

**Report of the
Constitution Committee
to the
76th Convention**

CWA

**Communications Workers of America
August 7-8, 2017
Pittsburgh, Pennsylvania**

The Constitution Committee met in the city of Washington, D.C. beginning June 12, 2017, for the purpose of reviewing and considering proposed amendments to the CWA Constitution.

The Constitution provides under Article XVI, Section 2, that the Constitution Committee is "charged with the duty of considering and reporting to the Convention and to the Executive Board on proposals to change the Constitution." Article XXVIII, Section 2 & 3, provides that amendment's submitted to the Constitution Committee sixty (60) days or more in advance of the Convention will require a majority vote of the Delegates present to be enacted. All other amendments to the Constitution proposed at the Convention shall require a three-fourths (3/4) vote of those voting to effectuate such proposed amendments, but in no event shall the three-fourths (3/4) vote of those voting thereupon be less than a majority vote of the approved delegates at the Convention.

This report sets forth all proposed amendments that have been received by the Committee to date. A ~~strikeout~~ denotes deletion of language; **boldface and underlined** type denotes insertion of new language. Each proposal in this Preliminary Report will require a majority vote of the delegates at the Convention to be enacted.

1. Amend Article IX, Section 7(c)

(c) The meeting of Local Presidents to be held in non-Convention years to hear and resolve any pending appeals shall be attended by the President of each CWA Local in good standing ~~and/or~~ their designee. The President ~~and/or his~~ **their** designee shall carry the same per capita voting strength as was certified for the Local at the prior year's Convention, calculated in accordance with the provisions of Article VIII.

(Submitted by the CWA Executive Board)

This amendment clarifies that each Local is entitled to one voting representative at the Presidents' Meeting – the Local President or their designee.

The Committee Recommends Adoption of this Proposal.

2. Amend Article XII, Section 5

Section 5 – Telecom and Technology Vice President

For those bargaining units of Telecommunications employees other than AT&T, Verizon, Qwest **(d/b/a CenturyLink)** and their subsidiaries and affiliates. The Telecom & Technology Vice President shall be responsible, under the direction of the Executive Board, for coordinating matters of common concern and interest with respect to contracts, wages, hours of employment and other working conditions within the units.

(Submitted by the CWA Executive Board)

This amendment reflects the change in the employers' name. Qwest was acquired by CenturyLink, (d/b/a denotes "doing business as").

The Committee Recommends Adoption of this Proposal.

3. Amend Article XII, Section 12

Section 12 – At-Large Diversity Executive Board Members

~~Beginning thirty (30) days after the conclusion of the 2017 Annual Convention, four At-Large Diversity Executive Board Member seats shall be created.~~ **There shall be four At-Large Diversity Executive Board Members.** The four At-Large Diversity Executive Board Members shall:

(a) Act under the direction of the President and perform such duties as may be assigned by the President or the Executive Board;

(Submitted by the CWA Executive Board)

This amendment removes obsolete language.

The Committee Recommends Adoption of this Proposal.

4. Amend Article XV, Section 2(a)

Section 2 – Vice Presidents and PPMWS Executive Officer

(a) District Vice Presidents shall be elected by a secret ballot, after nominations from the floor, at a meeting of delegates from the District. Beginning with the 2011 CWA Convention, there shall be elected a Telecom and Technology Vice President for AT&T Legacy T, Avaya, Alcatel-Lucent (**d/b/a Nokia**), OFS and those bargaining units of telecommunications employees other than AT&T, Verizon, Qwest **Qwest (d/b/a CenturyLink)** and their subsidiaries and affiliates. The Telecom and Technology Vice President, and the Public, Health Care and Education Workers Vice President shall be elected by secret ballot, after nominations from the floor at meetings of delegates representing members of AT&T Legacy T, Avaya, Alcatel-Lucent (**d/b/a Nokia**), and OFS and affected telecommunications bargaining units and Public, Health Care and Education workers units respectively.

(Submitted by the CWA Executive Board)

This amendment reflects the change in the employers' name. Qwest was acquired by CenturyLink and Alcatel-Lucent was acquired by Nokia.

