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OFFICE OF THE VICE PRESIDENT

December 20, 2023

**REPORT AND RECOMMENDATION**  
**HEARING OFFICER DENNIS TRAINOR**  
**TEMPORARY ADMINISTRATION – CWA LOCAL 9423**

**Background and procedural history**

On March 2, 2023, former President Chris Shelton, made a motion to the Executive Board seeking to place Local 9423 in temporary administration. He cited a request by District 9 Vice President Frank Arce due to allegations of theft by the Local president against the secretary-treasurer.

In the motion, former President Shelton noted a variety of issues with Local leadership. First, former Local President Robert Hogue had made repeated allegations of financial misconduct against former Local Secretary-Treasurer Monica Alvarado. In December 2021, former President Hogue stated at a Local executive board meeting that he had knowledge of financial misconduct. In March 2022, Mr. Hogue filed a bond claim seeking payment for more than \$20,000 in losses attributed to Ms. Alvarado, including losses due to cash dues payments that were unaccounted for, all of which he asserted he discovered in January 2022. As a result of the bond claim, the bond company informed CWA in February 2023 that Ms. Alvarado was not bondable, pointing in particular at the allegations regarding missing cash dues payments. Without a bond, she could not hold office or perform her official duties. Further, in December 2022, a Financial Misconduct Committee Report was issued by a committee formed at the direction of Mr. Hogue and the Local executive board to investigate and report on allegations of financial misconduct involving both Mr. Hogue and Ms. Alvarado. That report, which was posted on the Local's public website, exonerated Mr. Hogue while concluding that Ms. Alvarado was negligent in her duties in various ways. Notably, the committee report made no mention of the allegations of missing cash dues payments. In fact, there have been no findings made in any venue implicating Ms. Alvarado in the allegedly missing cash dues payments. Mr. Hogue also expressed his suspicion that Ms. Alvarado may have

been involved in theft of Local funds. Finally, former President Shelton stated his concern that Mr. Hogue and other former Local officers had prevented Ms. Alvarado from returning to her secretary-treasurer position pursuant to her exoneration at the 2022 Presidents Meeting.

Based on the foregoing, former President Shelton's motion was to impose a temporary administration on Local 9423, pursuant to the CWA Constitution, Article XIII, Section 8(c), because there was substantial evidence of theft of union property at Local 9423, and the Local had failed to adequately address the alleged theft by filing a charge so that an officer is not removed from office without due process.

On March 2, 2023, under Art. XIII, Sec. 8(b) of the CWA Constitution, the CWA Executive Board voted to place Local 9423 in temporary administration and appointed retired Staff Representative Nancy Biagini as temporary administrator. Hearing Officer Exhibit (hereinafter "H. O. Ex.") A. On March 6, 2023, Mr. Hogue's objections were received. H. O. Ex. C. Former President Shelton addressed a letter to all former officers of Local 9423 on April 27, 2023, explaining the basis of the temporary administration. H. O. Ex. D. On May 17, 2023, Ms. Biagini resigned as temporary administrator due to personal concerns and the Executive Board voted to make former staff representative Louis Rocha the new temporary administrator. H. O. Ex. F.

On May 23, 2023, I sent a letter to Mr. Hogue informing him that I had been appointed as the hearing officer. The hearing was set for June 5 to 7, 2023 at the Local 9423 union hall. H. O. Ex. G. On May 26, 2023, Mr. Hogue requested that the hearing be postponed, which I granted in a letter dated June 1, 2023. H. O. Ex. H. On July 31, 2023, I sent Mr. Hogue a letter, informing him that the hearing had been rescheduled for October 10 to 12, 2023. H. O. Ex. I. On September 12, 2023, I sent Mr. Hogue a letter informing him that the hearing location would be moved to the Hilton Garden Inn in San Jose due to issues with the union hall. H. O. Ex. K.

I held hearings on this matter from October 10 to 11, 2023. Mr. Rocha presented the Proponent's case, while Mr. Hogue and Courtney Hawkins presented the Opponents' case.

