



# AFL-CIO

AMERICA'S UNIONS

**American Federation  
of Labor and  
Congress of Industrial  
Organizations**

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Via First Class Mail and Electronic Mail

November 7, 2016

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1625 L Street, N.W.  
Washington, DC 20036-5665

Gregory J. Junemann, International President  
International Federation of Professional & Technical Engineers  
501 Third Street, N.W., Suite 701  
Washington DC 20001

RE: Article XX, 16-9 Public Employees Union Local 1,  
Northern California

Dear Presidents Saunders and Junemann:

Enclosed is a copy of the expedited determination issued by the Impartial Umpire today. The full determination shall follow at a later date.

Sincerely,

  
Richard L. Trumka  
President

cc: Homer La Rue, ad hoc Impartial Umpire  
Paula Caira, AFSCME  
Michael Melick, IFPTE  
Teresa Idris, IFPTE

Michael Sacco  
Robert A. Scardelletti  
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Christopher Shelton  
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Richard Lanigan  
Robert Martinez

**AFL-CIO CONSTITUTION, ARTICLE XX  
SETTLEMENT OF INTERNAL DISPUTES**

**AMERICAN FEDERATION OF STATE  
COUNTY AND MUNICIPAL EMPLOYEES,  
(AFSCME), AFL-CIO,**

**Charging Party,**

**-and-**

**INTERNATIONAL FEDERATION OF  
PROFESSIONAL AND TECHNICAL  
ENGINEERS (IFPTE), AFL-CIO,**

**Responding Party.**

Re: Solano County Unit #6, Health and  
Social Services Supervisors

Solano County Unit #16—Mid-Management

Contra Costa County Library Employees

**ART. XX CASE NO.: 16-09  
UMP. CASE NO.: 161005-SOLA**

**Homer C. La Rue  
Impartial Umpire**

**Expedited Determination  
(Analysis and Decision to Follow)**

**APPEARANCES**

**For the Charging Party**

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## **PROCEDURAL HISTORY**

This dispute arises under Article XX (Settlement of Internal Disputes) of the AFL-CIO Constitution (the “Constitution”). The parties to this dispute are the American Federation of State, County and Municipal Employees, AFL-CIO (“AFSCME”), the Charging Party, and the International Federation of Professional and Technical Employees (“IFPTE”), the Responding Party. AFSCME and IFPTE, when referred to collectively, shall be termed the “Parties.”

Article XX of the Constitution contains procedures for resolving disputes arising under the Constitution. Pursuant to Article XX of the Constitution, Homer C. La Rue has been designated the Impartial Umpire to hear certain issues arising under the Constitution. Article XX, Section 2 of the Constitution reads:

Each affiliate shall respect the established collective bargaining relationship of every other affiliate. No affiliate shall organize or attempt to represent employees as to whom an established collective bargaining relationship exists with any other affiliate. For purposes of this Article, the term “established collective bargaining relationship” means any situation in which an affiliate, or any local or other subordinate body thereof, has either (a) been recognized by the employer (including any governmental agency) as the collective bargaining representative for the employees involved for a period of one year or more, or (b) been certified by the National Labor Relations Board or other federal or state agency as the collective bargaining representative for the employees.

On October 5, 2016, AFSCME filed two charges. One charge pertained to Solano County Unit 6, Health & Social Supervisors. AFSCME’s claim in that charge is that IFPTE, by filing a decertification petition, is interfering with AFSCME’s established collective bargaining relationship. In pertinent part, the charge reads:

Despite AFSCME's successful affiliation of PEU Local 1 and despite providing notice to IFPTE, IFPTE Local 21 has continued its organizing activity and just filed the attached petition seeking to decertify PEU Local 1/AFSCME in Solano County Unit 6, Health & Social Services Supervisors.

(Charge #1, Oct. 5, 2016)

The second charge filed by AFSCME, dated October 5<sup>th</sup>, pertained to Solano County Unit 16—Mid-Management. The second charge also alleges that IFPTE, Local 21 (hereinafter “Local 21”) filed a decertification petition after having been placed on notice that PEU had become an affiliate of AFSCME; and therefore, was under the protection of the non-interference provisions of Article XX. (Charge #2, Oct. 5, 2016).

