

Trusteeship Hearing Manual

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the American Federation of Government Employees
Office of the General Counsel
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INTRODUCTION

DEFINITION

What is a trusteeship? The Department of Labor (DoL) regulation 29 CFR §401.8 defines it as any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws. We have included DoL's regulations 29 CFR §§458.26-458.28, which govern trusteeships, in Appendix A of this manual.

There are two types of trusteeships. The first, Expedited Trusteeship, is imposed where there is: (1) a violation of law established by preponderant evidence gathered by AFGE or by local, state, or federal officials; (2) secession from AFGE; or (3) confirmed loss of leadership, or where the local or council fails to agree to mediation under the procedures for the second type. In this first type of trusteeship, the officers are replaced immediately. The second type is imposed for the reasons outlined below, and the affiliate's officers remain in office until the National President's final decision regarding the trusteeship. The pre-hearing and post-hearing procedures will vary for the two types, but the mechanics of the hearing are the same for both.

Based on the DoL's regulations, Article IX, Section 5(a) of the AFGE National Constitution states the purpose for imposing a trusteeship: "preventing corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of bargaining representation, restoring democratic procedures, or otherwise carrying out the legitimate objectives of the Federation." Article IX, Section 5, contains specific steps for imposing and ratifying trusteeships. Section 5(a) gives the National President the right to impose a trusteeship, and it lists the grounds for that trusteeship. Section 5(b) (Appendix B of this manual), describes the procedure for

imposing and ratifying that trusteeship, including a hearing.

We have designed this manual for the use of all parties: the mediator or arbitrator, the members of the hearing panel, the Federation representative, the affiliate's officers or representatives, and witnesses.

GROUNDINGS FOR TRUSTEESHIP

Grounds for trusteeship include, but are not limited to, the following situations, provided there is justifiable cause for such action (Article IX, Section 5(a)):

(1) The affiliate cannot function independently because:

(a) There has been a drastic reduction in force, or a temporary or permanent closing of an installation or subsection thereof, affecting most members of the affiliate.

(b) The number of members in the affiliate is small or widely distributed geographically, or is unstable because of irregularities of employment in the bargaining units.

(c) There has been an unexpected loss of leadership.

(d) A newly established affiliate is in need of assistance because of inadequate treasuries, inexperienced officers, or difficulties encountered in getting organized.

(2) There is a failure of an affiliate's officers to properly manage the affiliate's affairs, resulting in financial mismanagement, such as insolvency or failure to meet its financial obligations, including payment of per capita tax.

(3) There is administrative mismanagement by the affiliate's officers including,

but not limited to, a failure by them to carry out the policies of the Federation, and/or the adoption of a constitution and by-laws at variance with those required by the Federation.

(4) There is actual or threatened secession of the affiliate from the Federation.

SUMMARY

To help you in the procedures leading up to and including the hearing, we have in-

cluded a description of the two processes. This includes the pre-hearing, hearing, and post-hearing processes, and an outline of the hearing in Appendix C, with a sample opening statement by the hearing authority.

Imposing a trusteeship on a local or a council is a serious undertaking, and the impartial conduct of a hearing on that imposition deserves close attention. It is our hope that this manual will assist all parties in reaching that goal.

THE TWO TYPES OF TRUSTEESHIP AND THE PROCEDURES FOR IMPOSING EACH

A. Expedited Trusteeship imposed for violation of law, secession, or confirmed loss of leadership

The following procedure applies to trusteeships imposed for (1) a violation of law established by preponderant evidence gathered by AFGE or by local, state, or federal officials; (2) secession from AFGE; or (3) confirmed loss of leadership.

It is important to understand that this type of trusteeship is governed by Section 5(a) and Sections 5(b)(4) – 5(b)(7) of the AFGE National Constitution. Section 5(b)(1) is not relevant to proceedings concerning this type of trusteeship.

Article IX, Sections 5(b)(5) – 5(b)(7) state:

5(b)(5) The National President shall remove incumbent officers and give notice of the imposition of trusteeship to the membership of the local or the constituent locals of the council within five days, providing the time, date, and place of the trusteeship hearing. The National President shall appoint a three member trusteeship hearing panel. The hearing shall take

place within 60 days in the vicinity of the local or council headquarters, with the exception of trusteeships imposed for chronic (three months) per capita tax delinquency which will be held in the National Office. Any affected member may appear at the hearing in person or by electronic means, and the hearing panel will receive testimony and documentary evidence from those attending or their representatives.

SEC. 5(b)(6) The hearing panel shall issue its decision within 30 days of the close of the hearing to ratify or rescind the trusteeship, and the National President shall notify the membership of the local or the constituent locals of the council. Any affected member may file an appeal within 15 days of notification to the National Secretary-Treasurer for appeal to the next AFGE National Convention.

SEC. 5(b)(7) The trusteeship shall end within 12 months.

The National Vice President in whose district the affiliate is located informs and provides evidence to the National President that

an affiliate meets these conditions (for example, the affiliate is obtaining signatures on a decertification petition (secession) or, there are significant unfilled vacancies on the affiliate's Executive Board (loss of leadership), or, the affiliate has failed to hold elections as required by law, its constitution, and/or by-laws), and requests in writing that the National President imposes trusteeship upon the affiliate. The National President has the authority without delay to impose trusteeship by issuing a notice of trusteeship to the affiliate's¹ members within five days by mail including the reasons for the trusteeship and the time, date, and place of the hearing. The National President also immediately (1) appoints a trustee, (2) removes the affiliate's officers from office,² (3) notifies the affiliate's bank and agency of the trusteeship, and (4) appoints a three-member hearing panel.

