

HEARING MANUAL FOR INTERNAL DISCIPLINARY TRIALS



DO and DON'T

DO

1. Do file charges on disciplinary matters.
2. Do specifically describe the alleged misconduct.
3. Do complete the investigation 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 and the trial committee members who do not include the charged party, the charging party, any member of the other committee, and anyone directly or indirectly involved in the matter.
6. Do use 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 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 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 trial committee or Executive Board acting as a trial committee, or a representative of another labor organization).
10. Do allow the charged party to have a representative of his/her choice and to present witnesses and documents.
11. Do give the charged party an audio tape recording or transcript of the trial.
12. Do give the charged party the trial committee report.
13. Do present the report in writing to the members of the local at the next regular meeting.
14. Do allow the charged party to address the membership.

15. Do vote without debate solely whether to accept or reject the report.

16. Do leave the officer in office or the member in good standing until after the trial and the vote of the membership.

17. 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 using the list in Article XVIII, 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 trial committee 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. 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 XVIII 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.

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 local and council **trial committees** 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.

TRIAL COMMITTEE

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**. If the local constitutes a **trial committee**, then the committee must consist of either the entire Executive Board (minus any Board members who: (1) are directly or indirectly involved in the matter which gave rise to the charges; (2) filed the charges; or (3) served on the committee of investigation), or 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** pursuant to Article IX, Section 5(e) of the AFGE National Constitution, then the committee will consist of three members or employees of the Federation, and these members will be independent of the local.

GROUND 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.) A committee of investigation is selected pursuant to Article XVIII, 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, 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 misconduct occurred. Besides a committee of investigation, the National President, the National Executive Council (NEC), or the National Vice President having jurisdiction over the local of which the **charged party** is a member also may prefer charges. 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 **trial committee**, (b) all documents accepted in to evidence, (c) the audio tape recording of the trial, and (2) establishing a trial date, place, and time with the **trial committee**.

RIGHTS OF THE CHARGED PARTY

Article XVIII, Sections 4 and 5 contain specific steps

for the conduct of a trial, and under Article XVIII, the **charged party** has the right to:

- (a) written specific charges in sufficient detail to enable a defense;
- (b) a reasonable time, not less than two weeks, to prepare a defense;
- (c) a representative selected by the **charged party** (who may not be a member of a rival union);
- (d) a full and fair trial;
- (e) at the trial, after a witness has provided direct testimony, a copy of the witness' previous statements.



PRE-TRIAL

PURPOSE OF THE TRIAL

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 **trial committee** 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. Since the committee has received only a copy of the charges, and does not look into the facts of the case before the trial starts, the **prosecutor** should present the case in the most logical and complete manner possible.

For the **charged party**, the purpose of the trial is to obtain dismissal with prejudice of all charges.

PREPARING FOR TRIAL

PRE-TRIAL OUTLINE

First, the **prosecutor** should prepare a pre-trial outline in writing, including a statement of the issues that presents the issues clearly and simply. The written outline also will include the points the **prosecutor** wants to make in the opening statement, and the facts to establish by the witnesses' testimony. The **prosecutor** will have to prove as part of the case that the moving parties have fully met the procedural requirements of Article XVIII. These requirements include: service with written specific charges, a reasonable time to prepare the defense, and a full and fair trial before a committee, whose members have no direct or indirect involvement in the matter which gave rise to the charges, and were not on the committee of investigation.

Of course, the **charged party** also should prepare in the same manner to prove facts with witnesses and documentation that demonstrate the invalidity of the charges, and also any significant failure to meet procedural requirements. The **charged party** has the responsibility of choosing a representative; it is not the union's responsibility to furnish one. **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.**

TRIAL DOCUMENTS

The **prosecutor** and the **charged party** should think about how to prove those facts needed to support, or disprove the charges, what evidence to submit, whom to call as witnesses, and what documents to include in exhibits. The **prosecutor** must have all the necessary documents, including a copy of Article XVIII of the AFGE National Constitution and the local's (or council's) constitution and bylaws, the initial charges filed by the member, the report of the committee of investigation, 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 committee member appointment letters from the National President. A notice to the **charged party** will include a listing of each specific charge preferred by the committee of investigation. 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.

