

CSEA 111TH ANNUAL DELEGATES MEETING

UNION LEADERSHIP RESPONSIBILITIES

• WEDNESDAY, SEPTEMBER 29, 2021, 1:30 – 3:30 PM •

BY LESLIE C. PERRIN, DEPUTY COUNSEL

A GUIDE TO THE CSEA JUDICIAL BOARD

Since 1910



New York's LEADING Union

Local 1000, AFSCME, AFL-CIO
Mary E. Sullivan, President

143 Washington Avenue, Albany, New York 12210
www.cseany.org
© CSEA

Table of Contents

Introduction	1
Overview of the Judicial Board	2
Examples of Judicial Board Charges.....	8
Judicial Board Penalties Involving Financial Improprieties	11
Issues Not Covered by the Judicial Board.....	12
Judicial Board Complaint Form	13

INTRODUCTION

The purpose of this booklet is to provide basic information on CSEA's Judicial Board, its purpose, and how it functions.

Nothing in this publication is intended to suggest any particular outcome or result in an actual Judicial Board case or to provide legal advice regarding similar issues currently arising in a local or unit. It is for illustrative purposes only.

The CSEA Judicial Board does not and will not distribute or publish its decisions. This handbook does not change this strict Judicial Board policy.

We hope you find this handbook helpful and informative.

This material is copyrighted by CSEA, Local 1000, AFSCME, AFL-CIO, and may not be used, reprinted or distributed without permission.

© CSEA 2021

OVERVIEW OF THE JUDICIAL BOARD

The Judicial Board is the official CSEA body with the power to hear, investigate and determine all complaints by any CSEA member or executive board against another member(s) and/or officer(s). As such, the CSEA Judicial Board provides an avenue for members to protect themselves and the Union from member conduct which is detrimental to CSEA.

A. Members of the Judicial Board

The Judicial Board is comprised of eight members. Each Region President appoints one member to the Judicial Board and the Statewide President appoints two members. The Statewide President also appoints the Judicial Board Chair and Vice Chair from the eight members.

To serve on the Judicial Board, a person must be a CSEA member in good standing for a continuous five-year period preceding the appointment and must have held, or be currently holding, an elected CSEA office.

B. Jurisdiction of the Judicial Board

The Judicial Board has the power to hear and investigate all complaints and charges against CSEA members and/or officers.

C. Process of the Judicial Board

A member may bring a complaint against another member or officer of CSEA. A Unit, Local or Region Executive Board may also bring a complaint. To do so, the formal Judicial Board Complaint Form must be completed and filed with the Judicial Board, 143 Washington Avenue, Albany, New York 12210, by certified mail, return receipt requested, and a copy of the complaint must be served on any person against whom the complaint is made, by certified mail, return receipt requested. The formal complaint shall be accompanied by all supporting documentation and/or statements signed by the member bringing the complaint.

A member may contact the CSEA Judicial Board at 1-800-342-4146 ext.1476 to obtain the formal Judicial Board Complaint Form. If a member initially files a Judicial Board complaint by letter or other document without using the Judicial Board Complaint Form, the Judicial Board will send the member the formal complaint form for completion and submission before any further action is taken on the complaint. If the formal Judicial Board Complaint Form is not completed and submitted, the Judicial Board will not further process the member's complaint.

1. The following constitutes the basis for complaints against any CSEA member or officer:

- (a) A violation of any provision of the Statewide, Region, Local or Unit Constitution.
- (b) Misappropriation, embezzlement, improper or illegal use of union funds.

(c) Any conduct which aids or supports, or is intended to aid or support, a competing labor organization.

(d) Refusal or failure to carry out legally authorized mandates or decisions of the President of the statewide Association, the Board of Directors of the statewide Association, the Delegate Body or the Judicial Board.

(e) Using the name of the statewide Association, or any Region, Local, or Unit thereof, in an unauthorized manner or for an unauthorized purpose, including publicizing through the media any political endorsement contrary to the endorsements and positions approved by the Statewide and/or Region Political Action Committees.

(f) Interfering with any elected official of CSEA in the discharge of that official's lawful duties.

(g) Solicitation or acceptance for personal gain of any money or the acceptance of any gift of more than nominal value from any employer, employee of the union, or from any person or firm which has or which is seeking to establish a business relationship with the Statewide Association or any subdivision thereof.

