AFT Decision Concerning the Internal Elections at the New Haven Federation of Teachers, AFT Local 933

**Background**

This decision addresses the election appeal filed with the AFT by Tom Burns, a candidate for President at the New Haven Federation of Teachers (NHFT), and subsequent developments, after the appeal was submitted to AFT, which impact Mr. Burns’ eligibility to be a candidate for office. Burns’ appeal was filed with the AFT on March 22, 2019. After a preliminary review by AFT of the merits of the appeal, including a review and analysis of the response from the NHFT President, President Weingarten sought authorization from the AFT Executive Council to appoint a Committee of the Executive Council to investigate the appeal. On May 22, 2019, the AFT Executive Council voted to authorize the appointment of a Council Committee to consider the appeal pursuant to Article VI, Section 14(b) of the AFT Constitution. The Executive Council approved the appointment of AFT vice presidents Ted Kirsch, Melissa Cropper and Anthony Harmon to conduct the hearing, with vice president Kirsch serving as the Chair.

The AFT investigation included not only the election issues raised by Mr. Burns, but also the issue of what the consequences should be where a candidate for union office, in this instance an unsuccessful one, uses threats in an effort to resolve the internal election dispute. Specifically, at the time that AFT was conducting its initial internal investigation of the appeal and before the Executive Council met to consider the appointment of a Committee to investigate, AFT was informed that a meeting took place between Mr. Burns and the NHFT President, David Cicarella, where Mr. Burns, in front of witnesses, threatened Mr. Cicarella that if he did not step down from the Office of President, Mr. Burns would go the police and the media with allegations that Mr. Cicarella had received improper financial benefits from the local. Consequently, this issue was added to the Committee’s investigation agenda.

The Committee sent a notice of hearing to the parties on May 24, 2019 and identified the issues that were the subject of the hearing. The hearing was scheduled for June 6, 2019 in New Haven, CT at the NHFT offices. A total of seven (7) witnesses provided testimony and evidence to the Committee. A court reporter was present at the hearing to record a transcript of the proceedings.

**Issues**

The parties were notified in advance that the issues that would be the subject of the hearing were:

1. The merits of the original challenge to the election by Mr. Burns that was filed with the AFT on March 22, 2019;

2. The merits of the response to the election challenge from the NHFT that was filed with the AFT on May 6;

3. Whether the allegations concerning Mr. Burns’ threats to Mr. Cicarella, where Mr. Burns stated he would go the authorities and the media with allegations of financial impropriety, unless Mr. Cicarella stated he would resign from office are accurate and if they are, what should the consequences be.

Subsequent to the AFT initiating this investigation, the AFT has been advised that Mr. Burns had also filed a complaint about the election with the US Department of Labor.
Decision

Article VI, § 14(b) of the AFT Constitution authorizes the AFT Executive Council to commence an investigation where it appears an internal election in an AFT affiliate has been conducted “in violation of the local or state federation constitution, the AFT constitution, or applicable federal law...” Before the Executive Council authorized this hearing there was a preliminary investigation by AFT to ascertain whether the challenge raises material issues that are in dispute and that require a hearing to develop a record for resolution of those issues. The result of that investigation was a recommendation that a hearing was necessary to resolve the issues in dispute and, therefore, as mentioned previously, President Weingarten sought and received approval from the AFT Executive Council to appoint a Committee to investigate. This decision is based on the record developed at the hearing that was conducted by the Committee of AFT Vice Presidents on June 6th, 2019. This is an appeal and, therefore, our first responsibility is to ensure that the NHFT and AFT Constitution and Bylaws were followed in the conduct of the NHFT election.

The starting point for our analysis are the applicable provisions in the AFT and NHFT Constitutions. As part of the charter granted to each local by AFT, the affiliate agrees to be bound by the provisions in the AFT Constitution. The provision of the AFT Constitution which governs internal elections is Article IV, Section 5. This section states that, “the conduct of elections shall be consistent with the standard for such elections developed under Title IV of the Labor-Management Reporting and Disclosure Act (“LMRDA”).” In practice, the AFT also considers the LMRDA’s implementing regulations as governing standards for union officer elections. We note that it is our understanding that the NHFT is subject to the LMRDA and that it files LM financial reports with the Department of Labor because it has private sector members that work at a private school and at two small visiting nurse associations in the New Haven area.

