



# Local Union Trial Manual

*A manual to provide affiliates of the International Association of Fire Fighters with basic guidelines and procedural suggestions for a Trial Board hearing.*

International Association of Fire Fighters  
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# Local Union Trial Manual

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The purpose of this Manual is to provide local unions of the International Association of Fire Fighters (IAFF) with some basic guidelines and procedural suggestions on how to conduct a Trial Board hearing. This Manual is not a set of rules that must be followed, nor does it supersede a Trial Board's broad discretion to issue its own rules for the conduct of the trial, or to make procedural rulings or decisions that may arise during the course of a trial.

However, nothing herein is meant to add to or subtract from the requirements of the IAFF Constitution and By-Laws, set forth in Articles XV – XVIII.

Each member of the IAFF has the right to fair treatment, and the Constitution and By-Laws provides for certain steps that must be taken when charges of misconduct are filed and pursued.

The primary purpose of this Manual is to explain, in general terms, the Trial Board process, and illustrate basic procedures and recommendations on how to conduct a fair trial, that are consistent with our IAFF Constitution & By-Laws.

The Trial Manual is divided into three sections. The Short Outline provides an overview of the basic procedures for conducting a trial. The Detailed Guidelines are a step-by-step procedure to help the Trial Board Members to conduct the trial pursuant to the requirements of the IAFF's Constitution and By-Laws. The final section contains the IAFF Constitution and By-Laws provisions concerning Trial Boards and sample forms.

Fraternally,



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# Section I

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## *Short Outline of Hearing Procedures for Trials*

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### **A. Charges**

Members and officers should keep in mind that a trial board is a local procedure, authorized under the IAFF's Constitution and By-Laws so that locals may resolve disputes between members at the local level. The trial board procedures authorized under Articles XV through XVII are not conducted by the IAFF except as specifically set forth therein. Put another way, the IAFF does not "run" a trial board; the local does.

Moreover, neither the IAFF nor any of its officers "prosecute" or pursue a charge on behalf of a charging party. When a charge is filed by one member against another, the charging party is the "prosecutor" (for lack of a better word) in the process. No IAFF officer, employee, or representative prosecutes or pursues the charges independently on behalf of the charging party. The charging party is at all times responsible for presenting all evidence or argument before the trial board in support of the charge.

#### ***1. Time Limits***

Charges may only be filed by a member in good standing against a member or officer who has allegedly engaged in misconduct as defined in Article XV.<sup>1</sup> Charges must be filed within six (6) months from when the charging party either knew or should have known of the alleged conduct.<sup>2</sup>

#### ***2. Contents of the Charge and the Number of Parties***

All charges must meet the following requirements:

- A. Be in writing.
- B. Be signed by the party or parties preferring same.
- C. Contain a statement of the facts out of which such charges originated and set forth the specific act or acts alleged to constitute misconduct, the dates, places, and persons involved.
- D. State the nature of the violation or violations alleged.

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<sup>1</sup> Art. XV, Sec. 1.

<sup>2</sup> Art. XVI, Sec. 1.

E. Refer to the Articles and Sections of this Constitution and By-Laws, the constitution or by-laws of the subordinate union, and the established policies, decisions, rules or regulations or other governing laws which the charging party contends have been or are being violated.

The charging party or parties may only name up to seven (7) charged parties in any set of charges. Any single trial board proceeding, therefore, should not have more than seven charged parties.

### **3. *Notice Requirements***

Notice of such charges shall be sent by the charging party by certified mail with return receipt where available, and if not available, then by registered mail to: the local union or other subordinate organization of this Association with which the charged party is affiliated; the IAFF District Vice President for the District or Districts encompassing the local, association or joint council of each of the parties to the case; the IAFF General President; and, the state or provincial association, to the extent that any of the parties to the charges are members of locals belonging to the state or provincial association. A copy must also be sent by certified mail with return receipt where available, and if not available, then by registered mail to the charged party. Failure to accomplish the above referenced service requirements shall be grounds for dismissal of the charges.<sup>3</sup>

The Vice President of the District concerned or his designee (not to include the person preferring charges) may have been asked by the charging party to serve the charges by hand-delivery on the accused. If this type of service was used, the Vice President or his designee must testify to the local trial board regarding the time, date and location of the service.

### **4. *Refusal to Accept Charges***

A party's refusal or failure without good reason to accept service of charges constitutes misconduct, as defined in Article XV, Section 1, Subsection M. Accordingly, it is very important that service of the charges be carried out in accordance with the foregoing procedures. Service should always be attempted first by certified mail with return receipt. Only if this form of service is unacceptable should the Vice President or his or her designee be asked to effect service by hand-delivery. If the accused party refuses or fails without good reason to accept service of charges by hand-delivery the trial board may still proceed with the trial on the charges in the absence of the accused. In such cases, an additional charge may be brought against the accused for refusing or failing without good reason to accept service of charges. If this additional charge is brought, and service of this additional charge is accomplished (or attempted) this charge may be consolidated with the original misconduct charges, and all of the charges may be heard together.

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<sup>3</sup> Art. XVI, Sec. 3.

## **5. *Pre-Trial Review Boards***

A charged party may request a Pre-Trial Review Board to make an initial determination regarding frivolous, retaliatory, or de minimis charges. A request for a Review Board must be mailed to the General President no later than thirty (30) days after service of the charges, with a copy of the request sent at the same time to the appropriate District Vice President and to the charging party or parties. If the request for Pre-Trial Review is received less than forty-five (45) calendar days before the start of the next Executive Board meeting, the matter will be heard at the next following Executive Board meeting, unless all of the parties involved agree otherwise.

The request must include a declaration stating that a copy of the request has been sent to the charging party or parties, along with a list of the names and addresses of the parties to whom a copy has been sent.

Any party wishing to submit a written statement related to a Pre-Trial Review Board's consideration of a case may do so. Any such statement must be received by the General President's office, either by regular or overnight mail, facsimile or email, no later than thirty (30) calendar days before the start of the Executive Board meeting at which the Pre-Trial Review Board will be held. Parties must, at the same time, mail or email a full copy of the written statement, including exhibits, to all other parties.

Trial Boards are comprised of three Vice Presidents from panels the General President has regularly established, from districts adjacent to the district where the charges were filed. Those Vice Presidents who serve on a Pre-Trial Review Board will be recused from considering any further appeals in the same case.

The Review Board has authority to dismiss some or all of the charges if it concludes after a review of written submissions, that the charges are frivolous, retaliatory, or de minimis. There is no appeal from a Pre-Trial Review Board decision.<sup>4</sup>

## **6. *Representative at Trial Boards***

The General President, at the request of the charging or charged party, or the local that is responsible for conducting the trial board, may appoint a representative to preside over and assist local trial boards by ruling on procedural matters, but not in making a decision on the merits. The cost of these representatives including travel, lodging, meals, and per diem, must be paid by the local where the case arose or as determined by the General President.

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<sup>4</sup> Art. XVI, Sec. 5.

## **B. Composition and Location of the Trial Board**

The Appointing Officer will obtain from the General Secretary-Treasurer's Office a randomly generated list of seven (7) members in good standing of the local in which the charges arose, and then the parties will select the trial board in the following manner: First, the charging party is allowed seven (7) days to strike two (2) names from the list; then the charged party is allowed seven (7) days to strike two (2) of the remaining names. The remaining three (3) named members shall constitute the trial board.

As noted in Article XVII, a trial board is normally created by the charged party's local president, who as "appointing officer" is charged with obtaining a random panel of seven members of the local. However, there are times when a charged party or charging party may have objections as to the impartiality of a given proceeding unless the trial is moved to a different location.

Upon selection, the Trial Board should confer as soon as possible to select a Trial Board Chair.

If either party wishes to propose that the trial board be moved to another local, the party must first establish that the charged party's local president *and* the local secretary-treasurer (or corresponding executive position) are "directly involved as a party, witness, or otherwise, in the conduct giving rise to the charges." The party must then establish that all members of the charged party's local are "either directly or indirectly involved as parties, witnesses, or otherwise, in the conduct giving rise to the charges brought against the accused."<sup>5</sup>

The party seeking to have a trial board constituted in a neighboring local or locals must submit a timely letter to the General President that establishes these facts as described above, and that expressly requests that the District Vice President be designated as the appointing officer for the trial board, and that the trial board panel be selected from a neighboring local or locals. This written request should be cc'd to the opposing party or parties, and cc'd to the appropriate District Vice President. It may be mailed or faxed.

Unless otherwise agreed to by the accused, the actual hearing shall be at the city or town where the accused is employed or in an adjacent city or town if the Trial Board Chair determines that it is more appropriate for the proper functioning of the trial.<sup>6</sup>

## **C. Selecting the Trial Board**

The Trial Board shall be created pursuant to the guidelines set forth at Article XVII, Section 1 of the IAFF Constitution and By-Laws. This section was amended at the 2012 Convention.

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<sup>5</sup> Art. XVII, Sec. 1(A).

<sup>6</sup> Art. XVII, Sec. 6.

