

Report of the Appeals Committee to the 74th CWA Convention

CWA

**Communications Workers of America
April 22-23, 2013
Pittsburgh, Pennsylvania**



INTRODUCTION

The Appeals Committee convened April 18 through April 21, 2013 at the Omni William Penn Hotel in Pittsburgh, Pennsylvania, for the purpose of receiving and disposing of appeals in accordance with the CWA Constitution and the Internal Appeals Procedures of the Union, as established by prior Conventions and the Executive Board.

The Committee was available to meet with interested parties on April 20 through April 21 between the hours of 2:00 pm through 6:00 pm. Outside of these hours, the Committee was available by appointment.

I would like to thank the Committee members – Erin Hall, President, CWA Local 6316, Chair; Tom Benedetto, Executive Vice President, CWA Local 1104; Debra Brown, President, CWA Local 3706; Todd Leyda, President, CWA Local 4302; and Richard Daszkowski, President, NABET-CWA Local 59057 for their hard work and the time they devoted to these appeals. Also, the Committee thanks Gail Evans, Administrative Director, CWA District 2-13, for her support and assistance.

APPEAL 1

On July 5, 2012, Debra Bracey, former Treasurer of CWA Local 6215, appealed the CWA Executive Board's decision to uphold the Local 6215 officer elections.

CWA Local 6215 conducted local officer elections on October 24, 2011. Debra Bracey was a candidate for the office of Treasurer. She did not prevail in that election.

On October 27, 2011, Ms. Bracey filed a challenge to the Election Committee citing numerous violations.

After careful review the Election Committee determined that the challenge would have no effect on the outcome in the race for the officer's position of Treasurer.

Ms. Bracey exercised her right to appeal the 2011 election results to District 6 Vice President Claude Cummings. In Ms. Bracey's appeal she cited the same violations.

On February 16, 2012, Vice President Cummings answered the appeal responding to each violation and concluded to uphold the decision of the Election Committee and the membership of Local 6215 and deny the appeal.

Ms. Bracey appealed to President Cohen on April 12, 2012. President Cohen determined "that no new issues or arguments were presented, and no explanations of why you believe Vice President Cummings' decision is erroneous. In fact, the appeals filed with me are identical. I see no reason to repeat Vice President Cummings' response, accordingly I uphold the decision of Vice President Cummings and deny the appeal."

Ms. Bracey appealed to the Executive Board.

Having reviewed the decision of Vice President Cummings and President Cohen and the file in this matter, the Executive Board found no reason to disturb the decision of President Cohen, and therefore, denied the appeal.

In addition, the file in this matter contains documents indicating that one or more of the unsuccessful candidates for office filed challenges with the Department of Labor. While the DOL did find problems with three (3) Chief Steward elections, which were re-run, the DOL did not find any issues that may have affected the outcome of any of the other elections.

After a thorough review of this case, the Appeals Committee recommends that the decision of the Executive Board be upheld and the appeal of Debra Bracey be denied.

APPEAL 2

On July 4, 2012, Eugenia Humphries, member of Local 6215, appealed the CWA Executive Board's decision to uphold the Local 6215 officer elections.

CWA Local 6215 conducted Local officer elections on October 24, 2011, Ms. Humphries was a candidate for the office of Executive Vice President. She did not prevail in that election.

On October 31, 2011, Ms. Humphries filed a challenge to the Election Committee, citing numerous violations.

After thorough and careful review, the Election Committee concluded that the challenge would have no effect on the outcome of the race for the officer's position of Executive Vice President.

Ms. Humphries appealed the 2011 election results to District 6 Vice President Claude Cummings on December 29, 2011, citing the same violations. Vice President Cummings answered the appeal responding to each cited violation and concluding to uphold the decision of the Election Committee and the membership of Local 6215 and deny the appeal.

Ms. Humphries appealed to President Cohen in which he determined that "... no new issues or arguments were presented, and no explanations of why you believe Vice President Cummings' decision is erroneous. In fact, the appeal filed with me is identical. I see no reason to repeat Vice President Cummings' response.

Accordingly, I uphold the decision of Vice President Cummings and deny the appeal." Ms. Humphries appealed President Cohen's decision to the Executive Board.

Having reviewed the decision of Vice President Cummings and President Cohen and the file in this matter, the Executive Board found no reason to disturb the decision of President Cohen and, therefore, the Executive Board denied the appeal.