AFSCME amended its charge on October 18, 2016 to allege facts that IFPTE was interfering with AFSCME’s established collective bargaining relationship. The allegation is that Local 21 had filed a decertification petition with the Contra Costa County Administrator. The petition seeks to decertify PEU in the Contra Costa County Library. (Amended Charge, Oct. 18, 2016).

The subject employees had been members of an independent union, Public Employees Union, Local 1. PEU entered an affiliation agreement with AFSCME on September 20, 2016. An affiliation vote took place on September 26, 2016. On September 27, 2016, the American Arbitration Association (“AAA”) issued a certificate of the results of the AFSCME affiliation vote in which the affiliation was approved by a majority of the members of the PEU.

Pursuant to Hearing Order No. 1 (“Case Management Order” or “CMO”), the Impartial Umpire and counsel for AFSCME and IFPTE held a telephone conference and established a schedule for the arbitration of the instant disputes. The Parties presented evidence and arguments on October 19 and 24, 2016.

AFSCME was represented by legal counsel selected by AFSCME. IFPTE was represented by legal counsel selected by IFPTE. The hearing was held in Washington, D.C. at the offices of the AFL-CIO. There was no stenographic record of the hearing. The hearing was closed on October 24, 2016. With the subsequent filing and service of written closings arguments, the record was closed on Monday, October 31, 2016.

AFSCME, at the close of the hearing and before the record was closed, requested that the Impartial Umpire issue an “award-only” on an expedited schedule. IFPTE argued that such an expedited schedule was not necessary because the decertification election would not take place until December 2016 or January 2017. The Impartial Umpire held a post-hearing conference with counsel on November 4, 2016 to consider AFSCME’s request. The Impartial Umpire set the date for the full award for November 18, 2016. Following the conference, on November 4, 2016, AFSCME renewed its request for an expedited award-only within one week from November 4, 2016. The renewed request was based on newly acquired information. The Parties were directed by Solano County, in charge of conducting the decertification election, to return the MOU for the Decertification Election agreeing to the ballot configuration which included IFPTE Local 21 by November 18, 2016. IFPTE did not dispute the assertion by AFSCME.

In response to the developments pertaining to the decertification election, the Impartial Umpire ruled on Friday, November 4, 2016 on AFSCME’s renewed request. In pertinent part, the ruling read:

Since the ballot configuration MOU for the Decertification Election is due by November 18, 2016, it is necessary that the parties know the disposition of the Article XX dispute before that due date.

I will issue the Award (only) in this matter at or before 5:00 pm (ET) on Friday, November 11, 2016. The rationale for the Award will follow in due course. The Award issued on or before November 11, 2016 shall be final and binding on the parties.

(Email: Homer C. La Rue, Friday, Nov. 4, 2016, 5:21 pm).

## **ISSUE**

Whether the decertification activities of IFPTE and its affiliates in Solano County Unit #6, in Solano County Unit #16, and in the Contra Costa Library Unit are an attempt to organize or attempt to represent employees as to whom an established collective bargaining relationship exists with another affiliate of the AFL-CIO, and if so, what is the appropriate determination pursuant to Article XX of the AFL-CIO Constitution.

## **BACKGROUND PRINCIPLES AND FACTS**

### ***A. The Criteria for a Valid Affiliation Agreement***

The Parties agree that the controlling principles for determining the validity of an affiliation agreement for the purposes of Article XX protection under the Constitution are the criteria set forth in the policy statements and the decisions pertaining to Article XX of the AFL-CIO Constitution. The pre-existing collective bargaining relationship of an independent union is protected from raiding by an affiliate when the independent union affiliates with an AFL-CIO union. First, such relationships must be the product of either a government agency certification or an employer-recognition. Second, *all* the following conditions for affiliation must be met:

[F]irst, that the independent union be chartered by, or absorbed into, a current affiliate of the AFL-CIO union; second, that the AFL-CIO union pay per capita tax to the AFL-CIO union; third, that the former independent's members have rights of membership in the AFL-CIO union; and fourth, that at the time of the affiliation the independent member union commit to pay full per capita tax to, and become permanently affiliated with, the AFL-CIO union within no more than four years. (footnote omitted).

Article XX Appeals Committee (the "Appeals Committee"), Decision on Appeal Re: *Boeing Corp.*, Case No. 01-19 at 2 (Mar. 22, 2002).

