

LOCAL TRIAL PROCEDURES ARTICLE XX CWA CONSTITUTION

I. CHARGES, DUTIES AND RIGHTS

A. Charges Against Members

1. Charges must be:
 - a. In writing;
 - b. Signed and sworn to by the accuser (oath before Notary Public or other public officer not required).
 - c. Filed with the recording officer of the Local of which the accused is a member (if accused is recording officer, file charges with President of Local); and
 - d. Submitted within sixty (60) days of the time the accuser becomes aware of the alleged offense.
2. Charges must also:
 - a. Contain an allegation of the facts constituting the offense, and
 - b. State the approximate date or dates on which the offense is alleged to have occurred.
 - c. Contain a specification of the offense set forth in Article XIX, Section 1, that is alleged to have occurred.
 - d. Contain the date on which the charges are filed.
 - e. Contain the date on which the accuser became aware of the offense, particularly in a case where the accuser files the charges within sixty (60) days of the date he/she became aware of the alleged offense, but more than sixty (60) days after the date on which it is alleged to have happened.

B. Duties of recording officer (or President where recording officer is the party accused)

1. Make record of date and time charges received and acknowledge receipt of the charges with a notation of the date received. Such acknowledgement should be sent to the accused.
2. Notify governing body (Local Executive Board of the Local of the receipt of the charges).

C. Duties of the Governing Body (Local Executive Board) of the Local

Upon receipt of notice that charges against a member have been filed with the recording officer or President, as is appropriate, the governing body should take the following steps:

1. Determine whether the charges filed conform to the requirements of Article XX, Section 2 of the CWA Constitution as outlined in A above.

- a. If the charges do not meet the requirements of the Constitution, the charges should be returned to the accuser together with a memorandum stating the defects.
- b. If the charges meet the requirements of the Constitution, the following steps should be taken:
 - 1) Have a copy of the charges served upon the accused.
 - By registered mail, return receipt requested, or
 - By personal service on the accused; in which case, the person serving the charges should file with the recording officer a signed written statement of the date and time the charges were served on the accused.
 - 2) A sufficient number of copies of the charges should be made available for use of the following persons:
 - Recording officer of the Local,
 - Accused member and his/her counsel,
 - Prosecutor and accuser,
 - Each member of the court.
 - 3) Select a court, composed of not less than three (3) or more than seven (7) members of the Local, who are not parties to the proceeding. Designate one member of the court to be chairperson.
 - 4) Appoint a member of the Local to serve as a prosecutor.
 - 5) The governing body (Local Executive Board) of the Local may also appoint or select members of the Local, who are not parties to the proceeding, to serve at the trial as a recorder and a clerk.
 - 6) The recorder is responsible for making an accurate record of the trial proceedings. When it is considered desirable by the governing body, the recorder may engage a stenographer or recording machine to faithfully report the proceedings.
 - 7) Designate the clerk to make the necessary physical arrangements for the trial, such as place, equipment, etc.

D. Duties of the Prosecutor

1. The prosecutor is responsible to assist the accuser in the trial and presentation of evidence and must conduct an investigation before the Trial Court is convened.
2. If, after the investigation, the prosecutor is of the opinion that there is no probable cause to believe that a violation punishable under Article XX has been committed, the prosecutor shall report the findings in writing to the governing body of the Local with a recommendation that the charge not be prosecuted. Copies of the findings and recommendation shall be delivered to the accuser and the accused. The prosecutor's recommendation shall become final unless appealed by the accuser within thirty (30) days after receipt. The accuser should file such an appeal with the Local in accordance with the CWA Internal Appeals Procedures.

E. Rights of the Accused

1. Select a member of the Local as counsel.
 - a. The accused shall be allowed a reasonable period of time in which to select counsel.
 - b. Counsel should be allowed a reasonable period of time in which to assist the accused in the preparation of his/her case.
2. Trial held speedily
 - a. The accused must be tried without undue delay.
 - b. A reasonable period of time should be allowed for all parties to prepare for trial.
3. Due notice of the trial
 - a. The accused must be notified within a reasonable period of time in advance as to the time and place of trial. (The chairperson of the trial court should cause this notice to be issued.)
 - b. Notice of trial may be given by one of the methods suggested by registered mail, return receipt requested or by personal service. (See I.C.I.b. above.)
 - c. The accused should also be notified of his/her rights under the Constitution and Bylaws. (See E.3.d.below)
 - d. A suggested form of notice of the trial and the rights of the accused is as follows:

Dear _____:

On _____ date _____, you were served with copies of charges brought against you by _____.

You are hereby notified that your trial on these charges will be held on _____ date _____, _____ place and time _____.

Under the CWA Constitution, Article XX, Section 3, paragraph 4, you have the right to select a member of the Local as counsel, the right to produce witnesses, present documentary evidence and to be heard on your own behalf. You will have the opportunity to cross-examine witnesses.

