

**Report of the
Appeals Committee
to the
2020
Presidents' Meeting**



Communications Workers of America

June 5, 2020

INTRODUCTION

The Appeals Committee convened May 21, 2020, via zoom, 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 June 3, 2020 and June 4, 2020, between the hours of 2:00 pm through 6:00 pm by appointment. Also, outside of these hours, the Committee was available to meet with appellants by appointment.

We thank the committee members – James Ryan, President, CWA Local 13101- Chair; David Weidlich Jr., President, CWA Local 1298; Rodney Hughes, President, CWA Local 3607; Kimberly Humphrey, President, CWA Local 6450; and Kim Liska, Secretary-Treasurer, CWA Local 4302 for their hard work and the time they devoted to these appeals. Also, the Committee thanks John Dempsey, Staff Representative, CWA District 1 for his support and assistance.

APPEAL 1

On March 13, 2020, CWA Local 4202 President Holly Sorey appealed the CWA Executive Board's decision not to arbitrate the Local's grievance alleging that AT&T Mobility assigned bargaining unit work to non-bargaining unit employees. This appeal is timely and properly before the 2020 Presidents' Meeting. The issue presented in this case is identical to Appeal number 2.

On April 21, 2015, AT&T Mobility bargaining unit member Richard Del Boccio, an Information Systems Technician ("IST"), filed a grievance alleging that management performed bargaining unit work when a manager holding the title of Senior Specialist – Client Tech Administrator ("CTA") imaged and set up a retail store manager's new computer. After the grievance was filed, Local 4202 broadened the scope of its allegation to include any computer technology work performed by CTAs in retail stores.

The evidence shows that the work at issue, whether the single incident of setting up a manager's computer or all the computer technology work performed in AT&T Mobility retail stores, was shared work and not exclusively performed by the bargaining unit. President Sorey informed the Appeals Committee that management

employees had been performing this work since at least 2005. The Company's job posting for CTA, dated September 2013, includes the task of "configuration for desktop" as well as general computer technology functions in retail stores, showing that the Company was openly assigning this work to the management title.

President Sorey argued that by assigning computer technology work to CTAs in addition to ISTs, the Company violated Letter of Agreement 5 ("LOA 5") in the 2013 Orange contract and the 2009 arbitration award issued by Arbitrator Ralph Berger. As pointed out by the Executive Board, LOA 5 applies to contractors, not managers, performing bargaining unit work. This grievance does not address contractors. Therefore, LOA 5 is inapplicable.

The Berger Award does not assist the Union's case. The Union prevailed before Arbitrator Berger in the prior case because it could show that the work at issue in that grievance had been exclusively performed by the bargaining unit. Additionally, the Union filed a grievance as soon as some part of that work was assigned to the management title. In this case, the Local does not contest that management has been openly performing the computer technology work in retail stores for at least ten years before the 2015 grievance was filed. Work traditionally performed by managers as well as bargaining unit employees is not protected by the recognition clause. For these reasons, the Union cannot prevail in arbitration.

Regarding allegations of contracting in 2019, the Executive Board properly determined that such allegations cannot be appended to the grievance here but must be addressed through a new grievance.

The Union has no basis upon which to prevail in arbitration. For these reasons, the Appeals Committee recommends that the Executive Board's decision be affirmed and the appeal of President Sorey be denied.

APPEAL 2

On March 13, 2020, CWA Local 4202 President Holly Sorey appealed the CWA Executive Board's decision not to arbitrate the Local's grievance alleging that AT&T Mobility assigned bargaining unit work to non-bargaining unit employees. This appeal is timely and properly before the 2020 Presidents' Meeting. The issue presented in this case is identical to Appeal number 1.

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management performed bargaining unit work when a manager holding the title of Senior Specialist – Client Tech Administrator (“CTA”) imaged and set up a retail store manager’s new computer. After the grievance was filed, Local 4202 broadened the scope of its allegation to include any computer technology work performed by CTAs in retail stores.

The evidence shows that the work at issue, whether the single incident of setting up a manager’s computer or all the computer technology work performed in AT&T Mobility retail stores, was shared work and not exclusively performed by the bargaining unit. President Sorey informed the Appeals Committee that management employees had been performing this work since at least 2005. The Company’s job posting for CTA, dated September 2013, includes the task of “configuration for desktop” as well as general computer technology functions in retail stores, showing that the Company was openly assigning this work to the management title.

