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MEMORANDUM

TO: George Parker 195-118-10
FROM: Lee W. Jackson
DATE: June 9, 2010
RE: **Authority to Set New Deadlines for Nominations and Elections of WTU Officers**

You asked that this firm advise the WTU with regard to the following question: Given the fact that the Local Constitutional time lines could not be met, which body, the newly-elected Elections Committee, or the Local Executive Board, has the authority to set new deadlines for nominations and elections of Local Union Officers? What follows is the opinion you requested.

In my considered judgment, the answer to this question is purely a matter of constitutional interpretation. An examination of the Local WTU Constitution indicates to me that the Executive Board is the highest governing body of the WTU in the absence of the Membership itself, and of the Representative Assembly. As such, it is my judgment that the Executive Board has the authority to make a reasonable interpretation of the WTU Constitution, including a reasonable interpretation of the question whether it or the Election Committee has the authority to set new deadlines for nominations and elections for Local Union officers. In *Monzillo v. Biller*, 735 F.2d 1456, 1458 (D.C. Cir. 1984), the Court stated that "An interpretation of a union constitution rendered by officials of a labor organization is entitled to considerable deference by a reviewing court and should not be overruled unless the court finds that the interpretation was unreasonable or made in bad faith." Thus, it is my opinion that the WTU Executive Board has the constitutional authority to decide this issue itself. Further, after a thorough examination of the WTU Constitution and By-Laws and relevant case law, it is my judgment that a reasonable, good faith, determination could be made by the Executive Board that the Executive Board itself, and not the Elections Committee, has the authority under the WTU Constitution and By-Laws to set new deadlines for nominations and elections for Local Union officers.

First, the WTU By-Laws make it clear that the highest governing body of the WTU shall be the Membership itself. Thus, Article V, Section 1, states that: "Section 1. The Membership shall be the primary unit of organization." (Emphasis added.) Pursuant to Article VI, Section 1 of the WTU

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By-Laws, the Representative Assembly is “the general governing body of the WTU ...” subject only to “... the final authority of the membership ...”. Further, Article VI, Section 7, specifically provides that:

Section 7. The Representative Assembly shall meet for the purpose of establishing the policies of the WTU; receiving and reviewing the reports of the President, Executive Board and Committees; taking appropriate action as specified in the Constitution, reviewing monthly financial reports and the annual audit and initiating and taking other actions as the body deems necessary.

(Emphasis added.)

Finally, Article VI, Section 5 of the WTU By-Laws provides that the Representative Assembly shall meet at least once each month, with the exception of the months of June, July, August, and December, and that special meetings of the Representative Assembly may be called by the WTU President, Executive Board, the majority of the Representative Assembly itself, or by ten percent of the members in good standing of the WTU.

The WTU By-Laws provide that the Executive Board is third in line of authority within the WTU, with the Membership being first and the Representative Assembly being second.¹ Article V, Section 2, D, (2) makes it clear that the Executive Board is empowered to exercise the exact same power as the Representative Assembly exercises, or as the Membership exercises, between meetings of either the Representative Assembly or the Membership. Thus, Article V, Section 2, D, (2) states as follows:

(2) The Executive Board shall take such action as may be necessary between representative assembly or membership meetings of this organization. All action taken must be reported at the next representative assembly or membership meeting.

(Emphasis added.)

¹An argument could be made, based upon Article V - “Units of Organization” of both the WTU Constitution and By-Laws, that the Executive Board stands second in line of authority, following only the Membership. That is unclear, given other cited language of the WTU Constitution and By-Laws. It is clear to me, however, that whether the Executive Board stands second or third in line of authority, the Executive Board clearly stands higher in the line of authority under the terms of both the Constitution and the By-Laws of the WTU than does the Election Committee.

Further, the WTU By-Laws, Article VII – ELECTIONS AND NOMINATIONS, makes it clear that the Executive Board is empowered to exercise authority even with regard to the nomination and election of Local Union officers. Thus, Article VII, Section 2, M provides that the Executive Board has the authority, by majority vote, to fill all vacancies among Local Union officers except the office of the President of the WTU. Thus, the WTU By-Laws generally state that the Executive Board stands in the shoes of both the Membership and the Representative Assembly between meetings of those bodies, and, additionally, specifically states that the Executive Board has the sole authority to fill a vacancy among Local Union officers by majority vote.

Although Article VII, Section 1, E, 2 of the WTU By-Laws seems to grant broad authority to the Elections Committee with regard to the election of Local Union officers, a close examination of the specific duties of the Election Committee set out in the By-Laws indicates that that delegation of authority gives the Elections Committee no power to exercise discretion in carrying out the functions assigned to it. Instead, The Elections Committee is simply charged to perform the functions set out for it in the WTU By-Laws, and to perform those functions exactly as they are set out in the By-Laws.