All witnesses shall testify under oath.

If you require more time to prepare your defense, please contact _____, the chairperson of the Trial Court in your case and arrange for a reasonable delay of the trial.

Very truly yours,
Chairperson Trial Court

4. During trial
 - a. To be represented and assisted by a member of the Local as counsel.
 - b. To produce witnesses, present documentary evidence and to be heard on his/her own behalf.
 - c. To have the opportunity to cross-examine witnesses.

II. PRE-TRIAL PREPARATION, ACCUSER, PROSECUTOR, ACCUSED, COUNSEL FOR ACCUSED

A. Investigation of an Alleged Offense by Both Prosecution and Defense

1. All facts relating to an alleged offense should be investigated just as soon as possible after charges have been filed.
 - a. Witnesses should be interviewed.
 - b. Signed statements of witnesses should be obtained.
 - c. Pertinent documents, if any, should be copied or reproduced.

2. During the investigation it is necessary to keep in mind just what must be proved at a trial so as to develop proper facts.

Example: It is charged that a member willfully violated the Local Bylaws. At a trial it will be necessary to prove that the accused knew he/she violated the Bylaws.

Likewise, the accused will seek to prove that he/she did not know what he/she did was a violation. Therefore, the investigation must develop these facts.

3. Generally, there are two sides to every question. Therefore, possible arguments, etc. should be anticipated and investigated for the purpose of preparing against them.

B. Planning the Case for Trial

1. Any case should be completely prepared before the trial in order to eliminate any uncertainty as to just what should be done at any stage of the trial.
2. Some type of an outline of the case would be very helpful to the accuser and prosecutor and to the accused and his/her counsel.
 - a. Outline each step of the case as it is intended to be presented to the court.
 - b. Summarize the important facts.
 - c. List each witness in the order they are to testify.
 - d. Indicate along with each witness' name just what is to be proved by his/her testimony.
 - e. Summarize each witness' story.

- f. Arrange the signed statements of witnesses in the order they are to testify.
- g. Arrange documents in the order they are intended to be used and indicate what is intended to be proved by each document.
- h. Summarize the allegations contained in the charges.
- i. Summarize the defense.
- j. Indicate the provisions in the Constitution or Bylaws which are relied on in any manner.
- k. Extra copies of the constitutional provisions might be helpful to each member of the court.

III. PHYSICAL ARRANGEMENTS FOR TRIAL

- A. Arrangements for the trial should be made, and the trial room set up, in advance of the time set for trial so as to preclude unnecessary delay in getting underway with the proceedings.
- B. Every effort should be made to hold the trial in a large enough room to comfortably accommodate all parties and participants in the proceedings.
- C. An actual courtroom arrangement and atmosphere would aid in the orderly and serious conduct of the trial.
 - 1. The members of the court should be seated together behind one table at the head of the room.
 - 2. The accuser and prosecutor should be seated together facing the court at a table located at one side of the center of the room, and the accused and his/her counsel similarly situated on the other side, with adequate space separating the opposing parties.
 - 3. The recorder should be seated at a table near the members of the court so he/she may hear every word.
 - 4. The clerk, if there is one, should be seated near the recorder.
- D. It would be good if there is an adjoining room wherein the witnesses may await their turn to testify, if it is necessary to separate the witnesses.
- E. Pencils and paper should be plentiful for those needing them, and pitchers of drinking water and glasses should be set up.

IV. TRIAL PROCEDURES

- A. Duties and Responsibilities of the Participants
 - 1. The court must render a decision without bias or prejudice, based on all the evidence presented, and if the accused be found guilty, impose a penalty.
 - a. In some cases it may be practically impossible to select a court consisting of members who do not know the facts or who have not formed an opinion. However, the members of the court are duty bound not to permit knowledge or opinions to enter into or interfere in any way with the decision they render or the penalty they impose.

