To: CWA Executive Board
From: Angela Thompson
Date: April 18, 2023
Re: Derrick Osobase–Eligibility to run for elective office

This memorandum is to advise the Board on the facts and issues presented by the question of Derrick Osobase's membership status.

Facts and procedural history

On March 3, 2023, President Shelton received an anonymous tip stating that District 6 Administrative Director Derrick Osobase, who was believed to be considering a run for District 6 Vice President, was ineligible to run for elective office because he was never a CWA member in a CWA-represented bargaining unit or otherwise a member while employed by an employer or performing work within a Local's charter jurisdiction. President Shelton subsequently received additional calls stating the same concern.

As a result of those calls, President Shelton reached out to Mr. Osobase on March 6 to confirm that he was, in fact, eligible to run. Instead of disavowing the underlying allegations regarding his employment and membership history, Mr. Osobase stated that, although he had been paying dues for many years to the Texas State Employees Union, CWA Local 6186 (TSEU-CWA or the Local), he had never been a CWA member while working for an employer within the Local's charter jurisdiction. According to President Shelton, Mr. Osobase said that he never worked for the state of Texas. Instead, Mr. Osobase joined the Union as an employee of the Local.

President Shelton explained to Mr. Osobase that, since he did not obtain membership while employed within the Local's charter jurisdiction, he was ineligible to run for elective office with CWA. Mr. Osobase requested to talk to someone who could further explain the problem to him. The following week, President Shelton described his conversation with Mr. Osobase to Chief of Staff Jody Calemine and requested that Mr. Calemine prepare a memorandum further explaining the eligibility issue.

Prior to receiving the requested explanation, Mr. Osobase announced his candidacy for District 6 Vice President. Mr. Calemine's informal memo to Mr. Osobase dated March 15 explained the membership eligibility requirements under the CWA Constitution and decisions by the Executive Board interpreting those eligibility requirements, including how a similarly situated candidate for elective office had cured their ineligibility in a past election cycle. Based on the facts Mr. Osobase provided to President Shelton, Mr. Calemine's memo concluded that Mr. Osobase would be ineligible for membership under those rules. The memo also invited Mr. Osobase to provide to President Shelton, Mr. Calemine, or myself any additional facts or arguments that might change the analysis.

Upon learning that Mr. Osobase had announced his candidacy despite what appeared to be constitutional problems with his eligibility, President Shelton sought counsel on what he was required to do. I advised that it was his responsibility to bring the matter to the Executive Board for consideration, which is the way that questions of candidate eligibility under the Constitution have been determined in the past. President Shelton raised the matter at the March 16 Executive Board meeting. The Board was provided with a copy of Mr. Calemine's informal memo as well as a 2019 memo drafted by former General Counsel Pat Shea concerning the same constitutional eligibility rules, as a starting point for discussion. After some discussion, the Board decided to give Mr. Osobase time to supply additional information before making its decision.

On March 27, Mr. Osobase responded with a memo regarding his membership eligibility, a letter to the Executive Board, a copy of Mr. Calemine's informal memo, and the CWA Constitution. Also included was a letter from the University of Texas San Antonio (UTSA) stating that Mr. Osobase was employed there as a Clerk from 10/18/1999 to 08/08/2003. This was the first time that Mr. Osobase informed the National Union that he had been employed by the state of Texas, which is in direct conflict with his prior statement to President Shelton that he had never been a Texas state employee.

In his memo, Mr. Osobase provided a timeline of his "relevant employment history," which indicated that he worked for UTSA from 1999 to 2003, attended law school from 2003 to 2005, worked for TSEU from 2005 to 2014, and worked for District 6 from 2014 to present. The employment history provided by Mr. Osobase is not entirely accurate. Records maintained by the CWA Human Resources department contain a document submitted by Mr. Osobase in 2016 from TSEU-CWA indicating that his dates of employment with the Local were from June 29, 2006 to June 25, 2013. And, according to a 2013 press release from the American Association of University Professors, Mr. Osobase was hired as the Executive Director of the Nevada Faculty Alliance (NFA) on July 15 of that year.[1] His employment with the NFA is corroborated by information Mr. Osobase published on LinkedIn[2] stating that he was the Executive Director and an Organizer for the NFA from July 2013 to February 2014.