Thus, Article VII, Section 1, E, 2 of the WTU By-Laws states that:

2. It shall be the duty of the Elections Committee to conduct all general and special elections of the organization.

More specifically, after an Election Committee is elected, that Committee must follow, to the letter, the specific instructions set out in the WTU Constitution and By-Laws regarding “Election of Officers”. Thus, Subsection A of Article VII, Section 2, provides, as stated above, that the Election Committee must notify all members of the opening of nominations for office 45 days prior to the date of any election. Subsection B requires that only current DCPS teachers and full dues paying members shall be eligible to run for office in the WTU. Subsection C requires that official nominating petitions “shall” be made available to the membership at the March meeting or at the WTU office, and that those petitions must be returned to the office of the WTU on or before the last regular working day of the Union in April. Subsection D requires that the Elections Committee “shall” certify that all nominating petitions have been properly signed by 20 members in good standing of the WTU before those names are placed on the ballots, and that those petitions must be submitted no later than 30 days following the notice of the opening of nominations. Subsection E requires that it “shall” be the obligation of the Election Committee to provide information concerning all Presidential candidates for an addition of “The Washington Teacher”, and that each Presidential candidate shall submit to the Elections Committee his or her official statement, not to exceed 150 words, for such publication. Subsection G establishes slate balloting for election of

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Union Officers and the method for determining the position of the slate on the ballot. Subsection H provides that an outside agency, such as FMCS, AAA, or other independent agency, shall conduct the election of Union Officers and members of the Executive Committee, and, at the same time, gives the Elections Committee only the power to “recommend” to the Executive Board which agency shall be chosen. It is within the authority of the Executive Board alone to determine which outside agency shall conduct the election. Subsection I requires that ballots shall be mailed to members no later than 15 days following the close of nominations. Subsection J requires that a Union Officer serve three years until their successors are elected and installed, and that officers shall be installed at the May meeting. Subsection K provides that a majority of the ballots cast shall determine an officer’s election in the WTU Election. It further provides that, in the absence of a majority, the Election Committee shall conduct a run-off election among the two candidates who received the most votes for the office, using the procedure set out in Subsection 2 H. Subsection L provides that newly installed officers “shall” assume their respective offices on July 1. Finally, Subsection M provides that the Executive Board, alone, has the authority to fill any vacancies among WTU Officers with the exception of the office of the President, by majority vote of the Executive Board. Thus, on balance, it appears that the functions assigned to the Elections Committee by the WTU Constitution and By-Laws give that Committee no power to exercise discretion, but merely directs it to perform those functions as they are specifically set out in the Constitution and By-Laws with no authority to change or modify those functions.

As you know, neither I nor my firm have been involved in the WTU election process, and so I have no direct knowledge of what led to the current situation, that is, that the WTU election of Local Officers did not occur before the end of May 2010. I have reviewed documents, however, that indicate that the AFT, based upon concerns expressed by both WTU President George Parker, and WTU General Vice President Nathan Saunders, determined that the process for nominating members of the WTU Elections Committee and delegates to the AFT Convention should be reopened, followed by elections for those positions. AFT further determined, after prior notice to both President Parker and General Vice President Saunders, to stay the election of WTU Officers until after a proper secret ballot vote to elect members of the WTU Elections Committee had occurred. That election, conducted by the AFT, for members of the WTU Elections Committee, was held, pursuant to information given to me, on May 27, 2010. It is within this context that the question has arisen as to which body, the WTU Elections Committee, or the WTU Executive Board, has the authority, after the election of the Elections Committee, to set new deadlines for nominations and elections of WTU Officers pursuant to the Local Union Constitution.

An examination of the nature of the authority in question lends further support to the conclusion that the Executive Board, not the Elections Committee, is empowered by the WTU Constitution and By-Laws to set new deadlines for nominations and elections of WTU officers. The

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WTU Constitution and By-Laws specifically provides the deadlines for nominations and election of WTU officers. In my view, these were policy decisions made by the framers of the WTU Constitution and By-Laws. The framers of the WTU Constitution and By-Laws clearly gave the Election Committee no role to play in making these decisions. They did provide, however, that the Executive Board has the power to act in place of the membership and the Representative Assembly, the highest governing bodies of the WTU, in their absence. It follows, then, that the Executive Board, not the Elections Committee, has the authority to make what is essentially a policy decision regarding new deadlines for nomination and elections of WTU Officers given the circumstance which required postponement of the election from its normal time frame.

Based upon all of the above, it is my conclusion that, pursuant to *Monzillo v. Biller*, cited above, the WTU Executive Board has the authority to make a reasonable and good faith determination that it is within the authority of the WTU Executive Board to set new deadlines for nominations and elections of Local Union officers, and not within the authority of the WTU Elections Committee. Clearly, the facts which underlie the current circumstances are not directly spoken to in the WTU Constitution and By-Laws. However, it is clear that the framers of the Constitution intentionally gave the Elections Committee a limited role in directing the course of those functions set out in Article VII, Section 2, while it gave the Executive Board power to act with discretion in certain enumerated circumstances, and to act generally in the absence of a meeting of the Membership or a meeting of the Representative Assembly. It is reasonable, therefore, to conclude that the framers of the Constitution intended to give the Executive Board the authority to set new deadlines for nominations and elections of WTU Local Union officers and did not intend to give that authority to the Elections Committee.

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