Section 402(c) of the LMRDA states, in relevant part, that, “If, upon a preponderance of the evidence” it is found that violations committed in the course of conducting an election “may have affected the outcome of an election”, the election shall be declared to be void and a new election may be declared “in conformity with the constitution and bylaws of the labor organization.”

Positions of the Parties on the Issues

At the outset of the hearing Mr. Burns made clear that he was withdrawing several issues that he had raised in his initial election appeal to AFT. Specifically, Mr. Burns indicated that he was withdrawing his charges that:

1) The security of the ballots were compromised when the outside company that conducted the election placed ballots that had been improperly delivered by the Post Office to an incorrect PO Box in a secure place at its offices until the ballot count took place. The incorrect PO Box that the ballots were delivered to was a second Box that the company had rented from the Post Office to conduct another election;
2) The outside company that conducted the ballot count erred in not counting ballots that were delivered to the PO Box after the cutoff date for receipt of ballots;
3) The outside company that conducted the count did not properly respond to duplicate ballot requests; and
4) Gift cards paid for with union funds were distributed by the NHFT President to members and the chair of the trustees committee, who acted as the election referee, in an effort to

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1 Id. at 482(c).
influence or “buy” votes.

The remaining election issues raised by Mr. Burns were considered at the hearing as well as the issue concerning Mr. Burns’ threat against President Cicarella.

**Decision**

1) **Was the Union Newsletter Used by the President to Campaign for Office**

Burns has alleged that the November/December issue of the Local 933 newsletter, the Advance, “was written to benefit the candidacy of Dave Cicarella” and that this was a “use of Union funds...for campaign purposes.” We believe that Burns is alleging a violation of the LMRDA’s prohibition on union resources being used to benefit a candidate. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g) provides, in relevant part, that no moneys of an employer or a labor union “shall be contributed or applied to promote the candidacy of any person in any election...” The Department of Labor has promulgated regulations designed to clarify this statutory ban on the use of employer and union resources in union elections. The regulations provide that the prohibition against the use of employer funds applies to both indirect and direct expenditures.\(^2\)

Thus, this prohibition includes “any costs incurred by an employer, or anything of value contributed by an employer,” including employer time, in order to support the candidacy of any individual in an election.\(^3\) The same prohibition applies to the use of the labor union’s funds.

Burns states that the content of the article embraced themes that were part of the President’s campaign for office. He also states that there is a picture on the front page of the newsletter that includes the President of the NHFT. Finally, Burns indicates that there is a box in the lower right corner of the newsletter that contains the header “NHFT Election Reminder” and provides general information about the ballot mailing and return dates and who to contact if a member did not receive a mail ballot.

Cicarella responded to this allegation by stating that every edition of the Advance starts with an article under the byline of the President. He noted that the content of this article, which concerned collaboration, has been a subject he has addressed on numerous previous occasions. Generally, he explained that the article was written in the same style as other stories under the President’s byline and it did not contain any content that would be considered advocacy for voting purposes. Cicarella noted that the picture on the front page was of the NHFT delegates that attended the AFT convention in Pittsburgh. He also indicated that the decision to place the information about the election mailing dates on the front page was made by the editor of the paper who wanted to make sure that this information was prominently featured so the members were reminded and aware that mail ballots would be arriving at their homes and would know when they had to return those ballots so that they would be counted.

This allegation does not survive careful scrutiny. We have reviewed multiple issues of the NHFT newsletter, in addition to the November/December 2018 issue and none of the articles constitute election advocacy material. The lead article in the November/December 2018 issue is titled “Collaboration: There’s Plenty of Fight in It” and it addresses the issue of labor/management collaboration and why it has been a beneficial strategy for NHFT. No article in that issue or any other that we reviewed promotes or attacks the candidacy of any candidate. Furthermore, no article engages in election advocacy for or against any candidate in the elections. The articles discuss the work of the union and the work the current leaders are doing on behalf of the

\(^2\) 20 C.F.R.§ 452.78(a)

\(^3\) Id.
members. Indeed there was, in fact, another article on the role of labor/management collaboration in the Sept/Oct 2015 issue of the newsletter. Nothing in the act suggests that the union should stop the business of representing its members during an election period. There is nothing inappropriate about such articles and it is not uncommon for union publications to highlight the work of the union and its officers.