ANTICIPATING THE OTHER SIDE'S CASE

Finally, each party should write out what each thinks will be the opposing side's position, questions which may come up during the trial, and how to respond to them. Neither side has the right to find out what the other side has in the way of witnesses or documents (**discovery**), so the **prosecutor** will not have to give any information before the trial to the **charged party**, except for the written specific charges.

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 admitted into the record. The **record** is the committee's notes, recording or transcript of oral evidence presented at the trial itself, and the other evidence, including documentary exhibits.

The **prosecutor** 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. The chair should admit all **relevant, competent, and material evidence**, except that which is unduly repetitious. **Competent** evidence is something that is reliable. **Material** evidence has importance and weight, adds something to help understand the case, and will influence the committee to accept a position as more probable than not. Evidence which makes no difference one way or the other to the core factual dispute is **irrelevant**, and the chair may exclude it. For example, evidence of events or documents which post-date the preferring of charges by the committee of investigation are irrelevant to the trial proceedings. Speculative statements, opinions, or **hearsay** ("second-hand" testimony about the statements of other people) should carry little weight, for they are not produced from the personal factual knowledge of witnesses. The chair 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.

PREPARING THE WITNESSES

A **witness** is a person who gives testimony under oath or swears to a fact. The **prosecutor** and the **charged party** must choose their witnesses and get them ready. Each should talk to his or her witnesses before the hearing, and decide whether or not to use a particular witness to make the **direct case**, or to **rebut**, or contradict, the opposite side's witness. Effective witnesses can tell the story simply and well, and should be called 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. Other witnesses are people who know important facts, who can fill in blanks, or who can support the previous witness. Rebuttal witnesses are saved until after the other side has put on its main evidence and witnesses, and are used to contradict or challenge that evidence.

It is proper and necessary 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 that 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 the witness' testimony.

Each party may write out questions for each witness, and give each witness a dry run. Witnesses should listen to the question, take a deep breath, and give a short responsive answer. Each party should write out the questions to show the **trial committee** through the witness:

- (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 for direct or rebuttal testimony almost always make or break the case.

Each party should expect **cross-examination** by the other side, and prepare the witness for it. Witnesses should be alerted by each party regarding some of the questions that the opposing side or the **trial committee** may ask on cross-examination, and should practice responses. Also, witnesses should be told (1) not to argue or take sides, (2) to answer only the question asked, (3) to never volunteer information, and (4) to be brief, absolutely accurate and truthful, and entirely calm.

For example, a witness should answer "yes" when the opposing side asks during the cross-examination if the witness' testimony had been discussed with either party before the trial. Hopefully, the witness will be able truthfully to say that the witness was advised "to be brief and accurate and to tell the truth."

PREPARING THE DOCUMENTS

Each party should prepare the written evidence by collecting all important and relevant papers, and organizing them in logical order. Each document/exhibit should be labeled or tabbed, to open quickly to each. A tabbed copy of each document to be used as evidence should be made for: (1) each of the **trial committee** members, (2) the opposing side, (3) the witnesses to use for reference, and (4) the side introducing the exhibit. A set of these documents will become part of the official record, if introduced properly.

THE TRIAL COMMITTEE

The chair should contact the other members of the **trial 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. The chair has the responsibility of conducting the trial, including setting times for breaks and lunch, and with the consent of the other committee members, ruling on the questions of testimony and evidence during the trial. Each **trial committee** member 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 this pre-trial meeting. The chair may bring questions concerning trial procedures or the AFGE National Constitution to the Federation's Office of the General Counsel.

Prior to the trial date, the chair 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.