(h) Conviction of a crime, the nature of which is such as to bring the union as an organization into disrepute.

(i) Knowingly submitting a false financial statement or audit report to the Statewide Association or any subdivision thereof.

(j) Any other conduct detrimental to the best interests of CSEA.

After a formal complaint has been filed with the Judicial Board, an opportunity will be extended to the member who is the subject of the complaint to submit information to the Judicial Board which might explain, excuse or rebut the complaint. All material will then be reviewed and discussed by the Judicial Board before a decision is made as to whether the complaint should be processed further by the Judicial Board.

Dismissal

If a complaint appears to be frivolous in nature, lacks sufficient supporting evidence or substantiation, or alleges conduct that is not appropriate for the Judicial Board, the Judicial Board may dismiss the matter without issuing formal charges.

Formal Charges

Where the Judicial Board determines that there is "probable cause" to believe that the complaint could sustain a finding of misconduct, if proven, the Judicial Board will issue formal Judicial Board Charges. The responding party is then given the opportunity to file an Answer with the Judicial Board. After the time to answer is expired, the Judicial Board will hold a hearing at which time each party will have the right to be represented by an attorney. Attorney representation before the Judicial Board is not provided by nor paid for by CSEA. Such representation is at the member's personal expense. In some instances, where the charges are

not in dispute, the Judicial Board may offer the responding party the opportunity to accept a penalty without going through the hearing process.

Upon receiving a complaint initiated by the CSEA Statewide President or the CSEA Statewide Treasurer, the Judicial Board immediately issues formal charges against the member or officer, without delay.

Judicial Board Hearing

The parties do not need an attorney and may present their own case evidence. The hearing is relatively informal.

The Judicial Board Role

The Judicial Board sits as a neutral body with the obligation to hear and determine the formal charges. The Judicial Board normally appoints one or more members of the Judicial Board to serve as Hearing Officer(s) for each hearing.

A verbatim hearing record of the proceedings is not kept. The Judicial Board may, and usually does, voice record the proceedings. These recordings are for the exclusive use of the Judicial Board and, if appropriate, the CSEA Board of Directors Appeals Committee, and are not available to any party or witness. If a party wants a stenographic transcript of the hearing to be made, such request must be made in advance of the hearing and the requesting party will bear the cost of such record and must furnish copies to the other parties and to the Judicial Board.

Judicial Board Attorney

The Judicial Board is guided by an attorney whose responsibility is to advise the Judicial Board with respect to procedural and evidentiary matters that may arise during the hearing. The Judicial Board attorney assists the Hearing Officer(s) throughout the hearing and insures that a complete record is made to assist the full Judicial Board in its deliberations.

The Judicial Board attorney is the attorney for the Judicial Board, not for any party to the proceedings. The Judicial Board Hearing Officer(s) may seek the attorney's advice on any matter occurring during the hearing and, if necessary, the Judicial Board Hearing Officer(s) may recess during the hearing to discuss matter(s), in private with the Judicial Board attorney. The Judicial Board attorney will insure that all parties are treated fairly and understand the process.

Defending Member

Any member, officer or former member of CSEA against whom a charge has been issued is presumed innocent until proven guilty. The defending member has the following rights:

- to be served by certified mail, return receipt requested, with a full copy of the Judicial Board Charges.
- to file a written answer to those charges within ten (10) days after receiving them.
- to have a hearing scheduled on the charges within a reasonable time after his or her answer has been received by the Judicial Board or the time for such Answer has expired.

- to be represented at the Judicial Board hearing by an attorney of his or her own choosing. All costs of such attorney must be borne by the defending member.
- to present witnesses and/or documentary evidence on his or her own behalf and to cross-examine witnesses presented by the charging member.
- to testify on his or her own behalf. The defending member does not have the right to refuse to be cross-examined or to refuse to produce at the hearing any papers, books, financial or other records which are the property of the Union and which are pertinent to the charge.

Charging Member

The charging member has the following rights:

- to receive a copy of any written answer to the charge, that is filed with the Judicial Board.
- to have a hearing scheduled on the charges within a reasonable time after the answer has been received by the Judicial Board or the time for such answer has expired.
- to be represented at the Judicial Board hearing by an attorney of his or her own choosing. All costs of such attorney must be borne by the charging member.
- to present witnesses and/or documentary evidence to substantiate the charges and to cross-examine witnesses presented by the defending member.
- to testify. The charging member does not have a right to refuse to be cross-examined or to refuse to produce at the hearing any papers, books, financial or other records which are the property of the Union and which are pertinent to the charge.