In total, fifty-one exhibits were received (twenty-three introduced by the Proponent, fifteen by the Opponents, and thirteen I introduced as hearing officer exhibits). Additionally, ten witnesses testified, three for the Proponent and seven for the Opponents. For the Proponent, the witnesses included Steven Schlapp, C.P.A., Domonique Thomas, Assistant to the Vice President for District 9, and Ms. Alvarado. For the Opponents, Mr. Hawkins, Jason Childs, David Bevans, Lisa Alden, Anthony Dedal, Edwin Gaudamuz, and Elizabeth Wilks testified. All witnesses were sworn in by me. Each side introduced

documents, called its own witnesses, and cross-examined the other side's witnesses.

I received the final transcript of the hearings on October 30, 2023. This is my report and recommendation to the CWA Executive Board.

### **Temporary Administration under Article XIII, Section 8(c)**

Temporary administration under Article XII, Section 8(c) of the CWA Constitution is appropriate where there is substantial evidence of theft and the Local is unable to adequately address such malfeasance. When the CWA Constitution was amended in 2017 by the 76th CWA Convention to add Section 8(c), the amendment was described as giving "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." The requirement of substantial evidence of theft does not mean an officer must be found guilty of theft to sustain temporary administration under Section 8(c). There need only be evidence of theft. Determinations of a Local officer's guilt or innocence are appropriate under the CWA Constitution's charging provisions. There need only be substantial evidence that theft is or may be occurring for a temporary administration under Article XIII, Section 8(c).

As to the second ground for a temporary administration under Article XIII, Section 8(c), the inability of the Local to adequately address the substantial evidence of theft, a Local is addressing evidence of theft when Local officers are being charged. Charges under the CWA Constitution were identified at the 2017 76th CWA Convention when the Constitution was amended to include Article XIII, Section 8(c) as the way a Local could adequately address evidence of theft. In response to a question from the floor of the convention as to what constituted a Local adequately addressing evidence of theft under the proposed language, then President Chris Shelton stated "For instance, charges have been filed within the Local, they are proceeding and they are going on the charges in that Local. There would be no need then for the Executive Board to step in and do anything because it's being handled by the Local." Locals are expected to bring charges when theft occurs. When a Local does not, it is not adequately addressing the problem. The statement from the 2017 convention endorsing charges to address theft supports the conclusion that where there is substantial evidence of theft and no charges have been filed against Local officers, the Local is not adequately addressing the substantial evidence of theft and therefore temporary administration under Article XIII, Section 8(c) is warranted.

## **Summary of arguments**

The CWA Executive Board placed Local 9423 in temporary administration on March 2, 2023, pursuant to Article XIII, Section 8(c) of the Constitution because there was substantial evidence of theft of union property at the Local, and the Local had failed to adequately address the alleged theft.

The Proponent introduced evidence showing, first, that the Local had taken several actions suggesting that Ms. Alvarado was, as the Local's secretary-treasurer, mishandling the Local's money and implying that Ms. Alvarado was stealing or losing the money. In addition, the Proponent introduced evidence that Local leadership, including Ms. Alvarado, had failed to follow a number of federal rules and Local bylaws. They also introduced evidence that the Local had spent its funds in dubious ways while leaving the Local's finances in disarray. Further, Mr. Hogue and Local leadership took various actions to prevent Ms. Alvarado from serving as secretary-treasurer for the Local, in contravention of the decision of the 2022 Presidents' Meeting.

The Proponent's primary evidence for the failure of the Local to follow various rules and maintain good financial order came from the testimony of Mr. Schlapp, and his report dated October 5, 2023. Proponent Exhibit (hereinafter "Prop. Ex.") I. The testimony of Ms. Thomas and Ms. Alvarado was the Proponent's primary evidence of allegations of theft and misappropriation, as well as regarding the issues preventing Ms. Alvarado from serving as secretary-treasurer.