- b. The decision and penalty can only be based on all of the evidence presented at the trial.
 - c. A decision that the accused is guilty must be founded upon a moral conviction of the truth of the charges.
 - d. Each member of the court should be in attendance throughout the entire course of the trial.
 - e. The court should act conscientiously and fairly in all matters pertaining to the trial.
 - f. The court should not attempt to limit or restrict the introduction of evidence as in a court of law where technical rules of evidence are followed.
2. The prosecutor must assist the accuser in the trial and present evidence.
- a. He/she should be in attendance throughout the course of the trial in order to properly perform his/her duties.
 - b. He/she should conduct himself/herself in a fair and conscientious manner at all times.
 - c. He/she should see to it that the case is presented as expeditiously as possible.
 - d. He/she should not engage in argument with the accused or his/her counsel, but should direct himself/herself at all times to the court.
 - e. Nor should he/she argue with the witnesses for either side.
3. A faithful record of the proceedings must be made; therefore, it has been suggested that the governing body of the Local appoint or select a recorder who will either make or cause to be made through a stenographer or a recording machine a record of the proceedings.
- a. The recorder should be in attendance throughout the course of the trial.
 - b. He/she should not enter into the proceedings, except when necessary to request that something be repeated in order that he/she may accurately record it.
 - c. He/she should make a complete and accurate record, using the spoken word rather than his/her own interpretation whenever possible.
 - d. He/she must keep in mind that the record he/she makes will be reviewed in the event of an appeal, and the decision on appeal will be based in large part upon that record.
4. All witnesses must testify under oath; therefore, it has been suggested that the governing body of the Local appoint or select a clerk of the court.
- a. The clerk should be in attendance throughout the trial.
 - b. He/she is to administer the oath to all witnesses.
 - c. He/she may mark all exhibits, documents, etc. received in evidence.
 - d. He/she may assist in any other manner as determined by the court to be necessary.
 - e. He/she should not otherwise enter into the proceedings.

B. Presentation of the Accuser's Case

1. A brief opening statement may be made by the prosecutor for the purpose of informing the court just what the matter is all about. The case should not be argued in these opening remarks. They should briefly state:
 - a. Who the accused member is;
 - b. What happened and what the offense is;
 - c. When and where it happened; and
 - d. How he/she intends to prove his/her case by giving an idea as to the type of evidence that will be presented.
2. The counsel for the accused or the accused may also make an opening statement following the statement by the prosecutor or such statement may be postponed until the beginning of the accused member's case (See IV.C.1. hereafter.)
3. Direct examination of witnesses for the accuser and introduction of documents.
 - a. This is a step-by-step process by which the case is proved in a logical manner by the prosecutor.
 - b. If the case has been planned as suggested above, the trial should proceed in an expeditious and orderly manner.
 - c. The accused should be given an opportunity to inspect each document before it is received in evidence.
4. Cross-examination of accuser's witnesses by the accused.
 - a. He/she may cross-examine a witness upon completion of the direct examination, or he/she may choose not to cross-examine a witness.
 - b. Cross-examination should generally be limited to those matters about which the witness testified on direct examination.
5. A witness for the accuser who has been cross-examined may again be questioned by the prosecutor, and so on until neither the prosecutor nor the accused has any further questions to ask the witness.
6. If necessary, the prosecutor may recall a witness for additional testimony.
7. The trial should not be prolonged by a lot of repetitious or unnecessary questions during either direct or cross-examination.
8. It is not necessarily important to rebut each and every statement or piece of evidence that differs from the facts developed by the accused.
9. When the accused is cross-examining a witness or presenting his/her side of the case, the prosecutor and accuser should make notes of the important statements which they wish to rebut.
10. The accuser's case should be completed before the accused presents his/her case.

C. Presentation of the Accused Member's Case

1. The counsel for the accused or the accused may make an opening statement at this time if it has been postponed. (See IV.B.2. above)
2. Direct examination of witnesses for the accused and introduction of documents.
 - a. The accused will attempt to disprove the accuser's case or offer mitigating facts or circumstances.
3. Cross-examination of the witnesses for the accused by the prosecutor.
 - a. Attempt to elicit facts that will tend to prove the accuser's case or that will tend to discredit the direct testimony of the witness.
4. The accused has the right to testify on his/her own behalf.

D. After the accused has completed his/her case, the prosecutor and the accused or the counsel for the accused should be given an opportunity to briefly summarize and argue their respective cases before the court adjourns to make its decision. The prosecutor should make the first summation, followed by the summation by the accused or his/her counsel, with the right of the prosecutor to close the argument in rebuttal.

E. Decision of the Court

1. If the accused member is found guilty of the charges against him/her, he/she may be fined, suspended and/or expelled.
2. Notice of the decision and penalty, if any, must be given in writing to the accused within five (5) days after the close of the trial. Such notice must be given by personal service or certified mail receipt.
3. The accused member should also be notified of his/her right to appeal and the method to appeal at the same time.
4. If the accused is found not guilty, the matter is closed. The accuser does not have the right of appeal.
5. A suggested form of notice and decision of the trial court is as follows:

Dear Member:

It is the decision of the Trial Court that you are guilty (or not guilty) of the charges brought against you by _____.

* The Court, therefore, has determined the following penalty:

A. You shall be fined the sum of
\$_____.

B. You shall be suspended from membership in the Union for a period of ____ days.

C. You shall be expelled from membership in the Union effective _____.

You have the right to appeal this decision of the Trial Court to a membership meeting of the Local within thirty (30) days of the date of this letter. The Local may affirm or reverse the decision or reduce the penalty. In the event you appeal to the membership of the Local, the penalties will be suspended pending the appeal.

Chairperson of the Trial Court

* Only use this paragraph when member is found guilty. Also only use applicable penalties.