The hearing panel must be composed of members or employees of the Federation. 29 CFR § 458.28 requires a fair hearing. The panel must conduct the hearing within 60 days and has 30 days after the close to reach a decision and recommendations.

B. Trusteeship imposed for all other reasons.

The following procedure is for trusteeships imposed for all other reasons.

The National Vice President in whose district the affiliate is located informs, provides evidence to, and requests in writing that the National President imposes trusteeship on an affiliate based on one or more of the grounds set forth above, under "Grounds for Trusteeship." The National President then must appoint a mediator, with the costs charged to the respective district.

¹ In this manual with respect to trusteeships imposed on councils, all required notices to an affiliate's members shall be served upon constituent locals of the council.

² But not delegates elected to the office of delegate.

If the local or council fails to agree to mediation, then the expedited procedure applies, and no further action shall be taken under this procedure.

If the local or council agrees to mediation but mediation fails to resolve the matter, the National President will review the documentation, provide a copy to the members of the National Executive Council (NEC), and obtain NEC approval for the proposed trusteeship. If the NEC approves, within 120 days the National President will notify the affiliate of the proposed notice of trusteeship, the basis for the imposition, and the time within which any response must be submitted.

The affiliate has the right to respond within a period set by the National President (no more than 30 work days).

Following expiration of the response period, the National President will review any responses and reach a decision whether to sustain or revoke the proposed notice of trusteeship. Prior to the date of the imposition of trusteeship, the National President will notify the affiliate's Executive Board of the decision by certified mail, including notice of the procedure by which the arbitrator will be selected. The National President also will notify the affiliate's members of the imposition of trusteeship and the reasons therefore by mail.

The National President then immediately will contact the American Arbitration Association or other association to obtain a list of seven arbitrators. The National President and the president of the trustee affiliate shall select the arbitrator by alternately striking from the arbitrator list. If the affiliate after certified notice refuses to participate in the selection of the arbitrator, the National President shall employ one of the arbitrators.

The National President shall appoint an ar-

bitrator who lives in close proximity to the affiliate, following consultation with the National Vice President, with the costs charged to the respective district. For council trusteeships, the cost will be paid by the Office of the National President. The arbitrator normally will open a hearing within 60 days after the date that the notice of trusteeship has been served on the members of the affiliate, and

issue his or her written findings and decision, based upon a preponderance of the evidence, within 15 days of the close of the hearing.

The National President will issue his or her decision to ratify or rescind the trusteeship, based upon a preponderance of the evidence, but cannot modify or change the decision of the arbitrator.

PRE-HEARING PROCEDURES

Pre-Hearing Procedures for the Hearing Panel **Expedited**

The chair of the hearing panel should contact the other two members of the panel prior to the hearing date to arrange a time and place to meet before the hearing begins. The purpose is to introduce each member to the other, to discuss the conduct of the hearing and the functions and responsibilities of each member, and to define the procedure for the panel preparing its findings and recommendations.

The chair should delegate to one member of the panel the duty of tape recording the hearing, and to the other the duty of correlating and recording the evidence produced during the hearing. The chair has the responsibility of conducting the hearing, including setting times for breaks and lunch, and with the consent of the other two members, ruling on the questions of testimony and evidence during the hearing.

Each panel member should review and understand the notice to the affiliate's members of imposition of the trusteeship, and Article IX, Section 5(a) and 5(b) of the AFGE National Constitution. All intra-panel questions and discussion should take place during this pre-hearing meeting. The chair may bring questions concerning hearing procedures or the AFGE National Constitution to the Fed-

eration's Office of the General Counsel.

Prior to the hearing date, the chair should confirm the meeting place and all arrangements for the meeting: the room will be unlocked, lighted, and heated/cooled, it will contain at least one table and a sufficient number of chairs, and it will include appropriate supplies.

Pre-Hearing Procedures for the Arbitrator **Trusteeships imposed for all other reasons**

The National President will have arranged hearing date and place. The arbitrator has the responsibility of conducting the hearing, including setting times for breaks and lunch, and ruling on the questions of testimony and evidence during the hearing. The arbitrator will review and understand the notice to the affiliate's members of imposition of the trusteeship, and Article IX, Section 5(b)(1) of the AFGE National Constitution, and may bring questions concerning hearing procedures or the AFGE National Constitution to the Federation's Office of the General Counsel. Prior to the hearing date, the arbitrator should confirm the meeting place and all arrangements for the meeting: the room will be unlocked, lighted, and heated/cooled, it will contain at least one table and a sufficient number of

chairs, and it will include appropriate supplies.

PURPOSE OF THE HEARING AND EVIDENTIARY GUIDELINES

The purpose of the hearing is to elicit the complete facts involved in the reasons for the imposition of the trusteeship, so as to be able to issue findings and recommendations based upon the factual record. It is not an adversarial proceeding.

Following the hearing, the hearing authority (panel or arbitrator) will write its findings and recommendations from the record of the proceeding, specifically affirming or dismissing each basis for the imposition of trusteeship.

The most important element of the hearing is the development of a clear, complete and accurate record. The record is that oral or documentary evidence submitted by either party. Since the hearing authority does not familiarize itself with the facts of the case prior to the hearing, it should facilitate the parties' presentation of their cases in the most logical and complete manner possible.

The hearing authority should inquire fully into all matters which are relevant to the issues of the hearing, in order to obtain a full and complete record upon which the hearing authority may make its findings and recommendations.