Under this newly revised section, the appointing officer submits, by mail, email, or fax, the names of seven members in good standing to the charging party. (Emailed or faxed notice, in addition to a mailing is favored, but not required.) The charging party is asked to strike two of these names within seven days of his or her receipt of the seven names. The appointing officer must then submit the remaining five names to the charged party, who will have seven calendar days to strike two names from the list. The remaining three individual members shall constitute the trial board. If either party fails to respond to the appointing officer's notice regarding strikes of the two individuals, the appointing officer must randomly choose the two strikes on his or her own.

The "appointing officer" is the president of the charged party's local unless he or she is "directly involved as a party, witness, or otherwise, in the conduct giving rise to the charges." If so, then the duty of "appointing officer" shall fall to the local secretary-treasurer (or corresponding executive officer) of the local. If that officer is *also* so involved, then *either* party may request that the General President "designate the Vice President of the District in which the subordinate union is located as the appointing officer of the trial board."<sup>7</sup> A party wishing that a District Vice President establish the trial board has the obligation to submit such request in writing to the General President. Please submit a courtesy "cc" to the District Vice President and the other parties.

There have been unfortunate occasions where charges have been filed but a trial board is not formed in a timely manner by the default appointing officer. In such instances, either party may submit a request to the General President that the District Vice President be designated the appointing officer, on the grounds that the delay evidences direct involvement by the local president and secretary-treasurer as a "party, witness, or otherwise."

The seven-member panel must be selected from a random, computerized process established and carried out by the General Secretary-Treasurer's office. The appointing officer should contact the Membership Department to obtain a randomly selected panel.

Any challenge to disqualify a Trial Board member for cause<sup>8</sup> should be made before the trial is commenced. However, a challenge may still be appropriate after a trial begins where the information disqualifying a Trial Board member was not available to the accused before the trial. If a trial board member is disqualified, or is unable or unwilling to serve after having been appointed, the procedure set forth in Article XVII, Section 3 of the IAFF Constitution shall be applied to replace that trial board member.

#### **D. Commencement of Trial**

The trial shall be held within one hundred twenty (120) days after the receipt of charges by the accused and not less than fourteen (14) days after notification to the accused of the composition of the Trial Board and the date and place of trial. If the Trial Board fails to

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<sup>7</sup> Art. XVII, Sec. 1(A).

<sup>8</sup> Art. XVII, Sec. 3.

convene within 120 days, it is required that a new Trial Board be created before the charge(s) can be adjudicated.<sup>9</sup> If the charged party fails to appear at the trial after proper notice, and no continuance has been granted, the Trial Board shall proceed to conduct the trial in his or her absence.<sup>10</sup> If the charging party fails to appear at the trial after proper notice, and no continuance has been requested, the Trial Board shall dismiss the charges with prejudice.

## **E. Postponement of Trial**

Either party may be granted a postponement for a reasonable period of time of a trial at the discretion of the Trial Board if a showing is made that there is a concurrent court or administrative agency case involving substantially the same issues and parties and that continuation of the Trial Board may prejudice the rights of either party. The Trial Board may postpone the trial on the request of a party to the case or on its own motion. A party may appeal a denial or grant of such a motion within ten days to the General President. Such appeal shall be sent to the General President by certified mail with return receipt where available, and if not available, then by registered mail. The General President shall issue a decision no later than ten days after receipt of the appeal and the decision of the General President is final and binding on all parties.<sup>11</sup>

## **F. Preserving the Record**

The Chair of the Trial Board should arrange for recording of the proceedings by way of hiring a stenographer or obtaining a tape recorder or other recording device. If the proceedings are tape recorded, the Secretary of the Trial Board must be designated to keep the minutes.

## **G. Rules for the Conduct of the Trial**

Trial boards may (but do not have to) issue its own set of rules for the conduct of the trial. If it chooses to do so, such rules must be provided to the parties at least fifteen (15) days prior to the start of the trial. At the discretion of the Trial Board, additional rules of procedure may be determined during the course of a trial if needed. Upon request by the charged party, the trial shall be open to such members of the IAFF who desire to attend, although the Trial Board retains the right to sequester witnesses — other than parties — until the witnesses' testimony has concluded.<sup>12</sup>

## **H. Outline of Actual Procedure During Trial**

At the beginning of the trial, and before the charging party has started presenting his or her case, the charged party may move (request) to have the charges dismissed on the

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<sup>9</sup> Art. XVII, Sec. 6.

<sup>10</sup> Art. XVII, Sec. 6.

<sup>11</sup> Art. XVII, Sec. 6.

<sup>12</sup> Art. XVII, Sec. 6.

ground that such charges are patently frivolous or lacking in substance or otherwise subject to dismissal without the necessity of testimony or other evidence. If the trial board is satisfied, after hearing argument from both sides, that the motion is well taken, the Trial Board must dismiss the charges and the trial shall be concluded.<sup>13</sup>

If the trial proceeds, the charging party should be called upon to produce evidence in support of all charges, and should be advised that he or she carries the burden of proving the allegations. Evidence may be submitted through witnesses as well as documentary evidence. The charged party must be given an opportunity to cross-examine each witness.

After the charging party rests his or her case, the charged party may then present his or her own witnesses and documentary evidence. The charging party must be given an opportunity to cross-examine each of the charged party's witnesses.

At the discretion of the Trial Board, the charging party may be allowed to put on additional witnesses, but only in rebuttal of testimony made by the charged party's witnesses. If the Trial Board allows the charging party to present rebuttal witnesses, then the charged party must also be provided an opportunity to rebut the testimony of these additional witnesses.

At the conclusion of all testimony, the Trial Board has the discretion to allow for oral arguments and/or the submission of written briefs by each party. As part of this, both parties shall be allowed to (but not required to) make any recommendation it may have concerning the appropriate penalty to be imposed in the event that the Trial Board finds the charged party to be guilty on one or more charges. The trial is then concluded.

## **I. Decision**

The Trial Board's decision must be issued within sixty (60) days of the start of the trial, and consist of the following:

- A. Be by majority vote of its members;
- B. Be in writing;
- C. Contain a statement of the pertinent facts involved,
- D. Contain a statement of the violations charged, including reference to the relevant provisions of the Constitution and By-Laws or other governing laws involved;
- E. A pronouncement of the guilt or innocence of the party charged; and
- F. If the charged party is found guilty of one or more charges, the penalty to be imposed. Permissible penalties are reprimand, fine, suspension from office, or suspension or expulsion from membership.

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<sup>13</sup> Art. XVII, Sec. 6.

## **J. Service of Decision**

The Board's decision shall be submitted to the secretary of the local union involved and shall be read at the next regular local union meeting. The secretary shall send copies of the decision by certified mail with return receipt where available, and if not available, then by registered mail to the parties involved. The Chair shall also transmit a copy of the Trial Board's decision to the General President's office and the District Vice President as soon as is reasonably possible.<sup>14</sup>

## **K. Appeals**

Appeals of the Trial Board's decision must be sent to the General President within thirty (30) days from the receipt of the Board's decision and must be sent by certified mail with return receipt where available, and if not available, then by registered mail.<sup>15</sup> The appealing party must clearly label any correspondence intended to serve as an appeal by writing or typing the word "APPEAL" on the cover page of any such correspondence and on the envelope in which it is sent.

The appealing party must also send a copy of the appeal by certified mail with return receipt where available, and if not available, then by registered mail to the adverse party (in the case of trial board decisions) or to the party whose order or decision is being appealed. The appealing party must include a statement in the appeal affirming that copies have been sent, including a list the names and addresses to whom the copies were sent

**Any party interested in filing an appeal should read Article XVIII of the IAFF Constitution and By-Laws with extreme care and strictly comply with its filing and service requirements.**

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<sup>14</sup> Art. XVII, Secs. 8, 10.

<sup>15</sup> An original appeal may be made directly to the International Executive Board if the General President is disqualified from hearing the appeal by reason of being involved as a party issuing the order or decision from which the appeal is taken or by being the accused. Art. XVIII, Sec. 4A.

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# Section II

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## *Detailed Guidelines for the Proper Conduct of Local Union Trial Boards*

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### **A. Pre-Trial Procedures at a Trial**

The Trial Board Chair should call the hearing to order and make certain announcements.

1. Initially, the Chair should state: “*The following trial is for the purpose of hearing charges of misconduct brought by [name of charging party] against [name of accused].*”
2. The Chair should identify himself or herself and the other members of the Board.
3. If the Trial Board chooses to have a verbatim transcript or a tape recording of the proceedings, the Chair should state the following:

Chair [reads]: “*All testimony will be recorded in a transcript (or tape recording) of the hearing and the transcript (or tape recording) and copies of any written materials will constitute the factual record upon which the Board will base its decision.*”

If the proceedings are tape recorded, the Secretary of the Trial Board must be designated to keep the tape and preserve it as part of the record.

4. Chair [reads]: “*The trial will be conducted in accordance with the International Association of Fire Fighters Constitution and By-Laws and proper conduct will be required of all present.*”

At this time introduce into the record of the hearing any Rules for the Conduct of the trial that the trial board established in advance of the hearing, and with proper notice as required by Article XVII, Section 6 of the IAFF Constitution and By-Laws.

