

Opening Statement of Washington Teachers Union Local #6, AFT
July 21, 2010

Members of the Committee:

- I -

The Washington Teachers' Union, Local #6 ("WTU") is in receipt of a copy of a letter dated July 14, 2010, from David Strom to WTU President George Parker, WTU Vice President Nathan Saunders, Claudette Carson, and Elizabeth Davis. The letter announces that, pursuant to Article VI, Section 14(b) of the AFT Constitution, the AFT would hold an investigative hearing of the WTU election process on July 21, 2010. The WTU has a concern that the correspondence to this point has suggested to this Committee a preferred outcome. In light of this correspondence, this Committee will need to be especially vigilant to exercise its independent judgment in light of the factual record which will be developed at this hearing.

An example is found in President Weingarten's letter to George Parker, Nathan Saunders, Claudette Carson, and Elizabeth Davis dated July 9, 2010, letter, which states:

AFT's goal in taking this matter to our Executive Council is straight forward. It is manifestly apparent that under the current circumstances of internal struggle that a timely and proper election for the officers of the WTU is not possible. Therefore, it is necessary and required that the national union step in to ensure an open, transparent and fair election for the WTU members.

The WTU submits that the evidence will demonstrate that it is not necessary for the AFT to intervene in WTU's internal governance in order to ensure a fair election.

Please note, too, that all of the issues or charges AFT has proposed to investigate involve actions taken by the WTU Executive Board on matters within the authority of the Executive Board. Nevertheless, at no time up to now has the AFT offered to involve the Executive Board in any of the discussions leading up to this investigation; nor has the Executive Board been invited to play any role whatsoever in the investigation itself. Indeed, President Weingarten's July 12, 2010, letter to WTU's members was not even copied to the WTU Executive Board. Instead, the AFT has invited President Parker to participate in the investigatory hearing, apparently failing to recognize that the Executive Board made the decisions AFT wishes to investigate. All of those decisions are within the purview of the WTU Executive Board, which has been excluded from this process up to now. In fact, by letter dated June 23, 2010, the WTU invited President Weingarten to meet with the Executive Board to discuss any concerns she had with the Executive Board's decisions involving the election.

The notice of charges is deficient because it fails to notify the WTU of the possible consequences of the AFT's investigation. If one of those consequences may be

the imposition of a full or partial administratorship to strip the WTU of the power to run its own election, the ground rules set forth in the July 14, 2010, letter make clear that this hearing procedure will be legally insufficient to lead to a full or partial administratorship.

The WTU believes that if, on the basis of this Committee's recommendation, the AFT intervenes in the WTU's election of officers and changes the current election schedule, it will not serve the interests of the membership. The WTU and DCPS are poised to begin their first school year under a new and groundbreaking contract. In order to implement this new agreement in time for the start of the 2010--2011 school year, much work remains to be done in the near term. The AFT's investigation serves as a distraction from the important work of the WTU and its membership at a time when it is crucial for the WTU to focus on the fair and appropriate implementation of the new contract. By unnecessarily escalating internal disputes to the national level, AFT is creating a disruption that will only disadvantage WTU's membership.

Finally, the WTU asserts that no conduct has occurred which would authorize the AFT to intervene in the WTU's election. This investigation, in addition to being procedurally unfair, is unwarranted. Accordingly, the WTU requests the AFT to terminate its investigation and permit the WTU to conduct its internal affairs without this unnecessary intrusion.

As President Weingarten wrote to Elizabeth Davis, a candidate for WTU President, on June 7, 2010:

First and foremost, the AFT constitutionally and culturally respects local autonomy. ... With respect to local internal elections, the AFT constitution is clear, the AFT's past practice is clear, and my position as the AFT's president is clear: It is up to the WTU to run its internal elections; it is up to the candidates for office to make their case to the members of the WTU; and it is up to the members of the WTU to decide who is best to lead their local union.

- II -

We turn now to the four issues for hearing, dealing with (1) when the WTU election should take place, given that the dates set forth in the WTU Constitution and By-Laws could not be met because of the absence of a duly elected Elections Committee to start the process in the spring of 2010; (2) whether the April 30 deadline to submit nominating petitions set forth in the WTU Constitution and By-Laws should be maintained, given the absence of a duly elected Elections Committee on that date; (3) the definition of eligible voters, including whether excessed teachers should be eligible to vote; and (4) whether the Executive Board's resolution setting General Vice-President Saunders' salary to \$0.00 and the prohibiting the President from approving a leave-of-absence from DCPS "improperly impaired [his] ability to run for WTU office."

1. The WTU's Election Schedule

As the court said in Monzillo v. Biller, 735 F.2d 1456, 1458 (D.C. Cir. 1984): “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.” The same rule of deference should apply when a parent organization reviews the actions of a local. When a question arose about whether the Elections Committee or the Executive Board had the authority to set the date of the election, the Union obtained a legal opinion from its attorney, Lee W. Jackson. By memorandum dated June 9, 2010, Mr. Jackson advised the Union that under the Union’s Constitution the Executive Board had the authority to do so, concluding that “the Executive Board is the highest governing body of the WTU in the absence of the Membership itself, and of the Representative Assembly.” Neither President Parker nor any member of the Executive Board asked Mr. Jackson to come to this or any other conclusion. Mr. Jackson came to his opinion entirely on his own. The WTU submits that the AFT must not intervene to overrule the decision of the WTU that its Executive Board was empowered to make the decision on the timing of the election, as set forth below.