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The Union has no basis upon which to prevail in arbitration. For these reasons, the Appeals Committee recommends that the Executive Board’s decision be affirmed and the appeal of President Sorey be denied.

APPEAL 3

Syed Rahim, former President of CWA Local 1182, has appealed the CWA Executive Board's decision to place Local 1182 under Temporary Administration. This appeal is timely and properly before the 2020 Presidents' Meeting.

Based on a request from two Local officers, the CWA Executive Board approved placing CWA Local 1182 under Temporary Administration on May 28, 2019. On June 12, 2019, CWA President Shelton appointed District 7 Vice President Brenda Roberts to conduct a hearing in this matter. The hearing was held in New York City on September 18 and 19, 2019, and January 14, 15, and 16, 2020, with Vice President Brenda Roberts serving as the Hearing Officer.

The Temporary Administrator appointed by the Executive Board hired an accountant, Michael Van Sertima, to complete an audit of the Local's finances. Mr. Van Sertima testified at the hearing in this matter and produced a report detailing certain financial irregularities in the Local ("Van Sertima Report"). Vice President Roberts found that overwhelming evidence contained within the Van Sertima Report showed serious financial misconduct within Local 1182. This report presents an unmistakable disregard for the members' trust, the Local assets and the future of the Local.

Some of the findings during this temporary administration hearing and the financial investigation showed:

- The Local President was paid over three times the salary of the highest paid member represented by the Local.
- Payments from Local 1182's treasury of over \$32,000 between October 2017 and May 2019 (including a Land Rover, total value of \$102,000) for vehicles in Mr. Rahim's name, not the Local's, without authorization by the Local Executive Board.
- Nearly \$40,000 paid from Local 1182 to a digital services vendor who hardly created a functioning website.
- Over \$84,000 between 2017 and 2018 in bonuses paid to Local officers and employees without any proper documentation or authorization.

- Spending nearly \$160,000 on jackets, purchasing more jackets than the Local had members, and leaving the Local unable to afford to print membership cards.
- Paying nearly \$40,000 for gas cards for officers and for three unidentified persons.
- Payment from Local funds for speeding tickets, tolls, public transportation that had no stated union purpose or documentation.
- Withdrawing \$25,000 from a political action fund for gift cards to distribute at a membership meeting.
- Executive Board minutes where discussions were had about emptying the bank accounts before the next election to influence the election.
- Lack of the number of membership meetings required by the Local Bylaws.

After reviewing the above irregularities, among many others, Vice President Roberts recommended affirming the Temporary Administration.

The argument against the temporary administration described the “financial irregularities” as minor recordkeeping issues that could be corrected quickly and easily. Mr. Rahim also argued that the Temporary Administration request did not meet Constitutional requirements. These arguments fail due to the fact that the CWA Constitution Article XIII, Section 8(b) is interpreted to allow CWA to take swift and necessary action to respond to urgent problems within locals in order to protect the collective interests of the members.

The financial malfeasance was anything but minor. Syed Rahim and the Executive Board blatantly disregarded their obligation to care for the Local’s assets, entrusted to Local officers by the membership, and were also unwilling or unable to comply with legal and regulatory requirements. The violations of IRS statutes and of financial responsibilities set forth in Local 1182’s Bylaws and the CWA Constitution were, and remain, sufficient to place CWA Local 1182 under Temporary Administration.

The Executive Board properly interpreted “officers” as used in Article XIII, Section 8(b) to include all members of a local executive board. Some locals do not distinguish between officers and executive board members. Where the distinction is made, it has no significance in the context of a request for temporary administration. Delegate-at-Large Angel Diaz, who requested the temporary administration but was not designated “officer” by the Local 1182 bylaws, had input into the important decisions of Local 1182. Whether technically an officer, or a member of the executive board, a person in such a position of trust and responsibility is an “officer” within the ordinary meaning of the word. Therefore, such an executive board member is an “officer” for the purposes of Article XIII, Section 8(b).