The Opponents argued, in brief, that neither Mr. Hogue nor anyone else in Local leadership accused Ms. Alvarado or anyone else of stealing; that, to the extent there were problems at the Local, they were solely the fault of Ms. Alvarado and prior elected leadership; and that finally that the Union lacked justification under the CWA Constitution or the Labor-Management Reporting and Disclosure Act (LMRDA) to have imposed the temporary administration.

Before addressing the parties' arguments, I emphasize that I base my recommendation upon evidence related to the reasons for my appointment as Hearing Officer listed in former President Shelton's April 27, 2023 letter. As stated in that letter, the purpose of this hearing was to determine "the reasons for and objections of the Local Officers to the imposition of the temporary administration." H.O. Ex. D. This hearing was held to assist the CWA Executive Board in determining whether the appointment of a temporary administrator should be affirmed, reversed, or modified, not to prove or disprove allegations against any individual officer or member of the Local. In other words, this hearing was intended to determine whether the Executive Board had adequate justification for imposing the temporary administration, not to adjudicate who was to blame for particular actions (or inaction) at the Local.

## **Proponent's arguments**

### **Theft and misappropriation:**

The first major issue here is the reports of theft and misappropriation of union funds. There were several incidents in which Mr. Hogue and his allies in Local leadership made repeated allegations of theft or misappropriation of union funds, usually implying that Ms. Alvarado was responsible. For example, the Local filed a lawsuit against Ms. Alvarado which accused her of trespass to chattels and conversion, which are essentially civil law versions of theft. Prop. Ex. B. This lawsuit was ultimately dismissed on jurisdictional grounds, underscoring how it was an ineffective course of action for the Local to take. Prop. Ex. D. Mr. Hogue filed a bond claim against Ms. Alvarado which accused her of losing over \$22,000. Prop. Ex. F. In addition, the Local assembled a Financial Misconduct Committee to look into allegations of misconduct by Mr. Hogue and Ms. Alvarado. Prop. Ex. H. The Committee exonerated Mr. Hogue but found that the Local's treasury had declined by \$60,000 between 2018 and 2021, and that Ms. Alvarado had been negligent and dishonest in her duties. Domonique Thomas, the Assistant to Vice President Arce, reported that Mr. Hogue told her in 2020 that he suspected that Ms. Alvarado had stolen or misappropriated significant Local funds. Hearing Transcript (hereinafter "Tr.") 72.

### **Financial and other issues under prior leadership:**

According to the Proponent, Mr. Hogue and his fellow former Local officers had their own problems in their stewardship of the Local. The Union commissioned a report by independent accountant Steven Schlapp to examine what had been going on at the Local between October 1, 2019 and July 31, 2023. Prop. Ex. I. Mr. Schlapp characterized the Local's financial records as "incomplete" beginning in 2019. Tr. 28-29. Further, he noted that dues collection in the Local office was not done in any systematic way. Tr. 30. Mr. Schlapp also noted that on the latest 990 tax form, the Local had an unreconciled difference of nearly \$100,000. That discrepancy still needs to be explained and the form resubmitted. Tr. 41. In addition, Mr. Schlapp uncovered that the Local had spent at least \$88,000 on legal fees pursuing its feud with Ms. Alvarado. Prop. Ex. I, p. 9, and Prop. Ex. E.

These financial issues under prior Local leadership would be troubling enough, but Mr. Schlapp found that the prior leadership had violated both Local bylaws and rules governing federal filings. As to the bylaws, Mr. Schlapp found that the Local violated:

- Article VII, Section 5b, by not submitting substitute secretary-treasurer Anthony Dedal to a vote by membership;
- Article XI, Section 5f, by having incomplete accounting records;

- Article XI, Section 5m, by failing to have audits;

Tr. 31-32, Prop. Ex. I, p. 5.