After receipt of the opinion memorandum from Mr. Jackson, the Executive Board met on June 9, 2010. The Executive Board passed this resolution:

1. That the notice of nominations for election of officers, Executive Board Members, Delegates to the Washington Metropolitan Council and Delegates to the Maryland State and DC AFL-CIO be sent to all WTU members by the WTU Elections committee no later than September 30, 2010 with election balloting to end at 5 pm, November 30, 2010.
2. That the Executive Board with the assistance of legal counsel and the WTU parliamentarian establish other constitutionally mandated timelines and provide to WTU members at the time of the notice of nominations.
3. That all candidates for elected positions submit new petitions to be certified by the newly duly constitutionally elected Elections Committee.
4. That the WTU Executive Board maintains all petitions submitted on April 30, 2010 for organizational records and for legal purposes.

The Executive Board decided to hold the election for officers in the fall of 2010 for several reasons. A valid Elections Committee was not elected until May 27, 2010. This was because the prior Elections Committee failed to complete an election for its successor and the remaining four members improperly claimed to be elected by acclamation. One of these was General Vice-President Nathan Saunders’ wife, Chandrai Jackson-Saunders. This action was improper because the Election Committee must be elected by the membership and because four members were insufficient to constitute a quorum – eight were needed. President Parker attempted to solve this problem by presenting the problem to the Representative Assembly. To try to conduct an election in

May 2010 as provided in the Constitution, at the Representative Assembly meeting on March 23, 2010, he recommended that members of the Representative Assembly, who are themselves elected, volunteer to permit the Executive Board to appoint them to fill the vacancies on the Elections Committee. The Executive Board appointed these volunteers to serve on the Elections Committee at its March 23, 2010, meeting.

General Vice President Nathan Saunders immediately filed a complaint with the U.S. Department of Labor (DOL) over the composition of the Elections Committee, and sent a copy to the AFT. He took the position that the Elections Committee should be composed only of those who proclaimed themselves elected by acclamation. By letter dated April 9, 2010, to President Weingarten, in response to Nathan Saunders' complaint, President Parker asked the AFT "to intervene and assist the WTU in resolving this issue." By letter dated April 19, 2010, AFT President Randi Weingarten informed both President Parker and General Vice-President Saunders that there was no duly elected Elections Committee to perform its duties under the Constitution. Therefore the AFT would conduct an election for the Elections Committee and delegates to the AFT Convention. She stressed the limited role to be performed by the AFT in conducting the election of the Elections Committee and delegates to the AFT Convention. The AFT stayed the election of WTU officers and conducted an election of the Elections Committee and delegates to the AFT Convention. The election was completed and the results certified on May 27, 2010.

The schedule established by the Executive Board for the WTU elections is the following:

1. Notice of the opening of nominations for the election of WTU officers, WTU Delegates to the Metropolitan Washington Council AFL-CIO and Delegates to the Maryland State/DC AFL-CIO will be sent to all members by the WTU Elections Committee - September 30, 2010
2. Deadline for submission of petitions - October 29, 2010
3. Balloting and election of WTU Officers - November 15 - November 30, 2010
4. Counting of ballots - November 30, 2010

By letter dated July 1, 2010, President Parker informed the WTU membership of this schedule and the reasons for its adoption, "including: providing all members with a fair and equitable opportunity to vote and participate in the nomination and election process, ensuring that the WTU membership list of eligible voting members is accurate and up to date following the exit of retirees and other teachers leaving the system during the summer, determining whether or not conducting an election during the summer break is in the best interest of WTU members and adhering to the legal intent and established election procedure of the WTU Constitution to the extent possible." President Parker also enclosed a copy of the legal opinion referred to earlier.

It is utterly impossible to conduct a fair election over the summer months because it is impossible to assemble a reasonably reliable membership list during the summer. An election could not be scheduled sooner than it was because only active teachers (those currently employed by DCPS) who are dues paying members are eligible to run for office and to vote. It is impossible to develop a reasonably accurate list of currently employed dues paying members until about three pay periods after the school year begins. This task is impossible to perform during the summer months, when the membership list is at its most inaccurate state. That is because teachers leave the system, for example, by retiring, resigning or being separated over the summer months when school is not in session. The turnover of teachers between academic years is between 400 and 500. The names of teachers who have left the system must be purged from the list. In addition, the WTU needs to have an accurate Union Dues Report (UDR) to develop a reasonably accurate membership list. The UDR over the summer months continues to list the names of all employees who were employed on the last day of school, including the 400 to 500 of those who have left DCPS because they continue to receive pay (“summer pay”) even though they are no longer employed by DCPS. The UDR report does not even begin to accurately reflect currently employed dues paying members until the first pay period after the commencement of the school year. By September 30 (the date the nominations process will begin) there would have been two UDR reports which would begin to give WTU an accurate reflection of eligible voters to begin the nomination process. Three or more UDR reports would be needed for the WTU to feel confident that the membership list was accurate enough to minimize the chances of the election being overturned.