5. Chair [reads]: “*As permitted by the Constitution and By-Laws, additional rules of procedure may be established by the trial board if needed during the course of the trial.*”

## B. Costs

In the case of charges between members of different locals, and in the absence of an agreement, the General President may impose reasonable costs for the conduct of the trial upon any local whose members are involved in the proceedings. To the extent possible, the General President will divide the costs equally between all locals involved unless he or she determines that fairness and equity warrant higher costs being imposed upon one or more locals or on the non-prevailing party or parties or local. The reasons for the cost allocations shall be discussed in a written decision by the General President. Appeal of the General President's decision may be made to the IAFF Executive Board.<sup>16</sup>

The cost of travel, lodging, meals and per diem of representatives assigned to assist Trial Boards in deciding procedural motions shall be paid by the local where the case arose or as determined by the General President.<sup>17</sup>

When charges are deemed frivolous, de minimis, or retaliatory by a Trial Board, all costs associated with the Trial Board, including attorney expenses, shall be borne by the charging party. Failure of the charging party to pay the cost and expenses of a convened Trial Board, within sixty (60) days from the date of the decision and any decision on appeal, shall result in suspension of the charging party until such time that all costs are paid in full.<sup>18</sup>

## C. Appearances

The appearance of lawyers and legal formalities is discouraged in Trial Board proceedings.<sup>19</sup>

Chair [reads]: *“Would the charging party and the accused identify themselves and the name of any representative present each has chosen.”*

## D. Reading of the Charge

At this point in the conduct of the trial, the Chair should read the written charges filed with the Trial Board.

Chair [reads]: *“Will the charging party state for the record whether what has been read represents the charge he/she has filed, and if not, to state any corrections necessary therein.”* [Wait for response.]

Chair [reads]: *“Will the accused party state for the record whether he/she understands fully the nature of the charge which has been filed against him/her and read to*

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<sup>16</sup> Art. XVII, Sec. 12.

<sup>17</sup> Art. XVII, Sec. 1.

<sup>18</sup> Art. XVII, Sec. 7.

<sup>19</sup> Art. XVII, Sec. 6.

*him/her.*” [The Chair should assure himself or herself that the accused understands fully the nature of the charge made.]

Where the charging party has made a correction of the charge, as provided for above, the accused should be asked whether he or she is prepared to face and defend against the charges, as amended. If the accused believes that, due to the correction, more time is needed for adequate preparation, a postponement of one or two weeks (at the discretion of the Trial Board Chair) should be granted to enable the accused to prepare for the trial.

## **E. Procedural Motions**

Chair [reads]: “*Do the parties wish to present any procedural motions?*”

The accused will then have the opportunity to Move to Dismiss the charge(s) filed against him or her. Proper grounds for such a motion may be such things as (1) an error or deficiency in the service of the charge upon the accused; (2) that the violation alleged in the charge is not covered by the IAFF Constitution and By-Laws, and therefore not a charge that the Trial Board can rule upon; (3) the charge is untimely;<sup>\*</sup> (4) or that the charge is patently frivolous or lacking in substance, or otherwise subject to dismissal without the necessity of a hearing. Upon a clear showing of any of the above grounds after hearing oral argument for and against the motion, the Trial Board should dismiss the charge and the trial would be concluded.

If any motion to dismiss is denied, the Chair should continue the trial by requesting the accused to respond to the charges.

## **F. Response to the Charge**

Chair [reads]: “*Will the accused state whether he/she desires to admit the truth of the charge?*” [If he/she does, the accused should be told to state that he/she is guilty of the charge. In the case of multiple accused parties, each accused should answer separately.]

If the accused enters a plea of guilty, it is then the duty of the Chair to question the accused sufficiently to be assured that the accused fully understands that by pleading guilty, he or she may be subjected to a penalty in accordance with the decision of a majority of the Trial Board and the IAFF Constitution and By-Laws. The Chair should inquire so as to assure himself or herself that the response of guilty has been made of the accused of his or her own free will and without any conditions thereto.

If the accused enters a plea of not guilty, the Trial Board Chair should then inform the parties that the trial will continue with the presentation of the evidence relating to the charge.

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<sup>\*</sup> See discussion at Section 1, paragraph A.1.

**Important Note:** A charged party may allege, as a defense to a charge, that the constitutional provision, by-law, policy, decision, rule, regulation or other governing law upon which the misconduct charge is based is unlawful or should otherwise not be enforced for a purely legal reason. While the trial board should allow such arguments to be presented and rebutted, it should decline from ruling on any such argument in its decision. At the time such arguments are presented, the trial board should state to both parties the following:

*“The trial board’s jurisdiction in this matter is limited to determining, as a factual matter, if the constitutional provision alleged to have been violated has in fact been violated. It is beyond the jurisdiction of this trial board to determine if the constitutional provision itself is lawful or not. Any such argument should be fully presented and rebutted by the parties during the trial board proceeding in order to preserve this argument for the record. The trial board will not rule upon this argument, but the party making the argument may then present this argument as grounds for appeal to the General President, who shall then rule upon the argument in deciding the appeal.”*

## **G. Presentation of the Evidence and Witnesses**

Chair [reads]: *“Do the parties intend to call witnesses to appear on their behalf who have knowledge of the facts relating to the charge?”* [Wait for response.]

Chair [reads]: *“Evidence to support or to refute the charge may be presented by way of oral statements or documentary evidence.”*

In the case of oral testimony, any member of the Trial Board may question any witness produced by any of the parties, but no member of the Trial Board should attempt to testify or bring in evidence in support of or in defense to the charges.

Article XV, Section 1(D) makes it misconduct for a charging party to fail to appear, without proper cause, after filing charges against a member or officer of the IAFF. In the case of an accused, he or she is not required to testify or present evidence in his or her defense. However, if a witness refuses to answer a question, the Trial Board may, but is not required to, draw an “adverse inference” on the unanswered question. An “adverse inference” is a rebuttable presumption that had the witness answered, his or her answer would have been adverse to the witness or the party offering the witness’s testimony. It is recommended that the Trial Board Chair advise the unanswering party of the consequences of refusing to answer a question or questions.

**Note:** This would be an important rule to establish as part of the rules provided to the parties in advance of the trial, instead of waiting to read this at the trial itself.

## H. Charging Party's Presentation of Evidence

The Chair [reads to the charging party]: *"You are required to produce evidence in support of all the charges that you have brought, and you have the burden of proving such charges by a preponderance of the evidence. When a party has the burden of proving any claim or defense by a preponderance of the evidence, it means that the trial board must be persuaded by the evidence that the fact, claim, or defense is more probably true than not true. The criminal standard of proof 'beyond a reasonable doubt' is not applicable to trial board proceedings. The charging party may now proceed with the presentation of his/her case."*

In such presentation, the charging party may choose to present his or her evidence by responding to questions asked by his or her representative (if any). Otherwise, the charging party may proceed with a statement of all facts he or she believes show the truth of the charge made. In addition, either party may present evidence through the testimony of witnesses.

## I. Accused Party's Presentation of Evidence

Upon completion of the presentation of facts by the charging party, the Chair should address the accused (or representative, if any).

The Chair [reads to the accused]: *"You may cross-examine the charging party with respect to the evidence presented."*

Cross-examination by the adversary party in a Trial Board proceeding is for the purpose of enabling each party to ask for explanations and additional details relating to the evidence presented by the charging party in order to establish the lack of substance or error in the factual details stated by the other party.

If the charging party has witnesses to present, a procedure similar to that used when questioning the charging party is followed with each of the charging party's witnesses, and in turn each witness is made available to the accused for cross-examination.

At the conclusion of the charging party's case, the Trial Board may dismiss the case, if based on the record, the evidence produced is insufficient to sustain the burden of proving the charges.

If sufficient evidence is produced by the charging party in support of the charges, then the Chair should call upon the accused to offer evidence in defense.

The Chair [reads to accused]: *"You may proceed with the presentation of your defense to the charge(s) brought against you."*

## **J. Rebuttal**

At the completion of the accused's presentation of facts (including those presented by each of the witnesses on his or her behalf) and after cross-examination by the charging party, the Chair should inform the charging party as follows:

Chair [reads to the charging party]: *"You may, but are not required to, present rebuttal evidence. Rebuttal evidence is evidence presented to show the lack of substance or errors in the evidence presented by the accused. You are not allowed to present new evidence which you had an opportunity to present during the presentation of your case."*

Rebuttal evidence is limited to rebuttal only of testimony given by the accused, witnesses for the accused or documentary materials offered into evidence by the accused. A similar opportunity for rebuttal only should be given the accused at the conclusion of the charging party's rebuttal.

## **K. Oral Argument**

The Trial Board may require or permit upon request of the parties either oral argument at the conclusion of the trial or written briefs to be submitted on behalf of the parties or both. Oral argument consists of a summary statement by each party as to why he or she believes, after hearing all the evidence of record in the case, he or she is entitled to prevail. Briefs or memoranda consist of written summations that each party is directed to file by a designated date through which each of the parties essentially argues why the evidence and law (such as provisions of the Constitution and By-Laws, etc.) applicable to the case supports his or her position. In complicated cases briefs can be of assistance to the Trial Board in organizing the facts and governing internal law in preparation for writing its decision. In most cases written briefs are not necessary but in the rare case where parties are represented by an attorney permission to file them is sometimes requested.

