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THE AFL-CIO INTERNAL DISPUTE PLAN: PUBLIC SECTOR ARBITRATION EXPERIENCE*

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ABSTRACT

Jurisdictional and representational disputes between rival unions have traditionally been a major concern to the labor movement. To both reduce and resolve issues of "raiding," in 1962 the AFL-CIO adopted a constitutional amendment creating the AFL-CIO Internal Dispute Plan. Article XX of the constitution provides to AFL-CIO affiliated unions a mandated conflict resolution procedure to adjudicate jurisdictional and representational cases. Additionally, Article XX describes specific violations of jurisdictional and representational behavior. This article discusses the AFL-CIO Internal Dispute Plan, including a ten-year review of public sector arbitration cases heard under this highly effective dispute resolution procedure.

A major concern within the labor movement is the resolution of jurisdictional and representational disputes among American Federal of Labor and Congress of Industrial Organizations (AFL-CIO) affiliated unions. The concern has been a longstanding one. During merger talks between the AFL and CIO in 1955, labor leaders from both organizations predicted the demise of the new federation due to the continuous "raiding" between competing AFL and CIO autonomous unions. Historically, raiding was often undertaken for the purpose of weakening or preventing the growth of certain other unions. Then and now, conflict over

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the jurisdictional and representational status of unions causes bitter interunion sentiments, reduced effectiveness during organizing drives, and heavy drains on the monetary and human resource capabilities of competing unions as a result of raiding. Furthermore, employers may become unnecessarily entangled in jurisdictional disputes, thereby creating unwanted work stoppages. Jurisdictional disputes found illegal under federal, state, or municipal law may lead to government intervention and/or court injunctions.

Early attempts by the new federation to reduce jurisdictional and representational disputes were based largely on the voluntary efforts of union leaders. Interestingly, decisions reached through the assistance of federation officials were often politically motivated and favorable to the larger unions. To eliminate these problems, in 1962 an AFL-CIO constitutional amendment was adopted, creating the Internal Dispute Plan (Plan). Article XX of the AFL-CIO constitution mandates that all affiliated unions exercise self-discipline when organizing and that affiliated unions use the internal dispute procedure when alleged jurisdictional or representational conflicts arise. Additionally, to assist unions with reducing raiding disputes, Article XX lists specific types of jurisdictional and representational violations, along with penalties for noncomplying labor organizations.

Since its inception, the AFL-CIO Internal Dispute Plan has been a highly effective procedure for resolving complex issues regarding union raiding. Impartial umpires (e.g., arbitrators) have rendered decisions in over 1,000 cases alleging various Article XX violations. Numerous incidents have been settled through the plan's mediation procedures. A large number of cases initially filed under Article XX procedures are subsequently settled informally and withdrawn largely through the plan's emphasis on the voluntary settlement of raiding issues. Unfortunately, while the success of Article XX is established, little discussion about the plan can be found in the literature and there is almost no analysis of Article XX usage by academics, neutrals, or union officials. Therefore, the purpose of this article is to review the formal dispute resolution procedure of Article XX, including a discussion of the major jurisdictional and representational violations, and to present a ten-year analysis of Article XX arbitration decisions applicable to public sector employers and labor organizations. Specifically, we present a numerical tabulation of public sector jurisdictional and representational prohibitions along with the unions involved in these raiding disputes.

ARTICLE XX

The AFL-CIO Internal Dispute Plan provides a judicial protocol to resolve jurisdictional and representational disputes. Specifically, the plan imposes a "rule of law" governing affiliates, and all AFL-CIO unions are bound by its principles. Affiliated unions are simply not free to reject the federation's no-raiding constraints with impunity [1, p. 22]. Additionally, Section 20 of Article XX states,

"No affiliate shall resort to court or other legal proceedings to settle or determine any dispute of the nature described in this Article or to enforce any settlement or determination reached hereunder" [2, §20]. This prohibition is important, since it underscores the federation's philosophy of settlement and enforcement of raiding cases from within.

