such a form that the hearing authority can make the appropriate finding from it.
- (5) Carefully check off on your pre-trial outline each bit of evidence as it goes into the record. This confirms that you have offered all the necessary facts, and it will help you see which facts you still must introduce before the concluding argument. If you fail to present all the relevant facts, the hearing authority may not be able to support the desired action.

(6) In questions involving facts you wish to prove, use interrogatory words: who, when, what, where, why. Some examples of proper direct examination are:

- (a) "Please state your name, address and occupation."
- (b) "What is your current connection with AFGE Local/Council ___?"
- (c) "How did ___ come to your attention?"
- (d) "What action did you take?"

Close with a strong witness, who can end the case on a favorable note.

The other side has the right to cross-examine each witness who testifies. (See cross-examination of witnesses below.)

INTRODUCING DOCUMENTARY EVIDENCE

In regard to documentary evidence, the hearing authority should make sure that the Federation representative submits again at the hearing all relevant information and documents that were submitted prior to the hearing. Lay the foundation for the introduction of the evidence. There are three steps in getting a document into the record: (1) identification; (2) explanation; and (3) presentation or offer. These documents then become exhibits. Again, this is good advice for both representatives:

(1) Introduce the exhibits logically through your witnesses, using those who best will be able to testify as to the genuineness and contents of each document.

- (a) First, you hand the document to the hearing authority: "I offer this document for identification and request that it be so marked."
- (b) The hearing authority then marks it as "Federation (or charged party) Exhibit No. ___ for identification." The hearing authority then hands it back to you.
- (c) You give the document to the witness. "You have in your hand Federation (or charged party) Exhibit No. ___, marked for identification. Would you please tell us what it is."

(2) The witness has seen it, received it, or prepared it, and now must properly identify and describe the document for the record, showing that as an exhibit it is relevant and material to the issue.

(3) After the witness has discussed it, you must offer the document into evidence: "I offer into evidence this document, which has been marked 'Federation (or charged party) Exhibit No. ___ for identification.'"

At this point, the hearing authority should hear any objections from the opposing side. Finally, the hearing authority admits the document, and it now (and not before) becomes an exhibit and part of the official record. Now you can ask more questions from your witness about the exhibit.

Use properly introduced exhibits, as follows:

- (1) To support your case;
- (2) As an admission, use it directly against the opposing side when it prepared the document, and when the document is inconsistent with the opposing side's position;
- (3) As impeachment, use it as the basis for cross-examination to contradict an opposing witness when the document is inconsistent with a prior statement by the witness, or when the witness raises a critical point omitted in the document. To impeach a witness:

- (a) Lock the witness into the testimony that will form the basis of the impeachment;
- (b) Identify the document;
- (c) Ask whether it constitutes a full and complete statement of the point;
- (d) Get the witness to agree that he had no intention to lie or to leave out any important information;
- (e) Get the witness to agree that the statement was made at an earlier point in time, when it was easier to remember the events;
- (f) Read the inconsistent point to the witness and ask if he remembers stating it; and
- (g) Stop. Argue the contradiction and its significance in your closing argument.

Following the Federation presentation, the hearing authority calls upon the representative of the charged party for presentation of testimony and/or evidence.

CROSS-EXAMINATION OF OTHER SIDE'S WITNESSES

A representative may refute or downplay the testimony of an opposing witness in one of several ways:

- (1) Ignore the testimony, and argue later that the evidence was not important;
- (2) Cross-examine the witness, and show inconsistencies or contradictions;
- (3) Rebut the witness by calling rebuttal witnesses, after the opposing side has finished.

The decision to cross-examine involves first asking yourself whether you were seriously hurt by the opposing witness. The basic purpose or goals of cross-examination is to strengthen your position or to weaken the opposition's case. More specifically, use cross-examination to:

- (1) To take the sting out of adverse testimony by rounding out the story;
- (2) To break down the story, showing inconsistencies, contradictions, or exaggerations in the testimony:
 - (a) Show that the witness was not in a position to see or hear what was said, or had no basis to remember the facts to which he has testified.
 - (b) Lock the witness into a position and contradict it later with your own witnesses.
- (3) To demonstrate a lack of inherent credibility in the opposition witness, by encouraging him to take a ridiculous position, and arguing later that the witness is not believable;
- (4) To demonstrate bias and hostility, including:
 - (a) Self-interest;
 - (b) Antagonism;
 - (c) A close personal or other relationship that creates a motive to exaggerate, cover-up or lie;

(d) A tendency of one witness to back up another.