Chair [reads]: *"Do any of the parties intend to present oral argument or written briefs?"*  
Or alternatively, *"The Trial Board requests the parties to present oral argument (or written briefs) on the issues in this case."*

At the conclusion of the oral argument, if any, the Trial Board Chair should read the following statement before concluding the hearing.

Chair [reads]: *"With both parties having concluded the presentation of the case, this hearing is now concluded. This Trial Board will issue a written decision within sixty (60) days of today."*

At the conclusion of the hearing, if the Trial Board has elected to allow the parties to submit written briefs, the Trial Board should set a firm date for serving such briefs on the Trial Board and the opposing side.

## **L. Decision of the Trial Board**

At the conclusion of the case, and after the submission of written briefs (if any) the Trial Board should meet and discuss the facts and arguments presented and reach a decision about whether each charge has been proved by a preponderance of the evidence or has failed for lack of proof. If the decision is that the accused is guilty of one or more of the charges preferred, the Trial Board shall also determine the penalty **for each violation**.<sup>20</sup> Available remedies include reprimand, fine, suspension from office, or suspension or expulsion from membership.

The Trial Board's decision must be in writing, and contain (1) a statement of the pertinent facts involved, (2) the violations charged, (3) reference to the relevant Articles and Sections of the IAFF Constitution and By-Laws, (4) a pronouncement of the guilt or innocence of the party charged with respect to each charge, and (5) the penalty to be imposed with respect to each charge in the event the verdict is one of guilt.

All decisions of trial boards must be issued within sixty (60) days from the start of the trial. This time may be extended, however, for good cause and with the consent of both the accused and the charging party or parties.

Copies of the decision must be sent by certified mail with return receipt where available, and if not available, then by registered mail to (1) the parties involved, and (2) the General Secretary Treasurer.<sup>21</sup>

## **M. The Making of a Proper Decision**

The following suggestions are intended to assist the Trial Board in reaching a proper decision and determination of any appropriate penalty.

A proper decision by a Trial Board should be based upon an evaluation of all the evidence of record. In such evaluation the Trial Board will have in the course of the hearing observed the attitude of the accused as well as that of the charging party and the witnesses each may have presented.

After thorough consideration of all the evidence the Trial Board Chair may request each other member to state his or her individual views as to the guilt of the accused under the facts of record, and the reasons for his or her conclusion. It is desirable, but not necessary, that a unanimous decision be reached. A majority decision, however, is required.

As noted in section F, above, the trial board should decline to rule upon any defense to a charge that the constitutional provision, by-law, policy, decision, rule, regulation or other governing law upon which the misconduct charge is based is unlawful or may otherwise not be legally enforced. After hearing arguments on any such defense, the trial board

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<sup>20</sup> Art. XVII, Sec. 7.

<sup>21</sup> Art. XVII, Sec. 8.

should merely note in its decision that such an argument was raised. It will be up to the party presenting such an argument to present the same as grounds for any appeal of the trial board's decision to the General President. In such cases, the General President shall rule upon the argument in the first instance.

The next most important procedure of the Trial Board is to agree upon an appropriate penalty if its decision is that the accused is guilty of the offense charged. The Trial Board should exercise its discretion to ensure that penalty fits the offense. Consideration should be given to such factors, among others, as to whether or not it is his or her first offense, whether he or she has been a habitual violator or if his or her actions were done deliberately and with knowledge that the Constitution and By-Laws were being violated, the degree of harm to the charging party, the local affiliate, or the IAFF. Including the financial impact of such violation, if any.

Should the Trial Board's verdict include a suspension of the accused, such suspension should not be for an indefinite period. It should be specifically stated as a certain number of days or months. Suspension, of course, means the membership rights of the accused are withheld for that period of time.

## **N. Post-Hearing Procedures**

The Constitution and By-Laws in Article XVIII provides procedures whereby the decision of the Trial Board may be appealed by the unsuccessful party and reviewed by higher IAFF officials. Such procedures, including time limits within which an appeal may be filed, must be strictly observed by the parties. Because of this, the entire record—including documents and the transcript or recording of the trial—must be preserved at least until the parties have exhausted the available appeals.

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# **Appendix I**

# **Sample Forms**

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***Form for Member Filing a Charge***

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Secretary \_\_\_\_\_ Date \_\_\_\_\_  
Local Union No. \_\_\_\_\_  
(Street Address)  
(City, State, Zip Code or City, Province, Mailing Code)

Dear Brother/Sister:

I, \_\_\_\_\_, a member of Local Union No. \_\_\_\_\_, IAFF, hereby prefer charges against Brother/Sister \_\_\_\_\_, a member of IAFF Local Union No. \_\_\_\_\_, whose last known mailing address is \_\_\_\_\_, for the following misconduct:

International Association Constitution and By-Laws, Article \_\_\_\_, Section \_\_;

Local Union Constitution or By-Laws, Article \_\_\_\_, Section \_\_;

Other rules or regulations, decisions, or policies (described).

The misconduct occurred on  (date or approximate date)  at  (location or approximate location) , with the last such instance occurring on \_\_\_\_\_.

The nature of the misconduct is [*explain briefly, see generally the IAFF Constitution and By-Laws, Article XV*].

Fraternally yours,

\_\_\_\_\_  
(Charging party's signature)  
(Print name)

Charge to be sent by certified mail with return receipt where available, and if not available, then by registered mail to the Secretary with a copy thereof to the accused by the same means. Upon request of the charging party, the Vice President of the District concerned, or his or her designee, not to include the charging party, shall serve the charges by hand-delivery on the accused. In such cases, the Vice President or designee must testify to the date, time and location of the Service before the local trial board.

***Sample Form of Notice of Hearing to Accused***

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Member \_\_\_\_\_ Date \_\_\_\_\_  
Local Union No. \_\_\_\_\_  
(Street Address)  
(City, State, Zip Code or City, Province, Mailing Code)

Dear Brother/Sister:

You are hereby notified to appear before the Trial Board Local Union No. \_\_\_\_\_, IAFF, meeting at \_\_\_\_\_ (street) \_\_\_\_\_, \_\_\_\_\_ (city) \_\_\_\_\_, \_\_\_\_\_ (state or province) on (day) \_\_\_\_\_, \_\_\_\_\_ (date) \_\_\_\_\_ at \_\_\_\_\_ (time) \_\_\_\_\_, to answer charges filed against you by Brother/Sister \_\_\_\_\_, Local No. \_\_\_\_\_ for alleged misconduct.

You have received by certified mail with return receipt where available, (and if not available, then by registered mail) or by hand-delivery by the Vice President of your district or his/her designee a copy of the charge filed against you. You may bring witnesses to give evidence in your behalf. You will be accorded the opportunity at the hearing to present any relevant evidence and to cross examine the charging party or any witness appearing on his/her behalf. You may, if you desire, designate any person, including any member in good standing of the Association (except a member of the Trial Board or other member involved in the proceedings), to act as your representative in the trial proceedings.

Fraternally yours,

\_\_\_\_\_  
Secretary, Local Union  
No. \_\_\_\_\_, IAFF  
(Print name and signature)

Certified Mail  
Return Receipt Requested  
(if appropriate)

***Sample Request to Have District Vice President Designated as the Appointing Officer***

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Harold A. Schaitberger  
IAFF General President  
1750 New York Ave NW  
Washington, DC 20006  
FAX: 202-638-5294

Date \_\_\_\_\_

Re: Charges filed by \_\_\_\_\_ against \_\_\_\_\_

Dear General President Schaitberger:

Pursuant to Article XVII, Section 1(A), I hereby request that you designate the District Vice President of the charged party as the appointing officer. I attest, for the following reasons, that the President of Local \_\_\_\_ (charged party's local) and the Secretary/Treasurer of the same Local are directly involved as a party, witness, or otherwise in the conduct giving rise to the charges:

*[provide a short, simple statement as to the reasons why both the President and the Secretary-Treasurer (or equivalent executive officer) of the charged party's local are directly involved as a party, witness, or otherwise in the conduct giving rise to the charges]*

Fraternally yours,

\_\_\_\_\_  
Party's Signature  
(print name and local #)

cc: [Opposing party]  
[District Vice President]

***Sample Request to Have Trial Board Moved to Neighboring Local or Locals***

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Harold A. Schaitberger  
IAFF General President  
1750 New York Ave NW  
Washington, DC 20006  
FAX: 202-638-5294

Date \_\_\_\_\_

Re: Charges filed by \_\_\_\_\_ against \_\_\_\_\_

Dear General President Schaitberger:

Pursuant to Article XVII, Section 1(A), I hereby request that you designate the District Vice President of the charged party as the appointing officer. I attest, for the following reasons, that the President of Local \_\_\_\_ (charged party's local) and the Secretary/Treasurer of the same Local are directly involved as a party, witness, or otherwise in the conduct giving rise to the charges:

*[provide a short, simple statement as to the reasons why both the President and the Secretary-Treasurer (or equivalent executive officer) of the charged party's local are directly involved as a party, witness, or otherwise in the conduct giving rise to the charges]*

In addition, it is my contention that all members of Local \_\_\_\_ (the charged party's local) are either directly or indirectly involved as a party, witness, or otherwise in the conduct giving rise to the charges. I therefore also request that the District Vice President select the trial board panel of seven members from a neighboring local or locals, as also provided in Article XVII, Section 1(A).