ENTERING DOCUMENTS BY STIPULATION

On the morning of the trial, as the committee is setting up the room, the **prosecutor** should approach the opposing side and try to **stipulate** to the authenticity and materiality of as many proposed exhibits as possible, that is, get agreement on introducing the documents without objection from the other side. This is the preferred way to enter documentary evidence into the record. Most documents are official records of the local 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**. If both sides will stipulate to the documents, it will reduce the use of witnesses and save time otherwise needed for introducing the papers. 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 trial begins, there should be a brief off-the-record **pre-trial conference** among the committee members and the parties. The chair should ask both the **prosecutor** and the **charged party's** representative to meet with the committee for this conference. 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 both sides. The committee can mark them before the trial even begins.

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 **trial committee** to accept the settlement. If a National Officer has preferred the charges, any settlement agreement is subject to the acceptance of the National Officer or NEC, respectively.

The chair assures that the trial proceedings are being recorded, opens the trial at the time announced in the notice to the **charged party**, and introduces the other committee members. The chair rules on the procedural conduct of the trial, such as whether the trial is open or closed, whether to sequester witnesses, and when to break for meals or otherwise. The chair also rules on any issue raised regarding local members in attendance. Only the **trial committee** members, **prosecutor**, the **charged party** and his/her representative, witnesses while they testify, and members of the local and the National Vice President within whose district the local lies have a right to attend the trial.

The chair also asks the opposing parties whom they intend to call to give testimony and/or evidence. The representatives of both sides should identify those individuals who will testify on each side. The chair then reads into the record the charges preferred by the committee of investigation, the National Officer, or the NEC against the **charged party**, charges are then marked as an exhibit.

For the **trial committee**, the **purpose** of the trial is to elicit the complete factual account involved in the charges of conduct. The chair should facilitate the parties' presentations of their cases in the most logical and complete manner possible. Therefore, the chair 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 the **trial committee** may make its findings, recommendations and decisions. Because the chair 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.

The chair can order witnesses **sequestered**, which means that they must remain outside the trial room while other witnesses testify until it is their turn. 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 giving their testimony, if the representatives agree not to recall them later. After the chair introduces the committee and presents the format of the trial, the chair calls upon the **prosecutor** to put on the case. Because the union has the burden of proof, the **prosecutor** will go first both in presenting the case, and at the close. A logical, sincere, and good-natured style is wise for all parties.

THE TRIAL

GENERAL COMMENTS

Although the Constitution calls the disciplinary hearing a "trial," it is important to stress that formal rules of evidence do not apply. That is, the many formalistic procedural and evidentiary rules required by the courts or federal agencies do not apply. The **trial committee** should assist the parties in insuring that a complete and coherent record is developed, and that all arguably relevant evidence is allowed in to evidence. Of course, the weight to give to evidence that is not directly on point, or is secondhand or hearsay is a matter left to the discretion and judgment of the **trial committee**.

The following guidance is equally applicable to the **prosecutor**, who presents the union's case first, and to the **charged party** or his/her representative.

OPENING STATEMENT

Normally, the **prosecutor** will begin with an **opening statement**, to explain the theory of the case, simple enough to explain in a few sentences. It is most helpful to have organized this presentation, either as fully written or at least written in an outline, prior to the trial. The **prosecutor** should not hesitate to read from a written opening statement, if a bit unsure of memory or a little nervous as the trial begins. There is no need for the drama of "off-the-cuff" opening remarks or hyperbole.

The opening statement should:

- (1) Introduce the case by framing the issue in the most favorable way.
- (2) Discuss the relevant Constitutional provisions.

- (3) Summarize the basic facts.

- (4) Talk briefly about the witnesses who will testify, and explain briefly how each will contribute to the case.

- (5) State the basic arguments.

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 committee members who are 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 **prosecutor** may wish to call the **charged party** as an initial "hostile" witness to "lock in" the **charged party's** version of events at the very beginning of the trial. This has the advantage of getting sworn testimony from the **charged party** before the **charged party** has had the opportunity to hear the testimony of other witnesses (since the **charged party** will be present throughout the trial). Rebuttal testimony from the **charged party** may then be less persuasive, if it is inconsistent with the initial testimony of the **charged party**. The disadvantage of calling the **charged party** first is that persuasive, credible testimony from the **charged party** may adversely affect the effectiveness of the **prosecutor's** case from the opening of the trial.

