

## ARTICLE I

### DUTIES OF OFFICERS

#### **Section 5. Duties of the Executive Board.**

(d) The President's seat, the Recording Vice-President's seat, the Financial Vice-President's seat or a member's seat on the Executive Board shall be declared vacant in the event of death, resignation, **or if found guilty by either a Trial Board, Trial Committee or the International Executive Board** of violating the Constitution, Bylaws, Rules, Regulations or Orders of the Local or of the American Federation of Musicians, after due process of law (except as specified in Article V Section 7, paragraphs (k),(l) and (m)) **and the penalty among other things, is removal from office and/or their expulsion from membership**; or upon failure to attend four consecutive meetings of the Board without being excused by the Executive Board; or upon failure to attend two consecutive meetings of the Local without being excused by the Executive Board; and such vacancy, except in the event of death, resignation or removal of the President and covered under Article I, Section 2 of the Bylaws, shall be filled by the Executive Board for the balance of the unexpired term.

## ARTICLE V

### CHARGES, TRIALS, APPEALS

#### **Section 1. Filing.**

A charge by a member, members or **officer(s)** of the Local that a member or members **or officer(s)** have violated the Constitution or Bylaws of the Union must be in writing, signed by the complainant and filed with the Recording Vice-President, **except when such charge is filed against the Recording Vice President, in which case the charge will be filed with the President.** ~~The Recording Vice President may require a~~ A form may be required to be used for such charges. Such charge(s) must specifically set forth the exact nature of the alleged offense(s), the date(s) such conduct allegedly took place, the circumstances surrounding the alleged offense(s), the provision(s) of the Constitution, Bylaws, Standing Resolutions, Rules, Regulations or Orders of the American Federation of Musicians, or of any order of the Executive Board of the Local or the American Federation of Musicians alleged to have been violated, and the document(s), if any, upon which the complainant shall rely. Such charge(s) will be tried by the Executive Board, or referred by it to the Trial Board, both of which bodies shall conduct all proceedings concerning such charges in accordance with this Article. **Charges against officers shall be adjudicated in accordance with Section 7, herein.**

#### **Section 2. Time Limitation (Per AFM Bylaw Art. 11 Section 1(d)).**

All charges **against members and/or officers** (for violation of the Constitution or Bylaws of this Local or the American Federation of Musicians) must be filed within **one year from the date of the event(s) that gave rise to the alleged violations or within one year of the date on which the relevant facts became known or reasonably could have become known, whichever is later.** ~~two (2) years of the occurrence of the alleged violation. All claims for monies due must be made within two (2) years of the date when each claim first arose; this shall not apply to claims regarding pension and welfare contributions in which cases the time limitation shall be six (6) years from the date of occurrence or three (3) years from the date of discovery of such claim, whichever is later.~~

#### **Section 3. Notice To Accused.**

A member against whom a charge has been filed shall be given notice of such charges by first-class mail

sent within thirty (30) days after the charges have been filed with the Recording Vice-President **or President**. Such notice shall include all information set forth in Section 1 of this Article. All communications concerning charges against members and officers shall be sent to the addresses of members contained in the latest records of the Local, unless the charge documents clearly reflect different addresses.

#### **Section 4. Procedural Review of Charges.**

(a) When a **member's** charge is filed with the Recording Vice-President or **the President if the charge is against the Recording Vice President**, it is mandatory that a trial be held unless said charge is withdrawn by the charging member(s) or is improper under this Section. A charge **against a member** shall be considered improper and shall not be processed further if it is found by the Executive Board or, if referred there by the Recording Vice-President **or President**, the Trial Board that:

1. the charge(s) does/do not state the exact nature of the alleged offense;
2. the charge(s) is/are untimely;
3. the act complained of, even if true, does not sustain a charge of violation of any provision of the Constitution or Bylaws; or
4. the charge(s) involve(s) a question which should be decided by a judicial or administrative body outside the Local.