Fraternally yours,

\_\_\_\_\_  
Party's Signature  
(print name and local #)

cc: [Opposing party]  
[District Vice President]

## ***Sample Rules for Conduct of Trial Board Hearing***

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1. The trial will begin at \_\_\_\_ A.M. and will continue day to day until conclusion with the following breaks:

\_\_\_\_ P.M. to \_\_\_\_ P.M. for lunch  
\_\_\_\_ P.M. to \_\_\_\_ P.M. for dinner (if required)  
\_\_\_\_ P.M. for evening recess  
(if required)

2. Pursuant to the request of the accused, the trial board will be open to such members of the IAFF who request to be present. [If the accused does not make such a request, the trial board hearing should be open only to the participants.] At the discretion of the Trial Board, those wishing to observe the proceedings may be required to present identification of membership in the IAFF.

3. Witnesses will be sworn by the reporter [or Chair].

4. Exhibits introduced at the trial by the Charging Party will be identified as “CPX \_\_\_\_.” Exhibits introduced by the Accused will be identified as “ACX \_\_\_\_.”

5. Briefs or memoranda may be submitted by the parties within \_\_\_\_ days after receipt of the transcript of the trial [briefs are not necessary and are at the discretion of the Trial Board].

6. Strict rules of evidence applicable in civil trials will not apply and either party may introduce oral testimony and documentary evidence so long as it is relevant to the issue or issues in the case.

These rules may be amended, as necessary, during the course of the trial.

## ***Sample Form of Trial Board's Decision***

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Date \_\_\_\_\_

Dear Brother/Sister:

Please be advised that a Trial Board of Local Union No. \_\_\_\_, IAFF on the     (date)    , after due consideration of the evidence produced relating to the charge of misconduct filed against you by Brother/Sister \_\_\_\_\_ has rendered its decision as follows:

Charge Number 1: *[The Trial Board's decision should state the verdict and the reasons for the verdict, in compliance with the requirements of Article XVII, Section 7 of the International Constitution and By-Laws. The Trial Board should then state the penalty (if any), and the reasons for the penalty. If the penalty is in the form of a fine, state that Article XVIII, Section 6 must be complied with before an appeal can be recognized.]*

Charge Number 2: *[Same as above; repeat for each charge.]*

*If the verdict on several charges is based on the same findings of fact and/or reasoning, these facts can be set out just once in the decision.*

Fraternally yours,

\_\_\_\_\_  
Chair, Trial Board Local  
Union No. \_\_\_\_ IAFF  
(Print name and signature)

Certified Mail  
Return Receipt Requested  
(if appropriate)

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**Appendix II**  
**Excerpts From IAFF**  
**Constitution and**  
**By-Laws**  
**Articles XV - XVIII**

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## ARTICLE XV MISCONDUCT AND PENALTIES

### Section 1. Misconduct and Penalties.

Except as otherwise provided in this Constitution and By Laws, any officer or member of the Association, or of any local union, or of a state or provincial association, or joint council, after charges, trial, and conviction of any of the following offenses, may be reprimanded, fined, removed from office, suspended, or expelled as the evidence and circumstances may warrant in the judgment of the officer or officers or legally constituted tribunal by whom he/she is tried as hereafter provided in Article XVII. The following shall constitute misconduct:

A. Refusal or failure without justifiable cause to comply with or abide by the provisions of this Constitution and By-Laws, the valid decision of any officer or officers thereof or the valid decisions of the Executive Board or those of the Association convention, or the valid provisions of applicable constitutions and by-laws of local unions, state or provincial associations or joint councils.

B. Committing any act of fraud, embezzlement, larceny, or misappropriation of any funds or property or other thing of value belonging to the Association or any local union or other subordinate body thereof, or refusing, failing or neglecting to comply with the provisions of this Constitution and By-Laws requiring a full and accurate accounting of all funds, property, books, and records for examination and audit.

C. Libeling or slandering or causing to be libeled or slandered any officer or member of the Association or of any local union or other subordinate body thereof, except in the form of charges of misconduct properly filed against an officer or member as provided by this Constitution and By-Laws.

D. Failing, refusing or neglecting to appear, without proper cause, as a prosecuting witness after filing charges against a member or officer of this Association.

E. Advocating or encouraging any labor or any other rival organization, or acquiring or maintaining membership in any such organization including volunteer fire departments or associations.

F. Maintaining membership in, or engaging in any subversive activity in support of, any authoritarian, totalitarian, terrorist or other organization which advocates the overthrow of the democratic forms of government under which our members live.

G. Acquiring membership by fraud, false representation or deceit.

H. Filing false charges against any officer or member of the Association or of any local union or other subordinate body of the Association; provided, however, that it is understood that for the purposes of this provision false charges are not merely charges of which an officer or member is acquitted but rather charges which are filed recklessly or in bad faith without substance, foundation, or reasonable basis of support.

I. Committing any physical assault upon any officer, member, representative or employee of the Association or of any subordinate body thereof while such person is engaged in the performance of his duties for the International or subordinate unions.

J. Engaging in conduct detrimental to the best interests of the Association or its subordinate unions which places or tends to place them in disrepute with other labor organizations, employers, or the public.

K. Failure or refusal to abide by the rules of order or parliamentary procedure established for the conduct of meetings of the Association, a local union, or other subordinate body of this Association or at International conventions.

L. Conduct unbecoming a member of this Association; provided, however, that utilization of this provision shall be valid only when the charges are set forth in specific terms specifying the act or acts or conduct alleged to be unbecoming a member.

M. Refusal or failure without good reason to accept service of charges and stand trial on such charges.

N. Working a secondary job part-time, paid on call, volunteer or otherwise as a firefighter, emergency medical services worker, public safety or law enforcement officer, or as a worker in a related service, whether in the public or private sector, where such job is within the work jurisdiction of any affiliate or which adversely impacts the interests of any affiliate or the IAFF. Upon a finding of guilt of working a secondary job in violation of this subsection, it is recommended that the penalty include disqualification from holding office in any affiliate and/or expulsion from membership for the period that the misconduct persists. Charges filed for the misconduct described in this subsection shall be preferred by a member of the charged party's local and/or a member of an adversely affected affiliate.

### Section 2. Rival Organizations.

With the approval of the Executive Board the General President may appoint a five (5) member Executive Board Committee to investigate and determine if the charges against any outside organization warrant the declaring of the term "rival

organization”, and report the committee’s recommendation to the full Executive Board. An outside organization may be declared a rival organization by two-thirds (2/3) vote of the Executive Board.

Upon receipt of a request by the charging party involved or by an affiliate of the Association to remove the declaration of rival organization from an outside organization, the Executive Board must consult with all parties involved and may vote to revoke the designation of rival organization by a two-thirds (2/3) majority vote; provided, however, that if the charging party is deceased or the charging affiliate is dissolved, the Executive Board may of its own motion consider revoking a declaration of rival organization.

## **ARTICLE XVI CHARGES**

### **Section 1. Who May Prefer Charges; Statute of Limitations; Multiple Charged Parties.**

Any member in good standing may prefer charges of misconduct as defined in Article XV against any officer or member of the Association or of any of its subordinate unions. Charges must be filed within six (6) months from when the charging party either knew or should have known of the alleged misconduct. The charging party or parties may name up to seven (7) charged parties in any set of charges alleging the same misconduct, in which case such charges will be adjudicated as a single trial board proceeding.

### **Section 2. Form of Charges.**

All charges shall be preferred in the following way:

- A. Be in writing.
- B. Be signed by the party or parties preferring same.
- C. Contain a statement of the facts out of which such charges originated and set forth the specific act or acts alleged to constitute misconduct, the dates, places, and persons involved.
- D. State the nature of the violation or violations alleged.
- E. Refer to the Articles and Sections of this Constitution and By-Laws, the constitution or by-laws of the subordinate union, the established policies, decisions, rules or regulations or other governing laws which it is alleged have been or are being violated.

### **Section 3. Notice of Charges Against Officers or Members of Local Unions, State or Provincial Associations or Joint Councils.**

Notice of charges against any officer or member of a local union or other subordinate organization of this Association shall be sent by the officer or member preferring the charges by certified mail with return receipt where available, and if not available, then by registered mail to the local union, association or joint council with which the accused is affiliated, and a copy sent by certified mail with return receipt where available, and if not available, then by registered mail to the accused. Upon request of the party preferring the charges, the Vice President of the District concerned or his/her designee, not to include the person preferring the charges, shall serve the charges by hand-delivery on the accused and must testify to the date, time and location of the service before the local trial board convened to hear the charges.

Notice of charges shall also be contemporaneously filed, using the same manner as outlined above, upon the General President’s office, as well as upon the Vice President for the District or Districts encompassing the local, association or joint council of each of the parties to the case. Such notice shall also be provided to the state or provincial association, to the extent that any of the parties to the charges are members of locals belonging to the state or provincial association. Failure to accomplish such notice shall be grounds for dismissal of the charges.

