

**Report of the
Appeals Committee
to the
2024 Presidents' Meeting**

CWA

**Communications Workers of America
June 24, 2024**

INTRODUCTION

The Appeals Committee convened from June 21 to June 23, 2024, for the purpose of receiving and disposing of appeals in accordance with the CWA Constitution and the Union's Internal Appeals Procedures, as established by prior Conventions and the Executive Board.

The Committee was available to meet with interested parties on June 22 and 23, 2024, from 2:00 PM to 6:00 PM. The Committee was also available by appointment between June 21 and June 24, 2024, outside of these hours.

I would like to 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, President, CWA Local 13500, for their hard work and the time they devoted to these appeals.

The Committee also thanks Mike Handley, CWA District 4 Administrative Director, for his support and assistance.

APPEAL 1

On March 28, 2024, former Local 9586 Executive Vice President Rene Lozoya appealed the decision of the CWA Executive Board upholding Prosecutor Adrian Acosta's recommendation that charges against Local President Rick Ibarra and Secretary-Treasurer David Contreras lacked probable cause to proceed to a National Trial Panel. Member Lozoya's appeal is timely and properly before the 2024 Presidents' Meeting.

On August 4, 2023, Member Lozoya submitted charges against Local President Ibarra and Secretary-Treasurer Contreras alleging that their acceptance of a Local Trial Court verdict against Member Lozoya constituted willful misconduct in violation of the CWA Constitution.

Importantly, Member Lozoya chose not to appeal the Local Trial Court's verdict against him to the membership of Local 9586, and his charges against Local President Ibarra and Secretary-Treasurer Contreras were received by Secretary-Treasurer Ameenah Salaam before the expiration of his appeal rights concerning the Local Trial Court's decision. Secretary-Treasurer Salaam sought clarification from Member Lozoya concerning whether his intent was to appeal the decision of the Local Trial Court under Article XX, Section 4(a), or to pursue charges against Local President Ibarra and Secretary-Treasurer Contreras. Member Lozoya responded, "My intent is not to appeal the decision of the trial," and he further explained his allegations of willful misconduct related to the Local Trial Court.

Member Lozoya made numerous arguments to the effect that the Local trial proceedings were unfair, and Prosecutor Acosta investigated and addressed each of these arguments. Prosecutor Acosta found that the Local's trial was consistent with the requirements of the CWA Constitution and did not offend any other applicable rules or policies.

The Appeals Committee believes that it is important to require parties to avail themselves of the established appeals procedures in the CWA Constitution. Through his charges against Local President Ibarra and Secretary-Treasurer Contreras, Member Lozoya is attempting to reopen the Local trial and to set aside the Local Trial Court's verdict. Collateral challenges to trial court decisions through the filing of internal charges must be discouraged, particularly where a charging party has not exhausted their appeals rights as provided by the Union's Constitution.

For these reasons, the Appeals Committee recommends that the decision of the Executive Board be upheld and the appeal of Member Lozoya be denied.

APPEAL 2

On October 25, 2023, former Local 4009 President Tina Culver appealed the CWA Executive Board's decision not to arbitrate a grievance on behalf of member Merl Nelson. The Local's appeal is timely and properly before the 2024 Presidents' Meeting.

Member Nelson is employed by AT&T as a Premise Technician with a Net Credited Service Date of March 27, 2015. On or about December 27, 2022, due to an error on behalf of the Company's staffing department, Member Nelson was mistakenly awarded a promotion to the Maintenance Administrator title over many more senior qualified employees. Current Local 4009 President Jim Simons inquired with the Company about the job placement after receiving a question from a member. After Member Nelson had spent about one month in the title, the error was corrected. As a result of Local President Simons' inquiry, the most senior qualified applicant was awarded the position, and Member Nelson was returned to the Premise Technician title. The member who was awarded the Maintenance Administrator position had a Net Credited Service date in October of 1997.

Former Local President Culver argued that the Company violated the Collective Bargaining Agreement when it awarded a promotion to the most senior qualified employee and returned Member Nelson, a more junior employee who had mistakenly been awarded the promotion, to his previous job title. Through former President Culver's appeal to the CWA Executive Board, the Local contended that returning Member Nelson to the Premise Technician title violated Appendix A11 of the CBA because it is not one of the two scenarios in which the Company is permitted to return an employee to a title they previously occupied. The Local had taken the position that under Appendix A11, the Company may only retreat employees to a

former position (1) when a promoted employee fails to satisfactorily complete training or perform duties within the first six months of being promoted, or (2) when a promoted employee voluntarily retreats to their former position.

Current Local 4009 President Simons acknowledged these contractual arguments lack merit before the Committee, and argued, without a basis in the CBA, that Member Nelson should receive preferential treatment as a result of training he never should have received. Local President Simons also stated that his desired remedy would involve the Union receiving access to the staffing system before an offer is made to the selected applicant.

Neither the arguments raised by former Local President Culver nor the arguments raised by current Local President Simons would persuade an arbitrator that the Company violated the CBA, and both arguments would work against all of the members covered by the contract. Whichever argument it pursued, the burden of proof would be on the Union to establish that the Company violated the CBA. There is no language in the CBA to support former Local President Culver's argument that the Company is restricted to retreating employees in the manner the Local argued through the Executive Board step of the appeal. Local President Simons, for his part, would have the Union take a contract interpretation case to arbitration when his arguments lack a basis in the CBA, are refuted by the parties' bargaining history, and are rooted only in fairness and equity.

As an initial matter, an arbitrator would likely conclude that the Local's inquiry brought the Company into compliance with the CBA when the mistake was corrected and the promotion was awarded to the most senior qualified applicant. Even in the unlikely event the Union were to prevail at arbitration, the remedy an arbitrator would be most likely to award is the action that ultimately resulted here without resorting to arbitration. Importantly, the staffing system access currently requested by Local President Simons, which is a departure from the requests of the Local through its appeals to the CWA Executive Board, is not a remedy an arbitrator would have the authority to award. The remedy requested by Local President Simons has been sought by the Union with regularity and would require new CBA language. There is virtually no chance that an arbitrator would interpret the CBA to entitle the Union to pre-offer staffing system access when both the CBA language and the parties' bargaining history refute that interpretation.

The arguments advanced by the Local, whether by former Local President Culver or current Local President Simons, may jeopardize the vital role that seniority plays for thousands of members covered by the CBA. These arguments, even if successful, might limit the ability of the Union to challenge and force the correction of the Company's mistakes in the long term. Local 4009 prevailing at arbitration would not even correct the mistake in this instance, because within the membership of the Local, there were approximately 14 more senior qualified applicants bypassed for the promotion and the related training. The Local's case, as advanced by former President Culver, creates a reasonable possibility that an arbitrator would determine that

the Company is not restricted to returning employees to previous titles in the manner the Local argued. The Local's case, as advanced by President Simons, has virtually no likelihood of success because the Union would be very unlikely to prevail in a contract interpretation case when its arguments are undermined by both the language of the CBA and the parties' bargaining history.

Most importantly, there is a reasonable likelihood that arbitrating this case could result in a decision that undermines the role of seniority in job placement decisions. Ultimately, in this case the most senior qualified applicant received the promotion, consistent with the requirements of the CBA, and the Union should not argue against that outcome. The Appeals Committee believes that seniority is at the core of this Union and its representation of its members, and decisions which jeopardize seniority should not be taken lightly.

For these reasons, the Appeals Committee recommends that the Executive Board's decision be affirmed and the appeal of former Local 4009 President Tina Culver on behalf of Member Merl Nelson be denied.