V. APPEALS

- A. Upon being found guilty by a court, the member may appeal the decision of the court. If an appeal is filed as outlined below, the sentence of the trial court shall not be made effective pending final decision on all steps of appeal, {except that the Local, at the first appeal step, may suspend the accused} pending the final decision on an appeal. Only the accused may appeal trial court decision or decisions resulting from appeals.
1. The accused has the right to refer the matter to a Local membership meeting within thirty (30) days after being found guilty by a court, which may affirm or reverse the decision or reduce the penalty; provided that where a local membership meeting is held by sections, units or areas, the appeal shall be to the governing body of the Local (Local Executive Board).
 - a. Appeals shall be filed with the recording officer of the Local (or President where recording officer is the accused).
 - b. The presiding officer at the membership meeting should read to the meeting the charges against the accused and the decision of the trial court.
 - c. The accused or his/her counsel should then be given an opportunity to state to the members assembled in the meeting why the decision of the trial court should be reversed or the penalty modified.
 - d. The prosecutor or the accuser should be given an opportunity to state why the decision of the trial court should be sustained.
 - e. The accused or his/her counsel should be given an opportunity to reply, if they so desire.
 - f. The meeting, thereafter, shall proceed by motion under Robert's Rules of Order to reach a decision with respect to the appeal.
 - g. If the accused appeals but is not present at the membership meeting, the appeal should still be heard and the accused notified of the decision using one of the notification methods set forth in Section I.C.1.b. above.
 2. The accused has the right to appeal from the final decision of the Local to the Executive Board of the Union within thirty (30) days after the final decision of the Local, by directing his/her appeal in writing to the Secretary-Treasurer of the Union. The decision of the Executive Board is based upon the record of the case.
 3. The accused has the right to appeal from the decision of the Executive Board of the Union to the next Convention by giving written notice of appeal to the Secretary-Treasurer of the Union within thirty (30) days after the decision of the Executive Board.
 4. The accused may appeal directly to the Convention, if the Executive Board has failed to render a decision within thirty (30) days preceding the Convention.

COMMON PROBLEMS INVOLVING LOCAL TRIAL PROCEDURES

A. PROCEDURAL PROBLEMS

1. **Time Limits**

The most common problem concerning Local trial procedures is that time limits are missed. Article XX contains two time limits which the accuser or Local Trial Court must meet.

First, the charges must be submitted within sixty (60) days of the time the accuser becomes aware of the alleged violation. {Article XX, Section 2(b)} Charges submitted after that time should be rejected by the Executive Board of the Local and returned to the accuser with an explanation of the defects. {See UOPM Section 12.1, Paragraph I.C.1.a.}

The second time limit which the Local must meet is set forth in Article XX, Section 3(b)(6) of the Constitution. The accused must be informed of the Trial Court's decision and penalty, if any, within five (5) days after the close of the trial. Failure to meet this time limit may result in a reversal on appeal. The requirement of notice must be satisfied by personal service or certified mail receipt. {See Article XX, Section 3(a)(6).}

In addition to the time limits which the accuser and Trial Court must meet, there are time limits which the accused must meet in order to appeal an adverse trial decision. The accused has thirty (30) days after being found guilty to appeal to the membership. {See Article XX, Section 4(a)(1).} For this reason it is useful to note the date that the accused received notice of the decision because it starts the thirty (30) day period. The Local is not required to accept any appeal to the membership if it is submitted after the thirty (30) day period. It may, however, extend the time limit for an additional period not to exceed thirty (30) days. {Article XX, Section 4(c)}

2. **Requirements for Charges**

Another common problem is the failure to comply with the requirements for charges. Article XX, Section 2(a) requires charges to be in writing, signed and sworn. Section 2(c) requires that they contain an allegation of facts, including approximate dates, which constitute the alleged offense. In many cases, the charges are not sworn. While the lack of sworn charges may be overcome in cases where there is sworn testimony against the accused at trial, every effort should be made to see that the charges are sworn. The "swearing" that is required need not include "so help me God." A single statement to the effect of "I swear that the foregoing is true and correct to the best of my knowledge" at the end of the charge is sufficient.

Charges also often fail to contain an allegation of facts. The CWA Constitution requires that a charge contain "an allegation of the facts constituting the offense with which the accused is charged and the approximate date or dates said offense is alleged to have occurred." Thus, the charges should contain an allegation of facts which is detailed enough to inform the Local and the accused of the alleged offense.

In addition, Article XX, Section 3(a)(2) requires the prosecutor to conduct an investigation after charges are filed and to determine whether there is probable cause to believe that a violation punishable under Article XX has been committed. If the prosecutor determines that there is no probable cause, he is required to report his findings to the Local Executive Board with a recommendation that the charge not be prosecuted. If the facts alleged do not constitute a violation of the Constitution or Local Bylaws, they are not punishable under Article XX and the prosecutor should find no probable cause.