Order of the Hearing

The presiding Hearing Officer will formally open the hearing by stating the matter before the Judicial Board, the names of the members involved, and the names of the member's representatives, if any.

At the request of either member or on his/her own motion, the Hearing Officer(s) may sequester all witnesses to the proceedings, except for the charging member and the defending member. Sequestration means that witnesses are in a separate room except for when they are testifying.

Each member is given an opportunity to make an "opening statement." The charging member goes first, followed by the defending member. The opening statement is not proof, but rather a brief summary of the facts the parties intend to prove during the hearing.

The charging member presents his/her case first. Each witness is questioned first by the charging member, then by the defending member. After the witness has been questioned by both sides, the Judicial Board Hearing Officer(s) or attorney may question the witness. Each witness is sworn before giving testimony.

After all questioning has been completed, the witness is excused and the next witness called. Any documents submitted into evidence during the course of the hearing must be provided to the Judicial Board Hearing Officer(s), the Judicial Board attorney and each party. The member submitting documents into evidence has the responsibility for providing the appropriate number of copies.

After the charging member has called all his/her witnesses and submitted all intended evidence, the Hearing Officer(s) will ask the charging member if that party “rests its case.” If yes, it is then the turn of the defending member to present witnesses and/or documentary evidence. The same procedure above is followed for the defending member.

After both parties have rested their cases, both are given an opportunity to make a closing statement. The defending member goes first. The closing statement is an opportunity to give a brief summary of the testimony and documentary evidence presented by that party and to make a recommendation as to the penalty, to be imposed, if any.

The Hearing Officer(s) will then declare the hearing closed.

Subsequent to the hearing, the Judicial Board will meet to discuss the evidence and consider penalty. A decision reached by a majority vote of at least five voting Judicial Board members will be issued. If no answer is filed with the Judicial Board, the Judicial Board may make a determination on the evidence before it without holding a hearing.

Settlements

A settlement between the parties may be entered into at any stage of the Judicial Board process. All proposed settlements must be in writing, and sent to the Chair for approval before they are effective.

Non-Appearance

If there is no appearance by a party at a scheduled hearing, the Judicial Board may make a determination on the evidence then before it, or may hold a hearing without participation by the absent party.

Restitution

Should the Judicial Board impose a penalty of full or partial restitution, the decision will direct that all payments be made to the Statewide Treasurer, CSEA Headquarters, 143 Washington Avenue, Capitol Station, Box 7125, Albany, New York 12224. Any reimbursement to a Region, Local or Unit is made by the Statewide Treasurer. The Statewide Treasurer is advised of all decisions wherein a penalty of restitution is imposed.

Penalties of the Judicial Board

A Judicial Board decision may include the following penalties: (1) formal reprimand, (2) full or partial restitution, (3) removal from office or position, (4) suspension of right to hold or seek any elected or appointed office or position for up to five years, (5) suspension from membership for up to three years, (6) expulsion from membership.

Appeals

A Judicial Board decision may be appealed to the CSEA Board of Director Appeals Committee. The appeal must set forth all portions of the Judicial Board decision to which an objection is taken and the reasons for the objection. The Appeals Committee considers objections that have been duly filed.

The appeal is not a new hearing. Objections are limited to the issues and evidence in the Judicial Board decision only and cannot be used to submit new information or documents which were not before the Hearing Officer(s). The Appeals Committee reports its findings to the full Board of Directors by the second Board meeting after the Appeal is received. The Appeals Committee may uphold the Judicial Board decision and dismiss the appeal, or send the matter back to the Judicial Board for reconsideration of penalty in light of the evidence and/or prior Judicial Board action on similar issues.

The appeal must be sent by certified mail, return receipt requested, to the Appeals Committee, 143 Washington Ave., Box 7125, Capitol Station, Albany, New York 12224.

EXAMPLES OF JUDICIAL BOARD CHARGES

The following representative charges are compiled from cases heard and decided by the CSEA Judicial Board.