In addition, the file in this matter contains documents indicating that one or more of the unsuccessful candidates for office filed challenges with the Department of Labor. While the Department of Labor did find problems with the three chief steward elections, which were rerun, the Department of Labor did not find any issues that may have affected the outcome of any of the other elections.

After a thorough review of this case, the Appeals Committee recommends that the decision of the Executive Board be upheld and the appeal of Eugenia Humphries be denied.

APPEAL 3

NABET-CWA Local 51011 (“Local 11”) member Charles Giles has appealed the CWA Executive Board’s decision upholding President Cohen’s decision regarding his challenge to the NABET-CWA Regional Vice President election.

NABET-CWA conducted its election for the position of Regional Vice President for NABET Region 1 between May 4 and June 1, 2012. The results of the election for this position were as follows:

Rich Gelber	181
Ed McEwan	157
Charles Giles	89

The election was certified on June 1, 2012, and no candidate received a majority of votes cast. Therefore, a run-off election between Rich Gelber and Ed McEwan was required.

Mr. Giles filed an election challenge with NABET-CWA President Jim Joyce on June 8, 2012, who referred it to the Sector Executive Council (“SEC”) Regional Vice President Elections Committee (“Elections Committee”). After review, the Elections Committee recommended that the challenge be denied, and on June 18, 2012 the NABET SEC adopted the recommendations of the Elections Committee. Mr. Giles appealed the SEC decision to President Cohen and thereafter to the CWA Executive Board, both upholding the decision of the SEC.

Mr. Giles did not provide the Appeals Committee with any new or additional information to supplement the record provided to the Executive Board, and did not provide us with any explanation as to why he was appealing the Board’s decision.

The extensive record indicates that Mr. Giles’ challenge to the Election Committee and all of his subsequent appeals raised the same issues.

The first issue concerns alleged ballot return envelope defect problems. Of the approximately 4,600 ballots mailed out to both Region 1 and 5, Mr. Giles is the only one to complain to the Sector about the alleged problem. In addition, Mr. Giles did not provide any evidence to support his claims, nor did he offer any evidence of an effect on the outcome of the election. We agree with the Executive Board that the results of an election may not be overturned based on mere speculation.

The second issue is Mr. Giles’ claim that Ed McEwan and Rich Gelber’s biography sent with the ballots were defamatory and untruthful. In accordance with Department of Labor regulations, the Union can not and does not censor campaign literature submitted to be sent out with the ballots. Notwithstanding the DOL prohibition on censorship, the Executive Board reviewed the biographies at issue and found nothing “defamatory” in either of them, and that they were representative of typical campaign pieces. The Executive Board found no violation of the Sector Rules, the CWA Constitution, or federal laws governing union elections. We agree with the Executive Board’s findings.

The third issue raised by Mr. Giles is whether dues paying daily hire members did not receive ballots due to the applicable Local not reporting them to the Sector in a timely fashion. President Cohen caused this issue to be investigated, and found that there were no daily hire members in this category out of Local 11. There were 34 individuals out of Local 16 in this category; however, even if all 34 votes were attributed to Mr. Giles, he still would not have been in the run-off election. We agree with the Executive Board that the 34 votes would not have affected the outcome of the election.

In conclusion, we noted that Mr. Giles contacted the Department of Labor with respect to the issues raised in his original challenge, but there is no record of any informal or formal investigation being initiated or completed by the DOL.

After a thorough review of the record, we find that there is no evidence to support a conclusion that a new election for Regional Vice President for NABET-CWA Region 1 is warranted and agree with the decision of the Executive Board.

Therefore, the Appeals Committee recommends that the decision of the Executive Board be upheld and the appeal of Charles Giles be denied.

APPEAL 4

On March 30, 2012, John Hansen, former President of Local 1171, appealed the Executive Board's decision concerning the recently conducted election for President in CWA Local 1171. The election was conducted on November 22, 2011. The tentative results for the office of President were as follows:

Thomas Gunning	180
John Hansen	151

Mr. Hansen challenges the conduct of the election. The challenge was based on the allegation that ballots were not mailed to all members, envelopes were mishandled, and the tally of the voters was not correct.

The Election Committee's decision was to overturn the results of the election for the position of President, based upon "difference in the number of members listed on the CWA membership list and the US Airways dues paying list." Mr. Gunning, winner in the election, appealed the decision of the Election Committee. The vote was tied two-to-two but later found that one member of the Election Committee was ineligible to be on the Election Committee because he was a candidate. Thus, Mr. Gunning was certified as President.

Mr. Hansen maintains that the September 2011 membership list issued by the Membership Dues Department and the September 2011 dues paying list issued by US Airways were inconsistent. Mr. Hansen states he discovered this during and after the election.