(5) To gain admissions and concessions by stressing the facts and circumstances, and using documents, favorable to your case.

To accomplish this, establish control over the opposing witness:

- (1) Do not tolerate evasiveness or unresponsiveness;
- (2) Primarily use leading questions that lead to "yes" or "no" answers, not open-ended questions. For example, you might say, "Isn't it right that you ...?" or "You then did ... , isn't that correct?"
- (3) Keep the questions moving; do not hint at your next question.

Cross-examination involves risk to your case, for the opposing witness may gain credibility, reinforce points already made, and fill in gaps in the previous testimony during the cross. Therefore:

- (1) Do not cross-examine the opposing witness if you have no definite objective in mind.
- (2) Do not ask a question if you are totally unsure of the possible answer or feel that it may harm your position.
- (3) If an opposition witness gives you a favorable answer, do not allow him to explain or modify the answer to the detriment of your position. Ask the witness to answer only your specific question, and if he fails to do so, ask the hearing authority to direct the witness to answer only those questions you have asked.
- (4) Do not badger or embarrass the witness, for it is improper and useless.

The two final steps are re-direct examination, and re-cross examination, if needed. The hearing authority should limit the questioning in the re-examination to the matters covered in the previous examination. Generally, cross-examination is limited to matters covered in direct examination, and re-direct examination is restricted to subjects cov-

ered on cross-examination. The hearing authority also may ask questions of the witnesses.

REBUTTAL WITNESSES

Both representatives have the right to present rebuttal evidence. The purpose is to call witnesses and put into evidence testimony or documents that answer or put into context any damaging evidence presented by the opposing side. It is not for filling in gaps in the case for either side. The risk is that you are giving the opposing side one more shot at weakening your case by cross-examining another witness. If you feel it is necessary to call a witness for rebuttal, make sure you use a rebuttal witness who can directly refute the opposing side on a critical point, and ignore side issues.

HOSTILE WITNESSES

If an opposition witness is the only source of crucial information, you must take his testimony. You may call him as your own witness as part of your case, if you are not sure the other side will be calling him. You should advise the hearing authority that you are calling the person as a hostile witness. You then may proceed to question the witness with leading questions, just as you would in cross-examination. Phrase your questions to require a specific, exact answer. Avoid general questions. If, in addition to giving out the crucial information you needed, the hostile witness makes any damaging statements, try to refute them through your own witnesses later.

OFFER OF PROOF

If the hearing authority rejects a document or does not allow one of your proposed witnesses to testify, tell him that you are making the following "offer of proof" on the record. "If the hearing authority had allowed me to call witness x, witness x would have said the following..." The purpose of this is to get it all into the record in the event of an appeal.

OBJECTIONS

Both you and the opposing representative may make objections. The purpose is to keep out the

other side's irrelevant or repetitive evidence, or to prevent the other side from asking your witness confusing or leading questions. Make an objection only when it serves your purpose; don't make a lot of objections on unimportant points, for that will irritate the hearing authority. If you have an objection, politely and firmly name the specific reason, get a ruling, and sit down. For example, "I object to that question, for the witness already answered it."

CLOSING STATEMENT

Following the charged party's presentation of his defense, the hearing authority calls upon the prosecutor to summarize in a closing statement the argument for a finding of guilt, and the charged party to summarize in a closing statement the argument for a finding of not guilty. It is often helpful, prior to the trial, to write a draft closing statement, or at least prepare an outline. Do not hesitate to read portions of the closing statement, if unsure of memory, or if fatigued after a long proceeding.

- (1) Restate the theory;
- (2) Summarize the basic points that were not in serious controversy. Stress the undisputed evidence and the admissions from the other side, and stress any other evidence that is particularly credible or persuasive.;
- (3) Discuss the evidence in dispute:
 - (a) Explain why your witnesses should be believed, and comment on any important documents admitted into evidence;
 - (b) Show why the opposing side's witnesses should not be believed:

- (1) Show the weaknesses in the other side's case;
- (2) Stress any contradictions established by cross-examination or otherwise, but be careful to not make unnecessary attacks that may create sympathy for the witness under attack;
- (3) For credibility, stay with the facts, and do not stretch points beyond fair argument or logical inference.

