

CONSTITUTIONAL AMENDMENT 27

Amending Procedures Under Article XX Relating to Appeals Committee and Justification Proceedings

This procedural amendment would facilitate the Article XX appeal process in two ways.

First, the amendment would formally recognize the long-exercised power of the Executive Council Appeals Subcommittee to remand an appeal to the Impartial Umpire for further proceedings. Section 13 currently accords the subcommittee authority to either deny an appeal or refer it to the full Appeals Committee. But the Subcommittee occasionally has remanded a case to the Umpire for further factual development or to address a particular claim or issue that he did address in his determination. Remand is an important practical option where neither denial nor referral is the appropriate course. This amendment would inscribe that option in Section 13, without any suggestion that it be used more or less frequently, or differently otherwise, than it is now.

Second, the amendment would expand the Article XX Appeals Committee from 12 to 15 members while maintaining the quorum at seven. The reason for this change is simply to make it easier to achieve the necessary quorum. In recent years, it has become considerably more challenging to schedule seven of the 12 committee members. An expanded pool should alleviate this problem while maintaining necessary continuity on the committee.

This amendment also would create a distinct Section 14 for the current provision that authorizes the

Executive Council to issue policy statements under Article XX.

The amendment would also provide greater due process to affiliated unions in Article XX justification cases. Since the inception of the modern version of Article XX more than 40 years ago, a procedure has been available for an AFL-CIO affiliate to secure advance approval from the Executive Council to take action that otherwise would violate Article XX, when “such special and unusual circumstances exist that it would be violative of its basic jurisdiction or contrary to basic concepts of trade union morality.” Article XX, Section 4. Over the years this option has been pursued infrequently and has resulted in only 11 Executive Council decisions (four granting and seven denying the justification claim).

The justification process occurs in two steps. First, an Impartial Umpire holds a hearing and submits to the Executive Council a report that finds the facts and concludes whether or not the proposed action would violate Article XX. The Council then decides by majority vote whether the proposed action would violate Article XX, and, if so, decides by a two-thirds vote whether or not the proposed action is justified.

The Council has always considered these cases either at regular meetings or through a written poll with-

out a meeting of any kind. The Council receives materials that include the Umpire's report and the parties' positions, but the Council has not always heard presentations by the parties, even when it has considered a justification request at a meeting. And, because the cases are resolved by a Council vote, there has never been a written justification decision other than the notification of that vote to the parties.

This process has generated some dissatisfaction: that the unions involved have an inadequate, or no, opportunity to engage with the Council as a whole about their positions; that the Council has ruled without a sufficient opportunity to consider and discuss the matter; and that both the Council and the parties proceed without the benefit of prior Council reasoning and interpretation of the Section 4 standards.

The proposed amendment would change this process to address these concerns. The Impartial Umpire would both issue a report of the facts and evaluate whether the proposed action would violate Article XX, as currently, and make a reasoned recommendation to the Council as to whether or not to uphold the justification claim. The Council would then consider the matter at an actual meeting (even if by conference call) and hear a presentation by the parties before voting on the matter. In doing so, the Council would have the discretion to comment substantively on the claim in reaching its decision, although the proposed amendment does not compel that an opinion issue; in any event, the Umpire would have provided an analysis.

This procedure should afford greater due process and considered decision-making. It may also encourage unions to file justification cases more frequently, which could benefit the labor movement by producing more flexible approaches to difficult situations where the ordinary rules do not advance trade union interests.

Finally, as a drafting matter, the amendment would include the justification process in Section 4 alone, rather than in Sections 4 and 17 as it is set forth now.

Therefore, the Executive Council proposes the following amendments:

A. Amend Article XX, Sections 4 and 17 as follows, and renumber current Sections 18-21 accordingly:

Sec. 4. (a) In the event that any affiliate believes that such special and unusual circumstances exist that it would be violative of its basic jurisdiction or contrary to basic concepts of trade union morality or to the constitutional objectives of the AFL-CIO or injurious to accepted trade union work standards to enforce the principles that would apply in the absence of such circumstances, such organization shall nevertheless observe such principles unless and until its claim of **such justification** is upheld ~~in the manner prescribed in Section 17 of this Article.~~

(b) Any affiliate that claims such justification shall inform the President of the basis upon which the claim is made and the action the affiliate proposes to take.

(c) An Impartial Umpire, selected in accordance with Section 9 of this Article, shall conduct a hearing and shall find the facts, determine whether the proposed action would violate this Article in the absence of justification, and submit a report on these matters and a recommendation to the Executive Council as to whether or not the proposed action should be determined to be justified.

(d) The Executive Council, at either a regular meeting or a special meeting (which may be conducted by conference call), shall determine, in consideration of the report and recommendation of the Committee and a presentation at such meeting by the affiliates involved concerning that report and recommendation, by a majority vote whether the proposed action would violate this Article in the absence of justification, and, in the event of its determination that it would, the Council shall determine by a two-thirds vote whether the proposed action is justified.

~~Sec. 17. Any affiliate that claims justification under Section 4 for action that would, in the absence of such justification, violate the provisions of this Article shall process its claim, prior to taking action, under the provisions of this Section. Such claim shall set forth the basis upon which the claim is made and the action that the affiliate proposes to take. The claim shall thereafter be processed as provided in this Article except that the determination as to whether the facts justify the proposed action shall not be made by the Impartial Umpire. The Impartial Umpire shall determine whether the proposed action would violate the provisions of this Article in the absence of justification, shall find the facts with respect to the claim of the justification, and shall submit a report to the Executive Council. The Executive Council shall determine on the report of the Impartial Umpire whether the proposed action would violate the provisions of this Article in the absence of justification; and, if the Council concludes by majority vote that the proposed action would so violate it, the Council shall find such justification only by a vote of two thirds of its membership.~~

B. Amend Article XX, Section 13 as follows, and renumber Sections 14-21 accordingly:

Sec. 13.(a) The subcommittee of the Executive Council may disallow the appeal, in which event the determination of the Umpire shall be final, and subject to no further appeal and shall go into full force and effect; **remand the case to the Impartial**

Umpire for further proceedings; or ~~the subcommittee may~~ refer the appeal to the Executive Council Appeals Committee consisting of the President, the Secretary-Treasurer, the Executive Vice President and ~~nine~~ **12** Vice Presidents drawn from various sectors of the labor movement, in which event the determination of the Umpire shall be automatically stayed pending disposition of the appeal by the Committee.

(b) The ~~nine~~ **12** Vice Presidents on the Appeals Committee shall be nominated by the President and approved by the Executive Council and shall serve two-year terms. The President shall not nominate a Vice President to serve for more than two consecutive terms. A quorum shall consist of seven members of the Committee, at least one of whom is an Executive Officer.

(c) The Appeals Committee shall have full and final authority to establish its procedures, to issue preliminary orders and to affirm, reverse, amend or remand the Umpire's decision under appeal.

~~Sec. 14. Notwithstanding the foregoing, t~~The Executive Council shall have full and final authority on its own motion or at the request of any affiliate to consider policy questions under Article XX and to issue from time to time policy statements having prospective effect on the implementation of Article XX, which statements shall, from the date issued, supersede inconsistent prior policy statements and case decisions.