TYPES OF EVIDENCE

Evidence is anything that establishes or disproves a fact. There are two kinds of evidence: oral and written. Oral evidence is what the witnesses will say, and written evidence is the documents submitted into the record. The record is the panel's notes, recording, or transcript of the hearing itself, in-

cluding the evidence both sides submit.

The Constitution requires that the rules of evidence that courts of law use apply in a trusteeship hearing. The Federation has the burden of proof in establishing the validity of the trusteeship by a preponderance of the evidence. Preponderance of the evidence is that degree of relevant evidence which a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue (5 CFR §1201.56(c)(2)), or, evidence which is more credible and convincing to the mind, even if only by 50.1%.

Evidence should be material -- adding something to help understand the case. Material evidence has importance and weight, and will influence the hearing panel to accept a position as more probable than not.

The evidence also should be relevant -- having something to do with the case. The hearing authority should admit all relevant evidence, except facts that only repeat what has gone before. Irrelevant evidence is useless or unrelated, and the hearing authority may exclude it. For example, evidence of events or documents that post-date the imposition of the trusteeship are irrelevant to the reasons for imposing the trusteeship.

The hearing authority should admit all relevant and material evidence, except that which is unduly repetitious. Evidence which makes no difference one way or the other to the core factual dispute is irrelevant and the hearing authority may exclude it. Speculative, "second-hand", or statements of opinion,

known as hearsay, should carry little weight, for they are not produced from the personal knowledge of witnesses. The hearing authority should admit hearsay evidence, however, even though it holds limited value. Parties may object to evidence submitted as being irrelevant, or repetitive, or may object to confusing questions.

The hearing authority may take official notice of generalized knowledge without consent of the parties, that is, facts which are universally known and cannot reasonably be the subject of dispute (for example, DoL regulations).

INFORMATION FOR THE FEDERATION'S AND THE AFFILIATE'S REPRESENTATIVE

PRE-HEARING OUTLINE

(1) Write a pre-hearing outline, including a statement of the issues, and state the issues as clearly and simply as possible. The outline also will include the points you want to make in your opening statement and the facts you want to establish by your witnesses' testimony.

(2) Decide what facts you must offer to prove your case, and what proof you need to support or challenge the reasons for imposing the trusteeship.

(3) Think how you will prove those facts, what evidence you will need to submit, whom you will call as witnesses, and what documents you need to include. Make sure you have all the necessary documents. The record of the hearing must include a copy of the AFGE National Constitution, the trustee appointment memo, the trusteeship notice to the bank and agency, the notice to the members, and the hearing authority appointment letters. The notice to the members will include a summary of the reasons for the trusteeship. The Federation representative should contact the National Vice President for more information, witnesses, and documents that he or she will need in meeting the burden of proof.

(4) Write what you think will be the opposing side's position, and write out questions

that you think may come up during the hearing. Write out how you will respond to them.

Neither side has the right to find out what the other side has in the way of witnesses or documents (discovery), so neither representative will have to give any information before the hearing to the other side. Of course, when a representative introduces a document, he or she will give a copy to the others.

PREPARING THE WITNESSES

A witness is a person who gives testimony under oath or swears to a fact. The Federation and affiliate representatives must choose their witnesses and prepare them. The representatives should talk to every witness, and decide whether or not to use a particular witness to make the direct case, or to use one to rebut, or contradict, the opposite side's witness. Call people who can tell the story truthfully, simply, and well, and call them in logical order so that the story makes sense. If they have good knowledge of what led the affiliate into trusteeship, they will be key witnesses for the case. Next, put on those who know important facts, who can fill in blanks, or who can support the previous witness. Save the rest for rebuttal, or do not use them at all. The witnesses must have personal knowledge of the critical events, or know about affiliate matters.

It is proper and necessary for the representatives to: (1) explain to each potential witness what a trusteeship is, and what the hearing is about, (2) find out how much the witness knows in order to write the questions which will draw out that information when the witness is on the stand, and (3) tell the witness what questions will be asked. It is improper to change or influence the witness' testimony.

Write out the questions for each witness. Give each witness a dry run. Instruct the witness to listen to the question, take a deep breath, and give a short and truthful responsive answer. Write out the questions so that the hearing authority will be shown through the witness:

- (1) Who the witness is in relation to the case.
- (2) Why the witness is testifying.
- (3) What the witness saw, heard, or knows, and/or why a document introduced through the witness as an exhibit is important.

Remember, witnesses offered for direct or rebuttal testimony usually make or break the case.

Expect cross-examination by the other side

and prepare the witness for it. Predict some of the questions that the opposing side or hearing authority may ask your witness on cross-examination, and practice them. Also, tell your witness: (1) not to argue or take sides, (2) to answer only the question asked, (3) never to volunteer information, and (4) to be brief, absolutely accurate and truthful, and entirely calm.

Tell your witness to answer "yes" when the opposing side asks during the cross-examination if you had discussed his testimony with him before the hearing. Also, tell the witness to say that you advised him "to be brief, accurate, and to tell the truth."

PREPARING THE DOCUMENTS

Prepare your written evidence. Collect all important and relevant papers and organize them in logical order. It helps to label or tab them so that you can open quickly to each. Make a copy of each document which you wish to use as evidence for: (1) the hearing authority, (2) the opposing side, (3) a copy the witnesses can use for reference, and (4) one for yourself. A set of these documents will become part of the official record if you introduce them properly.