Article XX Policy Statement No. 7 establishes conditions “1-3”. Condition “4” is established in Policy Statement No. 14. Condition “5” (commonly referred to as the “Fifth Condition”) was affirmed by the Appeals Committee in *Boeing Corp.* The Committee determined that “...affiliations should satisfy the fifth condition in order to secure Article XX protection.” *Id.* at 3.<sup>1</sup>

The Committee, in *Boeing Corp.*, went on to define the fifth condition. The Committee wrote that

the affiliation process must substantially conform with the fundamental rules applicable to effectuating an affiliation in the governing documents of the independent union; technical violations or violations of peripheral rules are not determinative.<sup>2</sup> Those rules must be reasonable and not designed or unreasonably applied to frustrate the possibility of affiliation with any AFL-CIO union; and, the independent union’s interpretation and application of those rules must be reasonable, even if driven in part by the goal of accomplishing a particular affiliation.

*Id.*

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## ***B. Asserted Facts of the Instant Case Relevant to the Fifth Condition***

### **1. AFSCME’s Factual Assertions**

Under the facts of the instant case, AFSCME asserts that it has met all conditions for a valid affiliation, effective September 27, 2016. First, AFSCME issued a charter to PEU, Local #1 on September 26, 2016. Second, on September 27, 2016, AFSCME delivered to the AFL-CIO Secretary-Treasurer a check representing the first monthly per capita tax payment of the AFL-CIO for PEU, Local #1. The check was received, and there

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<sup>1</sup> The pages of the Decision are un-numbered. The page numbers have been added by the Impartial Umpire for ease of reference.

<sup>2</sup> Footnote “2” in *Boeing*, in pertinent part, reads: “...the rationale for the fifth condition described above regarding and independent union’s rules would appear to apply as well to the rules of the AFL-CIO union partner.” *Id.* at 5.

is no dispute as to the correctness of the amount. Third, the affiliation agreement provides that members of PEU, Local #1 shall have full membership rights in AFSCME, consistent with the guarantee set forth in the AFSCME Constitution. Fourth, the AFSCME/PEU affiliation agreement met the condition for affiliation by providing an express agreement for the payment of per capita taxes to AFSCME on behalf of all members of PEU, by providing for the permanency of the agreement, and by providing for a one-time option for termination of the affiliation agreement.

Six, AFSCME, asserts that the affiliation meets the Fifth Condition. The bylaws of the PEU did not require a membership vote on affiliation and did not incorporate any state law pertaining to the affiliation. The PEU Board of Directors, nonetheless, decided to conduct a membership vote. The Affiliation Agreement (the "Agreement") provided for an affiliation with AFSCME on the date that the Agreement was ratified by the membership. The Agreement provided for a ballot question, "Do you wish to move forward with the partnership and affiliation of Public Employees Union, Local #1 and AFSCME." The vote was decided by a simple majority. The Agreement provided that "[t]he balloting and verification of results shall be completed no later than October 7, 2016." (AFSCME Ex. C). The notice of the affiliation vote was mailed on September 21, 2016 with the notice of affiliation to 5742 member addresses on file with PEU Local #1. (AFSCME Ex. E). On September 26, 2016, the AAA conducted an affiliation election among the members of PEU at eight (8) polling sites in Northern California. The vote took place on September 26, 2016. (AFSCME Ex. E). On September 27, 2016, the AAA issued a certification of the results of the AFSCME Affiliation Vote as follows:

<b><u>1382</u></b>	PEU Local #1 members voted: "YES."
<b><u>872</u></b>	PEU Local #1 members voted: "NO."
<b><u>1</u></b>	Blank/Void Ballot
<b><u>127</u></b>	Provisional Envelopes not opened/counted because the voter was not on the Master List.

(AFSCME Ex. F).



AFSCME, and its affiliate PEU; therefore, contend that they are entitled to the protections of Article XX of the Constitution. According to AFSCME, any decertification petitions filed on or after September 27, 2016 or any other interference with AFSCME's established collective bargaining relationship with PEU Local #1 and its membership violates Article XX.

IFPTE, therefore, must be ordered to cease and desist from all interference with PEU, Local 1's established collective bargaining relationship as set forth in the Constitution. The IFPTE and IFPTE, Local 21 must disclaim interest in the PEU-represented bargaining units. IFPTE and IFPTE, Local 21 must withdraw the decertification petitions pertaining to Solano County Unit #6, Unit #16, and the Contra Costa County Library. Finally, IFPTE and IFPTE, Local 21 must refrain from sponsoring or encouraging any further attacks on PEU, Local 1, AFSCME and the affiliation which is the subject of instant proceedings.