2) Alleged Defamation

Burns second allegation is that President Cicarella campaigned in a way that undermined his reputation—specifically that he spread rumors that Burns had used drugs in the past and that he would bankrupt the union if elected.

As to the allegation on drug use, while Mr. Burns denies the drug use allegation, President Cicarella asserts that there is a public record of a drug conviction involving Mr. Burns dating back to 1994. Additionally more recently at an AFT CT meeting Mr. Cicarella indicates that Mr. Burns stated that he had a relapse of his drug issue and had successfully completed a drug rehabilitation program. Cicarella indicates that these assertions about Burns were relatively common knowledge among the local members who had been working for some time in the New Haven public schools.

While there is a dispute about the allegation, it is not uncommon that when individuals run for office in a local, their fitness to serve and any past history that could impact that fitness are fair game in their campaigns. Moreover, we are not a court of law and we are not empowered to make such legal determinations. Additionally, we find that there is no reason why allegations of drug use, unless they were patently false and issued for malicious purposes, would violate any election rules or laws governing union elections. We do not believe that under the facts presented here it is established that such statements were clearly false and inaccurate or made for malicious purposes. This claim is dismissed.

3) Failure to Include the Members in the Two VNA Chapters and at the Private School As Eligible Voters

Mr. Burns did not raise this issue, but we now turn to it because of its importance and the fact that it came up during the AFT preliminary investigation and at the hearing. In addition to members who teach in the public schools in New Haven, the NHFT has three chapters of members who work in the private sector. One of those chapters is a group of private school teachers who are employed at the Cedarhurst School of Yale University, the other two are visiting nurse chapters in the New Haven area. The NHFT Constitution and Bylaws expressly recognize the status of the visiting nurse association members and states that they “shall maintain voting status in compliance with Department of Labor regulations.” Article III, Section 2 NHFT Constitution. At the hearing, testimony was provided that confirms that these individuals were not considered eligible voters and were not provided an opportunity to vote in the election. The total number of members in these three chapters who were not permitted to vote was approximately twenty-seven (27) individuals.

President Cicarella states that the NHFT does not bargain the contracts for these members or provide grievance representation and service. He indicates that the state federation provides such services. He also states that they pay less in dues to the local than the local pays in per capita to the state and national unions. However, it is clear that these individuals are members of the local and that they pay dues to NHFT. Additionally, their collective bargaining agreements indicate that the NHFT is their bargaining representative.
Members in good standing of a local labor organization have a right to vote for union leadership that is guaranteed by federal law. As already discussed, the NHFT is subject to the Labor-Management Reporting and Disclosure Act in two ways, under the AFT Constitution, and because it includes in its membership individuals who work in the private sector. Section 401(e) of the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter, LMRDA or Landrum-Griffin) states, in relevant part, “In any election...which is to be held by secret ballot...every member in good standing...shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof.” 29 U.S.C. § 481(e). Courts have held that the issue in a disenfranchisement case under the LMRDA is “whether the arrangement employed under the circumstances of this particular election and local resulted in unreasonable deprivation of the right to vote for any significant group of members.”

The standard employed by federal courts in determining whether an election should be overturned based on disenfranchisement of members is a high one. As one court stated about that high standard, “Under it, the question is not whether better procedures could have been adopted or whether it could have been made more convenient for some persons to vote, but whether the Court finds the actual arrangements made by the local so lacking in democratic principles and so unfair, in denying a reasonable opportunity to vote to a significant number of members, that the election must be voided.”

The standard set forth above has been applied to overturn union elections in which members were not given a reasonable opportunity to vote. In Chao v. Local 54, the Secretary of Labor sued a local union under the LMRDA, seeking to have an election of officers set aside and a new election ordered. The court held that the union violated the statute by failing to send a notice of election to 1,975 out of 15,095 listed members, despite the union’s claim that the addresses of the omitted members were invalid. In issuing its decision, the court cited Hodgson and other cases for the proposition that, “at a minimum, each member eligible to vote be given a ‘reasonable opportunity’ to exercise his or her franchise.”

