

## **Baltimore Teachers Union Investigation Report**

### **Request For Investigation**

On May 24, 2019, AFT President Randi Weingarten and Secretary-Treasurer Dr. Lorretta Johnson received a request for investigation from Diamonté Brown, the recently elected president of the Baltimore Teachers Union, regarding the BTU Nominations and Elections Committee's announcement of its intent to re-run the election for the BTU's Teacher Chapter. Brown's request asserted that the announced re-run was in violation of the local's constitution and due process. The request was submitted pursuant to the procedures for investigation of internal affiliate elections set forth in Article VI, Section 14(b), of the AFT constitution. Subsequently, BTU PSRP Chapter President Sandra Davis sought a trusteeship based on allegations that the new BTU leadership was improperly excluding the PSRP chapter from meetings and decisions. Finally, before a decision was made to conduct an investigation, the AFT also received information submitted by the BTU Progressive Caucus alleging egregious election violations both before and during the election.

On May 30, the AFT executive council voted unanimously to authorize an investigation into the BTU election and to stay the re-run of the Teacher Chapter election, in order to provide time to enable the AFT to adjudicate this matter. Weingarten appointed a committee, composed of herself as chair and AFT Vice Presidents Shelvy Abrams and Frank Flynn, to conduct the investigation with the assistance of AFT General Counsel David Strom. With advance notice being given to the parties, a hearing was conducted by the AFT investigation committee in Baltimore on June 10. The hearing began at noon and concluded at approximately 8:30 p.m. Twenty-nine witnesses provided oral testimony and documentary evidence to the committee. A court stenographer was present and prepared a transcript of the proceeding.

### **Issues**

Before the hearing, the parties were advised that the investigation committee was interested in hearing testimony, receiving evidence and reviewing arguments on the following issues:

1. Alleged due process violations with respect to the BTU Nominations and Elections Committee's decision to set a new election and its direction that the new election should only include teachers and not PSRPs.

2. Alleged violations by the Baltimore Movement of Rank-and-File Educators / Caucus of Educators for Democracy and Equity (BMORE/CEDE) slate with respect to use of employer resources (email and events on employer property) and election day conduct.
3. Allegations that Teacher Chapter executive board meetings have improperly excluded PRSP executive board members, and a request that the AFT appoint a trustee.

### **The Factual Record**

The BTU election held on May 15 was hotly contested, and the parties involved made many allegations of misconduct. At the AFT hearing on June 10, the AFT investigation committee asked each of these parties to present testimony and documentary evidence to support each of the allegations. The investigation committee specifically requested that: (1) the BTU Nominations and Elections Committee explain its basis for announcing a re-run of the election for the BTU Teacher Chapter; (2) the Progressive Caucus/English slate provide evidence of its allegations of election misconduct by the BMORE/CEDE slate; (3) BTU PSRP Chapter President Sandra Davis present her evidence that the newly elected leadership was improperly excluding the PSRP Chapter; (4) Brown and the BMORE/CEDE caucus respond to each of the allegations; and (5) Elections USA, the company BTU contracted with to conduct the election, explain the election process, ballot design and election results. Each party was questioned by the investigation committee and provided time for rebuttal after the initial testimony was heard. Based on the testimony and documents presented at the investigation hearing, the AFT investigation committee made the following observations and findings of fact:

#### **A. BTU Nominations and Elections Committee and 2016/2019 Election Rules**

On December 13, 2018, the BTU's executive board appointed its Nominations and Elections Committee for the spring 2019 election. The Nominations and Elections Committee put together election guidelines and procedures and presented them to the BTU executive board at its February 25, 2019,<sup>1</sup> meeting, at which time they were adopted.

The nomination and election rules for the 2019 election, while similar to those in effect in 2016, differed in some significant ways. The 2016 rules set forth limitations on how parties to the BTU elections could campaign; the 2019 rules added to those limitations by prohibiting the use of work email

---

<sup>1</sup> All further dates are in 2019 unless otherwise noted.

or worksite mailboxes to distribute campaign literature, and prohibiting any election-related meetings at schools and worksites. The BTU Nominations and Elections Committee submitted documents on June 13, which provided the following explanations for the changes:

- The prohibition on use of email was based on Section II(C)(1) of the school board regulation on Internet Safety/Acceptable Use of Technology (Employees), which states that the use of communications systems is intended for Baltimore City Public Schools business and education purposes, with limited personal use permitted, as well as that section's Privacy and Electronic Surveillance subsection ii, which allows the employer to access communications at any time.
- The prohibition on using school or worksite mailboxes was added because "candidates were placing mail in non-members mailboxes and distributing literature that was defamatory." They also cited the school board's policy on Employee Participation in Political Activities Section III (A) and (B), which cites state law prohibiting board employees from engaging in political activity on the job during working hours.
- The prohibition on election-related meetings at schools was also based on Section III (A) and (B) of the board's Employee Participation in Political Activities policy.