It is the Local's responsibility to keep its membership list up-to-date regardless of delays in the Membership Dues Department. Any inconsistencies in the two lists should have been resolved prior to the election. The Executive Board agreed with Vice President Shelton who stated, "the incumbents cannot direct which list to use then cry foul when they lose."

Therefore, after a thorough review of the file, the Appeals Committee recommends that the decision of the Executive Board be upheld and the appeal of John Hansen, former President, be denied.

APPEAL 5

On November 21, 2012, NABET-CWA Local 51011 (Local 11) member Charles Giles appealed the Executive Board's decision regarding his "Challenge/Appeal and Complaint" against NABET-CWA Local 11.

Local 11 conducted a special election to fill a vacancy in the office of Vice President from July 19 through August 30, 2011. The election notice sent out on July 7, 2011, indicated that the term of office would "run until November 2014." Mr. Giles was the winning candidate in that election.

On September 7, 2011 NABET-CWA Local 11's attorney, Steve Star, advised Local 11 that the announced term of office violated the LMRDA (Labor Management Reporting and Disclosure Act) because it extended beyond three years and recommended the Local amend the Bylaws to state, that "the term of office for the Special Election continue through the current term of office for the Vice President position, and that the position of Vice President remain on the ballot for the next elections, scheduled for November 2011." On September 7, 2011, the Local Executive Board adopted the recommendations of attorney Starr.

Mr. Giles sent emails to Local 11 President Cappo on September 25 and October 3, 2011, which indicate he was aware of the action taken by the Local 11 Executive Board. By letter dated October 21, 2011, and received by Local 11 on October 28, 2011, Mr. Giles filed a "challenge to Local 11 for changing the Vice President's term of office from 3 years to 3 months." This formal challenge was addressed by the Local 11 Executive Board at its November 2, 2011 meeting. Mr. Giles was present and an active participant in the open discussion. The Board decided to take no action on Mr. Giles challenge to the election. Any appeal of that decision should have been made to the NABET SEC within 30 days.

Mr. Giles appeal dated November 27, 2011, mailed on December 5, 2011, was received by the NABET Sector office on December 12, 2011. The NABET SEC ruled that Giles' appeal was untimely and notified him of that decision by letter dated January 20, 2012. Giles appealed the NABET SEC decision to President Cohen.

By letter dated March 13, 2012, President Cohen advised Mr. Giles that CWA would need additional time to respond to his appeal and subsequently, advised him the matter was returned to the SEC for further consideration. The SEC then appointed a Committee to conduct a review of Mr. Giles appeal. A report issued by this Committee on June 7, 2012 recommended that Mr. Giles' appeal be found to be untimely, reaffirming the original decision. The SEC adopted the Committee's report and denied Giles' appeal as untimely.

On August 31, 2012, President Cohen upheld the decision of the SEC, noting that Mr. Giles had been on notice since at least September 25, 2011 that some action had been taken by the Local 11 Executive Board regarding the term of office for the special election for the Local Vice President position. Mr. Giles was also present and participated in the Local 11 Executive Board meeting on November 2, 2011. During that meeting the Local Executive Board's minutes reflect that a consensus was reached to take no further action concerning the challenge, in effect

denying Giles' appeal on November 2, 2011. On December 12, 2011 the SEC received a registered letter, US Postal date stamp December 5, 2011 appealing the Local's decision.

Subsequently, the Executive Board upheld President Cohen's decision agreeing the appeal is untimely. Timeliness is the only issue in this appeal. The Appeals Committee agrees that the appeal filed on December 5, 2011 was untimely.

Therefore, after a thorough review of the file, the Appeals Committee recommends that the decision of the Executive Board be upheld and the appeal of member Charles Giles be denied.

APPEAL 6

Judy Peace, Executive Vice President of CWA Local 6143, appealed the CWA Executive Board's decision upholding the recommendation of Prosecutor Donna Bentley in the matter of Appellant's charges against George Luna, President of Local 6143 and Joann Vasquez, Secretary-Treasurer of Local 6143.

Ms. Peace's appeal is narrowly focused on a claim that Prosecutor Bentley failed to address that portion of Appellant's charge claiming that both Mr. Luna and Ms. Vasquez violated the CWA Policy on Mutual Respect, also titled the CWA Policy on Discrimination, to the extent that the conduct complained of rose to the level necessary to meet the two tests required by Article XIX (1)(i) to warrant proceeding to trial.