(b) Both the accused member(s) and the complainant shall be notified in a writing sent within fourteen (14) days of a Trial Board or Executive Board determination that the charge(s) is/are improper under this Section. The complainant may appeal from such determination in accordance with Section 8 of this Article, such appeal to be limited to the question of the propriety or impropriety of the charge(s) under paragraph (a) of this Section.

#### **Section 5.**

(a) **Notice of Trial.** The appropriate Board shall set a trial date not less than fourteen (14) days from the date of mailing of notification by the Recording Vice-President to the accused and the complainant.

(b) **Power To Summon Witnesses.** Any member or officer who files charges or against whom charges are filed shall be entitled to file with the Recording Vice-President a written request, signed by such member, specifying the names of such witnesses who are members of the American Federation of Musicians as they desire to call in their behalf, and specifying documents, if any, requested to be produced. The Recording Vice-President shall promptly send notice by mail to such members requiring them to attend and testify at the time and place designated for the trial of such charge(s), and to produce all documents or records specified in the request of the member filed with the Recording Vice-President as aforesaid. This paragraph shall not preclude the voluntary appearance of any witness(es).

(c) **Postponements/Adjournments.** The Executive Board and Trial Board may grant reasonable postponements or adjournments of proceedings within their respective jurisdictions.

#### **Section 6. Trial Procedure.**

(a) **Representation.** A member against whom charges are preferred shall be permitted to be represented by another member of their choosing provided, however, that such party will be required to abide by the

proceedings outlined in this Article. Private counsel of any member shall be permitted to attend and give advice only to their client concerning trials before the Trial Board or Executive Board but shall not otherwise represent members at such proceedings.

(b) **Fair Hearing.** Except for nonpayment of dues or fines, no member shall be fined, expelled, or in any way penalized, except after a fair and impartial hearing or reasonable opportunity therefore before the appropriate Board during which the member was confronted by the complainant and given a fair opportunity to present their case and to cross-examine the complainant's witness(es). A member bringing a charge against another member will be required to appear personally to substantiate their charge and shall also have the right to cross-examine the witness(es) of the accused. If either party fails to appear, the case may be postponed by the Board if, in its judgment, there is sufficient reason to do so. If either or both parties fail to appear, the Board may take such action and render such judgment as it deems proper. Notice of such action shall be sent to the complainant and the accused within fourteen (14) days of the action. The Board shall have the power to award judgment by default in the event that either party fails to appear after being served with the notice(s) set forth in this Article, of which action the same fourteen-day notice shall be issued.

(c) **Evidence.** The Trial Board or Executive Board shall have the opportunity to grant immunity to members who testify before it when, in its judgment, it is in the best interests of the Local to do so. Either Board may receive and consider as evidence from both parties the personal testimony of witnesses, documentary evidence, affidavits and/or signed statements, **according to** weight appropriate to its reliability to each type of evidence. No party or Board member shall be precluded from raising and considering the procedural issues described in Section 4 (a) of this Article.

(d) **Deliberation By Board on Charge Against Accused.** The Board conducting the proceeding, upon completion of the hearing on the evidence and arguments, shall go into closed session to determine the verdict and penalty. A majority vote shall be required to find the accused guilty. In case the accused is found guilty, the Board may:

1. Reprimand the accused; and/or
2. Assess a fine, in accordance with these Bylaws; and/or
3. Suspend or expel them from membership in the Union, or accord such other penalty as is consistent with these Bylaws.

(e) **Notice of Decision.** The appropriate Board, through the Recording Vice-President **or President**, shall notify in writing the parties to a dispute of its decision sent by regular mail to the address on the Local's records within fourteen (14) days of such decision. Such decision shall contain the date(s) of hearings, witnesses and parties present, factual findings of the Board, the decision and the reasons therefore, and a recitation of the presence of a quorum and the vote required for the action taken.