### **Section 4. Notice of Charges Against Association Officers.**

Notice of charges against any officer of the International shall be sent by the member preferring the charges by certified mail with return receipt where available, and if not available, then by registered mail to the General Secretary-Treasurer for delivery by him/her after duplication of sufficient copies to each member of the Executive Board, and by sending by certified mail with return receipt where available, and if not available, then by registered mail a copy of said charges to the accused. If the General Secretary-Treasurer is the party accused, the original of the charges shall be sent to the General President for delivery to the members of the Executive Board as aforesaid.

Where charges are filed against either the General President or General Secretary-Treasurer of the Association, notice and a copy of such charges shall be sent to all local unions of the Association. Where charges are filed against an International Vice President or Trustee, notice and copy of the charges shall be sent to all local unions in the Vice

President's District or Trustee's Region. In the event charges are filed against any Department Head of the International, notice and a copy of the charges shall be sent to all local unions of the Association.

### **Section 5. Pre-Trial Review Boards.**

A charged party, including any International officer, may request a Review Board to make an initial determination whether charges are frivolous, retaliatory, or de minimis. A request that the General President convene a Review Board at the next meeting of the IAFF Executive Board must be mailed to the General President and District Vice President no later than thirty (30) days after service of the charges, with a copy of the request mailed contemporaneously to the charging party or parties. The party requesting a Review Board must include a statement with the request affirming that a copy of the request has been sent to the charging party or parties, and list the names and addresses to whom a copy of the request has been sent. The request must be filed, in writing, no later than thirty days after service of the charges, with the General President to convene a Review Board at the next meeting of the IAFF Executive Board. Any party wishing to submit a written statement related to a Pre-Trial Review Board's consideration of a case must do so by ensuring that a copy of such statement is actually received by the General President's office, either by regular or overnight mail, facsimile or e-mail transmission, no later than fifteen (15) calendar days (effective October 1, 2010, thirty [30] calendar days) prior to commencement of the Executive Board meeting at which the Pre-Trial Review Board will be held. In cases where the request for Pre-Trial review is received less than (15) calendar days (effective October 1, 2010, thirty [30] calendar days) prior to the next Executive Board meeting, then the matter will be heard at the following Executive Board meeting, unless all of the parties involved agree otherwise. If the General President is involved as a party, the General Secretary-Treasurer shall be the person to convene a Pre-Trial Review Board. If the General President and General Secretary-Treasurer are both involved as parties, the International Vice President who is selected by the General President and approved by the parties shall convene a Review Board. The General President shall establish panels of four IAFF Vice Presidents in adjacent geographical districts to review charges arising from those four districts. No Vice President can sit on a Review Board for a charge arising from his/her District. Those Vice Presidents who serve on a pre-trial Review Board will be excluded on further appeals process in the same case. The pre-trial

Review Board has the authority to dismiss the charges if it concludes, after review of written submissions by all parties, that they are frivolous, retaliatory, or de minimis. At the conclusion of the review, if the Review Board determines that a charge should go to trial, a Trial Board must be convened within one hundred and twenty (120) days of the decision. There shall be no appeal from the Review Board's decision.

## **ARTICLE XVII TRIALS**

### **Section 1. Trials of Officers or Members of Local or Other Subordinate Unions.**

A. Whenever charges are preferred against an officer or member of a local union or an officer or individual member of a state or provincial association or joint council (hereinafter referred to collectively as "subordinate unions"), the accused shall be tried within one hundred twenty (120) days by a trial board selected and appointed as hereinafter provided by the president of the local or other subordinate union unless he/she is directly involved as a party, witness, or otherwise, in the conduct giving rise to the charges. (If the charged party requests a Review Board pursuant to Article XVI, Section 5, then the 120 day period shall run from the date of the decision by the Review Board.) If the president is so involved, the secretary-treasurer (or corresponding executive officer) of the subordinate union shall appoint the members of the trial board. If the secretary-treasurer (or corresponding executive officer) is also so involved, the General President shall designate the Vice President of the District in which the subordinate union is located as the appointing officer of the trial board.

The appointing officer shall submit names of seven (7) members in good standing of the subordinate union to the accuser, of which the accuser shall reject two (2), and then shall submit the remaining five (5) to the accused, of which the accused shall reject two (2), with the remaining three (3) thus appointed as the trial board; provided, however, that if all members of the subordinate union are either directly or indirectly involved as parties, witnesses, or otherwise, in the conduct giving rise to the charges brought against the accused, or, in the event the required number of members of a local or other subordinate union refuse to serve as members of a trial board, in either of these events the Vice President of the District in which the charges arose shall submit the names of seven (7) members in good standing of a neighboring local union or neighboring

local unions within the District to the accuser, of which the accuser shall reject two (2), and then shall submit the remaining five (5) to the accused, of which the accused shall reject two (2), with the remaining three (3) thus appointed as the trial board; provided, further, however, that the decision of the trial board consisting of members of a neighboring local or locals shall be deemed to be the decision of the local union in which the charges arose, the reasonable costs of which shall be borne by such local union and the decision of the trial board reported to such local union.

In the event that neither the local president nor the secretary-treasurer (or corresponding executive officer) have either submitted the names of seven (7) members of the subordinate union to the accuser, or notified the General President that they are sufficiently involved so as to preclude them from doing so, within thirty (30) days of their receipt of the charges, then the General President shall be authorized, upon request by any party to the case, to designate the Vice President of the District in which the subordinate union is located as the appointing officer of the trial board.

The accuser shall make his/her selection no later than seven (7) days following the submission of the names by the appointing officer, in the absence of which the appointing officer shall strike two names; thereafter the appointing officer shall submit the remaining five (5) names to the accused, who shall make his/her selection no later than seven (7) days following the submission by the appointing officer, in the absence of which the appointing officer shall designate the three (3) members of the trial board.

In cases where there is more than one accuser and/or accused, an effort will be made to obtain agreement among each group of accusers and/or accused to strike two (2) names. In the absence of agreement among a group of accusers and/or accused, the appointing officer shall strike two names by lot.

If charges are preferred by an International officer or officers against an officer or member of a subordinate union, the trial shall be conducted by members of the Executive Board of the Association who shall be designated as provided in Section 2 of this Article.

In all cases where the appointing officer selects the names of seven (7) members to be submitted to the accuser and the accused, such members shall be chosen by a random, computerized process established and carried out, upon request of the

appointing officer, by the General Secretary-Treasurer's office.

B. The General President, at the request of the charging or charged party, or the local that is responsible for conducting the trial board, may appoint Representatives to preside over and assist local trial boards by ruling on procedural matters but not making a decision on the merits. The cost of these Representatives including travel, lodging, meals, and per diem shall be paid by the local where the case arose or as determined by the General President.

## **Section 2. Trials Before International Trial Board.**

Whenever charges are preferred by or against an International officer of the Association, the accused shall be tried within one hundred twenty (120) days before a trial board of three (3) members of the Executive Board to be selected and appointed in the following manner by the General President unless he/she is directly or indirectly involved in the conduct giving rise to the charges in which case the General Secretary-Treasurer shall act as the appointing officer; provided, however, that in the event both the General President and the General Secretary-Treasurer are so involved in the conduct giving rise to the charges, the remaining members of the Executive Board not so involved by majority vote shall designate one of its members not so involved as the appointing officer. (If the charged party requests a Review Board pursuant to Article XVI, Section 5, then the 120 day period shall run from the date of the decision by the Review Board.) The appointing officer shall submit the names of seven (7) members of the Executive Board to the accused of which the accused shall reject four (4), the remaining three (3) to constitute the International Trial Board.

The accused shall make his selection no later than seven (7) days following said submission at the expiration of which time in the absence of election by the accused the appointing officer shall designate the members of the International Trial Board.

In the event that charges preferred against an International officer are of such a nature as to require immediate summary action to safeguard the interests of the Association, such as those involving larceny, embezzlement, unlawful conversion of Association funds or property of the like, the International Trial Board shall immediately refer the matter to the Executive Board. If the majority of the Executive Board (less any member or members disqualified because he/she or they are involved in the charges) decide, after review of the charges and any

investigation it considers necessary, that the charges are not frivolous or lacking in substance and are of such a nature as to require immediate summary action to protect the funds or property of the Association, it is empowered to and shall immediately suspend the accused officer or officers from any further duties or authority on behalf of the International pending completion of the trial by the International Trial Board. Thereafter, the trial shall proceed as hereafter provided in this Article, and the vacancy in the office of the suspended officer shall be filled temporarily as provided in Section 5 of Article V. If the accused is acquitted of the charges, he/she shall be immediately reinstated in office upon such acquittal.