- (4) Conclude by stating the important basic points directly and simply.

(5) **Tell the hearing authority what specifically you request. For the prosecutor, it is the specific penalty to be imposed and why that penalty is the appropriate one in light of the charges -- suspension from office and/or membership for a specific period, repayment with interest prior to reinstatement, etc. For the charged party, it is the dismissal with prejudice of all charges.**

The hearing authority may ask whether either side

wishes to submit written arguments, called a brief, and then closes the trial. In most instances, the issues and facts presented will not be complicated, and will not require written briefs in addition to the closing statements. If the trial continues to a second day, the hearing authority will attempt to secure the time and place, and to notify the parties on the record, prior to adjourning for the day.

POST-TRIAL

After the close of the record, the hearing authority will assure that all exhibits are present, and will provide for safekeeping the evidence and record of the hearing. The hearing authority should return the room to its original state, including placement of the furniture, windows, lights, and the doors locked, notify the custodian that the hearing has ended, and convey an appropriate expression of appreciation.

POST-TRIAL PROCEDURES FOR THE TRIAL COMMITTEE

The chair will meet with the other committee members to plan how to write the findings, recommendations and/or decisions, to determine that all exhibits are present, and to safekeep the evidence and record of the trial. The secretary shall furnish to each party, by certified mail, a copy of the minutes, audio tape recording, or transcript within a week of the close of the hearing. Each party has ten days from receipt to submit any objections to the accuracy of this trial record, in writing, to the secretary.

The chair will write the initial report of the committee's findings, recommendations and/or decisions from the record of the proceeding as soon as possible, but at least within two weeks after the time limit for objections to the record, and will send copies to the other committee members for their review. The trial committee should reach agreement on a decision supported by a majority of the members of the committee. No written dissenting opinion is authorized. Depending on the complexity of the issues, the committee's decision normally is only two to four

pages long. Appendix C contains a sample decision.

Trial Committee Selected by Local or Council

If the local (or council) had selected the trial committee pursuant to Article XXIII, Section 4, the committee then submits its written findings, recommendations and/or decisions regarding the office and/or the membership of the charged party to the membership of the local at its next regular meeting (or to the constituent council locals). **A trial committee's decision exonerating the charged party shall not be subject to local or council approval, there is no further internal appeal available to the charging party, and the finding is not subject to any further action within the local, council, or the Federation.**

If the trial committee finds the charged party guilty, the local's membership as the first item of business votes without debate solely to accept or reject the committee's work. It may not increase the penalty set by the trial committee. (A council trial committee submits its written findings, recommendations and/or decisions regarding the charged party's office to the council, pursuant to the applicable provision of the council's constitution.) In the case of multiple charged parties with different penalties, the local membership may vote on each charged party separately. All participants in the trial, if members, except for the accused, may vote.

The committee should safeguard the notice of charges against the charged party, the documenta-

tion of the authority (election meeting minutes) by which the trial committee was elected or constituted, the motions, rulings, orders, stipulations, exceptions, the audio tape recording of the trial, documentary evidence, and any briefs or other evidence submitted by the parties, and retain this record for one year.

Trial Committee Appointed by National President

If the National President appointed the hearing authority pursuant to Article IX, Section 5(d) after suspending the officer, the hearing authority renders the decision. If the National President appointed the hearing authority pursuant to Article IX, Section 5(e), it submits its findings, recommendations and/or decisions regarding the office and/or the membership of the charged party to the National President for final decision. The package containing the hearing authority's findings and recommendations should be forwarded to the National President not more than one month after the trial, and should include the notice of charges and trial, motions, rulings, orders, stipulations, exceptions, the transcript, audio tape recording, or minutes of the trial, documentary evidence, any briefs or other evidence submitted by the parties, and any objections to the transcript/minutes. The trial committee members may submit expense vouchers, as defined in their appointment letters, with the final report. Normally, the costs of the trial will be charged back to the local. A charged party may appeal an adverse disciplinary decision to the NEC pursuant to Article XXIII, Section 9.

POST-TRIAL PROCEDURES FOR THE ARBITRATOR

Notes

When the National President has suspended an officer and appoints an arbitrator pursuant to Article IX, Section 5(d), the arbitrator shall render a decision on the office: suspending the accused for a specific time from the office, removing the individual from office, or barring the accused from holding any office for a specified time. The arbitrator also may reach a decision on the membership: suspending the accused for a specified period of time from membership or expelling the individual from membership. The arbitrator may require the accused to repay any misappropriated funds with interest. This may be a condition to reinstatement to office or membership. In the alternative, the arbitrator may find the defendant not guilty as accused. The arbitrator will transmit such decisions within 30 days to the accused, with a copy to the Local, the National Vice President, and to the National President.