A member of the Progressive Caucus testified at the hearing that she interpreted the rule prohibiting election-related meetings at schools to mean they could have one-on-one conversations at schools, but not meetings.

## **B. Early Campaigning and Distribution of Nominating Petitions and Packets**

On March 22, nominating petitions and election procedure packets were distributed by the BTU's Nominations and Elections Committee. The election was to take place on May 15 and involve approximately 6,774 eligible voters at the approximately 174 schools in the Baltimore City Public School System.

In April 2019, presidential nominee Marietta English, the incumbent BTU president at the time, was qualified as a candidate, along with a full slate (the English, or Progressive Caucus, slate). Presidential nominee Diamonté Brown was also qualified as a candidate, but her full slate (the Brown, or

BMORE/CEDE, slate) was not, based on a determination by the Nominations and Elections Committee that seven of the BMORE/CEDE candidates were disqualified. The election rules provided that official campaigning was to begin on April 12.

On April 3, a group called the Teachers' Democracy Project sent an email to BTU members' work email addresses advertising a BMORE Supply Swap giveaway for Paraprofessional Week. PSRP Chapter officers Terry Harper and Celia Elliott wrote to the BTU Nominations and Elections Committee, stating that they believed this communication violated the election rules because it was campaigning using work emails. The Nominations and Elections Committee then wrote to the CEO of the Baltimore City Public Schools stating that the emails from the Teachers' Democracy Project violated BTU election rules and Section 2.4 of the Teachers Chapter CBA, which provides that the union, as exclusive representative, could use the school system's email facilities, but that other individuals and organizations could not. They also stated that it violated Maryland law because, by allowing its email system to be "used by BMORE as a campaign tool to influence union members in the upcoming election," the school board was "unwittingly in violation" of the prohibition on interfering with the rights of employees to participate in the activities of employee organizations. They asked the school to take steps to block the Teachers' Democracy Project and BMORE from using the school's email system to send information to BTU members. It is not clear if or how the district responded to this communication.

Additionally the Progressive Caucus alleges that BMORE/CEDE started campaigning even earlier than April. It submitted as evidence an announcement posted on Twitter for BMORE/CEDE school visits the week of March 6. The announcement said "BMORE & CEDE ARE RUNNING FOR BTU LEADERSHIP" and "Come meet some of the candidates!! We are making our way around to BCPSS [Baltimore City Public School System] schools to hear the needs of the rank-and-file members and talk about our platform." The announcement states that they would be having their first school visits at Green Street Academy and Ben Franklin High School. The announcement said that the event on March 6 would take place at 3:30 p.m.

### **C. Email Regarding Absentee Ballot Deadline**

On April 29, Kimberly Mooney, a BMORE/CEDE candidate for Teacher Chapter vice chair and a BTU building representative, sent an email to 74 BTU members using work email addresses, informing them that the deadline for requesting an absentee ballot for the upcoming BTU election was approaching. She attached an absentee ballot request form that she created, listing the three permitted reasons for

requesting an absentee ballot (illness, vacation and employment tour of duty). Members could circle their applicable reason, provide their information and submit the form directly to the BTU. Mooney also stated that she could spot people a stamp if they needed one to get it in on time. She testified at the hearing that she sent this email in her role as a BTU building representative because she wanted the BTU members she represented to know about the coming deadline and be able to request an absentee ballot if needed.

On May 3, the BTU Nominations and Elections Committee sent Mooney a letter stating that her email and the creation of the form letter was disruptive to the election process, citing rules regarding work email and the prohibition on conducting election-related meetings at schools and worksites. The committee directed her to cease and desist from engaging in any and all behavior that disrupts the election process.

The committee also communicated to all of the BTU members who submitted Mooney's form, asking them to provide more information about their need for an absentee ballot. Only two members replied to the committee's letter, and those two members were issued absentee ballots.

#### **D. Email from BMORE/CEDE Candidate Diana Desierto**

On April 30, BMORE/CEDE candidate Diana Desierto sent an email from her work email address to 30 other employees on their work email addresses, with the subject line "would you mind spreading the word?" The email text said, "Hey good people of Cecil, Abbottston, and Monarch" and invited them to attend BMORE/CEDE slate meet-and-greets off campus with a link to the slate website. Desierto testified that this was the only campaign-related email she sent from her work email.

On May 1, a teacher at Abbottston Elementary forwarded Desierto's email to 16 additional employees from his work email address to their work email addresses. In the forwarded email, the teacher said:

Teachers, I just wanted to reinforce how important voting is. If you are unhappy with BTU representation, this group(s) are trying to make things happen. Attend these events to hear what they stand for and most importantly, make sure you vote.