Mr. Rahim’s claim that CWA Constitution requires a majority of officers to make request for temporary administration must also fail. In 1992, the CWA Executive Board interpreted Article XIII, Section 8(b) to require more than one, not a majority, of the Local officers. This interpretation is consistent with the language of the CWA Constitution, serves the interests of the Union and its members, and preserves adequate safeguards. At the 1994 CWA Convention, the Constitution Committee rejected a proposal to require a majority of local officers to request a temporary administration. The Constitution Committee opined that such a requirement “could become an impediment to protecting the membership and the resources from individuals who do not have the membership’s best interests at heart.” That was the case here.

This interpretation is supported by the Convention and the Executive Board with input from Courts and the United States Department of Labor and is consistent with decades of CWA policy and practice and is outlined in the CWA Constitution Art. IX, Section 4(k), which allows the Executive Board of the Union to interpret the Constitution.

Furthermore, there were allegations of sexual harassment and the creation of a hostile work environment. Such allegations undermine the very core of CWA. This alleged inappropriate conduct is a violation of the CWA Policy on Mutual Respect as well as other provisions of the CWA Constitution. While there was evidence of these allegations presented at the hearing, these allegations are part of an ongoing civil lawsuit and therefore further comment is withheld.

The Appeals Committee agrees with CWA Executive Board and Vice President Brenda Roberts and supports the recommendation of continuing the Temporary Administration for CWA Local 1182. Therefore, the Appeals

Committee wholeheartedly recommends that the decision of the CWA Executive Board be upheld and the appeal of Syed Rahim be denied.

APPEAL 4

On October 15, 2019, Local 4202 President Holly Sorey appealed the CWA Executive Board's decision not to arbitrate the Local's grievance for the termination of Member Mark Nogle. The appeal is timely and properly before the 2020 Presidents' Meeting.

Mr. Nogle was employed by AT&T Mobility as a Retail Sales Consultant for less than three (3) years, from January 5, 2015 through September 5, 2017. He was terminated for allegedly failing to meet performance objectives.

At the time of Mr. Nogle's employment, the Company evaluated performance based upon the employee's use of the "Our Promise" behaviors as set forth in its My Performance policy. Implementation of the policy requires managers to observe an employee's interactions with customers and rate each of nine elements of the interaction.

On October 4, 2016, Mr. Nogle was given a Counseling after seventeen (17) coachings and observations during which he did not execute the behaviors. When the Counseling was delivered, Mr. Nogle was specifically instructed to perform the Our Promise behaviors with every customer, ask non-negotiable questions with every customer, demonstrate premium audio and digital life to every available customer, and develop one lead to sell to a corporate user to avoid being progressed to the next step of discipline. The Counseling was in effect until January 2, 2017.

On January 9, 2017 Mr. Nogle was given a Written Warning after sixteen (16) coachings and observations all between October 9 and December 26, 2016, while he was on the Counseling step. During these observations, management noted that Mr. Nogle failed to exhibit the behaviors on seven occasions, failed to ask the questions on two occasions, failed to demonstrate premium audio and digital life on four occasions, and did not develop one corporate user lead. No behavior or omission relied on by the Company occurred after the expiration date of the Counseling. Again, Mr. Nogle was told to perform the Our Promise behaviors, ask the non-negotiable questions, and demonstrate premium audio and digital life. Additionally,

Mr. Nogle was to bring three accessories to the table with each customer and to develop one business lead per week.

On May 7, 2017, Mr. Nogle was progressed to a Final Written Warning. The Company noted twelve (12) separate observations between January 18 and April 30, 2017, during which Mr. Nogle had not performed the tasks he was specifically instructed to perform with each customer. Management coached him five (5) additional times prior to issuing the discipline.

On September 5, 2017, Mr. Nogle was discharged because he failed to exhibit the Our Promise behaviors during seven (7) observations and failed to follow proper policy and procedure on an additional five (5) occasions between May 13 and August 28, 2017. Mr. Nogle had been coached thirteen (13) times since the issuance of the Final Written Warning.

President Sorey argued that the termination must be arbitrated because Mr. Nogle was issued a Written Warning after the date the Counseling expired, in violation of the Company's Progressive Discipline Policy. This argument fails because, as the Executive Board correctly determined, an arbitrator would be unlikely to disturb the merits of a past discipline that was not grieved at the time it was issued. Further, although the discipline was issued after the expiration of the Counseling, the incidents occurred while on the Counseling step.