HEARING

PRE-HEARING CONFERENCE

Even before the hearing begins, as the hearing authority is setting up the room, you should approach the opposing side and try to stipulate, that is, get agreement on introducing the documents without objection from the other side, as many documents as possible. This is the preferred way to enter documentary evidence into the record, for most documents are official records of the affiliate or the Federation, and should not be open to dispute. If both sides will stipulate to the docu-

ments, it will reduce the use of witnesses for introducing the papers.

Before the hearing begins, there should be a brief off-the-record pre-hearing conference with the hearing authority. The hearing authority requires the affiliate members who are there to contest the trusteeship to select a representative, and then should meet with the Federation's representative and that representative for the other side. Retained attorneys or representatives, who are not members of the local or council, may not represent the affli-

ate in the hearing. The purpose of the conference is to save time in the hearing by estimating the anticipated length of the hearing and the number of witnesses, and marking as exhibits those documents stipulated to by the representatives. Here the representatives can produce them and explain that they have reached agreement on those papers. The hearing authority can mark them before the hearing even begins.

The hearing authority will inquire into all matters that are relevant to the issues of the hearing, in order to obtain a full and complete record upon which the hearing authority may make its findings and recommendations. The hearing authority has the responsibility of fully developing the facts, and at his or her own initiative may call, examine, and cross-examine witnesses and introduce documentary evidence into the record.

The hearing authority can order witnesses sequestered, which means that they must remain outside the hearing room while other witnesses testify or until it is their turn. The reason for this is to prevent one witness' testimony from tainting the testimony of a following witness. Normally each side may allow the witnesses remain in the room after their testimony if the representatives agree not to recall them later.

The hearing authority opens the hearing at the time announced in the notice to the members and introduces itself. The hearing authority rules on the procedural conduct of the hearing, such as whether to sequester witnesses, and when to break for lunch. The hearing authority also rules on any issue raised regarding affiliate members in attendance. Only affiliate members, relevant witnesses, the representatives, trustee, and the National Vice President within whose district the affiliate lies, have a right to attend the hearing.

The hearing authority explains the hearing

procedure and asks the representatives through whom they intend to give testimony and/or evidence. The representatives should identify those individuals who will testify on their behalf.

After the hearing authority presents the format of the hearing, he or she calls upon the Federation representative. The hearing authority will ask the Federation representative if he or she is prepared to put on its case. Because the Federation has the burden of proof, the Federation representative will go first in presenting the Federation's case and at the closing statement. Normally, the representative of the Federation will begin with an opening statement and then will call witnesses who present oral and documentary evidence in support of the imposition of trusteeship. The hearing authority may swear in all witnesses.

OPENING STATEMENT

Normally, the Federation's representative will begin with an opening statement. Here he or she will explain the theory of the case, which must be simple enough to explain in a few sentences. Of course, he or she will find it is most helpful to have organized this presentation, either as fully written or at least in a written outline, prior to the hearing. He or she should not hesitate to read from a written opening statement, if a bit unsure of memory or a little nervous as the hearing begins. The representative is not before a jury, and there is no need for the drama of "off-the-cuff" opening remarks.

- (1) Introduce the case by framing the issue in the way most favorable to the Federation.
- (2) Discuss the relevant Constitutional provisions.
- (3) Summarize the basic facts.
- (4) Talk briefly about the witnesses that will be called to testify, and explain briefly how each will contribute to the case.

(5) State the basic arguments.

In similar fashion the affiliate's representative may present an opening statement at this time or reserve the right to make an opening statement at the commencement of its case.

DIRECT EXAMINATION OF WITNESSES

After the opening statement, the Federation's representative will present the direct case by calling witnesses who will present oral and documentary evidence in support of the imposition of trusteeship. In determining the order of witnesses, the representative first calls those who can tell the story best, or most of the story well, in a short, accurate, complete statement of the facts. The representative is presenting a "story" to the hearing authority which is unfamiliar with the facts, and should use good judgment in calling witnesses in an order (chronologically or otherwise) that makes sense for a logical and coherent retelling of what occurred. This is good advice for the representatives of both sides:

- (1) Let the witness testify. Phrase the questions to draw out complete factual statements. Avoid stating the facts yourself, which requires only a "yes" or "no" from the witness. That is a leading question, which you should use only on cross-examination.
- (2) Be brief and to the point. Do not ask ten questions, when one will produce the best results.
- (3) Do not be repetitive. If you have a number of witnesses to the same material facts, use good judgment in deciding which ones to call.
- (4) Do not leave a vague or incomplete statement of fact unclarified in the record, if it is important to your case. Question the witness further on the same topic until the answer is clear and complete. If a fact is essential to the final decision, it must ap-

pear in the record in such a form that the hearing authority can make the appropriate finding from it.

(5) Carefully check off on your pre-hearing outline each bit of evidence as it goes into the record. This confirms that you have offered all the necessary facts, and it will help you to see which facts you still must introduce before concluding your argument. If you fail to present all the relevant facts, the hearing authority may not be able to support or rescind the trusteeship.

(6) In questions involving facts you wish to prove, use interrogatory words: who, when, what, where, why. Some examples of proper direct examination are:

- (a) "Please state your name, address and occupation."
- (b) "What is your current connection with AFGE Local (or Council) ___?"
- (c) "How did ___ come to your attention?"
- (d) "What action did you take?"

Close with a strong witness who can end the case on a favorable note.

The other side has the right to cross-examine each witness who testifies. (See cross-examination of witnesses below.)