As to other violations, Mr. Schlapp found that the LM-2 report was filed late in 2021. For the 2022 report, he found several errors:

- The Local did not use a professional accountant in preparing the report;
- Incorrectly stated that the Local's records had been audited;
- Incorrectly stated for question 13 that the Local had not experienced a loss in the preceding year which is belied by the bond claim which was filed;
- Schedule 6 did not account for depreciation of fixed assets;
- Insufficient accounting for disbursements over \$5,000;
- Failure to provide accounting for underlying spending on credit card transactions; and
- Failure to provide sufficient information regarding the General Disbursements category.

Tr. 33-38, Prop. Ex. I, p. 6-7.

There were also problems with the 990 tax form, specifically:

- The form was rejected because it was not submitted electronically;
- Item G, gross receipt total, was incorrect;
- Page 1, part 1, current year activity, was blank, and assets for the beginning of the year were incorrect; and
- Page 11, part X, \$98,000 of unreconciled liabilities.

Tr. 39-42, Prop. Ex. I, p. 5-6. As a consequence of failing to properly file Form 990, the Local was potentially liable for up to a \$10,000 penalty from the IRS but has luckily avoided any penalty thus far.

In addition to the issues described above, Mr. Schlapp found that Mr. Hogue inappropriately charged for mileage which was already included in his Union salary. Tr. 44-45, Prop. Ex. I, p. 12. Mr. Schlapp also found that multiple former officers of the Local, including Mr. Hogue and Ms. Alvarado, received lost wages in excess of the weekly cap. Prop. Ex. I, p. 15-16.

### **Conflict between Mr. Hogue and Ms. Alvarado:**

Without getting bogged down in the details, much of the Local's difficulties are traceable to the conflict between Mr. Hogue and Ms. Alvarado. Charges were filed against Ms. Alvarado, which initially resulted in her conviction by a Local trial court and suspension from membership, but at the Presidents' Meeting in June 2022, the delegates to the meeting voted to overturn the Executive Board,

exonerate Ms. Alvarado, and return her to her position as Secretary-Treasurer. Prop. Ex. A. p. 24-25.

Subsequently, after coming back to her position, there were a number of issues that made it a challenge to fulfill her role. First, she did not receive the keys to the Local office until October of that year. Tr. 106. In another example, the office computer that she used to carry out her duties was taken by former Vice President Dave Bevans due to alleged hardware issues under mysterious circumstances, and she never got the computer back. Tr. 100-101, 254-257, 262-263. Another issue was that the financial files were moved from Ms. Alvarado's office. Tr. 109-110. The final straw was when Mr. Hogue filed a bond claim against Ms. Alvarado accusing her of causing \$22,000 of losses for the Local. Tr. 118, Prop. Ex. F, G. As a result of the bond claim, Ms. Alvarado could not hold her secretary-treasurer position while the claim was pending. Through these actions, Mr. Hogue was able to hobble and then finally end Ms. Alvarado's ability to serve as secretary-treasurer. Despite this, neither he nor any of his allies filed charges against Ms. Alvarado that would trigger the fact-finding process laid out in the CWA Constitution. Tr. 117-118.

In addition, the National Union, at both the district level, and by former President Shelton and former Secretary-Treasurer Steffens, attempted to mediate and resolve the dispute. Ms. Thomas noted the countless calls, emails, and other communications attempting to resolve disputes at the Local. Tr. 72. Former President Shelton met with both Mr. Hogue and Ms. Alvarado jointly, and warned them that they needed to resolve their differences and work together, and further warned that the Local may be put in temporary administration if they were unable to work together. Tr. 76, Prop. Ex. L.

### **Opponents' arguments:**

The Opponents of the temporary administration made a few arguments that the temporary administration was improper. First, they asserted that for the temporary administration to have been proper, the Proponent must prove a violation of the CWA Constitution. That is simply incorrect. As stated above, pursuant to Article XIII, Section 8(c) of the Constitution, the Proponent's burden is to show that there was substantial evidence of theft of union property at Local 9423, and the Local had failed to adequately address the alleged theft.

