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TEAMSTERS JOINT COUNCIL 40
REPORT OF LEGAL COUNSEL
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TRIALS AND APPEALS UNDER ARTICLE XIX OF THE IBT CONSTITUTION

Whenever a member or members seek to bring a charge against another member or members, Article XIX of the IBT Constitution sets forth certain basic requirements that must be followed. The purpose of this Report is to highlight certain of those basic requirements to ensure that the Local Unions are in compliance.

Charge Must Be In Writing And Filed With Secretary-Treasurer

Article XIX Section 1(b) provides that whenever charges are filed against a member or an officer of a Local Union the charges must be filed in duplicate with the Secretary-Treasurer of the organization which will decide the charge. Typically the charges must be filed with the Secretary-Treasurer of the Local Union that the charged member or officer belongs to. In some cases, such as where the charge is brought against the Local Union Executive Board, the charge must be filed with the Secretary-Treasurer of the Joint Council.

Initial Review of Charge

Article XIX Section 1(b) specifically requires that the Local Union Executive Board must review the charge *before* serving the charge on the charged member to determine if the charge meets certain threshold requirements. In order to comply with Section 1(b) the Local Union Executive Board must determine that the charge meets two basic requirements: (1) the charge must be timely filed, and (2) the act(s) complained of must constitute a violation subject to discipline under either the IBT Constitution and/or the Local Union Bylaws. If the charge does not meet both of these basic requirements, then the Local Union Executive Board must dismiss the charge in writing. In this case the charge is never served on the charged party.

In regard to the timeliness of the charge, Article XIX Section 7(a) provides that any charge based on misconduct that occurred more than five (5) years before the “discovery of the conduct giving rise to the charge” must be dismissed, with the exception of charges based on nonpayment of dues and other financial obligations.

In regard to the second threshold requirement, the Executive Board must examine the alleged conduct to determine if the conduct is something for which a member would be subject to discipline. In connection with this requirement under the IBT Constitution, Local unions are also subject to a specific requirement under federal law. The Labor-Management Reporting and Disclosure Act provides, at Title 29 U.S.C. Section 411(a)(5), that no member may be fined, suspended, expelled or otherwise disciplined (except for nonpayment of dues) unless the member has been served with “written specific charges,” provided a reasonable time to prepare a defense, and provided a full and fair hearing. Thus it is essential that the Executive Board conduct an appropriate review of the charge to make sure that the charge identifies with sufficient clarity the nature of the alleged violation.

No member may be tried for an offense involving the same facts as to which the member is facing a civil or criminal trial until such trial and appeals have been concluded. In addition no member may be tried for any offense that the same or substantially the same as a prior charge, provided that a decision was rendered on the prior charge.

Notice of Hearing

Article XIX Section 1(c) requires the Local Union to serve the charge on the charged member either in person or by mail. The hearing cannot be scheduled any sooner than at least ten (10) days from the date of service.

The Hearing

Both the charging party and the charged party may appear at the hearing, and each has the right to select a member of the Local Union in good standing to represent them at the hearing. If either party makes a request for a verbatim recording of the hearing at least five (5) days prior to the hearing, the Local Union Executive Board must provide for a recording. The Executive Board may determine the manner of the recording and may exclude all other forms of recording. The Executive Board must make the recording available to all parties on an equal basis.

Article XIX Section 2(d) provides that if the charging party fails to appear or fails to present evidence then the charge must be dismissed. The charged party is not required to appear, and if the charged party fails to appear then the decision must be rendered on the evidence presented.

A decision must be rendered based on a preponderance of the evidence. A decision to find a member guilty requires a majority vote of the Executive Board. The decision must be in writing and must set forth the reason(s) for the decision.

The foregoing is a partial list of the requirements that must be followed in conducting an internal Union trial under the IBT Constitution. You should consult Article XIX as well as the Local Union Bylaws when processing any internal Union charge.

**RESPECTFULLY SUBMITTED,
ROBERT A. EBERLE, ESQUIRE**