When the National President has not suspended an officer and appoints an arbitrator pursuant to Article IX, Section 5(e), the arbitrator shall render findings, recommendations, and decision on the office: barring the accused from holding any office for a specified time. The arbitrator also may render findings, recommendations, and decision on the membership: suspending the accused for a specified period of time from membership or expelling the individual from membership. The arbitrator may recommend that the accused repay any misappropriated funds with interest. This may be a condition to reinstatement to office or membership. In the alternative, the arbitrator may find the defendant not guilty as accused. The arbitrator will submit its report within 30 days to the National President, who will issue a final decision to the accused.

ATTACHMENTS

ATTACHMENT A **CHECKLIST FOR THE LOCAL**

- Did the charging party file charges on disciplinary matters, and not for conduct related to elections?
- Did the charging party specifically describe the alleged misconduct in the notice of charges sent to the charged party, and not merely list the items in Article XXIII, Section 2?
- Did the committee of investigation complete the investigation and either dismiss or prefer charges within 120 days of the filing of the charges?
- Did the committee of investigation send the preferred charges to the charged party by certified mail?
- Were the trial committee members all people who did not serve on the committee of investigation? Were any members of either the committee of investigation or the trial committee directly or indirectly involved in the charges?
- Did the local select the trial committee at the next regular membership meeting, or at a special meeting at least five days after the committee of investigation preferred the charges?
- Did the entire Executive Board (minus involved officers) serve as the trial committee, or, did the local elect a trial committee?
- If elected, did the trial committee have an odd number of members (3, 5, or 7)?
- Did the trial committee send the notice of trial to the charged party by certified mail, at least two weeks before the trial?
- Did the trial committee conduct the trial within 180 days after the preferring of the charges?
- Did the trial committee allow the charged party to present witnesses and documents and cross-examine opposing witnesses?
- Did the trial committee give the charged party a copy of the audio tape recording, transcript or minutes of the trial?
- Did the trial committee give the charged party the trial committee report?
- Did the trial committee present its report in writing to the local membership at the next regular membership meeting following the trial as the first agenda item?
- Did the local vote without debate only on whether to accept or reject the report?
- Did the local leave the officer in office (and not suspend the officer's duties), or leave the member in good standing, until after the trial and vote of the membership?
- Did the local inform the charged party by certified mail of the decision and appeal rights?

ATTACHMENT B
SAMPLE OPENING STATEMENT AND OUTLINE

I. INTRODUCTORY STATEMENT BY HEARING AUTHORITY

We are here pursuant to Article XXIII, Sections 4-6 of the AFGE National Constitution, for the conduct of a trial into disciplinary charges preferred by _ against _. We are here for a fact-finding trial.

While this is an adversarial procedure, the trial committee will allow no rudeness or disruption from the prosecutor or the charged party or representative or any witness or member of the local.

The prosecutor will put on his/her case first. Afterwards, the charged party will be extended the same right. The chair will resolve all disputes. This is not a court of law, and formal rules of evidence and procedure will not apply.

At the conclusion of the trial, the hearing authority will meet to write a recommended decision, and will present its finding of the facts, decision and recommendation to the next local regular membership meeting [council] [mail the decision (Sec 5(d)) or recommendation (Sec 5(e)) to the National President. The President then will notify the charged party of the decision.]

Is the prosecutor ready to proceed?

II. THE PROSECUTOR'S CASE

- A. Opening statement
- B. Witnesses and exhibits
 - (1) Direct examination by the prosecutor
 - (2) Cross-examination by the charged party
 - (3) Re-direct examination by the prosecutor
 - (4) Re-cross examination by the charged party

III. CHARGED PARTY'S CASE

- A. Opening statement
- B. Witnesses and exhibits
 - (1) Direct examination by the charged party
 - (2) Cross-examination by the prosecutor
 - (3) Re-direct and re-cross

IV. CLOSING STATEMENTS

- A. By the prosecutor
- B. By the charged party

V. CLOSE THE RECORD

ATTACHMENT C
SUPPLIES

If the hearing authority uses a cassette tape recorder rather than taking written minutes, it will need backup batteries or electrical connections, extension cords, and microphones if possible, and audio tapes for six to eight hours per day, labeled and numbered prior to the trial. The hearing authority should make one copy of the tapes following the trial for the charged party.