On May 3, the Progressive Caucus wrote to the BTU Nominations and Elections Committee and stated that it had been brought to their attention that members of the BMORE/CEDE slate had been utilizing Baltimore City Public Schools' email system for the purposes of soliciting electoral support, extending campaign invitations, and securing votes for the upcoming election. They asked for an

immediate investigation of the violation and a written ruling as soon as possible. The BTU Nominations and Elections Committee appears to have first responded to this request one week later, on May 10.

### **E. Teacher Appreciation Week**

During Teacher Appreciation Week, May 6-10, three cookouts were held involving supporters of the BMORE/CEDE slate. These cookouts were advertised on their Facebook page. Shari Thomas, a BMORE/CEDE candidate for PSRP vice-chair, also sent an email from her work email that stated that there were “several events upcoming this week ... [s]ome involve eating (free BBQ).”

The first cookout was held on May 6 outside of the BCPSS headquarters, and it is unclear whether any part of it was on school property. The second was held on May 7 outside on the grounds of Edmondson-Westside High School. The principal of Edmondson-Westside High School, Karl Perry, testified that on May 6, his school received a call from an individual claiming to represent the school’s Alumni Association. According to Perry and his staff, the individual offered to hold a cookout for the school’s staff the next day in honor of Teacher Appreciation Week, and the offer was accepted. Perry testified that most of the staff there, around 110 people, attended the cookout. He further testified that one of the administrators brought one of the sponsors to meet him to inquire about a teaching position. She told him that she was part of the ticket running for the BTU election and that they had sponsored the food, and she handed him a flier indicating voting locations. The third cookout was held on May 8 at or near Moravia Park Elementary School.

A member of the BMORE/CEDE slate testified that the BMORE/CEDE caucus paid for the food at these three cookouts and that they handed out a quarter-page flier with information about where and how to vote in the BTU election. The flier submitted into evidence states the date, time and voting locations of the election; what is required to vote; and the absentee ballot deadline. At the bottom, it directed people to call the BTU office; email Thomas Frasier, the BTU Nominations and Elections Committee co-chair; or email BMORE/CEDE, if they still had questions. Members of the two caucuses disagreed as to the total number of people who attended these cookouts.

### **F. Meeting at Hampstead Hill Academy**

On May 7, a building representative at Hampstead Hill Academy Elementary/Middle School emailed Kenya Campbell, then-chair of the BTU’s Teacher Chapter, confirming that she could come to

their meeting. The building representative explained that she planned to speak generally to staff about the election and then, after contracted hours, staff members could choose to stay and hear from both the BMORE/CEDE candidate for BTU Teacher Chapter president and Campbell, who was running for re-election. Campbell replied, saying that as the current BTU Teacher Chapter chair, she could come to the meeting to address any concerns staff had but, as a candidate, would not be able to campaign during the meeting or otherwise, as electioneering by either candidate would be a violation of election rules. After some additional back and forth, the building representative informed Campbell that she would not have either candidate attend and would instead speak to staff just about election locations and logistics.

### **G. BMORE/CEDE House Visits**

On May 8 and 9, two members of the English slate wrote to the BTU Nominations and Elections Committee expressing concern about visits they received at their homes from representatives of the BMORE/CEDE slate. The reports allege that the BMORE/CEDE representatives knocked on the door, asked by name for the English slate candidate, and then left BMORE/CEDE literature. The English slate candidates raised concerns about how the BMORE/CEDE slate obtained their addresses, and expressed feelings of fear and intimidation based on the visits. A third member of the English slate also submitted a letter after the election expressing concern about a visit to her home by the BMORE/CEDE slate.

On May 9, LaBrina Hopkins, then-BTU Teacher Chapter vice-chair running for re-election on the English slate, received an email from a member stating that she had been visited by the BMORE/CEDE slate and asking whether the BTU had circulated her address. Hopkins responded by stating that the BTU had not released the names and addresses of the membership and that she was copying Thomas Frasier, Nominations and Elections Committee co-chair, so that he was aware that this caucus was going to the homes of the membership.

The same day, the BTU Nominations and Elections Committee issued the following statement:

The Baltimore Teachers Union did not distribute membership names, addresses or phone numbers to any party or parties. Also, the BTU has not sponsored any social activities related to the upcoming internal election.