The Committee Recommends Adoption of this Proposal.

5. Amend Article XVI, Section 1, 11, 12, and 13

Section 1 – Regular Committees

The Regular Committees of the Union shall be:

- (a) Constitution Committee
- (b) Credentials Committee
- (c) Resolutions Committee
- (d) Legislative-Political Committee
- (e) Building Committee
- (f) Finance Committee
- (g) National Committee on Civil Rights and Equity
- (h) Women's Committee
- (i) Defense Fund Oversight Committee
- (j) Appeals Committee**

Section 11 – Appeals Committee

The Appeals Committee shall be appointed by the President and approved by the Executive Board. It shall consist of five members and be charged with the duty of considering and reporting to the Convention or Presidents' Meeting on all pending appeals.

Section ~~11~~-12 – Other Committees

The Convention, or the President with the approval of the Executive Board, may appoint such other committees as may from time to time be necessary.

Section ~~12~~-13 – Vacancies on Committees

Except as otherwise required by this Constitution, whenever a vacancy occurs on any Committee, the President, with the approval of the Executive Board, may appoint a member to serve for the unexpired term of the Committee.

(Submitted by the CWA Executive Board)

This amendment rectifies the omission of the Appeals Committee from the Constitution in Article XVI, Section 1 and 11.

The Committee Recommends Adoption of this Proposal.

6. Amend Article XV, Section 4(b)

Section 4 – General Provisions

(b) Any challenge to the conduct of an election must be filed in writing with the election committee within 10 days of the tentative certification of the results. The election committee shall rule on any such challenges and shall within 20 days of the tentative certification of the results make a final determination or certification. Such determination or certification shall be subject to the right of appeal to the governing body and to the membership of the Local. Any appellant must exhaust the remedies available within this section. If the appellant has attempted to exhaust such remedies without obtaining a final decision within 60 days of the tentative certification of the results **and the appellant wishes to further appeal**, the appellant ~~shall have the right to~~ **must** file an appeal in writing with the appropriate geographical Vice President. Such an appeal shall be filed within 70 days of the tentative certification of the results.

(Submitted by the CWA Executive Board)

This amendment clarifies that if the appellant does not get a final decision on an election appeal within 60 days of the tentative certification, and wishes to appeal he/she must file an appeal in writing to the appropriate geographical Vice President.

This amendment does not change or alter the election appeal process. It clarifies when the appellant must file an appeal and with whom.

There has been much confusion surrounding this issue by appellants in election appeals. Many think that the provision, as currently written, provides them with a choice of whether to file with the Vice President within 70 days of the tentative certification or to wait until the Local Membership decides the issue and then appeal to the Vice President.

The Committee Recommends Adoption of this Proposal.

7. Amend Article XX, Section 3(a)(2) and 3(b)(2)

Section 3 - Trials

(a) The Bylaws or Rules of a Local shall specify the manner in which an accused person shall be tried and must conform with the following minimum standards:

(1) An unbiased court composed of not less than three or more than seven persons, who shall be members of the Local, not parties to the proceeding, shall be selected by the governing body of the Local using a random selection process. The court shall be bound to render a decision and impose a penalty, if the accused be found guilty, without bias or prejudice, based on all the evidence presented;

(2) A prosecutor, who is a member of the Local, but not an accuser, shall be appointed by the governing body of the Local to assist the accuser in the trial and presentation of evidence. If, after investigation, the prosecutor is of the opinion that there is not probable cause to believe that a violation punishable under this Article has been committed, the prosecutor shall report the findings in writing to the governing body of the Local with a recommendation that the charge not be prosecuted. Copies of the findings and recommendations shall be delivered to the accuser and the accused. The recommendation shall become final unless appealed by the accuser within thirty (30) days after receipt **the date of written notice of the findings** using the procedures established pursuant to Article IX, Section 7, of this Constitution. **Such an appeal shall be filed with the Local Secretary or Secretary-Treasurer, and shall be considered pursuant to Section I.B of the CWA Internal Appeals Procedures.**