Mr. Osobase stated that he had paid dues and held membership in TSEU-CWA since 2005 as an employee of TSEU-CWA. He did not report and I am unaware of any records indicating that he obtained membership or made dues payments while employed at UTSA. Throughout his National Union employment, Mr. Osobase continued to pay dues to TSEU-CWA.

In his memo, Mr. Osobase also called into question the candidate eligibility of at least four current or former Local and National Officers of the Union: former President Larry Cohen, current Secretary-Treasurer and Presidential candidate Sara Steffens, former

[1] "New NFA Executive Director hired" by Angela Hewett accessed on April 11, 2023 at https://www.aaup.org/article/new-nfa-executive-director-hired#.ZDW92XbMI2w.
[2] Available at https://www.linkedin.com/in/derrick-osobase-45a15640/.

Local President and candidate for National Office Carla Katz, and current Local President and Defense Fund Oversight Committee member Ken McNamara. Although Mr. Osobase outlines the facts as he understood them in each case, there are factual inaccuracies in his retelling. In addition, it is undisputed that two of these individuals–Carla Katz and Ken McNamara–never held National Office, and the other two–Larry Cohen and Sara Steffens–were never subject to formal challenges to their eligibility. Even so, a more robust explanation of the differences between these cases and the circumstances surrounding Mr. Osobase's membership eligibility is included in my analysis below.

In addition to the response from Mr. Osobase, Mr. Calemine received a letter from TSEU-CWA President Judy Lugo, also on March 27 and copied to the Executive Board, stating that Mr. Osobase was a long-time member of her local, paying dues since 2006 according to dues records provided by the Local, and citing a provision of its Bylaws as support for TSEU-CWA being authorized to convey union membership on Local staff. The letter requested that Mr. Calemine retract his March 15 memo.

Finally, a review of CWA dues records indicated that Mr. Osobase first paid dues to CWA in July 2006, approximately three years after he left UTSA employment and while he was employed by TSEU-CWA.[3] Those records indicate that when Mr. Osobase began paying dues, he was listed as belonging to the 0519301 processing unit, which is the processing unit for members of TSEU-CWA employed by the State of Texas. According to the facts as represented by Mr. Osobase, he was not employed by the State of Texas during that time.

Mr. Osobase has requested an opportunity to appear before the Executive Board via Zoom prior to any decision being made on his eligibility.

Existing Rules and Executive Board Interpretations Regarding Eligibility:
Article XV, Section 4(d) of the Constitution provides the eligibility requirement for running for elective office within CWA:

> Only members of the Union in good standing shall be eligible to vote or hold elective office.

What "member of the Union in good standing" means is informed by the membership eligibility requirements as a preliminary matter. That is, the person must be eligible for membership under the Constitution. ("Good standing" is also dependent upon having met ongoing obligations of membership such as dues payments and compliance with the Constitution.) It is also important to note that eligibility for membership is distinct from a determination that an individual is, in fact, a member in good standing. In other words, a person can be eligible for membership but not actually be a member or a member in good standing.

[3] While there are some discrepancies in the dates of dues payments, those discrepancies are not material to the candidate eligibility issue before the Executive Board.

Article V, Section 1 of the Constitution addresses general eligibility for membership in CWA and provides, in relevant part:

> Section 1. Eligibility
>
> (a) All persons engaged in the communications field and other fields of endeavor, both public and private sectors, excepting those excluded by laws, shall be eligible for membership in the Union.
>
> (b) All persons who are officers of labor organizations representing workers within the jurisdiction of the Union shall be eligible for membership in the Union.
>
> (c) Members of the Union who are on leaves of absence from their employment or who are employed on a full-time or part-time basis by the Union or a Local or who are or may be retired for any reason may continue to be active members.

Moreover, Article V, Section 2(a) of the Constitution provides the means by which membership is obtained:

> Membership in the Union is obtained and maintained through a chartered local.