INTRODUCING DOCUMENTARY EVIDENCE

In regard to documentary evidence, the hearing authority should make sure that the Federation representative submits again at the hearing all relevant information and documents that were submitted prior to the hearing. Lay the foundation for the introduction of the evidence. There are three steps in getting a document into the record: (1) identification, (2) explanation, and (3) presentation or offer. These documents then become exhibits. Again, this is good advice for both representatives:

(1) Introduce the exhibits logically through your witnesses, using those who best will be able to testify as to the genuineness and contents of each document.

(a) First, you hand the document to the hearing authority: "I offer this document for identification and request that it be so marked."

(b) The hearing authority then marks it as "Federation (or affiliate) Exhibit No. ___ for identification." The hearing authority then hands it back to you.

(c) You give the document to the witness. "You have in your hand Federation (or affiliate) Exhibit No. ___, marked for identification. Would you please tell us what it is."

(2) The witness has seen it, received it, or prepared it, and now must properly identify and describe the document for the record, showing that as an exhibit it is relevant and material to the issue.

(3) After the witness has discussed it, you must offer the document into evidence: "I offer into evidence this document, which has been marked 'Federation (or affiliate) Exhibit No. ___ for identification.'"

At this point, the hearing authority should hear any objections from the opposing side. Finally, the hearing authority admits the document, and it now (and not before) becomes an exhibit and part of the official record. Now you can ask more questions from your witness about the exhibit.

Use properly introduced exhibits, as follows:

(1) To support your case.

(2) As an admission, use it directly against the opposing side when it prepared the document, and when the document is inconsistent with the opposing side's position.

(3) As impeachment, use it as the basis for cross-examination to contradict an opposing witness when the document is inconsis-

tent with a prior statement by the witness, or when the witness raises a critical point omitted in the document. To impeach a witness:

(a) Lock the witness into the testimony that will form the basis of the impeachment.

(b) Identify the document.

(c) Ask whether it constitutes a full and complete statement of the point.

(d) Get the witness to agree that he had no intention to lie or to leave out any important information.

(e) Get the witness to agree that the statement was made at an earlier point in time, when it was easier to remember the events.

(f) Read the inconsistent point to the witness and ask if he remembers stating it.

(g) Stop. Argue the contradiction and its significance in your closing argument.

Following the Federation presentation, the hearing authority calls upon the representative of the members who object to the imposition of the trusteeship for presentation of testimony and/or evidence.

CROSS-EXAMINATION OF WITNESSES

A representative can refute or downplay the testimony of an opposing witness in one of several ways:

(1) Ignore the testimony and argue later that the evidence was not important.

(2) Cross-examine the witness and show inconsistencies or contradictions.

(3) Rebut the witness by calling your own witnesses after the opposing side has finished.

The decision to cross-examine involves first asking yourself whether you were seri-

ously hurt by the opposing witness. The basic purpose or goals of cross-examination is to strengthen your position or to weaken the opposition's case. More specifically, use cross-examination to:

- (1) To take the sting out of adverse testimony by rounding out the story.
- (2) To break down the story, showing inconsistencies, contradictions, or exaggerations in the testimony:
 - (a) Show that the witness was not in a position to see or hear what was said, or had no basis to remember the facts to which he has testified.
 - (b) Lock the witness into a position and contradict it later with your own witnesses.
- (3) To demonstrate a lack of inherent credibility in the opposition witness, by encouraging him to take a ridiculous position, and arguing later that the witness is not believable.
- (4) To demonstrate bias and hostility, including:
 - (a) self-interest
 - (b) antagonism
 - (c) a close personal or other relationship that creates a motive to exaggerate, cover-up or lie
 - (d) a tendency of one witness to back up another.
- (5) To gain admissions and concessions by stressing the facts and circumstances, and using documents, favorable to your case.

To accomplish this, establish control over the opposing witness:

- (1) Do not tolerate evasiveness or unresponsiveness.
- (2) Primarily use leading questions that lead to "yes" or "no" answers, not open-ended questions. For example, you might say, "Isn't it right that you ..." or "You then did ... , isn't that correct?"
- (3) Keep the questions moving; do not hint at your next question.

Cross-examination involves risk to your case, for the opposing witness may gain credibility, reinforce points already made, and fill in gaps in the previous testimony during the cross. Therefore:

- (1) Do not cross-examine the opposing witness if you have no definite objective in mind.
- (2) Do not ask a question if you are totally unsure of the possible answer or feel that it may harm your position.
- (3) If an opposition witness gives you a favorable answer, do not allow him to explain or modify the answer to the detriment of your position. Ask the witness to answer only your specific question, and if he fails to do so, ask the hearing authority to direct the witness to answer only those questions you have asked.
- (4) Do not badger or embarrass the witness, for it is improper and useless.

The two final steps are the chance to re-direct, or examine the witnesses, and the opposing side can conduct re-cross examination. The hearing authority should limit the questioning in the reexamination to the matters covered in the previous examination; generally cross-examination is limited to matters covered in direct examination, and re-direct examination is restricted to subjects covered on cross-examination. The hearing authority also may ask questions of the witnesses.

REBUTTAL WITNESSES

Both representatives have the right to present rebuttal evidence. The purpose is to call witnesses and put into evidence testimony or documents that answer or put into context any damaging evidence presented by the opposing side. It is not for filling in gaps in the case for either side. The risk is that you are giving the opposing side one more shot at weakening your case by cross-examining another witness. If you feel it is necessary to call a wit-

ness for rebuttal, make sure you use a rebuttal witness who can directly refute the opposing side on a critical point, and ignore side issues.