(b) Trials conducted by courts selected by the Executive Board of the Union must conform with the following minimum standards:

(2) A prosecutor, who is a member of the Union, but not an accuser, shall be appointed by the Executive Board of the Union to assist the accuser in the trial and presentation of evidence, and such prosecutor shall have the same authority and discretion granted to Local prosecutors under Section 3 (a) (2) of this Article; **An appeal by the accuser of a prosecutor's findings of no probable cause shall be filed with the Secretary-Treasurer of the Union within thirty (30) days after the date of written notice of findings and shall be considered pursuant to Section II.C.6 of the CWA Internal Appeals Procedures;**

(Submitted by the CWA Executive Board)

These two amendments, are intended to provide clarity for appeals of prosecutors findings of no probable cause. The amendments clarify time limits and to whom to file.

The Committee Recommends Adoption of this Proposal.

8. Amend Article XX, Section 4(a)(4)

Section 4 – Appeals

(a) A member or officer of a Local upon being found guilty by a Local court may appeal as provided in this Section:

(4) Have the right to appeal from the decision of the Executive Board of the Union to the next Convention by giving a notice of appeal in writing within thirty (30) days after the **date of the written notice of the** decision to the Secretary-Treasurer of the Union. If the Executive Board has failed to render a decision within thirty (30) days preceding the Convention, the accused may appeal directly to the Convention which may affirm or reverse the decision or reduce the penalty. As provided more fully in Article IX, Section 7, commencing immediately after the 2011 CWA Convention, all appeals pending in non-Convention years may be heard and resolved by delegates to a Local Presidents' Meeting.

(Submitted by the CWA Executive Board)

This amendment provides more clarity regarding the date on which appeals must be submitted and to whom. Currently Article XX, Section 4(a)(4) reads "Have the right to appeal from the decision of the Executive Board of the Union to the next Convention by giving a notice of appeal in writing within thirty (30) days after the decision to the Secretary-Treasurer of the Union."

This language has caused confusion, with some believing the right to appeal must be exercised within thirty (30) days of the date of the written notice of the decision and others believing the right to appeal must be exercised within thirty (30) days after receipt of the decision. This proposed amendment addresses that confusion.

The Committee Recommends Adoption of this Proposal.

9. Amend Article V, Section 6(d)

Section 6 -- Retired Members' Council

(d) A Council Executive Board shall be elected which will consist of one representative from each of the CWA Districts and ~~three~~ **four** Sector/Division members who shall be elected from the Media Sector (consisting of the Printing, Publishing and Media Workers Sector, NABET-CWA and TNG-CWA), the IUE-CWA Division ~~and~~, and AFA-CWA Sector, **and the Public, Healthcare and Education Workers Sector**. The District representatives on the Council Executive Board shall be elected by secret ballot among the Council Lifetime members within the appropriate CWA District. The Sector and Division representatives shall be elected by secret ballot among the Council Lifetime members who retired from the Media Sector (consisting of the Printing, Publishing and Media Workers Sector, NABET-CWA, and TNG-CWA), the IUE-CWA Division, ~~and the~~ AFA-CWA Sector, **and the Public, Healthcare and Education Workers Sector**. Within the Council, Districts 2 and 13 shall not be combined until the end of the 2012 term. Terms of office shall be consistent with those of International officers. The elections shall be conducted in accordance with Council bylaws, federal and provincial laws and this Constitution. Any challenge to the Council Executive Board elections or Council officers' elections shall be resolved in accordance with the Council bylaws.

(Submitted by Brooks Sunkett, Vice President, Public Healthcare and Education Workers and Lisa Kermish, Executive Vice President, Local 9119)

The Committee discussed the proposed amendment with Brooks Sunkett, Vice President, Public Healthcare and Education Workers and Lisa Kermish, Executive Vice President, Local 9119 and Ray Kramer, Executive President, Retired Members' Council.

After further conversation with Ray Kramer, Executive President, Retired Members' Council and Lisa Kermish, Executive Vice President, Local 9119 both parties have agreed that the initial Public Healthcare and Education Workers Sector Representative will occur consistent with the 2019 Retired Members' Council election cycle.