### **H. BMORE/CEDE Press Conference Video**

On May 10, presidential candidate Diamonté Brown recorded an 8 1/2 minute video, during her lunch period, which was distributed on Facebook. It appeared that she recorded this video on the sidewalk

outside her school. In the video, Brown alleged that the current BTU leadership had displayed blatant voter suppression. She stated that the election would take place on only one school day from 7:30 a.m. to 5:30 p.m., leaving educators either to run out during their lunch or planning periods to vote, or to battle rush-hour traffic in the small windows of time before or after their school day. Brown added that many educators, especially PSRPs, work in after-school programs that don't dismiss until 6 p.m., after voting has ended. She stated that the current leadership has made voting locations remote or unreasonably far, with no polling places on the southeast side of the district.

Brown said that then-President English had promised educators there was no need to transition to a mail-in voting system because anyone who wanted an absentee ballot could have one and no one had ever been denied. But, Brown claimed, just that week the Nominations and Elections Committee had denied hundreds of absentee ballots. Brown also talked about her platform, including criticizing English's salary. She called out English and asked her to respond.

### **I. Complaint from Progressive Caucus and Elections Committee Response**

That same day, May 10, the Progressive Caucus wrote to the Nominations and Elections Committee complaining of elections violations by the BMORE/CEDE slate. The committee responded by immediately issuing a letter to the BMORE/CEDE slate stating that it had received complaints regarding their (1) use of work communications systems to communicate about the upcoming BTU election; (2) use of the school mailbox to distribute campaign literature; (3) distribution of campaign literature on school properties; (4) meeting with BTU members at schools/worksites to campaign for their positions; (5) sponsoring of activities and calling them BTU activities; and (6) delivery of BMORE/CEDE literature to homes of members. The committee directed the BMORE/CEDE slate to cease and desist, and stated that if the violations continued, it would be necessary to take actions to address them. The committee also asked Brown to meet with the committee, but according to Co-chair Frasier, Brown said she could not because of her side job. There is no allegation that BMORE/CEDE engaged in any of the activity described in the letter, subsequent to May 10.

The Nominations and Elections Committee also released a video explaining the position they had taken on the absentee ballot issue. They stated that they were abiding by the BTU constitution and had followed up with each person who requested an absentee ballot. Frasier explained that, in the past, no request for an absentee ballot had been denied because the member always wrote a letter to the chapter secretary requesting the ballot and providing a valid reason for the request. However, this year, he

explained, someone created a form encouraging people to request a ballot by checking a box. Frasier stated that the action violated school board policy and BTU guidelines, and added that suggesting an absentee ballot could be obtained by “an individual’s checking a box just stating illness, vacation or tour of duty is an attempt to make a mockery of the process and was disruptive to the election process.”

## **J. Election Day**

On May 15, the BTU held its election of local union officers. The election was conducted by a private company called Elections USA, with which the BTU had contracted since approximately 2002. Eligible BTU members could vote at six sites at electronic voting stations. Present at each voting site was a BTU elections judge appointed by the BTU Nominations and Elections Committee, Elections USA staff, and observers from both slates.

The electronic ballot began with a screen that stated “Straight Ticket” and listed “English Slate ENG.” If the individual did not select the English slate, the individual was presented with a screen that said “You did not select any party. Do you want to exit this screen? Yes/No.” If the voter selected “Yes,” he or she was then presented with a ballot with all candidates listed. If the individual picked “No,” he or she was directed back to the screen on which the only option was to vote for the English slate.

The Progressive Caucus and the Nominations and Elections Committee alleged a number of election day violations. Election judges at the NACA Freedom and Democracy Academy II site submitted statements that BMORE/CEDE candidate Michael Pesa was present in the voting area before the election began and claimed to be an observer; that BMORE/CEDE candidate Steve Mednick refused to enter the polling area the correct way after being asked to do so, claimed to be an observer, and then spoke to a voter who was in line to vote for delegates; and that BMORE/CEDE candidate Keisha Goodwin came to the polls three times to bring an observer lunch, a green notebook and a red folder. Other alleged election day violations included claims that: Two BMORE/CEDE delegate candidates (Jesse Schneiderman and Timothy Nathan Ferrell) acted as observers in violation of the rules; a radio reporter named Dr. K, who was allegedly supporting the BMORE/CEDE caucus, showed up to the polls and was disruptive; and someone took a photo of the electronic ballot, which was distributed to the press, who posted it publicly, along with the complaints about the difficulty of voting for the English slate challengers.

Finally, the Progressive Caucus submitted evidence that the teacher at Abbottston Elementary School who had sent an email from his work email on May 1, sent another email on May 15 to

substantially the same group reminding them to vote and explaining how to vote for the BMORE/CEDE slate. The teacher stated, “If you plan to vote for the BMORE/CEDE slate, pay close attention to the ballot attachment because the voting process is kind of confusing.”