A copy of the AFGE National and the Local's (or council's) Constitution and Bylaws.
A copy of the election minutes or appointment letter and the notice of charges to the charged party.
This *Manual*.
Office supplies: paper, pen & pencil, two color markers, large envelope, paper clips, rubber bands, stapler.

ATTACHMENT D SAMPLE DECISION

INTRODUCTION

A duly constituted hearing authority conducted a trial on _ (date), at _ (place) on charges preferred by _ against _, as contained in the notice to the charged party. The hearing authority consisted of _.

FACTS

An AFGE Local _ [or Council _] committee of investigation [or National Vice President _] preferred charges against _ (Joint or Federation Exhibit 1). Local _ [or Council _] constituted this trial committee on _ [or the National President, pursuant to Article IX, Section 5(d) or (e) of the AFGE National Constitution, by letter dated _, appointed the hearing authority (J or E Exhibit 2)].

_ prosecuted the charges before the hearing authority, and _ represented the charged party. The prosecutor presented the union's case with _ witnesses, and submitted Joint Exhibits 1 through _ and Union Exhibits 1 through _. The charged party presented narrative direct testimony and _ witnesses, and submitted _ Exhibits 1 through _.

FINDINGS AND RECOMMENDATIONS

Both of the representatives' extensive record evidence by direct and cross-examination of witnesses, and the hearing authority's questions, produced a record sufficient in quality and quantity to enable the hearing authority to render a sound and reason-

Notes

able report of its findings and recommendations. The hearing authority reviewed both oral and documentary evidence. It [is unanimous in its finding (or the majority finds)] finds that the preponderance of the evidence supported the charges as filed. The charged party did not adequately rebut the evidence presented. It [is unanimous in its finding (or the majority finds)] finds insufficient evidence to support the charges as filed.]

Specifically, the hearing authority found that **discuss each charge!**.

Accordingly, the hearing authority finds _: [guilty of the charges as filed (or guilty of charges _ - _), and it recommends that the charged party be (fined) (suspended from office) (barred from holding office) (suspended from membership) (removed from membership) (for life) (for _ years) (for the period _) (until repayment of _).]

[not guilty of the charges, and dismisses the charges (and the charged party, who had been suspended under Article IX, Section 5(d), is reinstated to the office of _). Exoneration of the charged party shall not be subject to local approval, there is no further internal appeal available to the charging party, and the finding is not subject to any further action within the local or the Federation.]

Hearing authority

ATTACHMENT E

TABLE OF MANDATORY PENALTIES

CONDUCT	PENALTY
Advocating, encouraging or attempting to bring about a secession from the Federation of any local or of any member or group of members.	Mandatory expulsion from membership for life.
Working in the interest of or becoming a member of the Communist Party or any other organization which advocates the overthrow of the democratic form of government under which our members live.	Mandatory expulsion from membership for life.

TABLE OF POTENTIAL PENALTIES

A wide range of penalties are available. The appropriateness of a specific penalty will depend upon the specific facts, the severity of the conduct, and the damage to the local. A suspension, removal, or bar from office could be for a specific length of time, until the next election, or for life. A suspension from membership would be for a specific length of time; expulsion from membership is for life.

CONDUCT	PENALTY*
Violation of any provision of this Constitution or the constitution and bylaws of the local to which a member belongs.	(1) Suspension from office, (2) removal from office, (3) bar from future candidacy for office, (4) suspension from membership, (5) expulsion from membership.
Making known the business of any affiliate of the Federation to management officials of any agency or other persons not entitled to such knowledge.	(1) Suspension from office, (2) removal from office, (3) bar from office, (4) suspension from membership, (5) expulsion from membership.
Engaging in conduct unbecoming a union member.	(1) Suspension from membership, (2) expulsion from membership.
Engaging in gross neglect of duty or conduct constituting misfeasance or malfeasance in office as an officer or representative of a local.	(1) Suspension from office, (2) removal from office, (3) bar from office, (4) suspension from membership, (5) expulsion from membership.
Incompetence, negligence or insubordination in the performance of official duties by officers or representatives of a local or council or failure or refusal to perform duties validly assigned.	(1) Suspension from office, (2) removal from office, (3) bar from office, (4) suspension from membership, (5) expulsion from membership.
Committing any act of fraud, embezzlement, mismanagement or appropriating to one's own use any	Suspension from membership for a minimum of thirteen years. Repayment of misappropriated funds