3. **Notification of Charges, Trials and Trial Court Decisions**

A common basis for appeals of Trial Court decisions is that the accused did not receive adequate and timely notice of the charges, the trial and/or the Trial Court decision. As noted above, the Constitution requires notice of the Trial Court's decision within five (5) days by certified mail or personal service. While not required, it is recommended that notice of the charge and notification of the trial date be made in the same manner.

COMMON PROBLEMS INVOLVING LOCAL TRIAL PROCEDURES

B. PROOF PROBLEMS - CONDUCT OF TRIAL

1. Sworn Testimony

Article XX, Section 3(a)(5) requires all witnesses to be sworn. The accused also has the right to cross-examine witnesses against him. Therefore, signed affidavits alone are insufficient because the use of such evidence denies the accused the right to cross-examination. Thus, in most cases, it will be necessary for the prosecutor to present direct testimony of witnesses.

2. **The No-Show Accused**

In the event the accused does not appear at the trial, the prosecutor must still present his or her case and provide the Trial Court with evidence upon which it may make a decision.

3. **Proof**

In order to find a violation of the CWA Constitution or Local Bylaws, the Trial Court must find actual proof of the charges based on the evidence submitted at the trial.

For example, if the charge is working during a duly authorized strike, there must be some evidence that there was a duly authorized strike; that the charged member did work and that the establishment he or she worked for or in was being struck by the Union or a Local. {See Article XIX, Section 1(e).} It is not sufficient to merely prove that the individual was being paid. It is important that there be proof as to each day the member worked. There can be no assumptions that because he or she worked the first day that the member scabbed the entire time.

4. **Remedies**

The CWA Constitution provides that members may be fined, suspended and/or expelled by a duly constituted Local Trial Court. While it is the responsibility of the Trial Court after a fair trial to determine what discipline, if any, should be imposed, certain legal precedents have been established of which you should be aware.

Should the Local expel a member for strike-breaking, the National Labor Relations Act prohibits any attempt to seek his or her discharge for nonpayment of dues (or dues equivalent in agency fee situations). Similarly, the Local could not seek the discharge of a member because he or she had not paid dues or dues equivalent during a period of suspension from membership.

It is clear that a union which meets the fair trial requirements of the CWA Constitution may fine a member for violating a lawful union rule. A fine may be levied in addition to a period of suspension.

Should the member refuse to pay such fine, the Local may enforce the payment of the fine by an action in state court. Many of our Locals have been successful in such actions. In deliberating as to the amount of any fine to be imposed, you should bear in mind that the courts will consider the reasonableness of the fine in deciding whether a particular fine will be enforced. The fine should bear some relationship to the wrong committed. One consideration might be the ill-gotten wages earned by a member during the strike. Nevertheless, it will be the good judgment of the Trial Court which will determine what discipline should be imposed in the first instance.

APPEALS PROCEDURES

The purpose of these appeal procedures is to provide reasonable regulations for the consideration and review of complaints of members regarding actions of the Union or Local, or Union or Local Officers or governing bodies, which are alleged to be in violation of the Union Constitution, Local Bylaws, rights and privileges of members.

The appeals procedures set forth herein are in addition to those provided in the Union Constitution which govern (1) appeals from decisions of the Executive Board - Article VII, Section 1, Paragraph (b), (2) appeals from revocations of Local charters - Article XIII, Section 6 and (3) appeals from decisions of Trial Courts - Article XXI, Section 4, and are also in addition to any other appeal procedures provided in Local Bylaws or rules.

The authority for these appeal procedures is set forth in the Union Constitution, Article IX, Section 7:

"The Executive Board of the Union shall establish reasonable appeal procedures within the structure of the Union to review complaints of members which allege violation of the Constitution, Local Bylaws or the rights and privileges of members."

Appeals from the decision of a Local with reference to the conduct and challenge of Local elections under Article XV, Section 4 of the Union Constitution shall be governed by Section 1(C) of these appeal procedures.

I. COMPLAINTS AGAINST THE LOCAL, ITS OFFICERS OR GOVERNING BODY

A. The Complaint

1. All Complaints shall be:
 - a. In writing;
 - b. Signed by the complainant;
 - c. Filed with the Secretary or Secretary-Treasurer of the Local of which the complainant is a member; however, if the complaint is about the action of such officer, then it shall be filed with the Local President; and
 - d. Submitted within sixty (60) days of the time the complainant became aware of the alleged violation.
2. The complaint shall also:
 - a. Contain an allegation of the facts on which the complaint is based, including applicable dates;
 - b. Specify the nature of relief sought; and
 - c. State that it is filed in good faith.