(See discussion of hostile witnesses, infra.)

The following instructions are appropriate for both parties, and may be emphasized by the chair:

- (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 too repetitive. If there are a number of witnesses to the same material facts, use good judgment in deciding which ones 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 committee can make the appropriate finding from it.
- (5) Carefully check off on the pre-trial outline each bit of evidence as it goes into the record. This confirms that the party has offered all the necessary facts, and it will show which facts the party still must introduce before the concluding argument. If a party fails to present all the relevant facts, the committee may not be able to support the desired action.
- (6) In questions involving facts the party wishes 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.

INTRODUCING **DOCUMENTARY EVIDENCE**

In regard to **documentary** evidence, the parties must 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. Only then do these documents become **exhibits**. Each party should follow this procedure for each exhibit.

- (1) Introduce the exhibits logically through the witnesses, using those who will be able to testify best as to the genuineness and contents of each document. Each committee member should already have a tabbed copy of the exhibits of both parties.
 - (a) First, refer to the document: "I direct your attention to tabbed Union (or **Charged Party**) Exhibit Number _. I offer this document for identification and request that it be so marked."
 - (b) The chair locates it and directs the designated committee member to mark it as "Union (or **Charged Party**) Exhibit No._ for identification."
 - (c) Direct the witness' attention to the document. "You have in your hand Union (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. For example, "Yes, this is a flier that _ gave to me on _. It urges the members to join a rival union. It says _."
- (3) **After the witness has discussed it, offer the document into evidence:** "I offer into evidence this document, which has been marked 'Union (or **Charged Party**) Exhibit No._ for identification."

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

Use properly introduced exhibits, as follows:

- (1) To support or oppose the 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 which 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.
- (g) Stop. Do not go any further. Argue the contradiction and its significance in the closing argument.

CROSS-EXAMINATION **OF OTHER SIDE'S** **WITNESSES**

The **prosecutor** or representative of the **charged party** 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 begins with asking whether the opposing witness's testimony was harmful to the party's position. The basic purpose or goal of cross-examination is to strengthen the position opposite to that supported by the witness, or to weaken the opposition's case. More specifically, use cross-examination:

- (1) To take the sting out of adverse testimony, by rounding out the story.

(2) To break down the story, by 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 other witnesses.

(3) To demonstrate a lack of inherent credibility in the opposing witness, by encouraging the witness 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, circumstances, and documents favorable to the case opposite that supported by the witness.

To accomplish this, the **prosecutor** or the representative of the **charged party** should establish control over the opposing witness:

- (1) Don't tolerate evasiveness or unresponsiveness.
- (2) Primarily use leading questions that require only a "yes" or "no" answer, not open-ended questions. For example, phrase the question as follows: "Isn't it right that you ..." or "You then did ... , isn't that correct?"
- (3) Keep the questions moving; don't hint at the next question.

Cross-examination involves risk to a case, for the opposing witness may gain credibility, reinforce points already made, and fill in gaps in the previous testimony during the cross. Therefore, the **prosecutor** and the representative of the **charged party** are advised as follows:

- (1) Don't cross-examine the opposing witness, if you have no definite objective in mind.
- (2) Don't ask a question, if you are unsure of the possible answer or feel that it may harm your position.

(3) Don't badger or embarrass the witness, for it is improper and useless.

The two final steps are the chance to **re-direct**, or reexamine the witness; and, the opposing side can conduct **re-cross** examination. The chair 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 covered on cross-examination. Committee members also may ask questions of the witnesses.

REBUTTAL WITNESSES

Both parties may 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. Also, a rebuttal witness risks giving the opposing side one more chance to use cross-examination to weaken the case. If it is necessary to call a witness for rebuttal, make sure the rebuttal witness can directly refute the opposing side on a critical point, and ignore the side issues.