## **2. IFPTE's Factual Assertions**

IFPTE contends that the PEU/AFSCME affiliation process fails to satisfy the Fifth Condition established under Article XX precedent. AFSCME and PEU conducted an undemocratic affiliation vote in violation of the Fifth Condition. According to IFPTE, there was a lack of notice of the affiliation vote and an overall lack of a fair process in the conduct of the affiliation vote. The votes of some dues-paying members of PEU were not counted.

AFSCME and PEU failed to provide reasonable voting locations for the Solano County members—choosing locations that were 30-40 minutes away from members' work sites. When members showed up at a location, other than the one to which they had been assigned, they were given provisional ballots. All those provisional ballots were not counted. IFPTE introduced at the hearing the petitions filed by members in

the three units protesting the lack of transparency of the election and their feeling that they were not given the opportunity to democratically decide whether to stay with PEU, Local 1 or to join IFPTE.

In addition, the Board of the PEU changed the date of the affiliation vote without due notice to the members of the change. Finally, IFPTE argues that the affiliation process did not substantially conform with PEU's bylaws.

IFPTE, citing the requirement that the AFL-CIO partner must adhere to its own rules during the affiliation, claimed that AFSCME failed to follow its own Bill of Rights in its constitution. The lack of notice and the change of the date of the affiliation vote constitute a violation, according to IFPTE, of AFSCME's guarantee of a fair election at all levels of the union.

Finally, the affiliation process did not, according to IFPTE, conform with PEU's bylaws. The affiliation agreement with AFSCME amended the bylaws of PEU. Per PEU's bylaws, any amendment in the bylaws requires a two-thirds vote of the members proposed at a general membership meeting. In the alternative, the amendment must be passed by a two-thirds vote in the affiliation process. The vote in favor of the affiliation agreement was 61%, and the amendment was not proposed at a general membership meeting.

In sum, IFPTE, Local 21 is entitled to organize Unit #6, Unit #16 and the Contra Costa County Library employees without running afoul of the Constitution. Local 21's participation in the decertification process in Solano County and in the Contra Costa County Library is proper under Article XX of the Constitution.

## **ANALYSIS AND DECISION**

(To Be Provided)

## **DETERMINATION**

Having considered all the evidence introduced and the arguments made by the Parties, the Impartial Umpire makes the following determination pursuant to Article XX, Section 10 of the AFL-CIO Constitution:

1. AFSCME's affiliation of the formerly independent PEU, Local #1 causes the PEU, Local #1 to meet the definition of a local or other subordinate body of AFSCME, and PEU, Local #1, AFSCME has an established collective bargaining relationship with Solana County and with the Contra Costa Library.
2. PEU, Local #1, AFSCME is protected under Article XX, Section 2 of the Constitution from raiding by IFPTE, IFPTE, Local 21, or any other AFL-CIO affiliate.
3. The decertification activities of IFPTE and its affiliate in Solano County Unit #6, in Solano County Unit #16, and in the Contra Costa Library Unit are an attempt to organize or attempt to represent employees as to whom an established collective bargaining relationship exists between PEU Local #1, AFSCME, an affiliate of the AFL-CIO, and Solana County and the Contra Costa Library.
4. IFPTE is in violation of Article XX of the AFL-CIO Constitution.

Dated: November 7, 2016  
Columbia, MD

*Homer C. La Rue*

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Homer C. La Rue  
Impartial Umpire  
AFL-CIO Constitution, Article XX

Art. XX Case No. 16-09  
Ump. Case No. 161005-SOLA  
Expedited Award  
November 7, 2016

### **AFFIRMATION**

I, Homer C. La Rue, being admitted to practice in the courts of New York, Maryland, and the District of Columbia, understand the penalties for perjury, and I affirm that this document is my Award, and that the signature affixed above is mine.

Dated: November 7, 2016  
Columbia, Maryland

*Homer C. La Rue*

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Homer C. La Rue  
IMPARTIAL UMPIRE  
AFL-CIO Constitution, Article XX

Art. XX Case No. 16-09  
Ump. Case No. 161005-SOLA  
Expedited Award  
November 7, 2016

**TO:**

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