Members of the BMORE/CEDE caucus denied being disruptive and asserted that they were performing their roles as observers. Around 1 p.m. on election day at the Edmonson-Westside election location, BMORE/CEDE observer Matthew Cipollone informed the elections judge that someone was beyond the polling point. The elections judge went outside and asked the person to move. Later, Cipollone asked if he could show voters how to work the voting machine, and the elections judge told him he could not. Around 5 p.m., Cipollone approached the Elections USA staff to ask about how the tally and voter receipt process worked. The elections judge told him that at 5:30 p.m. all observers would need to leave the room as they packed up the election equipment. Cipollone said that was not the instructions he had received, which was to be present and observe the printing of the machine receipts. He stepped out of the room to call a member of the BMORE/CEDE slate. When he returned, the elections judge and Elections USA staff person told him he needed to leave the room. The Elections USA staff person told him he was uncomfortable with him in the room because of the questions he was asking. When Cipollone refused to leave, the elections judge and Elections USA staff person suspended the voting. The elections judge then asked Cipollone to get on the phone with Connie Goodly-LaCour, the BTU election administrator, who told him she was speaking on behalf of Thomas Frasier, the BTU Nominations and Elections Committee co-chair. Goodly-LaCour told Cipollone to leave, and he did. The voting was then reinstated. Unrebutted testimony at the hearing suggested that everyone who was in line at this time did have an opportunity to vote, and there was no evidence that anyone was deterred.

Of the 6,774 BTU members eligible to vote, 1,770 cast votes. Upon tallying the votes, Elections USA announced that 901 votes had been cast for presidential candidate Diamonté Brown and 838 votes had been cast for presidential candidate Marietta English. The BMORE/CEDE candidates also won the other races on the Teacher ballot by large margins.<sup>2</sup> The English slate candidates won the races on the PSRP ballot by large margins.<sup>3</sup>

---

<sup>2</sup> Teacher chair (59%-39%); Teacher vice-chair (60%-39%); Teacher secretary (58%-39%); Teacher treasurer (58%-39%).

<sup>3</sup> PSRP chair (75%-20%); PSRP vice-chair (76%-19%); PSRP secretary (77%-19%); PSRP treasurer (75%-21%).

After the election, members of the English slate wrote to the BTU Nominations and Elections Committee alleging egregious violations of the elections process, challenging the results and demanding the results not be certified.

#### **K. Post-Election Day**

On May 17, Brown called an emergency meeting of teachers to discuss the ongoing negotiations with the school district. She held another meeting on May 19. On May 22, at a meeting for building representatives, Brown distributed guidelines for electing building representatives for the next school year. The guidelines stated that the PSRP building rep chair was Shari Thomas, a BMORE/CEDE candidate for PSRP vice-chair who had lost in the election. Brown testified that these were guidelines to assist building reps in running elections and were not binding rules.

On May 23, the Nominations and Elections Committee issued a letter to Marietta English stating that it had completed its investigation of the violations that were alleged to have occurred during the campaign and on election day for the BTU's Teacher Chapter and had determined that a new election should be scheduled. The letter copied Diamanté Brown. The committee also wrote to Brown and asked her to meet to discuss a re-run election for the Teacher Chapter. The following day, Brown asked the AFT to conduct an investigation and wrote to committee Co-chair Frasier informing him that she would not attend a meeting about a re-run because he did not have authority to schedule a new election under the BTU constitution, that it was impossible to hold an election for president with only one chapter, and that she had filed a request with the AFT for an investigation under Article VI, Section 14(b), of the AFT constitution.

Also on May 24, Sandra Davis, the BTU PSRP Chapter president, who had run on the English slate and won, wrote to AFT President Weingarten expressing concern that the meetings Brown had held on May 17 and 19 excluded the PSRP chapter. She also said that the building representatives' policy should have been presented to the jointly seated executive board, and she expressed concern that the policy involved sending personal contact information to a BMORE/CEDE caucus member rather than a PSRP executive board member. She also suggested that Brown was presenting issues not for the good of the entire BTU and its members, but for the good for her caucus. Finally, Davis asked Weingarten to appoint a trustee to the BTU to ensure the union continues to run efficiently during the election process.

## **L. AFT Investigation Authorized**

On May 30, the AFT executive board voted unanimously to authorize an investigation into issues related to the BTU internal election and to preserve its jurisdiction to adjudicate the matter, and it stayed the re-run election pending the resolution of the investigation.

### **Governing Authority**

The central issue in the investigation is whether the conduct of the BMORE/CEDE slate justifies overturning the BTU election conducted May 15. The starting point for our analysis is the AFT constitution. The governing provision of the AFT constitution is the language in Article IV, Section 5, which 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’).”

The LMRDA was adopted by Congress in 1959 after extensive hearings that examined how the objectives of union democracy should best be achieved. The AFT delegates decided to incorporate the LMRDA election standards into the AFT constitution because they are widely accepted as setting the benchmark for the democratic and fair conduct of internal union elections.

