

**Report of the
Appeals Committee
to the
79th Convention**

CWA

**Communications Workers of America
July 10-12, 2023**

INTRODUCTION

The Appeals Committee convened July 6 to July 9, 2023, at the Marriott Grand St. Louis in St. Louis, Missouri, 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 July 8 and July 9, 2023, between the hours of 2:00 p.m. and 6:00 p.m. Outside of these hours, the Committee was available by appointment.

We thank the Committee members – Tom Antonio, President, CWA Local 1122, Chair; Brandon Simmons, President, CWA Local 2105; Joe Snyder, President, CWA Local 4302; Lisa Markegard, President, CWA Local 7200; and Cindy Neumeyer, Executive Vice President, CWA Local 13500, for their hard work and the time they devoted to these appeals.

Also, the Committee thanks John Dempsey, CWA District 1 Area Director, for his support and assistance.

APPEAL 1

On December 6, 2022, CWA Local 4400 President Pete Eversole appealed the decision of the CWA Executive Board not to arbitrate the Local's grievance. President Eversole alleges member John Kappen was bypassed for a promotion in January 2021 in violation of the collective bargaining agreement ("CBA") with Cincinnati Bell Telephone Company. President Eversole's appeal is timely and properly before this Convention.

Member Kappen is currently employed as a Universal Technician with a Net Credit Service Date of April 30, 2012. At the time his grievance was filed on or about February 1, 2021, Member Kappen was employed as a Premise Technician, and he was subsequently promoted in January 2022. President Eversole argues seniority language in the CBA, specifically Article D-13.01, supported Member Kappen being promoted in January 2021.

Article D-13.01 provides only that seniority “has application” in promotions, and does not describe the precise nature or extent of how seniority applies to promotions. There is nothing in the CBA requiring the Company to promote the most senior employee. The evidence in the file shows the Company did not award Member Kappen the promotion in January 2021 based on his failure to meet two performance metrics. In 2017, when the Universal Technician title was established, the parties agreed that the candidates for promotion to the new title would need to meet performance objectives.

After thorough review of this case, the Appeals Committee recommends that the decision of the CWA Executive Board be upheld and the appeal of President Eversole be denied.

APPEAL 2

On February 9, 2022, CWA Local 7777 Executive Vice President Lori Griffith appealed the CWA Executive Board’s decision upholding the recommendation of Prosecutor Paul Castaneda not to prosecute charges she filed against Local President Debbie Medina and Local Secretary-Treasurer Dale Feller. No specific provisions of either the CWA Constitution or the Local 7777 Bylaws were cited in the charges. Executive Vice President Griffith’s appeal is timely and properly before this Convention.

President Medina was laid off by Lumen in 2021. Thereafter, she continued to receive the same hourly rate in lost wages from the Local that she had been paid by Lumen. District 7 Vice President Brenda Roberts became aware of complaints regarding President Medina’s pay and consulted with CWA Headquarters. As a result, a guidance memorandum was provided to President Medina that substantiated her pay was appropriate given that the membership had approved the Local’s budget for that Fiscal Year beginning October 1, 2020, and the budget provided for such pay. Beginning in the following Fiscal Year, because there was no approved budget to pay officers at that time, President Medina began paying herself \$15 per hour based on a motion adopted by the Local’s Executive Board in 2018 concerning work performed for the Local by retirees. Prosecutor Castaneda determined that while President Medina did violate the Local’s pay policy, prosecution would not be appropriate because the violation was not willful and President Medina repaid the Local in full.

Prosecutor Castaneda determined that Secretary-Treasurer Feller did not violate Local policies or rules when he attended a meeting of the Colorado State AFL-CIO because the Local had budgeted for conference attendance and he had paid for his own personal expenses. Furthermore, he had not withheld financial documents related to the 2021-2022 Fiscal Year budget and all materials needed to create and approve that budget had been presented.

After a thorough review of this case, the Appeals Committee recommends that the decision of the CWA Executive Board be upheld and the appeal of Executive Vice President Griffith be denied.

APPEAL 3

On September 28, 2022, CWA Local 4527 Vice President Marya McClelland appealed the decision of the CWA Executive Board not to arbitrate the Local's grievance regarding member Dana Chubarov. Vice President McClelland's appeal is timely and properly before this Convention.

Vice President McClelland alleges Member Chubarov was intentionally passed over by the Jefferson County Engineering Department for two separate overtime call-out assignments on February 27, 2022, in violation of the collective bargaining agreement ("CBA"). The CBA establishes a roster for assigning overtime on a rotational basis that was not adhered to in this instance. However, the CBA additionally states, "Should the Employer determine that overtime is necessary, overtime work shall be distributed as equally as practicable among qualified employees in the same garage." The remedy the Local is seeking is for Member Chubarov to work one hour and forty two minutes, and receive eight hours of overtime pay, which is the amount of time worked and pay received by the individual who was called-out on February 27, 2022. Based on the remedy sought by the Local, the language in the CBA, and the lack of evidence supporting the Local's position that the Employer's actions were intentional, especially in light of the practicable standard in the CBA, the Union would be extremely unlikely to convince an arbitrator to award the remedy the Local is seeking.

After a thorough review of this case, the Appeals Committee recommends that the decision of the CWA Executive Board be upheld and the appeal of Vice President McClelland be denied.

APPEAL 4

On June 22, 2022, Member Jamie McDole appealed the decision of the CWA Executive Board to uphold Prosecutor Lynn Johnson's recommendation not to prosecute charges filed against the UPTE-CWA Local 9119 Executive Board. Although no specific provisions of either the CWA Constitution or the UPTE Constitution were cited in her charges, Member McDole alleges violations of Article XIX, Section 1(b), 1(c), and 1(d) of the CWA Constitution. This appeal is timely and properly before this Convention.

Member McDole's charges are primarily related to their handling of the employment of Paul Harris, the Local's former Systemwide Director. Mr. Harris had a written employment agreement with the Local covering the timeframe between June 1, 2021, and May 31, 2022, that stated he "shall not be terminated during the term of this Agreement other than for gross misconduct." Member McDole charges that the Local Executive Board violated UPTE-CWA Local 9119 personnel policy and placed the Local at risk of litigation when he was terminated in violation of his employment agreement. Member McDole's argument is not factual. Mr. Harris voluntarily entered into a Mutual Separation Agreement and Release, which provided him paid leave for approximately three months and ended his employment at the conclusion of his leave.

Member McDole also charges the Local officers did not meet their fiduciary responsibilities when they replaced Mr. Harris without specific authorization from the Executive Board. Prosecutor Johnson reasonably determined that the Local officers did not violate their fiduciary responsibilities because the Local's budget had an approved allocation for Mr. Harris' position when he was replaced. Additionally, Prosecutor Johnson determined they did not violate their fiduciary responsibilities when they agreed to pay Mr. Harris beyond his employment.

Mr. Harris' employment agreement, entered into by Member McDole when she was the Local President, included a penalty of three months' pay and benefits in the event the Local provided late notice to Mr. Harris concerning its intentions to extend, or not to extend, his employment and he was required to remain available to Local officers and staff during his leave.

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