President Sorey further argued that the Company did not have just cause because it had disciplined Mr. Nogle for poor sales numbers (quotas) instead of for behavior. The termination notice does not reference any sales. Instead, it lists eleven (11) specific behavioral failures in a three month period. For this reason, President Sorey's argument regarding quota relief must be rejected as well.

While President Sorey advised the Appeals Committee that Mr. Nogle had been treated differently than other employees, there is no evidence in the record that there was any disparate treatment.

The Union could not prevail in an arbitration of this grievance. After a thorough review of the case file, the Appeals Committee recommends that the decision of the Executive Board be upheld and the appeal of President Sorey be denied.

APPEAL 5

On December 11, 2019, Local 4322 President Daniel Frazier appealed the CWA Executive Board's decision not to arbitrate the Local's grievance regarding the discharge of Member George Craig. The appeal is timely and properly before the 2020 Presidents' Meeting.

Mr. Craig was employed by AT&T as a Telecommunications Specialist in Dayton, Ohio, a job that required driving. At the time of his termination, he had approximately 19 years of service with the company. In 2018, Mr. Craig was suspended and ultimately discharged for a fifth conviction of driving while under the influence of alcohol or drugs.

The first issue in this case is whether the grievance can be arbitrated. Mr. Craig was discharged after the expiration of the 2015-2018 collective bargaining agreement and before CWA and AT&T signed a successor agreement. Since no agreement to arbitrate bound the parties at the time of the discharge, the Union cannot force the Company to arbitrate this grievance. The Back to Work Agreement, relied on by President Frazier as a basis for arbitration, does not contain an independent arbitration provision and therefore cannot be used for that purpose.

Even if the Company were bound by an arbitration provision, the Union could not prevail in arbitration on the merits of this grievance. On October 14, 2018, Mr. Craig was charged with driving a vehicle under the influence of drugs or alcohol, which resulted in the immediate loss of his driver's license. Mr. Craig pled guilty/no contest to the charge. The Company suspended Mr. Craig while it investigated. On December 6, 2018, it discharged him because the DUI conviction violated the 2015 Back to Work Agreement and Mandatory Treatment and After Care Agreement signed by Mr. Craig as well as the Company's policies.

During his employment, Mr. Craig had four convictions prior to the October 2018 incident. In January 2003, he pled guilty to driving under the influence. In May 2008, he pled guilty to physical control of a vehicle while under the influence of alcohol and/or drugs. In September 2008, he pled guilty to driving under the influence. Mr. Craig was discharged for this infraction. The Union arbitrated and Mr. Craig was reinstated in January 2010.

In May 2015, Mr. Craig was convicted, jailed, fined and placed on probation for operating a vehicle under the influence of alcohol and/or drugs. His license was suspended. The Company again discharged Mr. Craig. In June 2015, the Company and the Union settled the resulting grievance with the Back to Work Agreement. Among other things, the parties agreed that

[I]f the Company determines, in its sole discretion, that [Mr. Craig has] incurred another violation of the AT&T Code of Business Conduct, including but not limited to substance abuse violations, the company will have just cause to terminate [Mr. Craig's] employment. The company will consider mitigating circumstances in making its decision, but retains the sole discretion to determine whether or not termination is appropriate under the circumstances.

The conviction in 2018 was precisely the same circumstances as 2015. Therefore, under the terms of the Back to Work Agreement signed by the Union and Mr. Craig, the Company had just cause for discharge.

President Frazier argues that Mr. Craig's drunk driving was off-duty conduct and therefore could not be subject to employer discipline. The Executive Board correctly observed that maintaining an acceptable driving record is an essential part of his job. Mr. Craig was put on notice of this requirement by the Company's On and Off Duty Misconduct Policy, which specifically states that off duty misconduct can lead to termination. In fact, the Company had twice terminated him for just such conduct in 2008 and 2015.

After a thorough review of this case, in light of Mr. Craig's long history of similar violations and the second and third chances given him by the arbitration award and the Back to Work Agreement, CWA could not prevail in arbitration even if the grievance were arbitral. The Appeals Committee recommends that the decision of the Executive Board be upheld and the appeal of President Frazier be denied.