Also adding emphasis to voluntary settlements and internal adjudication of raiding disputes is an Article XX provision requiring affiliates to observe any private agreement they may have for the resolution of disputes between them of the kind otherwise subject to resolution under Article XX. Section 19 specifically reads, "Where a dispute between affiliates subject to resolution under this Article is also covered by a written agreement between all of the affiliates involved in or affected by the dispute, the provisions of such agreement shall be compiled with prior to the invocation of the procedures provided in this Article" [2, §19]. The intent is to encourage competing unions to establish individual procedures addressing voluntary settlements of jurisdictional and representational conflict while additionally easing the workload of the plan's officials and Article XX umpires.

Article XX consists primarily of two sections. One area describes the formal procedure for initiating charges, while the second delineates the specific violations of jurisdictional or representation disputes.

Dispute Procedure. Sections 7 through 13 of Article XX outline the plan's dispute resolution procedure. The process begins when an aggrieved affiliate files a formal complaint alleging a specific Article XX violation. Mediation is then mandated with the intent of reaching a voluntary settlement. The AFL-CIO maintains permanent mediators knowledgeable about raiding disputes and with the ability to assist parties in resolving their differences amicably. However, should mediation prove unsuccessful, the parties automatically proceed to arbitration. As with mediation, the federation retains a small but highly respected panel of impartial arbitrators to adjudicate Article XX cases.[1] Arbitrators render determinations based on the principles set forth under Article XX. Hence, arbitrators are highly versed in jurisdictional and representational prohibitions, past case precedents, and internally established rules of law particular to raiding cases. Arbitration decisions must be finalized within a specified period; however, extensions are permitted.[2] Decisions automatically go into full force and effect unless appealed within five days commencing with the umpire's determination.

[1]Throughout the history of the Internal Dispute Plan the panel of impartial umpires has always remained small. For the ten-year history of this research only two umpires heard public sector cases. The umpires were Paul C. Weiler and Howard Lesnick.

[2]The president of the AFL-CIO, or his designated representative, "may extend any time limit if, in his judgment, such extension will more readily effectuate an early settlement or determination of a dispute. Whenever, in the judgment of the President, pressing reasons require an accelerated settlement or determination, he may shorten or eliminate the mediation process or refer the dispute directly to an Impartial Umpire" (Article XX, Section II).

When requested, appeals are heard by a subcommittee of the federation's executive council when it is argued that the umpire's decision is not compatible with the federation's constitution or the principles of Article XX, the decision is not supported by fact, or the decision is believed to be "otherwise arbitrary or capricious." The subcommittee may disallow the appeal or it may refer the appeal to the Executive Council Article XX Appeals Committee, the final arbitrator of Article XX cases.[3] The appeals committee has full authority to affirm, reverse, amend, or modify the umpire's decision [2, §§7-13].

While the major focus of this study was Article XX arbitration cases, we also assessed the effectiveness of the various steps of the plan's dispute procedures. Specifically, from discussions with federation officials, coupled with our ten-year review of public sector jurisdictional and representational cases, we determined that approximately 65 percent to 70 percent of cases filed in any given year are either withdrawn once filed or settled through mediation. The effectiveness of the mediation efforts of the federation is a reflection of the willingness of affiliated unions to accept reasonable discipline and self-restraint. Approximately 25 percent to 30 percent of cases are finalized through arbitration, and about 5 percent are ultimately resolved by the executive council. These figures illustrate the effectiveness of the voluntary nature of mediation and the conclusiveness of arbitration in resolving raiding disputes. Additionally, there are few reported cases of non compliance with either arbitrated awards or executive council decisions. Considering the volatile nature and charged atmosphere of many raiding cases, this finding speaks to the willingness of affiliated unions to comply with imposed determinations.[4] It seems safe to say that the Internal Dispute Plan of the AFL-CIO is an accepted and respected institution of the labor movement.

Article XX Violations. Article XX imposes three primary obligations on AFL-CIO affiliates. First, in Section 2, affiliates shall respect the *established collective bargaining relationship* of every other affiliate. The phrase "established bargaining relationship" is defined to mean any situation in which a union or local has either 1) been recognized by the employer (including any governmental agency) as the collective bargaining representative for employees for a period of one year or more or 2) is certified by the National Labor Relations Board or

[3]The Executive Council Article XX Appeals Committee consists of the president, the secretary-treasurer and seven vice presidents drawn from various sectors of the labor movement. The seven vice presidents on the Appeals Committee are nominated by the president, approved by the Executive Council, and serve two-year terms. The federation's executive council is composed of fifty-four members elected at the AFL-CIO's biennial convention.