## **Section 7. Charges Against Officers.**

- (a) Officers of the Local (including Executive Board and Trial Board members) shall be fully amenable for violations of the Constitution and By-laws of this Local or those of the American Federation of Musicians, in the same manner as any other member. While charge(s) under this Section are pending the accused shall continue to function in their/their elected capacities.
- (b) No officer shall be subject to charges because of any order, ruling or official action they may have taken

from which an appeal is available under these By-laws or the Constitution and By-laws of the American Federation of Musicians, such appeals to include appeal to the International Executive Board of the AFM or to the AFM convention, if applicable.

- (c) Nothing herein contained shall exempt any officer from charges of malfeasance, such exemption being expressly limited to official actions from which appeal is available, and malfeasance is not explicitly charged.
- (d) Malfeasance shall be ~~mean serious misconduct engaged in by an officer of this Local. Officer's~~ ~~an~~ ~~dereliction of their duties or an Officer's~~ ~~violation of any provision of the Constitution and By-laws of Local 802, that causes harm to any member of the Local or to Local 802 itself.~~
- (e) No charges against any officer of this Local for their actions or conduct as an officer can be heard by the Trial Board or the Executive Board, such officers being answerable to the Local, subject to the right of appeal the American Federation of Musicians, as outlined below. Neither the Executive Board nor the Trial Board shall take any action to dismiss charges against officers on any grounds, nor shall either body undertake a procedural review of any charges filed under this Section. Such charges shall be processed in accordance with this Section.
- (f) Charges against officers must be in writing and filed with the Recording Vice-President ~~or the President~~ ~~within sixty (60) days of the time the complainant first became aware, or reasonably should have been aware, of the alleged offense(s)~~ ~~the time frame set forth in Section 2, herein.~~ The charges shall contain the same information required by Section 1 of this Article. The Recording Vice-President ~~or the President~~ shall serve said charges upon the accused within seven (7) business days after receipt thereof. ~~Notification of the filing of charges against an officer or officers shall be published in the next scheduled edition of the union's Official Journal following the submission of the charges. The Recording Vice-President shall schedule a membership meeting to hear the charges at the earliest possible date for which notice of the meeting can be published in the Official Journal at least thirty (30) days following publication of the notice.~~
- (g) ~~Charges against officers shall be the first order of business at said membership meeting, unless the meeting is a By law meeting, in which case said charges shall be considered upon conclusion of consideration of the resolutions submitted therefore. However, the members present may vote to place the charges first on the agenda.~~
- (h) ~~Any charges against officers placed on the agenda of a membership meeting shall first be read at such meeting by the complainant or by another member whom the complainant has designated as their representative. After the complainant's presentation, a motion may be accepted to dismiss the charge on grounds that the allegation of malfeasance is vague or poorly defined, or that the alleged act is too trivial to warrant charges, or that the alleged act is not, in fact, malfeasance or that no evidence exists to support the charge. In the last case the plaintiff may defend their charge by indicating to the meeting the type of evidence (i.e. documents, witnesses or other) upon which the charge is based. In no case, however, shall the meeting be asked to decide questions of fact. The names of witnesses and contents of documents shall not be disclosed. If the meeting decides, by majority vote, to dismiss the charge, then the matter shall be deemed resolved and the charge may not be resubmitted.~~
- (i) ~~If the charges are not dismissed by the meeting then the presiding officer shall call for the nomination of members in good standing for election to a Trial Committee of seven (7) members which shall hear the charges. Election of the Trial Committee shall be by secret ballot at the same meeting at which the nominations are made unless the quorum is lost in which case a continuation meeting shall be scheduled for that purpose at the earliest possible time. In the event that a duly elected member of the Trial~~

~~Committee resigns or is otherwise unable to serve on the Trial Committee, the candidate, if any, who has received the highest number of votes for election to the Committee shall serve as a replacement. If no such replacement is available, the Trial Committee shall elect a replacement by majority vote. No officer of the Local or any complainant or witness for or against the accused shall be eligible to make or receive a nomination for, or to serve on, such Trial Committee.~~