The other major argument of the Opponents is that Ms. Alvarado engaged in a variety of conduct that was deleterious to the functioning of the Local, but that neither Mr. Hogue nor anyone else accused her of theft. Regarding the conduct of Ms. Alvarado, the Opponents go to great pains to describe Ms. Alvarado's failings as the Local's secretary-treasurer. They accuse her of incurring fees by failing to pay bills on time, incurring overdraft fees, entering expensive leases for office equipment, and failing to properly account for dues payments. Tr.

155-176, 186, Prop. Ex. H, F, Opponent Exhibit (hereinafter "Opp. Ex.") X. In addition to the financial issues, they accused her of a variety of failures regarding the governance of the Local, many of which boil down to failing to follow the directives of Mr. Hogue. E.g. Tr. 198-200.

Despite the litany of complaints concerning Ms. Alvarado's conduct, the Opponents went to great lengths to note that Mr. Hogue never accused Ms. Alvarado of theft or stealing and that in fact Mr. Hogue multiple times corrected members who accused Ms. Alvarado of stealing or Mr. Hogue said that she was not stealing when they asked him. Tr. 233, 260-261, 273-274, 285, 292

In my judgment, the Opponents' arguments do little to suggest that the temporary administration should be dissolved. Indeed, Mr. Hogue spent much of his time at the hearing describing what a poor secretary-treasurer Ms. Alvarado had been and how difficult it was to work with her. True or not, this one-sided testimony is hardly relevant to whether or not a temporary administration is appropriate under Art. XIII, Sec. 8(c). Indeed, charges were never filed against Ms. Alvarado, which deprived her of the rights afforded by the CWA Constitution to a prosecutor to investigate the allegations and then, if necessary, an unbiased court to determine guilt or innocence. When a neutral third party, Mr. Schlapp, did look into what had been happening at the Local over the past few years, he found plenty of mistakes and errors by Mr. Hogue, Ms. Alvarado, and others, including a number of serious problems that remain to be resolved.

The first part of Art. XIII, Sec. 8(c) requires substantial evidence of theft. On this point, Mr. Hogue's arguments that he never said "theft" amount to mere semantics. Mr. Hogue and others engaged in a campaign accusing Ms. Alvarado of serious financial malfeasance, culminating in a bond claim against her, and a committee report accusing her of all sorts of nefarious activities. This committee report was widely publicized. Based on the foregoing it was obvious that the insinuations made against Ms. Alvarado would lead members of the Local to believe that Ms. Alvarado was stealing, and that is exactly what happened. Tr. 115-116. In addition, Ms. Thomas gave testimony that Mr. Hogue said there was stealing going on at the Local. Thus, I believe that the Executive Board was amply justified in concluding that there was substantial evidence of theft at the Local.

Now, as to the second part of Article XIII, Section 8(c), it is clear from the numerous examples above that the Executive Board was justified in concluding that there may have been some kind of theft going on at the Local, and it wasn't being dealt with appropriately, particularly since Ms. Thomas heard the report of theft in 2020, and the Financial Misconduct Committee issued its report at the very end of 2022. Thus, by the time that the temporary administration was imposed in spring 2023, these reports of theft and substantial sums missing from the Local had been going on for years. And



instead of using the charge process, which former President Shelton had explicitly instructed Mr. Hogue to do, Mr. Hogue and his allies instead engaged in various unilateral actions, none of which resolved the concerns of the Executive Board. Tr. 76.

**Recommendation**

Temporary administration is one of the strongest remedies available to the Union and is appropriate to address serious issues within a local. Without assigning blame amongst Local officers, the Local's problems, financial and otherwise, are best overcome by the continued imposition of the temporary administration. Accordingly, I recommend that the CWA Executive Board affirm Local 9423's temporary administration and leave it in place until the Local has returned to normal functioning and has elected officers, and those officers have fully completed their training for their respective roles.

Sincerely,

A handwritten signature in cursive script that reads "Dennis G. Trainor". The signature is written in black ink on a light-colored background.

Dennis G. Trainor  
District 1 Vice President