Each local has a charter issued by the National Union which defines its jurisdiction, typically covering employers and their geographies. Because membership is obtained through a chartered local with a charter limiting its jurisdiction, a "field of endeavor" as described in Section 1 must be within the charter jurisdiction of the relevant local to qualify a person for membership.

The Constitution likewise addresses termination of membership, beyond expulsion for misconduct. Under Article V, Section 4(a):

> Membership in the Union shall be terminated when any member shall accept a position which would render the person ineligible for membership, except that a member who temporarily assumes such a position may retain membership for a period not to exceed thirty (30) days, provided during such period such member shall not hold any office within the Union.

In conjunction with Article V, Section 2(a) (providing for both obtaining and maintaining membership through a chartered local), this provision stands for the proposition that membership terminates when a person takes a position outside the jurisdiction of their local. The key provision that prevents membership loss when leaving employment covered by a local's charter jurisdiction is Article V, Section 1(c) noted above. Thus, if a member leaves covered employment, which would ordinarily

terminate their membership, they may nevertheless "continue" their membership under specific enumerated circumstances: (1) a leave of absence, (2) full-time or part-time employment by the Union or a Local, or (3) retirement.

Read together, these Constitutional provisions provide that membership is obtained through a chartered local upon acceptance after application to the local by an employee engaged in a field of endeavor within the local's charter jurisdiction (Article V, Section 1(a)), which the Executive Board has determined covers any individual employed by an employer that a local is attempting to organize, or the individual must presently be an officer of a labor organization representing workers within the Union's jurisdiction (Article V, Section 1(b)). The membership is terminated once an individual accepts a position outside a local's charter jurisdiction (Art. V, Sec. 4a), except that membership can be continued if the member is on a leave of absence from the relevant workplace, working for the National Union or a local, or retired from relevant employment (Article V, Section 1(c)).

The Executive Board has addressed membership eligibility for potential candidates for elective office on a number of occasions.

In 1986, the Executive Board ruled on the status of Pat Collins, a District counsel who was not an employee of CWA and did not come from a unit under a local's charter jurisdiction but nevertheless sought elective office. (Executive Board Decision concerning the Membership Status of Pat Collins, District Legal Counsel, Executive Board Minutes, January 4-5, 1986.) In the Collins case it was determined that doing work for the Union as staff or otherwise–there as a non-employee lawyer working under a retainer agreement–did not qualify as a "field of endeavor." The Executive Board there also noted that Collins was "not employed in a bargaining unit which CWA [sought] to represent." It went on to explicitly state that "employment by CWA could not create membership eligibility. It would only permit the continuation of active membership if it existed at the time of employment."

In 1988, the Executive Board addressed the membership eligibility of Robert Hamilton. (Executive Board Decision concerning the Membership Status of Robert Hamilton, a former member of Local 9415, Executive Board Minutes, August 25, 1988.) In that case, Hamilton had been laid off by his employer in November 1985, and his recall rights had expired in November 1987. He nonetheless sought to run for elective office after his recall rights had expired. The Executive Board denied Hamilton's appeal to be allowed to run for office because "[u]nder Article V of the CWA Constitution an individual must be working for an employer within a Local's assigned jurisdiction in order to become a member of CWA." After noting that Article V, Section 1(c) provided for continuation of membership under certain conditions, it was determined that Hamilton's layoff did not meet any of those conditions and that he was therefore no longer employed by an employer within the local's assigned jurisdiction and ineligible to run.

In another case in 2019, the Executive Board considered whether Rafael Navar was eligible to run for elective office after he resigned his position with the National Union and declared his candidacy. Navar had never been a member employed in a CWA-represented bargaining unit or for an employer within a CWA local's charter jurisdiction. Navar ultimately cured his ineligibility by obtaining employment with an employer under the jurisdiction of a CWA local from which he then obtained membership and began paying dues. The Executive Board in that case reiterated that Article V, Section 1(c) only permits the continuation of membership if by employees employed by the Union or a local and that an individual cannot obtain membership in the first instance through employment by the Union or a local. (Executive Board Decision on Membership Eligibility – Rafael Navar, Executive Board Minutes, May 16, 2019.)

