

C #18

Subject: ARTICLE XV, SECTION 6 APPEALS

Submitted by: Peter Brunette, Chair, Ethics Committee

Category: Constitutional Amendment

Whereas there is an acknowledged need for a workable dispute resolution and charge and trial process.

Whereas disputes between members should be resolved at the lowest level possible.

Whereas judicial efficiency of processing disputes is of the utmost importance.

Whereas appeals from judicial type proceedings are not questions of policy normally heard by large committees or legislative bodies.

Therefore, be it resolved that Article XV, Section 5 be amended as follows to eliminate the charge and trial level of appeal to the council.

Proposed New Language

Section 5. THE TRIAL/HEARING PROCESS

(a) In the event that a hearing is to be held on formal charges brought by one member against another, the Chairperson shall appoint two members of the Trial Board pool to serve as a Trial Panel. The Trial Board will be made up of the appointed members and the Chairperson.

(b) The Trial board members shall hear and decide charges. All charges shall be decided by a majority vote.

(c) Trial board members with potential conflicts of interest should voluntarily remove themselves from consideration. The Chairperson shall make the final determination of conflict of interest.

(d) No Trial Board member who has heard and decided charges on a particular case shall be appointed to serve on the Trial Panel that rehears the same case. In the event that any member of the Trial Board is disqualified during a trial, the Chairperson shall appoint a replacement from among the Trial Pool.

(e) If the Trial shall conduct a hearing on the charges the Chairperson of the Trial Board shall provide all involved parties with a copy of the charges, Trial Board procedures and written notice of the time and place of hearing at least 10 days prior to the holding of such hearing. Any decision of the trial panel shall be in writing. (1) The Trial Board shall have access to all witnesses and materials pertinent to the charges under consideration. (2) The Trial Panel shall base its decision solely upon the evidence presented during the hearing. (3) No evidence shall be accepted after the close of the hearing.

(f) In case the charges are sustained, the Trial Panel shall reprimand, suspend, or expel the guilty party.

Section 6. APPEALS (a) Either the plaintiff or the defendant may appeal the ruling of the Trial board to the Board of Directors. All appeals must be in writing, filed with the SEA, SEIU Local 1984 Secretary within thirty days of the date of decision. While an appeal is pending, the decision appealed shall remain in effect.

(b) If a member of the Board of Directors is a party or a witness to a trial/hearing, they are automatically recused from the appeal panel. Within 10 calendar days of notice from the Chairperson that a Board of Director member (s) were a party or a witness to a trial/hearing and therefore recused from the appeal panel, the President (or his/her designee) will call for the Council meeting in accordance with Article IV, Section 2 (a) of

designee) will call for the Council meeting in accordance with ARTICLE VI, Section 2 (e) of the SEA Constitution. The President (or his/her designee) will choose nominees to send to the members of the Council for the number of Board of Director seats which need to be replaced for the appeal panel to convene.

(c) The SEA, SEIU Local 1984, Secretary shall notify the parties in interest, the Local President, the Board of Directors, and Trial Board that an appeal has been filed. The appeal must be specific as to:

- (1) The decision or portion of decision being appealed;
- (2) The charges that gave rise to the appealed decision(s); and
- (3) The grounds for appeal.

The grounds for appeal shall be:

- (1) Procedural error which substantially affected the outcome of the decision;
- (2) The discovery of significant new evidence which was not available at the time of trial; and/or
- (3) That the decision was procured by fraud or other undue means.

(d) Within fifteen days of the notice of appeal, the SEA Board of Directors will conduct an official hearing to listen to arguments of the parties to the appeal. However, any such hearing shall not be in the nature of a de novo review. Final rulings on the appeal shall be decided by a majority vote of the Board of Directors. The Chairperson of the Trial Board or his/her designee shall represent the Trial Board during the appeal.

(e) The Board of Directors may uphold or reverse the decision of the Trial Panel, or may return it to the Trial Board due to procedural error.

~~(f) Either party to a complaint has the right to request an appeal of said ruling of the Board of Directors to a Special Association Council Meeting. The request for appeal needs to be submitted in writing to the SEA President within thirty days of the date of the decision or the decision shall become final. Within 60 calendar days of receiving a request for appeal, the President of the Association will call for the Council meeting in accordance with Article VI, Section 2 (e) of the SEA Constitution. The President (or his/her designee) will send to the members of the Council an overview of the case being presented and any supportive documentation for their review.~~

~~(g) Members present at the Council meeting will designate a presiding officer for the hearing portion of the meeting. The procedures used for the hearing will be established based on the procedures used by the Board of Directors and be limited to the past testimony and evidence presented to the Trial Board and the Board of Directors appeal. The Chairperson of the Trial Board (or his/her designee) will represent the Trial Board and an appointed Director who was present for the appeals hearing will represent the Board of Directors. The parties to the complaint will be allowed equal opportunity to present their case to the Council.~~

~~(h) The ruling on the appeal shall be decided by a majority vote of the Council members registered. The members involved with the complaint and any witnesses previously called in the matters being presented will not be allowed to vote on the appeal. The Council may vote to uphold or reverse the decision of the Trial Board and the Board of Directors.~~

~~(i) (f) Replacing the Chairperson – Permanently: In the case that the Chairperson resigns or is unable to continue in their current position, the Board of Directors shall appoint an interim Trial Board Chairperson at their next meeting. The interim Trial Board Chairperson has all the rights and privileges of the original Chairperson with the exception of producing procedures.~~

~~(j) (g) Replacing the Chairperson - Temporarily: In the event the Chairperson is recused or otherwise unable to temporarily carry out the duties, the President of the Association shall draw a name at random from the existing Trial Pool to temporarily serve as the Chairperson~~

RECOMMENDATION – Ought To Pass

[] Passed [] Defeated [] Tabled until __moved that the Amendment be:

Comments: With the previous two amendments' front loading of the dispute resolution process, the committee agrees this section is no longer needed.