After a complete and thorough review of the documentary evidence available to the Committee, including but not limited to, written witness statements provided by Ms. Peace, Prosecutor Bentley's Investigative Report, and the Executive Board's Decision, we have determined that Prosecutor Bentley and the Executive Board both concluded that the CWA Policy on Discrimination was not violated by Mr. Luna or Ms. Vasquez. We concur.

The essence of the Policy is stated in numbered paragraph three (3) which states in part:

“... the Union shall [not] unlawfully discriminate against a person on account of race, color, gender, religion, age, marital/parental status, political beliefs, sexual orientation, gender identity or expression, national origin, or because a person is handicapped, a disabled veteran, or a veteran of the military service.”

In her Investigative Report, Prosecutor Bentley concluded, in part:

“The E-board meeting on July 24, 2012, and the Chief Steward meeting on August 2, 2012, resulted in a number of **personal attacks** that started with Ms. Peace's suggestion about attending the Week-long Leadership School the week of September 23, 2012” (emphasis added), and;

“All three [Luna, Vasquez and Peace] were **willing participants** in these inappropriate discussions, with the **‘first shot’ fired by Peace**”(emphasis added).

The Executive Board's Decision states in part:

“Prosecutor Bentley detailed a series of verbal altercations between Peace, Vasquez, and Luna which consisted of each of them accusing the other of sexual misconduct and using profane and vulgar language. The Board is loathe to describe the name-calling and accusations as they are both vulgar and inappropriate....”, and;

“While the incidents did reflect badly on all of the individuals making the inappropriate comments, the Executive Board believes that these actions did not bring the Local into disrepute.”

The Executive Board Decision also concludes that the CWA Policy on Discrimination was not violated by Luna and Vasquez.

We agree with Prosecutor Bentley's and the Executive Board's conclusion that the Policy on Discrimination was not violated based on the fact that the evidence does not support Ms. Peace's claim that she was unlawfully discriminated against by Luna and/or Vasquez on account of one of the reasons stated in numbered paragraph three (3) of the Policy. Even if the Board had found that the Policy was violated, proceeding to trial would still not be warranted as there is no evidence that the actions of Luna and Vasquez brought the Local into disrepute, as required by Article XIX Section (1)(i).

Finally, based on the conduct Ms. Peace admitted to engaging in, which is virtually identical in nature to the conduct she complains of in the charges she filed against Mr. Luna and Ms. Vasquez, we find it disingenuous and an abuse of process for Ms. Peace to file charges, much less her appeal, considering her "unclean hands" in this matter.

For the foregoing reasons, we concur with the Executive Board's decision that the appeal of Executive Vice President Judy Peace be denied, and recommend that the decision of the Executive Board be upheld and the appeal of Judy Peace be denied.

APPEAL 7

Former Local 6143 Vice President Sean McKenna has appealed the Executive Board's decision to uphold the Trial Court's decision to suspend Mr. McKenna from membership.

Sean McKenna was Vice President of Local 6143. He was brought up on charges of violation of the CWA Constitution and CWA Local 6143 Bylaws:

Local 6143 Bylaws, Article 6(a), working under the direction of the President; and CWA Constitution, Article 19(1)(i), for such other offenses, equally serious, which tend to bring the union or local into disrepute.

These charges were filed after a series of incidents between May 10, 2010, and September 27, 2010. Mr. McKenna had been warned on two different occasions by his President Ralph Cortez in regard to violent, threatening and hostile actions, and abusive language to officers and office staff. After not heeding the warnings and directives of President Cortez, Mr. McKenna was suspended from his position as Vice President and directed to return to work at his job with AT&T. Upon his return to work, Mr. McKenna was overheard telling members that the Executive Board of Local 6143 was stealing money from the Local, thus putting the Local's reputation in jeopardy.

A Trial Court was held on June 23, June 24, and July 22, 2011. The Trial Court found Mr. McKenna guilty on all charges and suspended him from membership for a period of ten years. Mr. McKenna appealed that decision.

Since Local 6143 had been placed in temporary administration, that appeal was to the temporary administrator. Temporary Administrator Mark Franken issued his decision upholding the decision of the Trial Court. Mr. McKenna further appealed his decision to the CWA Executive Board based on various procedural grounds and maintains that he was denied due process during the trial. The Executive Board has also upheld that decision, however, reducing the suspension to seven years.

After careful review of the various claims made by Mr. McKenna, the Appeals Committee recommends that the decision of the Executive Board be upheld and the appeal of Sean McKenna be denied.