- (g) Within thirty days (30) of filing, the Union shall submit the charge to the New York Office of the American Arbitration Association for adjudication under the AAA expedited arbitration rules (AAA). The charged party and charging party shall be given the ability to select an arbitrator from the lists provided by AAA. The Union and the charging party shall split the cost of the arbitration unless the charging party presents adequate proof that he/she/they/them are financially unable to pay. The trial procedure shall be the same as set forth in Section 6, herein, except where explicitly provided otherwise in this section.
- (h) It shall be a violation of these By-laws for a member to misrepresent the evidence that is claimed to be the basis for charges against any member. If a representation is made by the plaintiff that certain evidence is in their possession and/or witnesses exist to corroborate the charge, and it is subsequently found that this representation was false and such evidence did not in fact exist, then the plaintiff shall be deemed in violation of this By-law and shall be subject to charges.
- (i) The ~~Trial Committee~~ selected arbitrator shall conduct a procedural review of the charges before it. A charge shall be considered improper and shall not be processed **further** if it is found by the arbitrator either ~~Trial Committee~~ that:
  - 1. the charge(s) does/do not state the exact nature of the alleged offense **or that on its face does not constitute serious misconduct**
  - 2. the charge(s) is/are untimely; or
  - 3. the charge(s) involve(s) a question which should be decided by a judicial or administrative body outside the Local.
- (j) If the ~~Trial Committee~~, **arbitrator** after due deliberation, finds the defendant to be innocent of the charges, or dismisses the charges under above, then, this verdict will become final with the delivery of its report to the Recording Vice President **or President**. Such verdict shall be published in the next appearing Official Journal. Additionally, such verdict of innocence shall be read at the next membership meeting following the ~~Trial Committee's~~ **arbitrator's** decision. The charging party shall have the right to appeal such finding to the International Executive Board.
- (k) If the ~~Trial Committee~~ **arbitrator** finds the defendant guilty, then its report shall be read at the next membership meeting to convene following the delivery of its verdict to the Recording Vice President **or President**, and to the accused. If a special membership meeting can be scheduled on an earlier date with at least 30 days' notice in the Official Journal, such a meeting shall be scheduled by the Recording Vice-President **or President**. This report may reflect the degree of guilt and questions of malice and/or intent. However, a verdict of guilt may become effective only upon approval by a two-thirds (2/3) secret ballot vote of the members voting at the membership meeting. If such verdict is not approved by two-thirds (2/3) vote, the charges shall be dismissed, and no further action may be taken.

If the ~~Trial Committee~~ **arbitrator** finds that there is substantial evidence that serious misconduct had been engaged in by the officer, he/she/they/them shall **also** recommend one of the following penalties:

- (1) Reprimand.
- (2) Removal from office and ineligibility to hold elected or appointed office for a period of two (2) years.
- (3) Removal from office and ineligibility to hold elected or appointed office for a period of five (5) years.
- (4) Removal from office, termination of membership for a specified period, and ineligibility to hold elected or appointed office in the Local in the future.
- (5) Removal from office, expulsion from membership and ineligibility for any future readmission to membership.

(l) If the membership approves the verdict of guilt (including the recommended penalty), then such verdict and penalty shall be deemed final, subject only to appeal to the AFM.

(o) The accused, if found guilty, shall have the right to appeal the decision to the International Executive Board of the American Federation of Musicians in accordance both with its Constitution and Bylaws and Article V herein. If the penalty being appealed provides for removal from office, then the officer shall be suspended without pay pending the outcome of the appeal. If a suspended officer is subsequently acquitted by the International Executive Board, then they shall be reinstated and reimbursed for all wages withheld by the Local during the period of suspension.

## **Section 8. Appeals.**

(a) Appeals from decisions of the Trial Board, Executive Board, **or arbitrator** may be taken and signed by the appellant and notice thereof filed with the Recording Vice-President **or President** of this Local within thirty days from the date of notification of decision. In case a fine is imposed or the amount of a claim is allowed or ordered paid, the appellant must, as a condition of said appeal, deposit with the Financial Vice-President or President if the charges are filed against the **Financial Vice President**, with the notice of appeal, the amount of such fine or award, unless the Executive Board grants a stay of deposit of the fine pending the appeal. All the above shall be in conformity with the Bylaws of the American Federation of Musicians.