In order to find that a union election should be nullified on the ground that it violated the LMRDA, it must be shown (1) that the prevailing candidate’s conduct constitutes a violation, and (2) that the violation may have affected the outcome of the election. The traditional test used by courts provides that once a violation of the LMRDA has been proven, the burden then falls to the prevailing candidate to show that whatever violation occurred did not affect the election results. In some situations, election conduct by other actors during the course of the election has resulted in no “net effect” on the election.

### **Findings**

We conclude that the election results of May 15, 2019, should stand and that there should not be a re-run election. While the BMORE/CEDE caucus did violate some election rules by using employer email and facilities and having two candidates for delegate act as observers, these violations appear minor in their scope. Both the Teacher Chapter and the PSRP Chapter seemed equally affected by the allegations raised, yet the voters made very different decisions. Further, even assuming the factual validity of every alleged violation, we cannot conclude that the violations affected the election results

such that a re-run election of the Teacher Chapter is appropriate, given the other facts that emerged at the hearing—namely, the newly restrictive rules of campaigning and the confusing ballot. We do, however, make several recommendations for how to ensure that there are fair rules for campaigning and that there is compliance with those rules in future elections. Finally, as it is clear that the BTU union members voted for two different leadership teams to lead the teachers and the paraprofessionals, and that the paraprofessional chapter has evinced feelings of second-class citizenship, we strongly encourage BTU President Brown and the entire BTU executive board to adhere closely to the BTU constitution’s joint executive board structure, which provides that the Teacher Chapter and the PSRP Chapter are joint decision-makers.

### **A. Alleged BMORE/CEDE Misconduct**

While some of the accusations of election misconduct, namely the use of work emails, clearly violate the BTU election rules, the majority of the alleged violations against BMORE/CEDE relate to activity that is permitted under the LMRDA and the AFT and BTU constitutions. BMORE/CEDE’s pre-election conduct—including house visits, campaign videos, meet-and-greets, press conferences, and contact with the press—are all permitted. Criticizing candidates is also permitted, even when the criticisms are not accurate. There is also no evidence that BMORE/CEDE’s election day conduct, beyond the minor observer/delegate issue described below, violated the BTU’s election rules or the guidelines of the LMRDA.

As to the work email issues, they appear to fall into two buckets: emails that are facially neutral, and those that are not. We decline to find BMORE/CEDE candidate and building representative Mooney’s email regarding absentee ballots to be a violation of the rule prohibiting the distribution of campaign literature using BCPSS email addresses, or of the LMRDA, because the email was facially neutral and did not mention any slate or distribute any campaign literature.<sup>4</sup> We also decline to find that the April 3 email advertising a PSRP giveaway was campaigning activity that could be directly attributed to the BMORE/CEDE caucus.

---

<sup>4</sup> See *Brennan v. Solis*, 934 F. Supp. 2d 297, 311 (D.D.C. 2013) (facially neutral character of voter mobilization efforts outweighed allegations that the mobilization efforts were subjectively intended to support incumbents).

However, we do conclude that the BMORE/CEDE slate violated the BTU's election rules and the guidelines of the LMRDA under Section 401(g) in the following instances: when BMORE/CEDE candidate Diana Desierto used her work email to promote a BMORE/CEDE campaign event on May 1; when the teacher at Abbottston Elementary sent campaign-related emails from his work email address on May 1 and May 15; and when BMORE/CEDE candidate Shari Thomas referenced the campaign-sponsored cookouts on her work email address.<sup>5</sup>

We also find that the BMORE/CEDE caucus violated the BTU's election rules and the guidelines of the LMRDA when it held caucus-sponsored cookouts on school property during Teacher Appreciation Week. The BTU's 2019 election rules prohibited candidates from conducting election-related meetings at BCPSS schools and worksites. Further, Section 401(g) of the LMRDA prohibits the use of employer resources to promote the candidacy of any person in a union officer election. This prohibition applies even to indirect expenditures of the employer, including the use of employer facilities, even if the employer does not know about or does not approve such use. In contrast, certain uses of union and employer funds that do not support one person's candidacy over another are acceptable, such as providing the use of equipment, facilities or publications to all candidates on an equal basis after giving them notice of this opportunity. Because this did not occur here, the use by the BMORE/CEDE caucus of employer facilities (school property) to conduct campaign activity violated the rules.

It appears from the evidence that at least two of the three cookouts were held on BCPSS property—at Edmondson-Westside High School on May 7 and at Moravia Park Elementary School on May 8. It is not clear to what extent BMORE/CEDE campaigned at these cookouts or how many people attended. BMORE/CEDE's flier had neutral election-related information on it, but at least one individual told the principal of Edmondson-Westside that she was running in the election and that her ticket had sponsored the food. In addition, BMORE/CEDE advertised these cookouts and posted photos from them on its Facebook campaign page. Thus, we conclude that BMORE/CEDE's cookouts at Edmondson-Westside High School and Moravia Park Elementary School violated the BTU's election rules and the guidelines of the LMRDA.