With the support of the Retiree Members Council the Constitution Committee feels comfortable recommending these amendments.

The Committee Recommends Adoption of this Proposal.

10. Amend Article XIII, Section 4(a), 2, and New 3

Section 4 – Jurisdiction Disputes

(a) In jurisdictional disputes between Locals the District Vice President will make every reasonable effort to obtain an agreement among the involved Locals. If no agreement can be reached the matter will be resolved by the following procedure:

1. Upon agreement of the Locals involved, an election shall be conducted in accordance with rules and procedures adopted by the Executive Board and shall be conducted under the supervision of the District Vice President.

2. If the Locals will not agree to an election, **and the members in dispute number 25 or more,** the dispute shall be referred to an independent referee appointed by the Executive Board and approved by the Convention. The decision of the referee may be appealed to the CWA Convention within thirty days of receipt of the referee's decision. As provided more fully in Article IX, Section 7, commencing immediately after the 2011 CWA Convention, all appeals pending in non-Convention years may be heard and resolved by delegates to a Local Presidents' Meeting. Such appeals shall be presented to the Convention or Presidents' Meeting by the Appeals Committee. The only responsibility of the Appeals Committee shall be to convey the decision and opinion to the Convention or Presidents' Meeting without making any recommendations.

3. If the Locals will not agree to an election, and the members in dispute number less than 25, the dispute shall be referred to the Executive Board who will decide which Local shall have jurisdiction, after an opportunity to provide a record to the Locals involved. The decision of the Executive Board shall be by a vote of at least two-thirds. The decision of the Executive Board may be appealed to the CWA Convention within thirty days of receipt of the Executive Board's decision. As provided more fully in Article IX, Section 7, commencing immediately after the 2011 Convention, all appeals pending in non-convention years may be heard and resolved by delegates to the Local Presidents' Meeting. Such appeals shall be presented to the Convention or Presidents' Meeting by the Appeals Committee. The only responsibility of the Appeals Committee shall be to convey the decision to the Convention or Presidents' Meeting without making any recommendations.

(Submitted by the CWA Executive Board)

This amendment gives the Executive Board the authority to resolve jurisdictional disputes involving less than 25 members with a two-thirds vote. All jurisdictional disputes including those involving less than 25 members continue to be appealable to the Convention or Presidents' Meeting.

This change allows for the timely resolution of jurisdictional disputes involving less than 25 members while reducing cost. We have had to conduct hearings for as few as two, four and six members.

The cost of these hearings, including payment of an independent referee, sometimes travel to and from the hearing, hotel and meal expenses, preparation days for the independent referee and other expenses, have become quite costly.

The Committee Recommends Adoption of this Proposal.

11. Amend Article XXVI, Union Publication

The Union shall ~~print,~~ publish and distribute to its members an official publication. Said publication ~~shall be sent to all members and~~ shall contain matters pertaining to Union functions, policies and activities as well as matters of labor and public interest generally.

(Submitted by the CWA Executive Board)

This amendment eliminates the requirements to mail a publication to all members, thus saving the Union over three-quarters of a million dollars annually, while still maintaining the flexibility of mailing a publication to members when deemed necessary.

CWA has a weekly online newsletter that currently goes to all members and retirees (240,000) for whom we have an email address. As per the Constitution the weekly newsletter "contains matters pertaining to Union functions, policies and activities as well as matters of labor and public interest generally."

The Committee Recommends Adoption of this Proposal.

12. Amend Article XIII, Section 8 New (c)

Section 8 – Temporary Administration

(c) By an affirmative vote of two-thirds, the Executive Board may appoint a temporary administrator when the Local is pursuing a course of action for which its Charter could be revoked under Article XIII, Section 5 or when there is substantial evidence that a Local Officer is engaging in theft of Union funds or property, where any of these matters are not being adequately addressed by the Local.

(Submitted by the CWA Executive Board)

The Committee discussed this proposal with Chris Shelton, President CWA and Pat Shea, CWA Headquarters Council.