* The Constitution provides for imposing fines on members, but, in practice, there have not been actual cases before the NEC involving fines of a member.

money, property or thing of value belonging to the Federation or any affiliate.	with interest, which may be a condition of reinstatement.
Refusing, failing or neglecting to deliver at specified periods or on demand, in accordance with this Constitution or the constitution and bylaws of the local or council to which a member belongs, a full and accurate account of all monies, properties, books and records for examination and audit.	(1) suspension from office, (2) removal from office, (3) bar from office, (4) suspension from membership, (5) expulsion from membership.
Assisting, counseling or aiding any member or officer of the Federation or any of its affiliates to commit any of the offenses herein set forth.	(1) suspension from office, (2) removal from office, (3) bar from office, (4) suspension from membership, (5) expulsion from membership.

ATTACHMENT F
ARTICLE IX, SECTION 5(d)-5(e)
DUTIES OF THE NATIONAL PRESIDENT

SUSPENSION AND TRIAL

SEC. 5(d). The National President shall be authorized to suspend immediately any officer of an affiliate for serious misconduct, including but not limited to incompetence, negligence, or refusal to perform duties validly assigned, or any other offense, as described in Article XXIII, Section 2, where in his or her judgment the continuance in office of such officer would be inimical to the best interests of the Federation and its members. At the time of the suspension, the National President shall serve upon the suspended officer by registered or certified mail a written notice of the suspension stating in detail the charges against the officer, and he or she also shall mail a copy of such notice and charges to the president or highest remaining ranking officers of the local. Such suspended local officer shall be tried by his or her local under the procedures established in Article XXIII. However, the National President, when he or she deems it in the best interest of the Federation, or in his or her opinion the local will not proceed promptly to trial, or cannot be expected to fairly or judiciously try the matter, may (1) appoint a trial committee or (2) select an arbitrator under existing

Federal Mediation and Conciliation Service or American Arbitration Association procedures, for the trial of the suspended officer. A suspended national bargaining council officer will be tried by a trial committee composed of three members, one of whom shall be an arbitrator selected in accordance with Article XXI, Section 7, and of the others, who shall be appointed by the National President, one shall be a national council president. A suspended local officer shall be tried by a trial committee appointed by the National President, composed of at least three members or employees of the Federation. Such trials shall be conducted speedily but with reasonable time for the accused to prepare his or her defense. The procedures described in Article XXIII, Sections 4, 5 and 6 governing the conduct of hearings by local trial bodies shall be followed by the trial committee or arbitrator to assure the accused a full and fair hearing in accordance with the basic requisites of due process. The trial committee shall render a decision suspending the accused for a specific time from his or her office, removing him or her from the office, barring him or her from holding any office for a specified time, and/or suspending for a specified period of time, or removing him or her from

membership, or finding him or her not guilty as accused. An officer suspended or removed from office and/or membership shall have the appeal right as set forth in Article XXIII, Section 9, after decision by the trial committee.

The suspension or removal of an officer shall operate only to suspend the right of such person to occupy any office or position, or perform any of the functions thereof, but all other membership rights of such individual shall remain unaffected unless and until the trial committee renders a decision affecting his or her membership rights.

SEC. 5(e). Where the National President determines that the conditions within a local or council are such that a fair and impartial investigation and trial of charges against a member cannot be conducted by the local or council under the provisions of Article XXIII, Section 3, then in that event the National President may appoint a committee of investigation and/or a trial committee, such committees to

be composed of at least three members. In lieu of a trial committee, the National President may select an arbitrator under existing Federal Mediation and Conciliation Service or American Arbitration Association procedures. In the case of a national council officer, the composition of the trial committee shall be consistent with Article XXI, Section 7. In no case will the committee of investigation and the trial committee be composed of the same members. All of the due process provisions in Sections 4, 5, and 6 of Article XXIII govern the trial before such trial committee. The findings and recommendations and decision of such trial committee shall be submitted to the National President. Within 15 days after the National President receives the transcript or minutes of the hearing and the findings and recommendation and decision of the committee or arbitrator, he or she shall render a written decision. The National President's decision may be appealed by the charged member to the NEC and to the National Convention in accordance with the procedures in Section 9 of Article XXIII.