Here, the fact the members in these chapters were not sent ballots is the threshold issue, not the margin of victory for Mr. Cicarella over Mr. Burns (20 votes) or the fact that Mr. Burns stated, that he did not believe any of these members would have voted for him. There are at least twenty-seven (27) members in the two VNA chapters and the private school who did not vote in this election. Indeed, we must err on the side of providing them the opportunity to participate in the election of officers for their local. We can not presume that their votes would have no bearing on the outcome of the election given this margin. On this fact alone, we conclude that this election must be rerun and the members in the three chapters that did not participate in the original balloting must be included and provided with the opportunity to vote.

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7 Id. at 125-26.

8 Id. at 120 citing Hodgson, 350 F. Supp. At 19.
4) **Ballot Box Security**

While at the hearing Mr. Burns withdrew his challenge to the manner in which the outside company who conducted the election handled the misdelivered ballots, we address that issue anyway because it was raised by Burns earlier and we believe that it should be resolved since left unanswered it could leave a cloud of uncertainty over how the balloting was conducted. NHFT retained MK Election Service LLC to conduct the mail balloting. Burns alleged that the US PO Box obtained by MK for the return of mail ballots cast by members of NHFT “was opened and ballots were taken by MK Elections to be stored at their residence until the rest of the ballots would be picked up...” Furthermore, he alleged that “ballots were not counted” and that ballots from another election were commingled with those for Local 933. No evidence was supplied by Burns with the complaint to substantiate any of these allegations.

Local 933’s response included a letter from MK Election Services LLC. In that letter, the company explained that they were running two organizations’ elections at the same time with two different ballot boxes at the same post office. It is true that ballots from these elections were commingled by workers at the post office. However, the company states unequivocally that, while they were permitted to check the ballot box for the other organization’s election periodically, they did not open the Local 933 box prior to December 4, 2018, the appointed date for retrieving the ballots. The company did receive some Local 933 ballots in the other PO Box, which they did save at their office because postal regulations do not permit mail to be returned to the post office for placement in another box. MK reports that the ballots that they received in the incorrect PO Box were secured in their office and a Local 933 election trustee was informed at the time they took this action. Finally, MK addressed the commingling issue by stating that the Local 933 election occurred prior to the other organization’s election. As such, MK personnel were able to check both boxes on December 4—the final date by which ballots could be returned—to make sure that no ballots for the Local 933 election were in the other PO Box.

This allegation is dismissed on the following grounds. First, MK denies that the ballot box which was designated for return ballots for the Local 933 election was opened before the appointed date and Mr. Burns has produced no evidence to substantiate his allegation that it was opened early. While MK acknowledges that ballots were commingled with those from another election, complainant has produced no evidence that suggests that all of the ballots of the Local 933 election that were received by the deadline were not received and counted. The fact that the Local 933 election was held before the other election is highly determinative of this issue, because it afforded MK the opportunity to check both boxes for ballots prior to the Local 933 count. It is unfortunate that the postal service delivered ballots to the wrong box and it is also unfortunate that they refused to return ballots to the appropriate box after the error occurred. This resulted in MK holding onto ballots at its offices. Mr. Burns has failed to produce any evidence that any ballots were not received or counted. Nor has he produced any evidence of ballot tampering, a potentially serious but unsubstantiated allegation. Without such evidence, it is impossible to conclude that the commingling or storage of ballots at the MK offices affected the outcome of the election.

5) **Alleged Extortion Threats Related to the Election**

Ordinarily, an election investigation would conclude here. However, serious allegations concerning post-election conduct by Mr. Burns have come to our attention that warrant a response. We have learned that Mr. Burns has raised allegations concerning financial practices of the local under Mr. Cicarella’s leadership and that he has, in the presence of Mr. Cicarella and two other individuals, threatened to make the financial practices public unless Mr. Cicarella resigns his office. Mr. Cicarella has informed us that a respected local attorney told
him that such actions and threats constituted extortion and that with the advice of legal counsel Mr. Cicarella has filed a criminal report with the New Haven police regarding such activity.