Charge: FAILING TO ADMINISTER DUTIES AS LOCAL OFFICER

- * A local treasurer's failure to safeguard and maintain the records of a local.
- * A local president's failure to insure that all local officers perform their respective duties in accordance with the local constitution.
- * Local treasurer's failure to comply with a lawful mandate to provide the local's records and equipment to the newly elected officers.

Charge: FAILING TO FILE BUDGET

- * The budget was not timely filed by the local president and an unapproved expenditure was made for members of the local attending a convention.

Charge: FAILING TO HOLD MEETINGS

- * The Judicial Board has heard various matters including failure to hold local general membership meetings, wherein the Judicial Board imposed a penalty of a formal letter of reprimand.
- * In another matter, nine separate charges were before the Judicial Board, ranging from failure to hold executive board meetings, failure to appoint committees, failure to follow financial guidelines, and the like. The absence of the meetings resulted in a lack of appointment of committees and as such a lack of approval of unit expenditures.

Charge: FAILING TO PROVIDE REPORTS

- * A local secretary failed to take meeting minutes and provide the minutes to the local treasurer, as required by the CSEA Local Constitution.
- * In a more complex matter, various charges were sustained against a local treasurer for failure to file the local's annual report, failure to file the local's budgets for two years, and misuse of the local's funds.

Charge: IMPROPERLY PAYING HONORARIA TO OFFICERS

- * The unit executive vice president received an unauthorized honorarium. The uncontroverted testimony established that the honorarium was not authorized and that due demand had been made by CSEA for its repayment.

Charge: INTERFERING WITH ELECTED OFFICER'S DUTIES

- * The unit secretary failed to provide notice of executive board meetings to the unit vice president.

Charge: MISUSE OF LOCAL FUNDS

- * The Judicial Board has heard numerous and varied matters including charges of personal use of local and unit funds, advancing money without repayment to CSEA, substitution of signatures on local and unit checks, destroying bank statements, unauthorized political contributions, improper and unauthorized fundraising, and other matters involving misuse of funds. Penalties have ranged from a formal reprimand to expulsion from CSEA membership, depending on the severity of the charges and the number of charges sustained against the party or parties involved.

Charge: PROMOTING A VENDOR WITHOUT BOARD APPROVAL

- * The local president had improperly permitted the use of CSEA materials to endorse and promote a dental practice without prior CSEA Board of Directors approval.

Charge: USE OF CSEA LOGO WITHOUT PERMISSION

- * The local president had permitted the CSEA name and logo to be used by an outside vendor without first obtaining appropriate CSEA Board of Directors approval.

Charge: CAMPAIGNING TO DECERTIFY CSEA and/or SUPPORTING A COMPETING UNION

- * Unit officers filed a petition for decertification with the PERB, and circulated petitions for CSEA members to sign in order to aid in the decertification process. Unit officers are held to a higher standard of loyalty to CSEA. Both their speech and actions in support of a competing labor organization can be the basis for charges.

Charge: FAILING TO RELEASE RECORDS

- * In a case against a former local secretary, two separate complaints were filed where the secretary had failed to turn over records and equipment of the local, thus interfering with the discharge of the duties of another CSEA officer.
- * An outgoing local president failed to maintain the security and integrity of the local's records and equipment, and so caused the equipment and

records to be lost, destroyed, or otherwise improperly removed from the local office.

Charge: VIOLATING OATH OF OFFICE

- * The local president improperly permitted a non-member to serve as a local executive board member and executed a lease without prior Statewide Board of Director's approval. The local president, upon learning that the individual was not a CSEA member, tried to alleviate the situation by removing him as an executive board member. This, in turn, caused the local executive board to lack a quorum so as to be unable to act on the lease.
- * Unit treasurer had engaged in conduct detrimental to CSEA by producing a dues rebate article that advocated CSEA members to apply for a dues rebate.

**Charge: CONDUCT UNBECOMING AN ELECTED OFFICER-
SEXUAL HARASSMENT**

- * Local President, third vice-president and local delegate made inappropriate sexual gestures toward other union officers, constituting conduct detrimental to the best interest of CSEA and conduct unbecoming of a union officer.