### **Section 3. Disqualification for Cause and Procedure for Replacing Trial Board Member Unable to Serve.**

No name submitted for selection as a member of a trial board shall be that of anyone directly or indirectly involved as a party, witness, or otherwise, in the conduct giving rise to the charges, and in the event any of the members are so involved they shall be disqualified to sit as a member of the trial board, and the appointing officer shall submit three (3) additional names to the accuser, who shall strike one (1), and shall submit the remaining two (2) to the accused, who shall strike one (1), and the remaining member shall sit as a substitute member. The accused and accuser shall in all cases each have seven (7) days to make their respective strikes after said submission failing which the appointing officer will designate the substitute member. The procedure described herein shall also apply to replace an individual selected by the accused to serve on a trial board who is unable or unwilling to serve on the trial board for any reason.

### **Section 4. Chairperson of Trial Board.**

Prior to proceeding with the trial, the members of the trial board shall elect one of their group as chairperson. The Chairperson shall preside at the trial and rule upon all questions and points of order.

### **Section 5. Absence of Trial Board Member from Session.**

It shall be the duty of each member of a trial board to attend all sessions of the trial. In the event that a member is unavoidably absent from a session of the trial, it may proceed provided a majority of the trial board members are present.

Thereafter, the absent member shall remove himself/herself from the trial board and may not participate in any further proceedings or in the findings or decision of the trial board.

### **Section 6. Rules for the Conduct of the Trial.**

Except as otherwise provided herein, trial boards may promulgate their own set of rules for the conduct of the trial formulated in consultation with both the accused and charging party or parties and distributed to them in writing at least fifteen (15) days prior to the commencement of the trial. Additional rules of procedure may be determined by a trial board during the course of a trial if situations not covered by the rules adopted should occur.

A simple manual of trial procedure will be prepared by the International and made available to each of its affiliates for assistance and guidance in conducting the trial. The trial board shall have the authority prior to receiving testimony and other evidence to entertain a motion to dismiss the charges in a case without further trial on the ground that such charges are patently frivolous or lacking in substance or otherwise subject to dismissal without the necessity of testimony or other evidence. If the trial board is satisfied after hearing argument for and against motion to dismiss that the motion is well taken, it shall dismiss the charges and the trial shall be concluded.

Unless otherwise agreed by the accused, the trial shall be held at the city or town in which the accused is employed or in an adjacent city or town if the trial board chairperson determines that it is more appropriate for the proper functioning of the trial. It shall be held within one hundred twenty (120) days after the receipt of charges by the accused and not less than two (2) weeks after notification to the accused of the composition of the trial board and the date and place of trial. If the charged party requests a Review Board pursuant to Article XVI, Section 5, then the 120 day period shall run from the date of the decision by the Review Board. If a trial board should fail for any reason to convene within the time period prescribed in this Section for the commencement of the trial, it shall be dissolved and a new trial board constituted by the appointing officer and convened within the time limits herein required.

Each party to the case shall have the privilege of designating any person, including any member in good standing of the Association except a member of the trial board or other member involved in the proceedings to act as his counsel in the trial proceedings.

It is the intention of the Association to discourage the appearance of lawyers in these

hearings, and legal formalities shall not control the proceedings.

For good cause shown the accused or party preferring charges may request a postponement of the date set for trial. Such motion shall be addressed to the Chairperson of the trial board and shall be subject to approval or rejection within the discretion of the members of the trial board.

Either party may be granted a postponement, for a reasonable period of time, of a trial at the discretion of the trial board if a showing is made that there is a concurrent court or administrative agency case involving substantially the same issues and parties and that continuation of the trial board may prejudice the rights of either party. The trial board may postpone the trial either on request or on its own motion. A party may appeal a denial or grant of such a motion within ten (10) days to the General President. Such appeal shall be sent to the General President by certified mail with return receipt where available, and if not available, then by registered mail. The General President shall issue a decision no later than ten (10) days after receipt of the appeal. Such decision shall be final and binding on all parties.

Upon request by the accused, the trial shall be open to such members of the Association who desire to attend and the trial board shall so provide in its rules for the conduct of the trial.

Each trial board shall have the option either to select a qualified stenographer to take the official verbatim transcript of the trial proceedings or record such proceedings on a tape machine. In the event tape recordings are utilized, the trial board shall also designate one of its members to take official minutes of the proceedings. All documents or other items offered as exhibits shall also be preserved by the trial board as a part of the record. If a tape recorder is used, either the accused or charging party shall be permitted to listen to it subsequent to the trial under the supervision of a member of the trial board and if either of such parties decides to take an appeal from the decision of the trial board, a transcription of the tapes shall be made. A copy of the official minutes and transcripts shall be furnished upon request to either party to the case without charge.

Should the accused fail to appear for trial after due notice, or should he/she appear but refuse to comply with the rules for the conduct of the trial prescribed in this Constitution and By-Laws or formulated by the trial board, or should he/she engage in conduct designed to obstruct his/her trial, then in that event the trial board shall proceed to conduct the trial in his/her absence. The accused, the party preferring charges, counsel for either party, or any witnesses or spectators who are guilty of

misconduct before the trial board, at the discretion of the Chairperson of the trial board, shall be excluded thereafter from the trial proceedings and the trial shall continue in their absence.

After all evidence has been presented and arguments made by all parties or their counsel, the trial board shall conclude the trial and, as soon as may be practicable, assemble for consideration of its decision.

## **Section 7. Decision of Trial Board.**

The decision of the trial board shall be by majority vote of its members, shall be reduced to writing, and shall contain a statement of the pertinent facts involved, the violations charged, reference to all relevant Articles and Sections of this Constitution and By-Laws or other governing laws involved, a pronouncement of the guilt or innocence of the party charged, and the penalty to be imposed in the event the verdict is one of guilt which shall be reprimand, fine, suspension from office, or suspension or expulsion from membership.

When the charges are deemed frivolous, de minimis, or retaliatory by a decision of the trial board, all costs associated with the trial board, including attorney expenses, shall be borne by the charging party. Failure of the charging party to pay the costs and expenses of a convened trial board, within sixty (60) days from the date of the decision and any decision on appeal, shall result in suspension of the charging party until such time that all costs are paid in full.

All decisions of trial boards shall be rendered within sixty (60) days from the commencement of the trial; provided, however, that this time may be extended by the Board for good cause shown with the consent of both the accused and the charging party or parties.

## **Section 8. Disposition of Decision of Local and Other Subordinate Union Trial Boards.**

A. Local Unions. Decisions of local union trial boards shall be submitted to the secretary of the local union and shall be read at the next regular meeting. Decisions of the trial board shall be final and binding unless reversed or modified upon appeal as provided for in Article XVIII, Sections 2, 3, 4, 5, 6, and 7 of this Constitution and By-Laws. The chairperson of the trial board shall transmit a copy of the trial board's decision to the General President's office and the District Vice President as soon as is reasonably possible.

B. State and Provincial Associations and Joint Councils. Decisions of trial boards of state and provincial associations and joint councils shall be

final and binding unless reversed or modified upon appeal as provided in Article XVIII. The chairperson of the trial board shall transmit a copy of the trial board's decision to the General President's office and the District Vice President as soon as is reasonably possible.

### **Section 9. Disposition of International Trial Board Decision.**

The decision of an International Trial Board shall be final and binding unless reversed or modified on appeal as provided in Article XVIII. All decisions of International Trial Boards shall be submitted to the General Secretary-Treasurer.

### **Section 10. Service of Decisions.**

Copies of the decisions of all trial boards shall be sent by certified mail with return receipt where available, and if not available, then by registered mail to the parties involved by the secretary of the local or subordinate union or by the General Secretary-Treasurer as the case may be.

### **Section 11. Further Proceedings.**

Either party to a case may appeal from the decision of any subordinate union trial board or International Trial Board in accordance with the provisions of Article XVIII.

### **Section 12. Trial Board Costs.**

In the case of charges between members of different locals, and in the absence of an agreement, the General President may impose costs for the conduct of the trial upon any local whose members are involved in the proceedings. To the extent possible, the General President will divide the costs equally between all locals involved unless he determines that fairness and equity warrant higher costs being imposed upon one or more locals or on the non-prevailing party or parties or local. The reasons for the cost allocations shall be discussed in a written decision by the General President. Appeal of the General President's decision may be made to the Executive Board.

## **ARTICLE XVIII APPEALS**

### **Section 1. Matters Appealable.**

Except as otherwise provided by this Constitution and By-Laws such as in the case of automatic suspension of members for failure to pay

dues or automatic forfeiture of subordinate union charters for failure to pay per capita taxes, any final order or decision of a local union or other subordinate union or of a legally constituted tribunal thereof or any decision or order of any International officer or officers or of the Executive Board or any legally constituted tribunal of the Association shall be appealable.

### **Section 2. Who May Appeal.**

Any member in good standing or any local union or other subordinate union of this Association adversely affected by any order or decision as aforesaid may take an appeal as hereinafter provided.

### **Section 3. Appeals to the General President.**

Except when he/she is directly involved in the order or decision from which appeal is taken, all appeals shall be referred initially to the General President for review and decision.