B. Consideration of the Complaint

1. The complaint shall be placed on the agenda of the next regular Local general membership meeting after the date the complaint is filed, provided, however, that where such a meeting is not scheduled, or otherwise will not be held, within thirty (30) days after the filing date, or where Local membership meetings are held by areas, sections or units the complaint shall be placed on the agenda of the next regular meeting of the governing body of the Local. In the event the complaint is not considered by either the Local membership or the Local governing body within ninety (90) days, the complaint may be filed directly with the President of the Union within one hundred twenty (120) days from the date of original filing.

In the event the complainant demonstrates that there is a willful refusal by the Local officers, the Local membership or the Local governing body to consider the complaint, a copy of the complaint may be filed with the President of the Union by the complainant.

Complaints filed directly with the President may be referred by the President to the appropriate geographical Vice President for handling under the provisions of Section 1(C)(2) of these Appeals Procedures or in the discretion of the President retained for handling under Section II(B)(1) and II(C)(1) of these Appeals Procedures.

2. Upon consideration of the complaint, either at a general membership meeting or meeting of the governing body, it shall be determined what action, if any, is to be taken with reference to the complaint, and the complainant shall be so notified in writing within five (5) days of the date of decision.
3. Regardless of which body considers the complaint, the decision reached shall be recognized as being the decision of the Local.

C. Appeal

1. The decision of the Local may be appealed in writing to the appropriate geographical Vice President within thirty (30) days following the date of the notice of the Local's decision.
2. The Vice President shall take whatever steps are deemed necessary to secure the facts of the matter complained about, which may include investigation and the obtaining of all records of the matter in possession of the Local, its officers or governing body.
3. The Vice President shall review the complaint and within thirty (30) days affirm, reverse or modify the decision of the Local, or return the complaint to the Local with such direction or order as may be determined to be appropriate. He or she shall notify interested parties of his or her action.
4. The decision of the Vice President may be appealed in writing by the complainant or the Local to the President of the Union within thirty (30) days following the date of the notice of the Vice President's action.
5. The President shall take whatever steps are deemed necessary to secure the facts of the matter complained about, which may include an investigation and the obtaining of all records of the matter in the possession of the Vice President, the Local, its officers or governing body.

6. The President shall review the complaint and within thirty (30) days affirm, reverse or modify the decision of the Vice President, or return the complaint to the Vice President with such direction or order as may be determined to be appropriate. He or she shall notify interested parties of his or her action.
7. The decision of the President may be appealed in writing by the complainant, the Vice President or the Local to the Executive Board of the Union within thirty (30) days following the date of the notice of the President's decision. The appeal shall be filed with the Secretary-Treasurer of the Union.
8. The Executive Board shall review the complaint and affirm, reverse or modify the decision of the President.
9. The Executive Board shall base its decision upon the record of the matter, including such statements as may be filed by the complainant, the Local, the Vice President or the President, and any other facts that may be developed.
10. There shall be no right to appear personally before the Union Executive Board, except at the invitation of the Executive Board.
11. Interested parties shall be notified in writing of the decision and action of the Executive Board.
12. The decision of the Executive Board may be appealed to the next Convention in accordance with the provisions of Article VII, Section 1, Paragraph (b) of the Constitution.

II. COMPLAINTS AGAINST THE UNION, ITS OFFICERS OR EXECUTIVE BOARD.

A. The Complaint

1. All complaints shall be:
 - a. In writing;
 - b. Signed by the complainant;
 - c. Filed with the President of the Union, however, if the complaint is about the action of such officer, then it shall be filed with the Union Secretary-Treasurer and considered by the Executive Committee subject to appeal to the Executive Board and Convention; and
 - d. Submitted within sixty (60) days of the time the complainant became aware of the alleged violation.
2. The complaint shall also:
 - a. Contain an allegation of the facts on which the complaint is based, including applicable dates.
 - b. Specify the nature of relief sought; and
 - c. State that it is filed in good faith.

B. Consideration of the Complaint

1. The President shall determine what action, if any, is to be taken within thirty (30) days and notify interested parties.
2. In the event such complaint is against the President, the Executive Committee shall determine what action, if any, is to be taken within thirty (30) days and cause interested parties to be notified.

C. Appeal

1. The decision of the President may be appealed to the Executive Committee of the Union in writing within thirty (30) days of the notice of the President's decision, and shall be filed with the Union Secretary-Treasurer.
2. The complaint shall be placed on the agenda of the next Executive Committee meeting after the date the appeal is filed.
3. The Executive Committee shall review the appeal and affirm, reverse or modify the decision of the President within thirty (30) days and cause interested parties to be notified.
4. The decision of the Executive Committee may be appealed in writing to the Executive Board within thirty (30) days of notice of the Executive Committee decision, and shall be filed with the Union Secretary-Treasurer.
5. The complaint shall be placed on the agenda of the next Executive Board meeting after the date the appeal is filed.
6. Upon consideration of the appeal, the Executive Board shall determine what action, if any, is to be taken with reference to the complaint, and interested parties shall be so notified in writing.
7. There shall be no right to appear personally before the Union Executive Board, except at the invitation of the Executive Board.
8. The decision of the Executive Board may be appealed to the next Convention in accordance with the provisions of Article VII, Section 1, Paragraph (b) of the Constitution.