(b) Before an appeal has been taken to the International Executive Board from any ruling, decision or determination of the Executive Board or the Trial Board, a rehearing may be applied for to the Executive Board or the Trial Board, as the case may be, within ten days after notification of its decision, only provided that the amount of the fine, judgment or award included in such decision or determination has first been deposited with the Financial Vice-President of this Local, unless the Executive Board or the Trial Board shall have stayed the making of the deposit, accompanied by the appellant's written consent that such deposit may be turned over to the other party on the denial of such rehearing or the confirmation of such decision or determination on a rehearing, subject to the return of such deposit by the receiving party only on a subsequent reversal on appeal.

(c)(1) Appeals to a membership meeting from decisions of the Executive Board or Trial Board may be had provided such appeal is filed with the Recording Vice-President **or President** of the Local within 30 days of the appellant's receipt of the decision. The appellant must submit to the Recording Vice-President **or President**, in writing, a resolution for the meeting at which the appeal is to be heard, said resolution stating the case number or quoting the decision if no case number exists, the date of the decision and the penalty imposed, if any, plus the reason for the appeal and the relief sought. Appellant's resolution shall be published in the next possible issue of the official journal *Allegro* and the appeal shall be heard at the membership meeting scheduled not less than 30 days after the publication date of the issue of *Allegro* carrying the appeal resolution.

(2) In the event that the membership meeting is not convened due to failure to obtain a quorum, the appeal resolution may be submitted again provided such resubmission is done within seven days of the scheduled date of the first meeting. The procedure shall be as in (1) above. If the second meeting fails to obtain a quorum, the appellant shall be deemed to have exhausted their rights of appeal to a membership meeting.

(3) In the event that the meeting to which a resolution of appeal has been submitted is a meeting to which bylaw resolution(s) has/have been submitted, the bylaw resolutions shall be considered first unless the membership shall decide otherwise.

(4) In the event that an appeal is heard by a membership meeting then the method of procedure shall be for the appellant's resolution to be read, then the Executive Board or Trial Board, as the case may be, shall present a statement of its findings in the case, its decision and the reasons therefor, the appellant then to be allowed to state their side of the case including the reasons for the appeal, discussion from the floor within the discretion of the meeting, and a vote on the appeal resolution, a majority being required to adopt same.

(5) Thereafter an appeal may be had to the International Executive Board upon notice filed with the Recording Vice-President **or President** of the Local within 30 days from the date of the decision of the Local.

(6) An appellant aggrieved by a decision of the Executive Board or Trial Board may appeal directly to the International Executive Board in accordance with the provisions set forth in Sections 8(a) and (b) of this Article.

(7) It is expressly provided, anything herein contained to the contrary notwithstanding, that appeals from decisions for violations of Article IX of these Bylaws can be made only to the International Executive Board.

## **Section 9. No Retroactive Effect**

This amendment to Article V, shall not have retroactive effect nor shall it be applicable to charges pending or decided prior to its effective date.

## **ARTICLE VI**

### **ELECTIONS**

**Section 5.** No member of this Local shall run for, hold, or continue in any elective office, serve on any committee, or hold or continue in any appointed office for a period of two years from the date of conviction for violation of any portion of the Constitution or Bylaws of this Local or the American Federation of Musicians **if the penalty for the violation is removal from office and/or expulsion from membership unless the membership should decide otherwise by a two-thirds vote of those voting at a duly convened membership meeting with regard to any particular member in accordance with Article V Section 7 (k).**

By:

*Harvey S. Mars*

Harvey S. Mars

Member Number: MO9577

The Local 802 Executive Board has reported this proposed bylaw amendment unfavorably. 7