Therefore, as a general matter, in order to be eligible for membership in CWA, an individual must be employed by an employer within the charter jurisdiction of the local (Art. V, Sec. 1(a)); meet one of the criteria listed in Article V, Section 1(b) or (c); or be employed by an employer that a local or the National Union is attempting to organize.[4] Additionally, Article V, Section 2(g) provides: "A Local shall not establish qualifications for membership which contravene qualifications set forth in this Constitution."

The charter of TSEU-CWA provides jurisdiction as follows:

> Over all work performed by employees of the State of Texas; over all work of food service employees at Stephen F. Austin University, Nacogdoches, Texas, excluding managers, bookkeepers, unit clerk and payroll clerk; KLRU Production Workers Guild, Austin, Texas; Supershuttle (Drivers and Dispatchers) in Austin, Texas; and such other jurisdiction as may be assigned by the Executive Board of the Union.

In addition, the TSEU-CWA Bylaws define membership eligibility in Article V, Section 1 as follows:

> Any person eligible for membership in CWA, as defined in Article V of its Constitution, shall be eligible for membership in Local 6186, if performing work within Local 6186's assigned jurisdiction, or if employed on a part-time or full-time basis by the CWA or Local 6186.

Osobase's Arguments for Membership:

Mr. Osobase makes two primary arguments for why he is a CWA member eligible to hold office at the National Union. First, Mr. Osobase argues that he is eligible to run for and hold CWA elective office under Article V, Section 1 because he has been a dues-paying member of TSEU-CWA since 2005. Second, he argues that he is eligible to run for and

[4] The latter scenario is referenced in the Pat Collins decision, denying her membership eligibility and stating that she was not employed in a bargaining unit that CWA was seeking to represent.

hold CWA elective office because of his employment with an employer within the jurisdiction of TSEU-CWA (i.e., UTSA) from 1999 to 2003.

Analysis:
Local and National Union staff are not eligible for CWA membership under Article V, Section 1 based solely on their employment at a CWA local or the National Union. Therefore, I believe that Mr. Osobase's claim that he is a member in good standing based on membership in and dues payments to TSEU-CWA is unsupported by the Constitution and Executive Board interpretations of the Constitution.

Mr. Osobase asserts (as does TSEU-CWA President Lugo), that TSEU-CWA Bylaws provide membership eligibility to staff working for the local under Article V, Section 1(a), which states:

> Any person eligible for membership in CWA, as defined in Article V of its Constitution, shall be eligible for membership in Local 6186, if performing work within Local 6186's assigned jurisdiction, or if **employed on a part-time or full-time basis by the CWA or Local 6186.** (emphasis added)

Both Mr. Osobase and President Lugo argue that the bolded portion granted Mr. Osobase the option to obtain and maintain membership in CWA through his employment with the Local, allowing him to now run for office within the National Union. However, there is more to this provision in the Local's Bylaws than the section highlighted in President Lugo's letter and above.

The clause before the highlighted material qualifies Local staff eligibility to be a member of the Local as follows: "if performing work within Local 6186's assigned jurisdiction." The Local charter assigns TSEU-CWA jurisdiction over work performed by (1) employees of the State of Texas, (2) work of food service employees at Stephen F. Austin University, Nacogdoches, Texas, (3) KLRU Production Workers Guild, Austin, Texas, (4) Supershuttle (Drivers and Dispatchers) in Austin, Texas, and such other jurisdiction as may be assigned by the Executive Board of the Union. TSEU-CWA is not granted jurisdiction over its own employees under its charter, nor could it be since, as a private sector employer covered by the National Labor Relations Act (the Act), the Local is not allowed to serve as or control the collective-bargaining agent of its own employees without running afoul of Section 8(a)(2) of the Act prohibiting employer interference with or domination of its employees' union.

Additionally, this provision of the Local Bylaws is further qualified by the clear statement that it is limited by the membership eligibility requirements of Article V of the CWA Constitution. Therefore, by its own terms, the bolded phrase must be interpreted in a manner consistent with the Constitution, which allows Local and National staff to *continue* but not *obtain* membership through their employment with the Local or National Union.