HOSTILE WITNESSES

If an opposition witness is the only source of crucial information, you must take his testimony. You may call him as your own witness as part of your case, if you are not sure the other side will be calling him. You should advise the hearing authority that you are calling the person as a hostile witness. You then may proceed to question the witness with leading questions, just as you would in cross-examination. Phrase your questions to require a specific, exact answer. Avoid general questions. If, in addition to giving out the crucial information you needed, the hostile witness makes any damaging statements, try to refute them through your own witnesses later.

OFFER OF PROOF

If the hearing authority rejects a document or does not allow one of your proposed witnesses to testify, tell him that you are making the following “offer of proof” on the record. “If the hearing authority had allowed me to call witness x, witness x would have said the following...” The purpose of this is to get it all into the record in the event of an appeal.

OBJECTIONS

Both you and the opposing representative may make objections. The purpose is to keep out the other side’s irrelevant or repetitive evidence, or to prevent the other side from asking your witness confusing or leading questions. Make an objection only when it serves your purpose; don’t make a lot of objections on unimportant points, for that will irritate the hearing authority. If you have an objection, politely and firmly name the specific reason, get a ruling, and sit down. For example, “I object to that question, for the witness already answered it.”

CLOSING STATEMENT

Following the affiliate’s presentation of its case opposing the trusteeship, the hearing authority calls upon the Federation representative to summarize in a closing statement the imposition of the trusteeship. It is often helpful to write a draft closing statement, or at least prepare an outline. Do not hesitate to read portions of your closing statement if you are unsure of your memory, or if you are fatigued after a long proceeding.

- (1) Restate the theory.
- (2) Summarize the basic points which were not in serious controversy. Stress the undisputed evidence and the admissions from the other side, and stress any other evidence which is particularly credible or persuasive.
- (3) Discuss the evidence in dispute:
 - (a) Explain why your witnesses should be believed, and comment on any important documents admitted into evidence.
 - (b) Show why the opposing side's witnesses should not be believed:
 - (i) Show the weaknesses in its case.
 - (ii) Stress any contradictions established by cross-examination or otherwise, but be careful not to make unnecessary attacks that may create sympathy for the witness under attack.
 - (iii) For credibility, stay with the facts and do not stretch points beyond fair argument or logical inference.
- (4) Conclude by stating your basic points directly and simply.

The hearing authority then calls upon the affiliate’s representative for a summation. The hearing authority may ask whether either side wishes to submit a brief, and then closes the hearing. In most instances, the issues and facts presented will not be complicated, and

will not require written briefs in addition to closing statements. If the hearing continues to a second day, the hearing authority will at-

tempt to secure the time and place prior to dismissal.

POST-HEARING PROCEDURES

After the close of the record, the hearing authority will assure that all exhibits are present, and will provide for safekeeping the evidence and record of the hearing. The hearing authority should return the room to its original state, including placement of the furniture, windows, lights, and the doors locked, notify the custodian that the hearing has ended, and convey an appropriate expression of appreciation.

Post-Hearing Procedures for the Hearing Panel **Expedited**

The hearing panel should write its findings and recommendations as expeditiously as possible. For expedited trusteeships, the decision is due within 30 days of the close of the hearing. Depending on the complexity of the issues, the hearing panel's findings and recommendation normally need be only a few pages long. Appendix E contains an example of a recent decision. The hearing authority's findings and recommendations should be forwarded to the National President, including the notice of imposition of trusteeship, motions, rulings, orders, stipulations, exceptions, the audio tape recording of the hearing, documentary evidence, and any briefs or other evidence submitted by the parties.

The panel members may submit expense

vouchers, as defined in their appointment letters, with the final report.

Post-Hearing Procedures for the Arbitrator **Trusteeships imposed for all other reasons**

The arbitrator should write his or her findings and decision as expeditiously as possible, either ratifying or rescinding the establishment of the trusteeship. For these trusteeships, the arbitrator has 15 days from the close of the hearing. Depending on the complexity of the issues, the arbitrator's findings and decision normally need be only a few pages long. The arbitrator's findings and decision should be forwarded to the National President, including the notice of imposition of trusteeship, motions, rulings, orders, stipulations, exceptions, the audio tape recording of the hearing, documentary evidence, and any briefs or other evidence submitted by the parties.

Under either procedure, if the decision ratifies the trusteeship, the National President will notify the affiliate. Any member may appeal the decision in writing to the Department of Labor or to the next AFGE National Convention.

APPENDIX A

DEPARTMENT OF LABOR REGULATIONS

29 CFR §458.26 Purposes for which a trusteeship may be established.

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of (a) correcting corruption or financial malpractice, (b) assuring the performance of negotiated agreements or other duties of a representative of employees, (c) restoring democratic procedures, or (d) otherwise carrying out the legitimate objects of such labor organization.

§458.27 Prohibited acts relating to subordinate body under trusteeship.

During any period when a subordinate body of a labor organization is in trusteeship, (a) the votes of delegates or other representatives from such body in any convention or election of officers of the labor organization shall not be counted unless the representatives have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate; and (b) no current receipts or other funds of the subordinate body except the normal per capita tax and assessments pay-

able by subordinate bodies not in trusteeship shall be transferred directly or indirectly to the labor organization which has imposed the trusteeship; Provided, however, That nothing contained in this section shall prevent the distribution of the assets of a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution thereof.

§458.28 Presumption of validity.

In any proceeding involving §458.26, a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution and bylaws shall be presumed valid for a period of 18 months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for purposes allowable under §458.26. After the expiration of 18 months the trusteeship shall be presumed invalid in any such proceeding, unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under §458.26.