HOSTILE WITNESSES

If an opposition witness is the only source of crucial information, the testimony must be taken. Either the **prosecutor** or the representative of the **charged party** may call a hostile witness as their own witness as part of their case, if it is not sure the other side will be calling the witness. The party calling a hostile witness should advise the committee that the person is being called as a hostile witness. It is then proper to proceed to question the witness with leading questions, just as in cross-examination. Questions should be phrased to require a specific, exact answer. Avoid general questions. If, in addition to giving out the crucial information needed, the hostile witness makes any damaging statements, try to refute them through other rebuttal witnesses later.

OFFER OF PROOF

If the chair rejects a document or does not allow one of a party's proposed witnesses to testify, the party should advise the chair that the party is making the following "offer of proof" on the record: "If the chair had allowed me to call witness A, witness A 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 sides 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 a witness confusing or leading questions. A party should make an objection only when it serves a purpose; a lot of objections on unimportant points are harmful, for that will irritate the chair. If a party has an objection, the party should 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 chair 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. Use the facts, as developed in the trial, to make the case.

The closing statements should:

- (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 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 trial committee what specifically is requested. 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, removal until repayment, etc. For**

the charged party, it is the dismissal with prejudice of all charges.

The chair 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 chair will attempt to secure the time and place, and to notify the parties on the record, prior to adjourning for the day.



POST-TRIAL

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 chair should return the room to its original condition, including the furniture, windows and lights, lock the doors, tell the custodian that the trial has ended, and express the committee's appreciation. The secretary shall furnish to each party, by certified mail, a copy of the audio tape recording, transcript or minutes 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.

If the local (or council) had selected the **trial committee** pursuant to Article XVIII, 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. **A trial committee's decision exonerating 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.** If the trial

committee finds the charged party guilty, the local's membership 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. The committee should safeguard the notice of charges against the **charged party**, the documentation 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.

If the National President appointed the **trial committee** pursuant to Article IX, Section 5(d) after suspending the officer, the committee renders the decision. If the National President appointed the **trial committee** pursuant to Article IX, Section 5(e), the committee then 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 **trial committee'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.

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 XVIII, Section 2?
- Did the committee of investigation complete the investigation 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 Executive Board (minus involved officers) serve as the trial committee, or, did the local elect a trial committee?
- 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 allow the charged party to present witnesses and documents and cross-examine opposing witnesses?
- Did the trial committee give the charged party the audio tape recording or transcript 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?
- Did the local vote (excluding the charging and charged parties from the 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 CHAIR

We are here pursuant to Article XVIII, 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 either the **prosecutor** or the **charged party**.

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 **trial committee** 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 (c)) or recommendation (Sec 5(d)) 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 and re-cross

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 Committee 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, labeled and numbered prior to the trial. The **trial committee** should make one copy of the tapes following the trial for the **charged party**.

For each Committee member:

A copy of the AFGE National and the Local's Constitution and By-Laws.

A copy of the election minutes or appointment letter and the notice of charges to the **charged party**.

Office supplies: paper, pen & pencil, two color markers, large envelope, paper clips, rubber bands, stapler.

ATTACHMENT D

SAMPLE DECISION

INTRODUCTION

A duly constituted **trial committee** conducted a trial on _ (date), at _ (place) on charges preferred by _ against _, as contained in the notice to the **charged party**. The **trial committee** members were _, chair, _, and _.

FACTS

An AFGE Local _ Committee of Investigation [or National Vice President _] preferred charges against _. Local _ constituted this **trial committee** on _ [or the National President, pursuant to Article IX, Section 5(d) of the AFGE National Constitution, by letter dated _, appointed the **trial committee** (**trial committee** Exhibit 2)].