[4]Article XX provides provisions regarding cases of noncompliance. Sanctions include: 1) noncomplying unions can be denied the benefits of Article XX; 2) sanctions against noncomplying affiliates are published; and 3) other affiliates are barred from assisting guilty labor organizations. Additionally, the executive council may deny the offending union other services or protection of the federation. These penalties are considered significant by federation officials.

other federal or state agency as the collective bargaining representative for the employees [2, §2].

Second, in Section 3, the plan requires that affiliates respect the *established work relationship* of every other affiliate. An established work relationship refers to work of the kind customarily performed by members of an organization at the particular plant or work site. Additionally, Section 3 states, "No affiliate shall by agreement or collusion with any employer or by the exercise of economic pressure seek to obtain work for its members as to which an established work relationship exists with any affiliate, except with the consent of such affiliate" [2, §3].

The third no raiding prohibition is contained in Section 5. This section prohibits AFL-CIO affiliated labor organizations from defaming other affiliates during organizing campaigns. Section 5 states specifically "No affiliate shall, in connection with any organizational campaign, circulate or cause to be circulated any charge or report which is designed to bring or has the effect of bringing another affiliate into public disrepute or of otherwise adversely affecting the reputation of such affiliate or the Federation [2, §5].

RESEARCH METHODOLOGY

All Article XX arbitration decisions reached in the public sector between 1989 and 1998 were analyzed. For this ten-year period a total of ninety-five cases were reviewed. Cases were obtained with the assistance of the AFL-CIO, Washington, D.C., and are published verbatim in various issues of *The AFL-CIO Internal Dispute Plan: Determinations.* For this research the following data were collected for each case: 1) the unions of employee associations involved in Article XX arbitrations, 2) the union's classification as either plaintiff or defendant in each case, 3) violations alleged (e.g., Sections 2, 3, or 5 of Article XX), and 4) the outcome of the case—the win/loss record of each labor organization. Tabulation and discussion of these data are presented below. While we recognize that unions and employee associations often view themselves as having different philosophies and bargaining agendas, for the statistical purposes of this research both groups were classified jointly as unions.

DATA ANALYSIS AND DISCUSSION

For the ten-year period 1989 through 1998 approximately one-third of all Article XX arbitration cases originated from the public sector. Thus, when total cases are considered, it is evident that a high percentage of yearly Article XX arbitrations are from the public sector. Table 1 presents summary statistics for the ten years under review. As illustrated, thirty autonomous unions were involved as either plaintiffs or defendants in 200 public sector arbitration determinations. Plaintiffs were successful

Table 1. All Unions Appearing as Plaintiffs or Defendants In Article XX Awards: 1989-1998 (N = 30, Public Sector)

		Plaintiffs			Defendants		
Individual Unions	Total Appearances	Appear-ances	Won	Lost	Appear-ances	Won	Lost
30	200	104	65 (63%)	39 (37%)	96	46 (48%)	50 (52%)

in sixty-five of the disputes (63%) and unsuccessful in thirty-nine cases (37%). A significant percentage of unions that believed they had been raided or wronged won their cases. Therefore, if union officials understand the jurisdictional and representational violations of Article XX, and they believe their rights have been violated, pursuing an Article XX charge has definite merit.

During 1989 through 1998, eleven unions had five or more appearances as either plaintiffs or defendants in Article XX arbitrations (Table 2). However, three unions, the Service Employees International Union (SEIU), the American Federation of State, County, and Municipal Employees (AFSCME), and the International Brotherhood of Teamsters (Teamsters) had—by far—the greatest presence in arbitration hearings. These three unions participated as either plaintiffs or defendants in ninety-nine of 156 appearances (63%) between 1989 and 1998. Interestingly, while SEIU had twenty appearances as a plaintiff and fifteen appearances as a defendant, AFSCME appears twenty-seven times as a plaintiff and only eight times as a defendant. The Teamsters, on the other hand, appeared only four times as a plaintiff and twenty-five times as a defendant. If we acknowledge that plaintiffs in Article XX cases see their representational and organizational rights as violated and defendants as possible violators of those rights, then AFSCME can be viewed as a frequently raided union and the Teamsters as frequent raiders. Regardless, in the public sector, the Teamsters initiate many organizational efforts that result in Article XX complaints against them, but they are seldom the target of organizational efforts by other unions.