Burns denies he committed extortion and states he was doing his duty to go forward to the criminal justice authorities and media with corruption allegations he believes are true. At the investigation hearing, the two other individuals who heard these statements by Mr. Burns provided testimony under oath. They confirmed that Burns had made these statements and they were announced by him as a plan that would happen unless Cicarella stepped down promptly. It was evident that Cicarella believed Burns would carry out these actions and further that he was worried that the media could well publicize the claims and damage his reputation, even though he stated that the claims lacked merit, leaving Cicarella to later clear his name but after damage to his reputation had resulted.

The financial allegations raised by Mr. Burns are under review by AFT-Connecticut. They were brought to the attention of the state federation in May 2019. They were not raised by Mr. Burns at the hearing, and will not be addressed here.

What is very much at issue in this matter is the attempt by Mr. Burns to allegedly extort his way into the office that he did not win in the recent election. It is certainly appropriate that Mr. Burns or any member raise issues concerning the finances of their local, if they feel that bona fide issues exist. At the same time, it is never appropriate and the AFT will never countenance any indicia of extortion. We are a democratic union and there are democratic means in place pursuant to the AFT Constitution and federal law for the investigation of financial issues and the resolution of election disputes. We would urge Mr. Burns in the strongest possible terms to cease and desist from any efforts to advance his political ambitions through threats. Through this decision, we place Mr. Burns on notice that his national union and its leadership will not abide illegal activity of this nature by anyone for any reason.

More importantly, we can not permit such conduct to go unremedied. Article VI, Section 14(b) of the AFT Constitution provides AFT in resolving an election investigation “the power to resolve the matter.” This same section states that “the action of the council in such cases shall be final.” In the context of this investigation where we are directing that a rerun election occur, we find that this conduct disqualifies Mr. Burns from being an eligible candidate to run for office or being appointed to a vacancy in Local 933. We further find that he should not be deemed eligible to run for office or being appointed to a vacancy in Local 933 in the next election cycle as well. To do any less would be to reward efforts to use extortion to prevail in an election that he lost. During this period of ineligibility, Burns will otherwise have the rights of any other member of the union. Overall, we believe that it is important that the national union go on record that engaging in extortion in order to advance an individual’s goal to hold union office should be considered in itself grounds to disqualify that individual as an eligible candidate.

**Conclusion**

We conclude that the election must be rerun because the VNA and private school teachers were not allowed to vote. We also conclude that Mr. Burns’ conduct disqualifies him from running for office. Even in the original election, there was third candidate for office, Cameo Thorne. We do not assume to know how the members of the NHFT would vote in a rerun election. Each election is different and impacted by the qualifications and positions of the candidates who appear on the ballot as well as the issues facing the membership in the workplace at that point in time. Therefore, while in the original three-way race Ms. Thorne did not come within the margin of victory that would have been
impacted by the private school teachers and VNA members who did not have an opportunity to vote, for the reasons stated above, we believe a rerun is necessary.

We also recommend that the NHFT and AFT Connecticut work together to amend the NHFT Constitution to either to integrate into the local governance structure more directly the private school teachers and VNA members or to create a separate local governance structure for these members.

We further recommend that in future internal elections, the NHFT empower the elections committee created in Article V, Section B of its Constitution and Bylaws “along with the Trustee Council to oversee the election.” See, Article VI, Section 1 of the NHFT Constitution and Bylaws. In making this recommendation, we note that in the most recent election the Trustee Council alone implemented the necessary functions to carry the election out, along with the outside company that handled the balloting, in a manner that fully comported with the NHFT Constitution and Bylaws.

This decision shall take effect immediately after the vote by the AFT Executive Council.

Order

Based on the entire record, including the testimony and exhibits from the hearing, and pursuant to the authority provided in the AFT Constitution, the AFT Executive Council directs that:

1) The 2018 election for NHFT officers be rerun for all candidates that ran in contested positions;

2) Each candidate will be provided the opportunity to include a photo and a 250-word biographical statement which will be mailed with the ballots;

3) Mr. Burns is disqualified from both participating in this election and the next one or from being appointed to office during this time period for the reasons stated in our decision;

4) The rerun election should occur early this fall after teachers return to school for the 2019-2020 school year, with a four week voting period;

5) The AFT will monitor the conduct of the election;

6) A letter will be sent by AFT to the NHFT members explaining the reasons for the rerun election; and

7) The AFT Executive Council will retain jurisdiction pending completion of the rerun election and installation of the new officers.

Date: July 10, 2019