*Appeals Procedures Adopted as Amended
by CWA Executive Board October 20, 1978.*

REINSTATEMENT PROCEDURE
PERSONS EXPELLED OR SUSPENDED BY
UNION TRIAL COURT FOR DUAL UNIONISM

The purpose of this procedure is to provide reasonable regulations for consideration and review of requests for reinstatement to membership in good standing in the Union by persons expelled or suspended by Union Trial Courts for dual unionism.

This procedure shall be applicable upon exhaustion of the procedures for appeal provided in Article XX, Section 4 of the Constitution. In the event a person expelled or suspended has not exercised the right of appeal under the Constitution, this procedure may be invoked by the Executive Board.

1. Application for reinstatement to membership in good standing in the Union shall be:
 - a. in writing;
 - b. signed by the person expelled or suspended, properly notarized and filed with the Secretary-Treasurer of the Union.
2. The application shall:
 - a. contain a statement of justification of the request for reinstatement;
 - b. specify the Local in which reinstatement of membership is sought, and
 - c. assert that the application is filed in good faith.
3. The Secretary-Treasurer, upon receipt of such application for reinstatement to membership in good standing, shall so notify the appropriate Local, and each member of the Executive Board of the Union.
4. The Executive Board or other governing body of the Local shall within thirty (30) days vote on the question of reinstatement to membership, and certify to the Union Secretary-Treasurer the result of said vote in writing. The Local may submit whatever recommendations it deems appropriate in connection with reinstatement.
5. The Secretary-Treasurer shall then refer the entire matter to the Executive Board of the Union at least thirty (30) days before the next scheduled meeting of the Board.
6. The Executive Board of the Union shall consider and review the application for reinstatement to membership. A 2/3 majority vote of the Executive Board shall be required for reinstatement, and then, only after the applicant for reinstatement has executed a notarized "Oath of Obligation" as follows: "I, _____, do freely and voluntarily swear that I will truly and faithfully execute the responsibilities of membership in the Communications Workers of America. I further swear that I will support and defend the Union, its Constitution and its jurisdiction against all enemies and will, to the best of my ability, abide by all its duly constituted policies and rules, both local and national. I take this oath and assume this obligation without any reservation whatsoever." The Executive Board may impose whatever terms and conditions, not inconsistent with the Constitution, that it deems appropriate in connection with this reinstatement.
7. The Secretary-Treasurer shall notify the applicant and the appropriate Local of the decision of the Executive Board.

UNION DISCIPLINE

Local Unions often fine or otherwise discipline members who violate Local bylaws or rules, such as crossing a duly authorized picket line.

While it is entirely permissible for a Local to take such action and, in the appropriate case, seek enforcement and collection of fines in state courts, there are some limitations on the Local's right to fine or otherwise discipline a member of which Locals should be aware.

RIGHT TO DISCIPLINE

A Local union may properly fine or otherwise discipline a member in accordance with the Local's Bylaws and the CWA Constitution.

Under the Labor Management Reporting and Disclosure Act, such action may, however, only be taken after a "full and fair hearing" on the matter.

A hearing conducted in accordance with Articles XIX and XX of the CWA Constitution will be sufficient to comply with the mandate of the LMRDA.

A Local Union may only fine or otherwise discipline a member for actions taken while the individual was a member.

Thus, if an individual resigns his or her union membership before, for example, crossing a picket line, he may not be fined or otherwise disciplined for actions taken after the resignation.

If an individual crosses a picket line prior to resigning from membership and later resigns, he or she may be tried and fined for the activity prior to the resignation but not the activity after the resignation.

In this regard, it is important to note that the National Labor Relations Board and the United States Supreme Court have taken the position that a Union may not impose restrictions on the individual's right to resign from membership.

Thus, provisions that purport to limit resignations during a strike, to delay the effective date of a resignation, or to limit resignations to a particular time of year have been ruled invalid as a restriction on the individual's right to resign.

While there is currently still some question as to whether a union may require a resignation to be submitted in a particular fashion, for example by certified mail, at least one court has held that a requirement that a resignation be in writing is a valid union rule.

ENFORCEMENT OF FINES

A local that has tried a member and imposed a fine may seek to enforce that fine in state court in the event that the member does not pay voluntarily.

The National Labor Relations Board and the United States Supreme Court have held that the NLRB does not have the authority to examine the reasonableness of any fine imposed by a union upon a member.

The issue of the reasonableness of the fine is one for a state court in an action to enforce the fine.