ATTACHMENT G
ARTICLE XXIII
OFFENSES, TRIALS, PENALTIES, APPEALS

SECTION 1. Except as provided for under the powers of the National President in Article IX, Section 5, the local in which an individual member holds membership is the court of original jurisdiction for trial of charges against the local's members and officers, unless the charges arise out of or result from an individual's conduct or status as a council officer on matters concerning council operations, in which case the council has original jurisdiction for trial of such charges. The due process provisions of Article XXIII shall govern at the council level when a council officer is charged and tried in his or her capacity as a council officer. Members of the Federation, including officers, agents, and representatives of locals

or councils, shall be tried for any of the offenses listed in Section 2 hereof.

SEC. 2. Charges may be preferred for conduct detrimental or inimical to the best interests of the Federation. Offenses against this Federation include the following:

- (a) Advocating, encouraging, or attempting to bring about a secession from the Federation of any local or of any member or group of members. The conflict resolution program is not available. Penalty for conviction under this subsection shall be expulsion;
- (b) Working in the interest of or becoming a member of the Communist Party or any

other organization which advocates the overthrow of the democratic form of government under which our members live. The conflict resolution program is not available. Penalty for conviction under this subsection shall be expulsion;

(c) Violation of any provision of this Constitution or the constitution and bylaws of the local to which a member belongs;

(d) Making known the business of any affiliate of the Federation to management officials of any agency or other persons not entitled to such knowledge;

(e) Engaging in conduct unbecoming a union member;

(f) Engaging in gross neglect of duty or conduct constituting misfeasance or malfeasance in office as an officer or representative of a local. The conflict resolution program is not available after the committee of investigation has preferred charges;

(g) Incompetence, negligence, or insubordination in the performance of official duties by officers or representatives of a local or council or failure or refusal to perform duties validly assigned;

(h) Committing any act of fraud, embezzlement, mismanagement, or appropriating to one's own use any money, property, or thing of value belonging to the Federation or any affiliate. The conflict resolution program is not available after the committee of investigation has preferred charges;

(i) Refusing, failing, or neglecting to deliver at specified periods or on demand, in accordance with this Constitution or the constitution and bylaws of the local or council to which a member belongs, a full and accurate account of all monies, properties, books, and records for examination and audit; and/or

(j) Assisting, counseling, or aiding any member or officer of the Federation or any of its affiliates to commit any of the offenses herein set forth.

SEC. 3. Charges may be preferred by the National President, the National Executive Council, the National Vice President having jurisdiction over the local of which the accused is a member, or by a committee of investigation of the local. Any member may request conflict resolution or bring charges by first filing them with the local of which the accused is a member, and the charges shall be investigated by a committee of investigation appointed by the local president or by the majority of the local Executive Board if the local president is being accused. If it is the local president who brings charges against a member, then the local Executive Board shall appoint a committee of investigation. If a member of the local Executive Board is the accused member, he or she may not vote in the selection of the committee of investigation. No member of the Executive Board may serve on the committee of investigation. The local committee of investigation shall conduct and complete the investigation within 120 days of the filing of charges. If the committee of investigation finds probable cause and cannot settle the matter informally or through the conflict resolution process, it shall prefer charges upon the accused. Such charges shall be in writing and shall be served upon the accused by registered or certified mail at his or her last known address, and the local of which the accused is a member also shall be served at its office or address of its highest ranking officer. The charges shall contain an allegation of the facts describing the nature of the offenses charged.

SEC. 4. The trial shall be conducted either (a) by all of the eligible members of the local's Executive Board or (b) by a trial committee elected by the membership and composed of not less than three nor more than seven members of the local. In any event, no member of a local union shall be eligible to serve on the board or trial committee for the hearing of charges under this Article if he or she is directly or indirectly involved in the matter

which gave rise to the charges upon which the accused is to be tried. In no case will the committee of investigation and the trial committee be composed of any of the same members. The trial committee shall be elected by the membership of the local at the next regular meeting after the charges have been preferred or at a special meeting called for that purpose to be held not less than five days after a copy of the charges has been filed with the local. The body hearing the trial shall select from among themselves a presiding officer and a secretary and fix the time and place of the trial. The presiding officer shall notify the accused and those who preferred the charges by registered or certified mail of the time and place of trial, and such trial shall be held promptly but shall not be held less than two weeks after the mailing of the notice so as to insure the accused of a reasonable time to prepare his or her defense, nor more than 180 days after the preferring of charges, so as to insure a prompt trial. The conflict resolution program is not available after the trial commences.