And, even if the TSEU-CWA Bylaws created an unqualified right of membership to Local staff, that portion of the Local Bylaws would be void because the Local's bylaws are prohibited by Article V, Section 2(g) from contravening the CWA Constitution. Such a provision would, in fact, contravene the language of the CWA Constitution and its numerous interpretations by the Executive Board explicitly prohibiting exactly the practice that Mr. Osobase and President Lugo rely on to create a right of membership in this instance.

As noted above, the Executive Board has consistently and explicitly interpreted Article V to prohibit obtaining, rather than continuing, membership through employment by a local or the National Union, as demonstrated in the Collins, Hamilton, and Navar decisions.

Mr. Osobase is not eligible for membership based on his employment relationship with TSEU-CWA.

Here, Mr. Osobase relies on his membership in and payment of dues to TSEU-CWA since 2005 (although records reflect dues payments dating back to 2006, not 2005) to demonstrate that he is a member in good standing, but the Constitution, along with the Executive Board's interpretations, explicitly foreclose that pathway to membership in good standing. Mr. Osobase could have continued his membership by transitioning from being a member in a CWA-represented unit covered by the charter jurisdiction of a CWA local to a position at TSEU-CWA, but he is not able to obtain membership in the first instance through employment with the Local. Thus, consistent with these precedents described above, Mr. Osobase is not eligible for membership in CWA solely through his employment at TSEU-CWA.

Mr. Osobase is not eligible for membership based on his employment at UTSA.

Additionally, Mr. Osobase is not eligible for membership, and is not a member in good standing, based on his UTSA employment. Mr. Osobase argues that his employment by UTSA from 1999 to 2003 provides a basis for his eligibility to run for CWA elective office. However, there is no evidence that he was a dues-paying member of TSEU-CWA during his time working for UTSA. By his own admission, Mr. Osobase did not start paying dues to TSEU-CWA until 2005, two years after his employment with UTSA had ceased. Joining the union in the first instance is required in order to *continue* membership when accepting employment with a local or the National Union. It is not enough to be *eligible* to become a member through employment with an employer covered by a local's charter jurisdiction. Were that the case, employees who refused or resigned membership would also be able to run for CWA elective office. This is not allowed.

But even if Mr. Osobase had become a member during his tenure at UTSA, he could not have continued his membership because he admittedly left UTSA to attend law school, and there is no evidence that he maintained or could have maintained his membership

with CWA during this period.[5] And, even if Mr. Osobase had been a member of TSEU-CWA while working at UTSA (which he was not), and even if he had maintained membership by taking a position at TSEU-CWA directly after his employment at UTSA (which he did not), Mr. Osobase's membership would have terminated when he left TSEU-CWA to become the Executive Director at NFA.

Mr. Osobase is not eligible to run for elective office based on his erroneous allegation that CWA has allowed nonmember staff to run for elective office in the past.
Mr. Osobase also argues that "CWA's past practice demonstrates there have been many notable CWA elected officials, candidates and national committee representatives who have held national positions with the same background as myself." He presents four specific individuals as examples.

As an initial matter, this argument is unpersuasive. As described in more detail above, the actual past practice of the Executive Board has been to review questions of candidate eligibility when they arise and make a determination in each case applying the Constitution and prior Executive Board interpretations thereof. If a candidate who was ineligible to run for elective office managed to evade detection, that does not create a past practice prohibiting the Executive Board from addressing candidate eligibility questions that arise going forward. And in any case, that situation is not present here as none of the individuals mentioned by Mr. Osobase were ineligible for membership. They are not similarly situated to Mr. Osobase, as explained below, and the fact they held elective office does not create a right to CWA membership in this case.

Larry Cohen
In Larry Cohen's case, an informal question of his eligibility was raised. As with Mr. Osobase, Mr. Cohen was contacted to determine the facts of his situation. Unlike Mr. Osobase, however, Mr. Cohen responded with facts that dispelled any concerns about his membership status and the planned challenge was dropped.