This finding is given additional weight by analyzing the win/loss records of these unions. When appearing as plaintiffs in Article XX cases, AFSCME has been successful in twenty-one of twenty-seven cases (a 78 percent win rate), while losing only six cases (22%). As plaintiffs, the Teamsters were successful in no cases (0 for 4), while as defendants they lost twenty-two of twenty-five cases (an 88% loss rate). For unions with at least nine appearances in arbitration between 1989 and 1998, no other unions have this wide disparity in win/loss records as either plaintiffs or defendants.

Table 2. Unions Appearing as Plaintiffs or Defendants in Article XX Awards
5 or More Appearances: 1989-1998: Public Sector

		Plaintiffs			Defendants		
Union	Total Appearances	Appearances	Won	Lost	Appearances	Won	Lost
Service Employees International Union	35	20	8 (40%)	12 (60%)	15	9 (60%)	6 (40%)
American Federation of State, County, and Municipal Employees	35	27	21 (78%)	6 (22%)	8	5 (63%)	3 (37%)
International Brotherhood of Teamsters	29	4	0 (0%)	4 (100%)	25	3 (12%)	22 (88%)
Laborers' International Union of North America	10	4	4 (100%)	0 (0%)	6	2 (33%)	4 (67%)
American Federation of Government Employees	9	8	5 (63%)	3 (37%)	1	1 (100%)	0 (0%)
Communications Workers of America	9	5	3 (60%)	2 (40%)	4	2 (50%)	2 (50%)
International Brotherhood of Electrical Workers	7	1	0 (0%)	1 (100%)	6	3 (50%)	3 (50%)
Office and Professional Employees International Union	6	2	2 (100%)	0 (0%)	4	3 (75%)	1 (25%)
American Federation of Teachers	6	4	3 (75%)	1 (25%)	2	2 (100%)	0 (0%)
International Association of Machinists and Aerospace Workers	5	4	4 (100%)	0 (0%)	1	1 (100%)	0 (0%)
Amalgamated Transit Union	5	4	3 (75%)	1 (25%)	1	1 (100%)	0 (0%)
Totals	156	83	53 (64%)	30 (36%)	73	32 (44%)	41 (56%)

Table 2 also highlights another finding. While the predominance of arbitration hearings are among traditional public sector unions, a finding we should expect from this study (e.g., AFSCME, American Federation of Government Employees (AFGE), American Federation of Teachers (AFT)), a variety of traditional private sector unions are also active organizers of public sector employees. For example, the Communication Workers of America (CWA), the Office and Professional Employees International Union (OPEIU), and the International Association of Machinists and Aerospace Workers (IAM) are all involved in Article XX proceedings. Additionally, if we consider the number of Article XX complaints as a proxy for organizational activity, then the unions shown in Table 2 are the major players in public sector organizational and representational activity.

Table 3 presents yearly statistics for Article XX arbitration awards. A relatively high incidence of Article XX violations occurred in 1989 and 1991, while 1992 and 1998 represent low caseload years. However, no particular trend seems evident in yearly filings of Article XX arbitration cases. From our study and knowledge of the public sector bargaining milieu, we can report that during the ten years of this study no important events have occurred from which to predict either high or low arbitration years. Rather, the filing of Article XX violations simply appears to be a random occurrence.

Table 4 shows Article XX arbitrations by specific violations. As indicated in Table 4, nearly all determinations (85 cases, or 79.4% of total cases) resolved an issue

Table 3. AFL-CIO Article XX Arbitration Awards
Public Sector Cases: 1989-1998

Year	Total Yearly Cases	Guilty of Violation[1]	Percentage[2]	Not Guilty of Violation	Percentage[2]
1989	14	7	50	8	57
1990	9	8	89	2	22
1991	16	15	94	7	44
1992	5	1	20	4	80
1993	8	4	50	5	63
1994	9	6	67	4	44
1995	7	4	57	3	43
1996	10	4	40	7	70
1997	13	4	31	9	69
1998	4	4	80	1	20
Total All Years	95	57	59	50	52

[1]The number of guilty and not guilty violations may exceed the total cases for a year, since each case may have more than one Article XX violation.
[2]Percentages are rounded to whole numbers.