SEC. 5. All parties shall be given full opportunity to present all relevant evidence and exhibits which they deem necessary to the proper presentation of their case and shall be entitled to cross-examine witnesses of the other party or parties. The accused shall have the privilege of being represented by representatives of his or her choice, except by a member of the trial committee or a member of the Executive Board when it is acting as a trial board or a representative of another labor organization.

At the discretion of the local union a verbatim transcript of the trial proceedings may be taken. For the purpose of creating an official record of the hearing conducted by the trial body, a verbatim transcript also shall mean a tape recording. In the event no verbatim transcript is made, the secretary of the trial body shall reduce the minutes of the trial to writing and include therein the substance of the testi-

mony and all exhibits submitted at the trial. The secretary also shall furnish to each party a copy of the transcript or minutes, as the case may be, and each party within ten days after receiving said transcript or minutes shall submit to the secretary in writing any objections thereto. The record thus made shall constitute the record of the trial for the purpose of appeal, and in the event any party fails to attest to the correctness of the record or to file objections to the correctness of the record within the time limit prescribed herein, the transcript or minutes furnished by the secretary of the trial committee for the purpose of appeal shall be deemed to be a correct record of the trial procedure and of the evidence presented. All matters relating to the procedure of the trial not otherwise specified in this Section shall be determined by the trial body, and all parties and their respective counsel shall comply with all orders and directions of the trial body with respect to such matters. No member of the board or trial committee who absents him or her self from any session of a trial may participate in findings, decisions, or recommendations of the board or trial committee or file any concurring or dissenting opinion.

SEC. 6. Should the accused fail, refuse, or neglect to appear for trial after due notice, or after appearing refuse to comply with orders or directions of the trial committee relating to the conduct of the trial or otherwise attempt to obstruct or thwart the trial committee in its conduct of the trial, the trial committee shall proceed with the trial in the absence of the accused, hear such evidence as may be presented by witnesses who respond to notice, and render its findings, recommendation, and decision. However, the accused shall not be deprived of the privilege of being represented by a representative of his or her choice.

SEC. 7. At the next regular meeting of the local following the conclusion of the trial, as the first order of business, the trial body shall

read the sustained charges against the accused. At that time the accused or representative may make a statement on his or her behalf to the membership. The trial body then shall submit to the local in writing and read its findings of the facts, decisions, and recommendations. The accused shall retire from the room when the vote of the membership is taken. The members of the local there assembled shall vote without debate solely on the question of whether to accept or reject the decision and recommendations of the trial body. The local by a majority vote of its members voting may fine, suspend, or expel the accused from its membership or suspend or remove the accused from any local offices which the accused may hold. No further trial shall be had on the same charges except for violation of the procedures described by the Constitution or of procedural due process, and then only if desired by a decision on appeal.

SEC. 8. The accused and those who preferred the charges shall be notified by registered or certified mail of the decision of the local. The notice to the accused shall be mailed to the last known address and shall advise the accused of available appeal rights. Any adverse decision against the accused shall remain in effect pending final appeal.

SEC. 9. Any officer or member fined, suspended, or expelled from membership or suspended or removed from office by a vote of his or her local may appeal such decision to the NEC, provided such appeal is filed in writing with the NST within 15 days after the officer or member is notified of the decision of the local. The NEC shall consider the appeal at its next regularly scheduled meeting or at a special meeting called for that purpose by the National President or two-thirds of the NEC. The NEC shall review the case and affirm or reverse the decision, reduce the penalty, or return the case to the local for a new trial before a different trial committee. If the decision of the NEC should affirm any adverse action taken against the appellant by the local, the appellant may further appeal to the next National Convention.

SEC. 10. All provisions relating to the trial procedures and appeals in local constitutions and bylaws must comply with the Rules and Regulations of the Assistant Secretary of Labor for Labor-Management Standards implementing Public Law 95-454, Standards of Conduct for Labor Organizations. This Article supersedes any provisions in local constitutions and bylaws which do not meet the basic democratic procedures prescribed in this Article.