Specifically, Mr. Cohen worked for the state of New Jersey for more than five years. During his employment, he began organizing his workplace with CWA, taking a leadership role in the organizing drive. He signed a union card and paid dues to–and took a job with–Local 1085, which was involved in the organizing campaign. His dues payments went to Local 1085 because it was the only local available at that time since

[5] In his response, Mr. Osobase argues that, under the "fundamental rule" articulated in Mr. Calemine's informal memo, he is eligible to run for CWA elective office based on his employment at UTSA regardless of whether he was a member during that time. That argument is not addressed here because Mr. Osobase's interpretation of Mr. Calemine's statement is not relevant to the question presented. Mr. Calemine's informal memo was responding to the facts known to him at the time–that Mr. Osobase was never employed by the State of Texas–and was not intended to unilaterally create a new standard for eligibility to run for elective office, nor could it under the CWA Constitution.

the local that would ultimately be home to these workers following the substantial organizing victory in New Jersey had yet to be chartered. Mr. Cohen did not have a break between his time working for the state of New Jersey and his employment with the Local. As a result, Mr. Cohen was eligible for membership under Article V, Section 1(c) and Executive Board decisions interpreting that provision.

In Mr. Osobase's case, while he was eligible to join TSEU-CWA during his employment from 1999 to 2003 – the non-bargaining membership-based Local had been established for 19 years when he started his Texas state employment – he did not do so. And, even if he had, there was a break in his employment in 2003 (and again in 2013) that would have terminated his membership.

Sara Steffens

In Sara Steffens' case, the facts recounted by Mr. Osobase were incomplete, leading to his misinterpretation of the circumstances surrounding her membership status. Ms. Steffens worked at the Contra Costa Times as a reporter at the time of a CWA organizing drive. Like Mr. Cohen, she became a lead organizer at the employer. She signed a union membership card. After the unit won its vote to join CWA and was certified, her employer unlawfully fired her for her organizing activity. She and the local filed an unfair labor practice charge with the National Labor Relations Board seeking reinstatement. While that charge was pending, she was voted chair of her bargaining unit by fellow members of her local, and eventually was paid lost time wages through her local as part of a CWA SIF supporting first contract bargaining. But for the employer's unlawful union-busting conduct, Ms. Steffens would have begun paying dues to her local while employed by the employer in her CWA-represented unit.

Additionally, while working at the local, Ms. Steffens organized and joined a freelance unit that the local represented. In sum, she was eligible for membership under two different rules: due to her efforts at the Contra Costa Times under the same organizing precedent as Mr. Cohen and based on her work in a field of endeavor within her local's charter jurisdiction.

Mr. Osobase has not presented any evidence that he had joined TSEU-CWA out of an organizing drive at his former workplace, nor has he presented evidence that, while he was employed by the Local, he was also engaged in a field of endeavor within the Local's jurisdiction.

Carla Katz and Ken McNamara

The remaining two individuals cited by Mr. Osobase are Carla Katz and Ken McNamara. Mr. Osobase is correct that neither of them were subjected to a membership eligibility challenge calling into question their ability to run for elective office and, therefore, their eligibility has never been examined. Mr. Osobase asserts facts that indicate each obtained membership solely through their employment at a local. However, as Mr. Osobase himself noted, both Ms. Katz and Mr. McNamara were local

officers at the time of their candidacy for elective office. Under Article V, Section 1(b), "All persons who are officers of labor organizations representing workers within the jurisdiction of the Union shall be eligible for membership in the Union."

In Mr. Osobase's case, there is no evidence that he is or was an officer of a labor organization representing workers within CWA's jurisdiction.

Conclusion:
It is my advice to the Executive Board, based on the facts as related by Mr. Osobase, President Lugo, and my own independent investigation, that Mr. Osobase is not eligible to run for elective office because I do not believe that he is or was a member of CWA under the rules of the CWA Constitution and all existing Executive Board interpretations of those rules. Because Mr. Osobase was not a CWA member directly preceding his employment with TSEU-CWA, he is unable to continue membership under Article V, Section 1(c). And, even if he had been eligible to continue CWA membership, there was an additional break in his employment in 2013 when he began working for NFA that would have terminated his membership at that point. Furthermore, because his work as a staff member of the Local and later the National Union does not confer membership, he is not eligible for membership under Article V, Section 1(a). For these reasons, I recommend finding that Mr. Osobase is not a member in good standing and is therefore ineligible to run for elective office on these facts.