APPENDIX B

AFGE NATIONAL CONSTITUTION, ARTICLE IX, SECTION 5

SEC. 5(a) The National President shall be authorized and empowered, with the approval of the NEC, to place any council or local under trusteeship. The National President shall for safeguard and protection take immediate

charge of all equities and properties, tangible or intangible, acquired and/or possessed by any such affiliate for the purpose of preventing corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of bargaining representation, restoring democratic procedures or otherwise carrying out the legitimate objec-

tives of the Federation. Restoring democratic procedures and carrying out legitimate objectives of the Federation include, but are not limited to, the following situations provided there is justifiable cause for such action.

(1) The affiliate cannot function autonomously because:

- (i) There has been a drastic reduction in force or a temporary or permanent closing of an installation or subsection thereof affecting most members of the affiliate;
- (ii) The number of members in the affiliate is small or widely distributed geographically or is unstable because of irregularities of employment in the bargaining units;
- (iii) There has been an unexpected loss of leadership;
- (iv) A newly established affiliate is in need of assistance because of inadequate treasuries, inexperienced officers, or difficulties encountered in getting organized;

(2) There is a failure of an affiliate's officers to properly manage the affiliate's affairs, resulting in financial mismanagement, such as insolvency or failure to meet its financial obligations, including payment of per capita tax;

(3) There is administrative mismanagement by the affiliate's officers including, but not limited to, a failure by them to carry out the policies of the Federation and/or the adoption of a constitution and bylaws at variance with those required by the Federation;

(4) There is actual or threatened secession of the affiliate from the Federation.

SEC. 5(b)(1) In all cases but secession from AFGE or confirmed loss of leadership, or where the local or council fails to agree to

mediation, the National President shall be authorized and empowered with the approval of the NEC, to place any council or local under trusteeship only after the following procedures have been followed:

- (1) There will be mediation by a certified mediator, appointed by the National President and paid from the district in which the trusteeship is proposed. A council trusteeship will be paid by the Office of the National President. After mediation and conciliation has been exhausted to resolve any conflict;
- (2) The Federation should then review the documentation created during the period for resolution and provide a copy to the NEC;
- (3) After the review the disputed local should be notified within 120 days of the proposed notice to place a local in trusteeship and the reason why;
- (4) That the Federation allow the local a response period after notification (no more than 30 work days) to state why they should not be placed in trusteeship;
- (5) The Federation should then send a decision letter either sustaining or revoking a proposed notice of trusteeship;
- (6) This proposed notice should first be served upon the Executive Board by certified mail.

Prior to the imposition of trusteeship, the notice shall be sent by mail from the National Office to all members of the affiliate setting forth the reasons why the affiliate was placed in trusteeship. In all cases except secession or confirmed loss of leadership, all elected officers shall remain in office until after a decision from a fair and impartial hearing by the Federation. In all cases except secession or confirmed loss of leadership, the National President shall employ an independent arbitrator solicited from the AAA or another arbitration association. The selected arbitrator shall live in close proximity to the council or local where the hearing is being heard. The

arbitrator shall have the authority to decide the trusteeship based on the standard of evidence used in the courts. The arbitrator shall conduct a hearing concerning the circumstances surrounding the trusteeship. The arbitrator shall be selected with consultation by the NVP having jurisdiction over the affiliate. The affiliate and the National President designee shall select the arbitrator from a seven member list supplied by the AAA or other association.

Either party shall have three opportunities to strike from such list until there remains one arbitrator. This last arbitrator shall be selected to hear the case for trusteeship for the affiliate. If it is documented by certified return notice that the local or council will not participate in the selection of the arbitrator after certified notice, the National President shall contact and employ this arbitrator; the expense shall be born by the district in which the trusteeship is proposed. For proposed council trusteeships, the cost will be paid by the Office of the National President.

The hearing shall normally commence within 60 days after the notice of trusteeship has been served upon the members of the affiliate. The reason for the establishment of the trusteeship will be fully explored through the testimony of witnesses. The arbitrator will rule on questions of evidence and testimony at the hearing.

Within 15 days, the National President will receive the record of hearing, along with the findings and the decision of the arbitrator. He or she shall render a written decision, either ratifying the establishment of the trusteeship if the preponderance of the charges are sustained, or rescinding the trusteeship if the decision is not sustained by a preponderance of the evidence. The National President shall not modify or change the decision of the arbitrator.

SEC. 5(b)(2) In cases of secession or confirmed loss of leadership, the imposition of trusteeship will be followed within 90 days by a report and recommendations by a three-member panel appointed by the President. The panel may act on the basis of the written record, or may hold an on-site hearing, or may take evidence or argument by electronic means.

SEC. 5(b)(3) If the decision is for trusteeship, the National President will notify the affiliate; any member may appeal the decision in writing to the Labor Department or the next Convention. A copy shall be mailed by certified or registered mail to the National Secretary-Treasurer of the Federation within 15 days after the National President has established the trusteeship.

The appeal will be processed under the regulations/guidance of the Labor Department. If the trusteeship is still sustained, the member of the affiliate can only appeal again that decision at the next Convention.

While a local in the Federation is under trusteeship, the trustee will ensure that the membership of the affiliate will be involved or participate by: allowing the membership's approval for all expenditures over \$250; providing the membership a voice in setting policy; ensuring representation is given; and allowing the Bill of Rights to govern.

To safeguard and protect the affiliate's assets, the Federation will take immediate charge of all equities and properties, both tangible and intangible, acquired or possessed by the affiliate for the purpose of preventing corruption or financial malfeasance. The Federation will assure the performance of the collective bargaining agreement, restore the duties and responsibilities of the representatives and promote democratic procedures, and otherwise carry out the legitimate objectives of the Federation.