Appeals shall be in writing, shall be made within thirty (30) days from the receipt of the order or decision from which appeal is taken, and shall be sent by certified mail with return receipt where available, and if not available, then by registered mail to the headquarters of the General President. The appealing party must clearly label any correspondence intended to serve as an appeal by writing or typing the word "APPEAL" on the cover page of any such correspondence and on the envelope in which it is sent. Copies of the appeal shall be sent by certified mail with return receipt where available, and if not available, then by registered mail to the adverse party (in the case of trial board decisions) or to the party whose order or decision is being appealed. The party filing the appeal must include a statement in the appeal affirming that a copy of the appeal has been sent to the adverse party or the party whose order or decision is being appealed, and list the names and addresses to whom a copy of the appeal has been sent. The opposing party or party whose order or decision is being appealed must also affirm that a copy of the opposing statement has been sent to the appealing party as part of the opposing statement.

The appeal shall contain a resume of the facts, the decision or order involved, and such argument (but no new evidence in the case of appeals from trial board decisions) as the appealing party deems necessary for the proper consideration of the appeal. Upon receipt of the appeal, the General President shall secure from the custodian thereof the official record of the trial and action of the trial board and local union (if any) and shall review such

proceedings and decisions in his/her consideration of the appeal.

Upon receipt of a copy of the appeal, the opposing party or party whose order or decision is being appealed may file a statement in opposition with the General President accompanied by such statement and argument (but no new evidence in the case of appeals from decisions of trial boards) as such party may consider necessary for proper consideration of the opposing position. Such opposing statement shall be sent by certified mail with return receipt where available, and if not available, then by registered mail within thirty (30) days after copies of the appeal have been received, and a copy of such statement shall be sent by certified mail with return receipt where available, and if not available, then by registered mail to the appealing party.

After the appeal and opposing statement (if any) are received, the General President shall render his/her decision on the appeal in writing within a reasonable time compatible with his/her other duties and obligations but no later than sixty (60) days thereafter, and shall send copies of such decisions by certified mail with return receipt where available, and if not available, then by registered mail to all parties in interest. He/She shall have the authority to affirm, reverse, or modify the order or decision appealed from and, in the case of an appeal from a trial board decision, he/she may also change or modify any penalty imposed or remand the case to the local union or trial board for further proceedings consistent with his/her decisions.

Decisions of the General President on appeals shall be final and binding unless a further appeal is taken as provided herein.

#### **Section 4. Appeals to the Executive Board.**

The Executive Board shall entertain two classes of appeals as follows:

A. All original appeals which the General President is disqualified to decide as provided in Section 3 of this Article, by reason of being involved as the party issuing the order or decision from which appeal is taken or by being the accused, shall be taken initially to the Executive Board and addressed to the General Secretary-Treasurer and shall be filed within thirty (30) days from the receipt of the order or decision from which appeal is taken. The Executive Board shall receive the Appeal, opposing position, and record of the trial (if a trial board decision is appealed) in accordance with the procedure heretofore prescribed in Section 3 of this Article governing appeals to the General President,

and the Board shall render the original decision on appeal; and

B. Any party in interest who is dissatisfied with the decision of the General President on appeal may make a further appeal from such decision to the Executive Board within thirty (30) days after receipt of a copy of the General President's decision on appeal. Such appeal shall be sent by certified mail with return receipt where available, and if not available, then by registered mail to the General Secretary-Treasurer and copies similarly mailed to all other parties in interest. The party appealing shall file a brief statement of the reasons why the General President's decision on the prior appeal should be reversed by the Executive Board and may submit in written form, by memorandum or brief, such detailed argument as he/she desires in support of his/her reasons for seeking reversal. He/She shall also attach a copy of the General President's decision from which appeal is taken. A copy of all such appeals and accompanying papers shall be sent by certified mail with return receipt where available, and if not available, then by registered mail by the party appealing to the opposing party or parties at the time the appeal is transmitted to the Executive Board. Such opposing party or parties may file a statement in opposition to the appeal with the Executive Board within thirty (30) days after a copy of the appeal and supporting papers have been received together with such memorandum or brief in support of the opposing statement as may be desired. A copy of such statement and supporting papers shall be sent by certified mail with return receipt where available, and if not available, then by registered mail to the appealing party at the same time the opposing statement is mailed to the Executive Board through the General Secretary-Treasurer.

After receipt of appeals and opposing statements as aforesaid, the General Secretary-Treasurer shall make available to the Executive Board the entire record in the case which shall include the written appeal, opposing statement (if any), all prior appeals and decisions, all supporting statements and arguments filed with such appeals and (in the case of appeals from decisions of trial boards) the complete record of the Trial. The General Secretary-Treasurer shall also notify the parties to the appeal by certified mail with return receipt where available, and if not available, then by registered mail of the date the appeal has been referred to the Executive Board for review and decision.

Upon receipt of the appeal and all accompanying papers, the Executive Board shall review the entire record in the case and shall reach decision by majority vote of those members of the

Executive Board participating, which decision shall be rendered in writing within a reasonable time compatible with the other duties and obligations of the members of the Board but no later than ninety (90) days after the receipt of all papers on the appeal from the General Secretary-Treasurer. Such decision may affirm, reverse, or modify the decision or order from which appeal is taken and, in the case of decisions in disciplinary cases originating with trial boards or local unions, may change or modify the penalty imposed or remand the case to the local union or trial board for further proceedings consistent with the decision on appeal of the Executive Board. Copies of all appeal decisions by the Executive Board shall be sent to all parties in interest by certified mail with return receipt where available, and if not available, then by registered mail.

If, in the judgment of the Executive Board, it is desirable to hear the parties to an appeal on oral argument in further support of their positions, the Board may schedule a hearing for such purpose at a time and place to be set by it and shall advise the parties accordingly, but otherwise no right of the parties to have an oral hearing or argument in support of their positions shall exist.

The decision of the Executive Board shall be final and binding subject to further appeal to the International convention as hereafter provided.

### **Section 5. Appeals to the International Convention.**

Any party qualified to take an appeal under Section 2 of this Article who is adversely affected by any order or decision originating with the Executive Board from which appeal may be taken under this Constitution and By-Laws may appeal therefrom to the International Convention, or any party in interest who is dissatisfied with the decision of the Executive Board on an appeal may further appeal the matter to the International Convention, by sending notice of such intent to appeal to the General Secretary-Treasurer within thirty (30) days after receipt of a copy of the Executive Board's decision or order or decision on appeal. Such notice shall be sent by certified mail with return receipt where available, and if not available, then by registered mail and a copy thereof similarly mailed to the other party or parties in interest.

Appeals may also be taken directly to the International Convention by any subordinate union whose charter has been forfeited or revoked by the General President after approval of the Executive Board as provided in Article XII of this Constitution and By-Laws.

Upon the convening of the next regular convention of the Association all appeals from appeal decisions of the Executive Board, or appeals from original decisions or orders originating with the Executive Board, or appeals from charter revocations shall be referred to the Committee on Grievances and Appeals of the convention. The General Secretary-Treasurer shall transmit the entire record of each appeal taken as aforesaid for review by this Committee.

The Grievances and Appeals Committee shall review the entire record in each appeal and shall permit, upon request, parties in interest to appear before it accompanied by counsel of their choosing in support of their positions on appeal. The Committee shall allow such parties to make an oral argument and file written statements and argument but shall receive no new evidence.

After hearing the parties and reviewing the entire record of each appeal submitted to it, the Grievances and Appeals Committee shall prepare a separate written report on each case recommending affirmance, reversal, or modification of the decision from which appeal is taken including any penalties imposed. Such reports shall be read separately to the delegates of the International Convention by the Chairperson of the Grievances and Appeals Committee. At the conclusion of each report, the delegates of the convention shall by majority vote sustain, reverse, or modify the recommendations of its committee.

The decision of the International Convention on any appeal shall be final and binding.

### **Section 6. Compliance Pending Appeals.**

No appeal shall be recognized or considered unless the party filing the appeal has accepted and complied with the requirements of any decision or order from which an appeal is taken; provided, however, that if the General President or the International Executive Board concludes that for good cause shown, including possible irreparable injury, compliance in a particular case should be stayed in order to prevent such injury from occurring during the pendency of the appeal, such compliance may be stayed or modified by the General President with respect to appeals submitted to him/her or by the Executive Board with regard to appeals submitted to it or to the International Convention; and provided, further, that in all disciplinary cases where fines in excess of fifty dollars (\$50.00) are imposed, fifty dollars (\$50.00) shall be required to be paid no later than fifteen (15) days after the thirty (30) days appeal period as a condition of any proper appeal from the decision under which such fine was imposed.

**Section 7. Appeal to Courts of Law or Other Civil Authority.**

No officer or member or subordinate union of this Association shall resort to any court of law or equity or other civil authority for the purpose of securing an opinion or decision in connection with any alleged grievance or wrong concerning any case arising within the Association or any of its subordinate unions until such party shall have first exhausted all remedies by appeal or otherwise provided in this Constitution and By-Laws not inconsistent with applicable law for the settlement and disposition of such alleged rights, grievances or wrongs.

The General President, the Executive Board and the International Convention are hereby empowered to refuse or defer consideration, or to refuse, defer or withhold decisions in any matter pending in any court of law as circumstances in their judgment may warrant and justify.

**Section 8. Enforcement of Decisions.**

In the event of noncompliance by a member with a final decision handed down by a trial board or appellate body, the Executive Board may suspend from all privileges of the Association such member until the provisions of the decision have been complied with.