However, due to insufficient evidence regarding the degree of campaigning at these events and the number of people who attended, despite the panel's questioning, we cannot conclude that this activity

---

<sup>5</sup> See *Solis v. Local 9477*, 798 F. Supp. 2d 701, 705–06 (D. Md. 2011) (use of an employer's email system to promote a candidate in a union election constitutes a violation of the LMRDA).

could have affected the election. We also note that there is no evidence of other BMORE/CEDE use of BCPSS property for campaigning after March 22, when the election rules prohibiting such use were distributed. The meeting that was initially scheduled to take place at Hampstead Hill Academy with candidates from both caucuses did not, in fact, take place, once the Progressive Caucus candidate explained that it was not permitted under the rules.

## **B. Elections Committee Issues**

### **1. Election Rules and Ballots**

The BTU Nominations and Elections Committee's changes to the election rules from 2016 to 2019 significantly narrowed the opportunities for candidates to campaign and for members to receive information about the elections. The 2019 changes added prohibitions on use of email, school mailboxes and facilities. The committee cited various BCPSS rules to support these changes, but the respective BCPSS rules do not appear to prohibit the conduct at issue.

For example, prohibitions on "political activity" seem to relate to activity around political elections, as is required by state law, rather than to internal union elections. Similarly, while BCPSS regulations do provide that email should be used for business purposes only, the BTU Teachers' agreement (Section 2.4) also provides that email may be used by the BTU provided such use does not interfere with the operation of the school system. The new limits imposed for the 2019 election created an overly restrictive environment, and neither candidates nor members were properly educated about the new rules. It is hard for anyone to navigate the line between permissible and non-permissible conduct under these rules, as was candidly revealed at the hearing. One-on-one conversations would be acceptable, but a meeting would not be acceptable. When does a conversation become a meeting? These current rules, which would not enable any election meetings on school sites, then invite other types of campaigning, like the home visits that were also raised as a concern. We recommend that, in the future, the BTU executive board ensure the Nominations and Elections Committee create reasonable rules for campaigning and that it distribute and review these rules with members and candidates.

There was also confusion about the use of absentee ballots with respect to the language in the BTU constitution and the past practice. While we do not find that the Nominations and Elections Committee violated any rules in the way it handled the requests for absentee ballots, as it adhered strictly to the BTU's constitutional language, we do recommend that BTU consider amending its constitution to

allow any member to request an absentee ballot or to allow for secret mail-ballot elections, to maximize participation by BTU members in internal elections.

The electronic ballot used was also confusing. While the LMRDA specifies that no particular ballot must be used, ballots cannot be designed in a way that compels members to vote for only an entire slate or ticket; free exercise to choose among individual candidates must be permitted.<sup>6</sup> While this ballot did not compel members to vote in any particular way, the first screen presented only an option to vote for the English slate. This was because, according to the rules, if a slate did not have a candidate for every office, it could not qualify as a slate, and as a result, BMORE/CEDE did not have sufficient candidates to qualify as a slate. However, if the voter did not select the English slate, he or she was presented with a screen stating “You did not select any party. Do you want to exit this screen?” In telling voters they had not selected any candidate, the screen implied that voters should go back to the screen that permitted them to vote only for the English slate. It also implied that voters could lose their opportunity to vote for any candidate if they did not select the English slate. While no one testified in this regard, this ballot design could have been viewed to favor the English slate. We highly recommend that in the future the BTU consider a different ballot design, which either allows multiple slates or simply lists candidates with their slate affiliation.

## **2. Observers**

The BTU’s election rules provide that observers have the right to see any and all aspects of the balloting process, including the verification of voters’ eligibility and the tallying process. This rule is in line with the LMRDA’s requirements. Observers should also conduct themselves in a professional manner and should not interfere with or disrupt the conduct of the election or tally.

BMORE/CEDE observer Cippolone had a right to be close enough to see each task being performed, including every verification that took place up until the polls closed as well as the shutting down of the equipment at the polling location. Based on the evidence presented during the hearing, it appears that Cippolone became agitated because he was told he would have to leave the room and believed he would not be able to be present during the printing of machine receipts.

---

<sup>6</sup> 29 C.F.R. 452.112

The situation between Cippolone, Elections USA staff and the Nominations and Elections Committee got quite heated, leading to a temporary suspension of the voting at that location. However, testimony at the hearing suggested that this suspension did not affect anyone's ability to vote. In the future, we recommend that the BTU's Nominations and Elections Committee train those conducting its elections, including election judges, to ensure that observers' rights to see each stage of the voting are respected.