Many CWA Locals have been successful in enforcing locally imposed fines upon members who crossed a picket line.

The Local should bear in mind, however, that a court will review the fine to determine whether it is reasonable.

Most of those Locals which have been successful in their efforts to enforce strike fines have fined the individuals the amount of the wages earned during the strike.

EXECUTIVE BOARD POLICY ON JURISDICTIONAL CHANGES

Article XIII of the Constitution states that jurisdiction of a Local is assigned by the CWA Executive Board, Article XII, Section 3 - Jurisdictional Change states:

- (a) The Convention or the Executive Board by an affirmative vote of three-fourths (3/4) may change the jurisdiction of any Local.
- (b) Locals may combine or waive jurisdiction by an affirmative vote of a majority of those voting by referendum in each Local affected.

This, of course, was and is the mechanism by which Locals seeking to effectuate a jurisdictional change, i.e., a merger, must proceed. In order for such changes in Local jurisdiction to be effectuated, a vote must be taken in both Locals, the appropriate forms must be submitted to the International Union and the Executive Board of the Union or its agent must act to approve the change. Section 7 of the Uniform Operating Practices Manual specifically sets forth instructions and contains the appropriate forms that must be completed and submitted to the International Union before any change in Local jurisdiction can be effectuated.

In 1958, the CWA Executive Board was asked to review and interpret these provisions of the Constitution in answering several questions placed before it. The questions addressed by the Executive Board were:

1. Whether a Local could waive (and another Local expand) jurisdiction over a portion of the Local such as a particular location or workplace;
2. Whether a Local could waive (and another Local expand) jurisdiction over an individual; and
3. Whether a Local could waive (and another Local expand) jurisdiction on a permanent or temporary basis.

The Executive Board interpreted the Constitution to permit waivers and expansions of a portion of the Local or of an individual. The Executive Board also interpreted the Constitution to permit waivers and expansions to be made on either a permanent or temporary basis. In answering all three of these questions in the affirmative, however, the Board emphasized that such jurisdictional changes must be approved by the Union Executive Board or its agent.

Since at least 1958, any Local which then sought to effectuate a change in Local jurisdiction through the process of waiver an expansion was required to obtain a majority vote of those members voting by referendum as to whether the Local should waive (or expand) jurisdiction. This was and is true regardless of whether the waiver or expansion was over one ember or over the entire Local. Moreover, any attempt to “rescind” a waiver or expansion which had been previously granted must also be supported by a majority vote of the membership of both Locals since such action is also a change in Local jurisdiction. Finally, it is clear that both Locals involved in a waiver/expansion of jurisdiction must take action in order for the change to be effectuated and that the change must be approved by the Executive Board or its agent.

As a result of consolidations, reassignments and transfers affecting members within our Union, questions concerning Local jurisdiction have arisen. Given that the original Executive Board interpretation on this subject was issued in 1958, the Executive Board has considered the entire matter once again. Based upon our review and consideration of these questions, we hereby reaffirm the policy and interpretation issued by the Executive Board in 1958.

Nonetheless, we recognize that some Locals have waived and expanded jurisdiction over portions of their Locals, and particularly over individuals, without the required majority vote of the membership. In that these actions were taken in complete good faith and that disruption and uncertainty would result if such actions were nullified, the Executive Board has decided to deem any waiver/expansion which was in effect as of August 1, 1993 as approved. Any waivers or expansions subsequent to August 1, 1993, however, must comply with the Constitution as interpreted in 1958 and reaffirmed in 1993.

Move that the Executive Board adopt the foregoing Policy on Jurisdictional Changes.

Adopted (9/13/93)

1. Article XIII, Section 3 of the Constitution states:

Locals may combine or waive jurisdiction by an affirmative vote of a majority of those voting by referendum in each Local affected.

The term "referendum vote" does not necessarily mean that a mail ballot must be conducted. However, if a vote is to be taken at a membership meeting, adequate notice that a vote is to be taken on a matter of Local jurisdiction should be given and every effort to encourage and allow the widest possible participation of the membership must be made. For example, extending the polling hours.

2. Both the "waiving" Local and the "expanding" Local must vote and any limitation as to the duration of the change must be stated. For example, if a waiver/expansion of a particular individual is sought in order to allow that individual to complete a term of office, that fact, as well as the expiration date of the waiver/expansion, should be specifically stated.
3. Any effort to "rescind" or "undo" the original waiver/expansion must also be voted on by the membership of both Locals since such action is itself a jurisdictional change.
4. The appropriate waiver and expansion forms must be completed and submitted to the National Union.
5. In a situation where one Local seeks to waive jurisdiction over a portion of the Local or over an individual, a vote by that Local is not sufficient to effectuate the change. The expanding Local must also vote to approve the change before it can become effective.
6. As always, any change in Local Jurisdiction is subject to the approval of the CWA Executive Board, or its agent.