This amendment gives the CWA Executive Board the authority to place a Local under temporary administration in cases where there are obvious improper actions that are not being adequately addressed by the Local.

Currently the Executive Board has no authority to place the Local under temporary administration unless they receive a request from at least two (2) Officers or the Local membership.

The Executive Board can clearly take action to revoke a Local's charter under certain circumstance, but such action does not allow the Executive Board to take prompt and timely action because, under Article XIII, Section 7 of the Constitution, a revocation of a charter cannot be effective until after the Convention or Presidents' Meeting has ruled on any appeal. Thus, the revocation of a charter may not take place for as long as two (2) years after a problem has been identified.

It is in the best interest of the Union and its membership to allow the imposition of the Temporary Administrator quickly in these matters to protect the assets of the Local and to insure that the membership of the Local is properly represented.

President Shelton told the Committee that "This new provision would only be used as a last resort after all other efforts to put the Local back on track have failed."

The Committee Recommends Adoption of this Proposal.

13. Amend Article XV, Section 8

~~Section 8—International Union Officer Term of Service Retirement shall be mandatory for all full time officers of the Union after reaching age 70 upon the expiration of their current term of office.~~

(Submitted by the CWA Executive Board)

The Committee discussed this proposal with Chris Shelton, President of CWA and Jody Calemine, CWA General Counsel.

This amendment would remove Article XV, Section 8 which requires full time officers of the Union to retire after reaching age 70 upon the expiration of their current term of office. This mandatory retirement language for full time officers was adopted at the 2013 Convention.

In 2013, the Constitution Committee was provided a legal opinion that the language did not violate federal law on age discrimination. This legal opinion was based on the top policy maker exception in the Age Discrimination and Employment Act (ADEA), which permits an organization to seek mandatory retirement for its top policy makers once they turn 65. The main legal concern at the time seemed to be age discrimination and once that was satisfied, the amendment was thought to be appropriate.

A closer examination of the legal standing of the mandatory retirement age was prompted by the fact that two (2) Board Members may be impacted by the language in 2019. New information has been acquired particularly from the Department of Labor (DOL) which indicates that Article XV, Section 8 is unlawful and in violation of the Labor-Management Reporting and Disclosure Act (LMRDA) and some state age discrimination laws.

In a relevant case in which AFSCME disqualified candidates over 65 from running for Union office the court found for the plaintiff. In *Dole v. AFSCME* the U.S. District Court for the District of Columbia ruled against the Union, declaring the election void and ordering a new election based on an "unlawful candidacy qualification," under the LMRDA.

The LMRDA is the exclusive remedy for Union elections. Under the LMRDA, any member in good standing may run for and hold office though the Union may impose reasonable qualifications for office. "Reasonable" is interpreted very narrowly. Any qualifications related to a members personal characteristics such as age must have a direct bearing on his or her fitness for office. The Department of Labor has advised the CWA General Counsel that the Union would have a "perhaps insurmountable burden" proving that a

maximum age rule has a direct bearing on fitness for office under the terms of the LMRDA regulations.

In addition, the CWA General Counsel advises that Article XV, Section 8 poses liability risk under various state age discrimination laws. Noting that many states outlaw mandatory retirement with even narrower, if any, exceptions than those in the Federal ADEA. For example, the District of Columbia, CWA's primary place of employment for several Executive Board positions, only allows maximum age limits for police officers and fire fighters in cadet programs.

President Shelton in discussions with the Committee emphasized the fiduciary responsibility of the Executive Board to take action once made aware of the legal ramifications, which led to the submission of this amendment.

The potential consequences of leaving the mandatory retirement age in the Constitution are significant. If the age limit provision remains in place, CWA is obligated to enforce it. Any fulltime National Board Officer age 70 or older seeking re-election in 2019 or beyond will have to be barred from running. As in the AFSCME case mentioned above, candidates barred from running because of age could file a complaint with the Department of Labor under the LMRDA. They might also sue CWA, under state or Federal age discrimination laws. This litigation could take years, be costly, and result in an order to re-run the election under the supervision of the U.S. Secretary of Labor. The Committee feels that the uncertainty which this language creates undermines our election process.