_ prosecuted the charges before the **trial committee**, and _ represented the **charged party**. The **prosecutor** presented the union's case with _ witnesses, and submitted 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 **trial committee** members' questions, produced a record sufficient in quality and quantity to enable the **trial committee** to render a sound and reasonable report of its findings and recommendations. The **trial committee** reconvened and reviewed both oral and documentary evidence. It is unanimous in its finding (or the majority finds) that there was:

[(overwhelming) (sufficient) evidence to support the charges as filed. The **charged party** did not ade-

quately rebut the evidence presented.]

[Insufficient evidence to support the charges as filed.]

Specifically, the **trial committee** found that [briefly discuss each charge].

Accordingly, the **trial committee** 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** 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.]

Chair

trial committee member

trial committee member

ATTACHMENT E
TABLE OF MANDATORY AND SUGGESTED 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
Violation of any provision of this Constitution or the constitution and bylaws of the local to which a member belongs:	(1) fine, (2) suspension from office for a specific time, (3) removal from office, (4) bar from future candidacy for office, (5) suspension from membership for a specific time, (6) expulsion from membership for life
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) fine, (2) suspension from office, (3) removal from office, (4) bar from office, (5) suspension from membership, (6) expulsion from membership
Engaging in conduct unbecoming a union member:	(1) fine, (2) suspension from membership, (3) 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) fine, (2) suspension from office, (3) removal from office, (4) bar from office, (5) suspension from membership, (6) 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) fine, (2) suspension from office, (3) removal from office, (4) bar from office, (5) suspension from membership, (6) expulsion from membership
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:	Suspension from membership for thirteen years, with reinstatement after repayment
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) fine, (2) suspension from office, (3) removal from office, (4) bar from office, (5) suspension from membership, (6) 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) fine, (2) suspension from office, (3) removal from office, (4) bar from office, (5) suspension from membership, (6) 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 immediately suspend 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 XVIII, 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 shall also 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 XVIII. 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 appoint a trial panel for the trial of the suspended officer. A suspended council officer will be tried by a trial panel composed of three (3) members, one of whom shall be an arbitrator selected in accordance with Article XVI, 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 panel appointed by the National President, composed of at least three (3) members or employees of the Federation. Such trial panels shall be conducted speedily but with reasonable time for the accused to prepare his or her defense. The procedures described in Article XVIII, Sections 5 and 6 governing the conduct of trials by local trial bodies shall be followed by the trial panel to assure the accused a full and fair trial in accordance with the basic requisites of due process. The trial panel 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 or removing him or her from membership for a specified period of time, 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 XVIII, Section 9, after decision by the trial panel.

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 officer shall remain unaffected unless and until the trial panel 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 XVIII, 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 (3) members. In the case of a national council officer, the composition of the trial committee shall be consistent with Article XVI, 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 XVIII 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 fifteen (15) days after the National President receives the transcript or minutes of the trial and the findings and recommendation and decision of the panel, 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 XVIII.

ATTACHMENT G
ARTICLE XVIII
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 XVIII 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. Penalty for conviction under this sub-paragraph 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. Penalty for conviction under this sub-paragraph 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 con-

duct constituting misfeasance or malfeasance in office as an officer or representative of a local;

- (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;
- (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;
- (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 NEC, the NVP having jurisdiction over the local of which the accused is a member or by a committee of investigation of the local. Any member may 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. The 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, it shall cause charges to be served 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 shall also 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 by the local's executive board or by a trial committee composed of not less than three (3) nor more than seven (7) 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 trial 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 filed or at a special meeting called for that purpose to be held not less than five (5) 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 promptly held but shall not be held less than two (2) weeks after the mailing of the notice so as to insure the accused of a reasonable time to prepare his or her defense.

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 trial conducted by the trial body, a verbatim transcript shall also 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 testimony and all exhibits submitted at the trial. The secretary shall also furnish to each party a copy of the transcript or minutes, as the case may be, and each party within ten (10) 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, the trial body shall submit to the local in writing its findings of the facts, decisions and recommendations. At that time the accused may make a statement on his or her behalf to the membership. 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 board or the trial committee. 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 fifteen (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.