We also note that two BMORE/CEDE delegates acted as observers in the election, despite the BTU's election rules providing that candidates may have observers other than themselves. We do not find that the presence of two candidates for delegate as observers was a substantial election violation, but we do encourage the BTU Nominations and Elections Committee to carefully check the names of observers submitted against the list of candidates in the future to ensure that all candidates comply with the election rules.

### **3. Post-Election Investigation and Announcement of Re-Run**

On May 23, just about a week after the election, the BTU Nominations and Elections Committee issued a short letter announcing that it had completed its investigation and determined that a new election for the Teacher Chapter should be scheduled. The letter had no discussion of what violations the committee found or why it had determined that a re-run for just the Teacher Chapter was appropriate. In addition, the committee did not give the BMORE/CEDE caucus an opportunity to respond to the particular allegations or to make the argument that any violations that occurred did not affect the election.

Election integrity is key to any democracy, and prior to ordering any re-run of any election the impact of any irregularity on the election results must be carefully considered. The standard should be high, and the evidence substantial. Election officials should: allow all parties to submit evidence and address any allegations of misconduct; advise the parties of the basis for the decision, including the violations found and how the violations impacted the outcome of the decision; and inform the parties of procedures and time limits in the constitution and bylaws that must be followed to appeal the decision. While the AFT hearing did afford due process, there is no record of adequate due process from the BTU Nominations and Elections Committee before it made its decision. We therefore recommend that, in the future, the BTU Nominations and Elections Committee use a procedure for dealing with election challenges that adheres to these important procedural safeguards.

### **C. Ruling on Re-Run Letter**

In considering all of the evidence, we conclude that the letter from the BTU Nominations and Elections Committee announcing a re-run election was not supported by the evidence before us and the original election results of May 15 should stand. While the BMORE/CEDE caucus did commit violations of the election rules, we find that these violations did not affect the outcome of the election. Specifically, the emails sent were limited in distribution, and the cookouts took place on the grounds of two (or three) of about 174 BCPSS schools. The two candidates for delegate who acted as observers were among 174 candidates for delegate. Especially in light of the newly restrictive rules and the confusing ballot, we cannot conclude that the violations affected the election results such that a re-run election is appropriate.

### **D. President Brown's Post-Election Conduct**

After the election, Brown held two meetings with only the Teacher Chapter. She testified at the hearing that these meetings were about the ongoing negotiations for the Teacher Chapter collective bargaining agreement. After the election, she also announced guidelines for building representative elections that had not been reviewed by the PSRP Chapter executive board; these guidelines listed the losing BMORE/CEDE candidate for PSRP Chapter vice-chair as the contact person for the PSRP Chapter. While it appears that communication was difficult and strained in the immediate post-election period, Brown testified that the guidelines were not binding and that there was no intention to undermine the PSRP Chapter or generate lack of trust between the two chapters.

The BTU constitution provides that the BTU consists of two chapters and sets out the duties of the president, many of which require the approval of the executive boards of both chapters. We strongly encourage Brown to work as collaboratively as possible with members of both executive boards in decision-making. We also encourage the members of the executive boards who are Progressive Caucus members to work as collaboratively as possible with Brown and the BMORE/CEDE members. Toward that end, the AFT will assign a national representative for the next several months to assist in rebuilding trust between the chapters. As AFT Vice President Shelvy Abrams said at the hearing:

We have a serious road ahead of us. No matter how the outcome presents itself, we're going to have to stand together. We're going to have to stick together. Our job is not done yet, ... we must come together. Come together, brothers and sisters. Because time is the most important thing that we have right now. So no matter what happens, ... this is no time to be leaving people out. We have to bring them all in. We all are on the same boat. Bottom line, if that boat sinks, we're all going [down].

## Order

For the reasons stated above and pursuant to the authority provided in the AFT constitution, including but not limited to Article VI, Section 14(b), and Article IV, Section 5, the AFT executive council orders, effective immediately:

1. The May 23 decision of the BTU Nominations and Elections Committee to re-run the election is not supported by the evidence and, consequently, is overturned.
2. The results of the May 15 election are hereby affirmed, and the officers elected in that election should serve their terms.
3. The council strongly recommends that the BTU consider implementing reasonable campaigning rules that permit greater access to the voters by all candidates and that facilitates member participation in elections to the greatest extent possible.
4. The council strongly recommends that the BMORE/CEDE coalition and the Progressive Caucus officers work together to make the BTU the strongest, best union it can be for its members and those they serve. To that end, the AFT will assign a national representative through Dec. 31, 2019, to assist with the transition.

Dated: July 10, 2019