Table 4. Violations by Sections of Article XX
Public Sector Cases: 1989-1998
(N = 107)

Year	Section 2	Section 3	Section 5	Section 20*	
1989	11	1	2	1	
1990	8	0	1	1	
1991	14	2	3	2	
1992	5	0	1	0	
1993	7	0	2	0	
1994	9	1	0	0	
1995	7	0	0	0	
1996	9	1	1	0	
1997	10	1	1	1	
1998	5	0	0	0	
Totals	85	6	11	5	= 107
Percentage	79.4	5.6	10.3	4.7	= 100%

*As noted in the text, Article XX prohibits AFL-CIO affiliated unions from resorting to court or other legal actions to settle disputes of the nature outlined in Article XX. Since Section 20 violations do not regard the technicality of jurisdictional or representational conflicts, but rather the forum for settlement of those disputes, they were eliminated from the discussion of raiding in this article. However, since Section 20 violations *are* part of the arbitration determinations of this ten-year study, they are presented in this table for categorization only.

where the defendant was attempting to organize an established collective bargaining relationship of another union—a Section 2 violation. Eleven cases (10.3%) involved concerns where the defendant allegedly defamed another union—a Section 5 violation, and in six cases (5.6%) the defendant attempted to organize an established work relationship of an affiliate union—a Section 3 violation.

There is one possible explanation for the high incidence of Section 2 violations. In a 1981 article discussing the Internal Dispute Plan, arbitrator Cole discussed the unsettled nature of public sector bargaining stating, "This is a primitive area in which there is either no clear legal basis for recognition of bargaining rights or in which the rules are loose and uncertain." In the 20 years since the publication of that article, little has changed in the legal environment of public sector bargaining to alter the opinion of arbitrator Cole. Consequently, a high percentage of Section 2 cases continues to be adjudicated.

The success rate of plaintiffs for Section 2, 3, and 5 violations shows the following. For Section 2 violations, plaintiffs were victorious in 49 cases or 57.6 percent; for Section 5 violations, plaintiffs won 6 determinations or

54.5 percent; and, for Section 3, plaintiffs won 3 of 6 cases or 50 percent. Not surprisingly, these statistics parallel those illustrated in previous tables.

CLOSING

Predictions regarding future labor relations trends are, of course, precarious. Regardless, given today's state of public sector legislation and labor-management activity, we see no change in the public sector raiding activity of AFL-CIO affiliates. While the AFL-CIO Internal Dispute Plan has greatly reduced raiding, mainly during the plan's early years, with the labor movement's current emphasis on organizing, continued incidents of jurisdictional and representational conflict will likely remain steady. This seems particularly true with the larger AFL-CIO unions, which are largely responsible for organizational and representational activity. Although Article XX provides a forum for resolving the number of raids among affiliates, it has not necessarily curbed the larger unions' aggressive behavior, because they continue to account for a disproportionate share of alleged violations.

From interviews conducted as part of this study, the opinions of federation and national union officials attest to the success of the Internal Dispute Plan in lessening union raiding. However, beyond the prescribed mandates of Article XX on affiliated unions, the success of the Internal Dispute Plan also rests heavily on the strong persuasive force of the federation—the so-called federation family opinion. Affiliated unions have largely reconciled themselves to the idea that they are not free to organize unilaterally or to decide their own jurisdictional or representational activity. Under this philosophy, unions, governmental employers, and the public all benefit.

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REFERENCES

1. J. Krislov and J. Mead, Arbitrating Union Conflicts: An Analysis of the AFL-CIO Internal Dispute Plan, *The Arbitration Journal, 35*:2, June 1981, pp. 21-29.
2. A full reading of Article XX of the Internal Dispute Plan can be found in all issues of *The AFL-CIO Internal Dispute Plan.* This publication gives determinations of

Article XX cases for various years. Issues may be ordered from Publications, AFL-CIO, 815 Sixteenth Street, N.W., Washington, D.C. 20006.

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