JUDICIAL BOARD PENALTIES INVOLVING FINANCIAL IMPROPRIETIES

At the 2001 Annual Delegates' Meeting, the delegates amended the CSEA By-Laws, Article III, Statewide Elections, regarding eligibility to run for an elected office of CSEA. Previous to this amendment, CSEA has relied on Judicial Board action to expel or otherwise suspend a member's right to hold/seek office for a period not to exceed five years where the member was found to have engaged in some sort of financial improprieties involving CSEA money. A person not expelled and receiving a lesser penalty imposed as a result of their misuse of union money presumably remained eligible to run for future office.

The new language clarifies that to run for office, a candidate must be eligible for bonding by CSEA. In effect, the new language imposes a lifetime ban from running for office for any member whose Judicial Board penalty results in a CSEA claim being filed with our bonding company. Since that member would no longer be able to be covered under the CSEA surety bond, the member could not run for any future CSEA elected office.

A. PRIVATE SECTOR LOCALS

In cases involving misappropriation of union funds from a private sector local, the United States Department of Labor has separate jurisdiction and undertakes an independent investigation. Such investigations have, in the past, resulted in the prosecution, conviction, and in certain cases imprisonment of the officers found to be responsible for the misappropriation. Under the LMRDA, persons convicted of crimes involving misappropriation are prohibited from holding union office or employment for thirteen (13) years after the conviction, or until thirteen (13) years after the end of the imprisonment resulting from the conviction, whichever is later.

ISSUES NOT COVERED BY THE JUDICIAL BOARD

The Judicial Board has received numerous complaints and inquiries involving matters not suitable for Judicial Board review. In these instances, the Judicial Board refers the matter to the appropriate CSEA Committee or Department.

1. Election Committee

Election related complaints addressed to the Judicial Board are referred to the statewide, local or unit election committee, as appropriate, for handling. The Judicial Board has received election protest letters, complaints against a particular election committee, and complaints against an officer or candidate interfering in the election process.

2. State Operations/Field Operations

Complaints relating to contract negotiations and ratification procedures are referred to the CSEA State or Field Operations Department (depending on the contract). Those departments have internal procedures for review of contract ratification complaints. Other matters involving labor relations and/or field and member services issues are referred to the Field Operations Department.

3. Legal Department

Complaints involving legal rights of a non-contractual nature are referred to the Legal Department. Additionally, complaints involving substance or procedure under the Legal Assistance Program are referred to the Legal Department. For instance, the Judicial Board recently received a complaint wherein an officer failed to serve subpoenas in a disciplinary matter when requested to do so. This matter falls within the Legal Assistance Program.

4. Personnel Matters

Where a member files a complaint against a staff member, the Judicial Board will refer the matter to the appropriate CSEA Department Manager, or, in the case of a local or unit employee, to the local or unit executive board, for appropriate action.

JUDICIAL BOARD COMPLAINT FORM

I. Complaining Party or Parties Information: Identifying information about yourself as Complaining Party or Parties:

1 _____
NAME ADDRESS
LAST FOUR DIGITS OF CSEA ID# _____ LOCAL/UNIT # _____

2 _____
NAME ADDRESS
LAST FOUR DIGITS OF CSEA ID# _____ LOCAL/UNIT # _____

II. Responding Party or Parties Information: Identifying Information about person or persons you are complaining about:

1 _____
NAME ADDRESS
LOCAL/UNIT # _____ TITLE[S] (if any) _____

2 _____
NAME ADDRESS
LOCAL/UNIT # _____ TITLE[S] (if any) _____

III. Specific Violation[s] you are asserting:

A. The conduct you are complaining about is: [Check applicable grounds]

- Improper or illegal use of union funds
- Conduct aiding or supporting, or intending to aid or support a competing union
- Refusal or failure to carry out mandates or decisions of the Statewide President, Board of Directors, Delegate Body, or Judicial Board
- Use of CSEA name or a Region, Local or Unit name, in unauthorized manner or for unauthorized purpose, or for a political endorsement contrary to endorsements or positions approved by CSEA
- Interference with elected official in discharge of that CSEA official's lawful duties
- Solicitation or acceptance for personal gain of money, gift of more than nominal from any employer, union employee, or any person/firm having or seeking to have business relationship with CSEA
- Conviction of a crime, nature of which is such as to bring the union into disrepute
- Knowing submission of a false financial statement or audit report to CSEA
- Other conduct detrimental to the best interests of CSEA

Continued on PAGE 2