SEC. 5(b)(4) Expedited Trusteeship Process: In situations where there is: (1) a violation of law established by preponderant evidence gathered by AFGE or by local, state, or federal officials; (2) secession from AFGE; or (3) confirmed loss of leadership, the following shall apply:

SEC. 5(b)(5) The National President shall remove incumbent officers and give notice of the imposition of trusteeship to the membership of the local or the constituent locals of the council within five days, providing the time, date, and place of the trusteeship hearing. The National President shall appoint a three member trusteeship hearing panel. The hearing shall take place within 60 days in the vicinity of the local or council headquarters, with the exception of trusteeships imposed for chronic (three months) per capita tax delinquency which will be held in the National Of-

fice. Any affected member may appear at the hearing in person or by electronic means, and the hearing panel will receive testimony and documentary evidence from those attending or their representatives.

SEC. 5(b)(6) The hearing panel shall issue its decision within 30 days of the close of the hearing to ratify or rescind the trusteeship, and the National President shall notify the membership of the local or the constituent locals of the council. Any affected member may file an appeal within 15 days of notification to the National Secretary-Treasurer for appeal to the next AFGE National Convention.

SEC. 5(b)(7) The trusteeship shall end within 12 months.

APPENDIX C

OUTLINE

I. Introductory statement by hearing authority

We are here pursuant to Article IX, Section 5(b) of the AFGE National Constitution, imposition of trusteeship. [We are all members of the Federation, all brothers and sisters of the Union.] We are here for a fact-finding hearing. This is not an adversarial procedure and none of us are enemies. The hearing authority will allow no rudeness or disruption from either the members or representative of the affiliate or the Federation representative.

All members of the trustee affiliate are invited to this hearing, and except for relevant witnesses, the representatives, trustee, and the National Vice President, all others must leave.

The Federation will put on its case first. Afterwards, the representative of the affiliate may make a statement or put on evidence.

The hearing authority will resolve all disputes. This is not a court of law and formal rules of evidence and procedure will not apply.

At the conclusion of the hearing the hearing authority will write a recommended decision, and will mail that recommendation to the National President. The National President then will notify the members of his or her decision and also will provide a copy of the hearing authority's recommendations at that time. Is the Federation ready to proceed?

II. The Federation's case

Opening statement

Witnesses and exhibits

Direct examination by the Federation

Cross examination by the opposing side

Re-direct examination by the Federation

Re-cross examination by the opposing side

III. Affiliate's case

Call on the affiliate's representative to put on witnesses and exhibits, with limited cross-examination by the Federation.

- Opening statement
- Witnesses and exhibits
- Direct examination by the opposing side
- Cross examination by the Federation
- Re-direct examination by the opposing side
- Re-cross examination by the Federation

IV. Closing statements

- By Federation
- By affiliate's representative

V. Closing of the record by the hearing authority

SUPPLIES

Cassette tape recorders, with backup batteries, and microphones if possible.

Audio tapes for six to eight hours, labeled and numbered prior to the hearing.

A copy of the AFGE National and the affiliate's Constitution and Bylaws.

A copy of the appointment letter and the notice to members of the imposition of trusteeship.

Office supplies: paper, pen & pencil, two color markers, large envelope, paper clips, rubber bands, stapler.

SAMPLE RECOMMENDED DECISION

Introduction

A hearing authority of the American Federa-

tion of Government Employees conducted a hearing on the imposition of trusteeship on AFGE Local (or Council) ____, on ____, at ____, ____ (place), as contained in the notice to the members dated ____. (Joint or Federation Exhibit __). The hearing authority consisted of ____.

Facts

The National President, pursuant to Article IX, Section 5(b) of the AFGE National Constitution, by letters dated ____, appointed the hearing authority (Joint or Federation Exhibit __). The National President placed AFGE Local (or Council) ____ into trusteeship by memorandum dated ____, (Joint or Federation Exhibit __). This notice described the reasons for the imposition of the trusteeship:

[1. There is documented loss of leadership. The Local's Bylaws, Section ____ requires regularly scheduled election of officers in _____. Section ____ sets the term of office as ____ years. The Local last conducted its election of officers on _____. The terms of those officers expired on _____. There are no current officers within their term of office. There are no officers authorized to conduct the business of the Local.]

[2. There was an attempted secession of the Local from the Federation. On ____ the ____ issued a notice to the membership that said _____.]

M ____ represented the Federation, and M ____ represented the affiliate's members. The Federation presented its case with ____ witnesses and submitted Joint Exhibit 1 through ____ and Federation Exhibit 1 through _____. M ____ presented its case with narrative direct testimony and selected other witnesses.

Findings and Recommendations

Both the representatives' extensive testimony by direct and cross-examination of witnesses, and the hearing authority's questions, produced a record sufficient in quality and quantity to enable the hearing authority to render a sound and reasonable report of findings and recommendations. The hearing authority reviewed both oral and documentary evidence. [It is unanimous] in its finding that the preponderance of the evidence supported the establishment of trusteeship. The affiliate's members did not adequately rebut the evidence presented.

Specifically, the hearing authority found that _____.

Notes:

Accordingly, the hearing authority finds that the National President properly [or improperly] imposed the trusteeship on AFGE Local (or Council) _____ pursuant to constitutional authority, and it recommends that the National President ratify the establishment of this trusteeship pursuant to Article IX, Section 5(b) of the AFGE National Constitution until such time as conditions within the affiliate allow the lifting of the trusteeship and the re-establishment of its autonomy in the Federation.

Hearing authority