Now that we have been made aware that the mandatory retirement age poses serious liability risk for CWA, the Constitution Committee feels strongly that it must be removed in order to avoid future litigation and to maintain the legitimacy of our election process.

The Committee Recommends Adoption of this Proposal.

14. Amend Article V, Section 6(d) and (f)

Section 6 – Retired Members' Council

(d) A Council Executive Board shall be elected which will consist of ~~one~~ **two** representatives from each of the CWA Districts and ~~three~~ **two representatives** **from each of the** Sector/Division members who shall be elected from the Media Sector (consisting of the Printing, Publishing and Media Workers Sector, NABET-CWA and TNG-CWA), the IUE-CWA Division and the AFA-CWA Sector. The District representatives on the Council Executive Board shall be elected by secret ballot among the Council Lifetime members within the appropriate CWA District. The Sector and Division representatives shall be elected by secret ballot among the Council Lifetime members who retired from the Media Sector (consisting of the Printing, Publishing and Media Workers Sector, NABET-CWA, and TNG-CWA), the IUE-CWA Division, and the AFA-CWA Sector. ~~Within the Council, Districts 2 and 13 shall not be combined until the end of the 2012 term.~~ **Of the two elected Representatives one shall be known as District or Sector President and one shall be known as District or Sector Vice President.** Terms of office shall be consistent with those of International officers. The elections shall be conducted in accordance with Council bylaws, federal and provincial laws and this Constitution. Any challenge to the Council Executive Board elections or Council officers' elections shall be resolved in accordance with the Council bylaws.

(f) The Council Executive Board ~~members~~ **Presidents** shall also serve as delegates to all CWA Conventions during their term of office and shall each carry one (1) vote. As delegates to the CWA Convention, Council Executive Board ~~members~~ **Presidents** shall have the right to vote in elections of the CWA President and Secretary-Treasurer.

(Submitted by Ray Kramer, Executive President, Retired Members' Council)

The Committee discussed this proposal with Ray Kramer, Executive President, Retired Members' Council.

This amendment merges the Retired Members' Council General Board into the Retired Members' Council Executive Board and deletes obsolete language combining Districts 2 and 13 representatives on the Council. If this amendment is adopted, the composition of the Retired Members' Executive Board will consist of elected District and Sector Presidents and Vice Presidents.

In consultation with Retired Members' Council Executive President Ray Kramer Article 5, Section 6(f) has also been amended with his support to reflect that

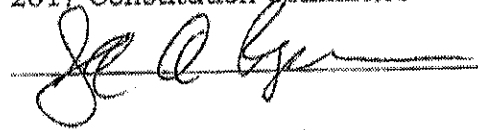
Council Executive Board Presidents will remain delegates to the Convention and shall each carry one (1) vote.

The original proposal would have also made the District and Sector Vice Presidents delegates to the Convention with one (1) vote each. Regular CWA Locals with 200 or less dues paying members are allowed only one (1) Convention delegate and the Committee felt the established language making Retired Members' Council Presidents delegates with one (1) vote is sensible.

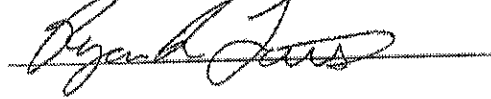
The Committee Recommends Adoption of this Proposal.

Respectfully submitted,

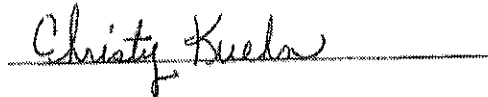
James Ryan, Chair
Executive President, CWA Local 13101
2017 Constitution Committee



Ryan Letts, President
CWA Local 4034
2017 Constitution Committee



Christy Kuehn, Executive Vice President
CWA Local 7201
2017 Constitution Committee



Keith Purce, President
CWA Local 1101
2017 Constitution Committee



Dianne Chase, President
CWA Local 51024
2017 Constitution Committee