The last two elections which were successfully challenged because of inaccurate membership lists of eligible voters. Indeed, the Department of Labor filed suit over the 2005 election because the AFT (while the WTU was under AFT administratorship) sent ballots to over 100 individuals who were not eligible to vote by the time the ballots were sent out, which were enough ballots to affect the outcome of the election based on the candidates’ margin of victory. This election was conducted in November – the membership list in the summer months is even more unreliable. In a close election the accuracy of the membership list is even more critical. The WTU officers, including General Vice-President Saunders, remained in office until their successors were elected in the next scheduled election, which by agreement was conducted by DOL.

Because teachers are often away during the summer months, moreover, there was a very substantial risk that they would not even participate in the election process, which would not result in a representative participation of the membership in the election. Because teachers are often away during the summer months, moreover, there was a very substantial risk that they would not even vote, which would not result in a representative participation of the membership in the election.

The allegation that the WTU failed to cooperate with the request of the Elections Committee for the membership list is untrue. The membership list is confidential information, as specifically provided in the WTU Constitution; Article X, Section 4 states: “Membership lists shall be sued only as permitted by the Executive Board.” There are only two reasons why the Election Committee needs to examine the membership list.

One reason is to verify that a candidate received a sufficient number of members' signatures on each petitions. This is called certifying the petitions. The past practice is to provide the Elections Committee with access to the membership list for that purpose at a convenient time the week of the deadline or following the deadline to submit petitions. The Elections Committee also has access to the membership list to examine the list prior to its being sent to the American Arbitration Association (AAA). There is no further need for the Elections Committee to have access to the membership list because the balloting process is conducted by an outside organization, traditionally the AAA.

2. The Deadline for Election Petitions

The deadline for submission of nominating petitions must be set at some point in the future because there was no valid Elections Committee in existence to send out the notice of the opening of nominations as required by the Constitution. In addition, there was no valid Elections Committee as of April 30, 2010, to verify the petitions, as required by the Constitution. Any actions of the invalid Elections Committee in this period would have been null and void. As noted, the currently scheduled notice of nominations is set for September 30 and the petitions must be returned by October 29, 2010.

3. The Universe of Eligible Voters

Only dues paying WTU members who are actively employed as DCPS teachers are eligible to vote. Prior to sending the membership list to the AAA, the Elections Committee has access to the membership list to examine it. This is the list of members who are sent ballots by the AAA. As explained above, one reason the Executive Board adopted the current schedule is to assure an accurate list of members, particularly in light of the finding of the Department of Labor in a recent election that ineligible voters received ballots. These rules comport with union democratic principles because those affected by the outcome of the union election should be the ones who select their officers.

Those exsessed on June 30, 2010, remain employed by DCPS and if they are members of the WTU as outlined above, they are eligible to vote like any other eligible union member.

4. The Setting of Saunders' Salary and his Leave of Absence Request

The Notice of Hearing states that one of the issues before this Committee is whether the recent setting of General Vice-President Saunders compensation at zero and the fact that the Executive Board forbade President Parker to approve his leave of absence from DCPS has not been approved improperly impaired his ability to run for WTU office. The facts leading up to these actions are set forth below as background information, but the bottom line is that neither the fact that the Executive Board placed conditions on the resumption of Nathan Saunders' salary which he failed to meet, or the fact that he is or is not on leave of absence from DCPS, in any way impairs his ability to run for office. Whether the Executive Board was justified in taking the actions it did is not a proper issue before this Committee as long as he remains eligible to run for office.

That said, this is what happened. Under the WTU in its Constitution, the Executive Board determines the compensation of the President and General Vice-President. Until the administration of former WTU president Barbara Bullock, the General Vice-President was not a full-time employee of the WTU and did not receive a full time salary. There is no requirement in the WTU Constitution that the General Vice-President be a full time employee of the WTU. The Executive Board set the salary of the General Vice-President, which most recently came to \$131,000 per year, to work to be a full time employee of the WTU, with the expectation that he would perform duties and adhere to all directives in accordance with the Constitution. In September of 2009 the Executive Board directed General Vice-President Saunders to implement the directives and assignments of the President. On March 25, 2010, the Executive Board passed a resolution demanding that General Vice-President Saunders submit to the Executive Board a journal of his services to the WTU membership. The General Vice President Saunders has taken the position that he had no obligation to account to any person or body for his services to the WTU membership, even though Article VII, Section 2(a) of the WTU By-Laws states that the General Vice-President shall: "Perform other duties as delegated by the President or assigned by the Executive Board." General Vice President Saunders has refused to carry out assignments and directives from President Parker or the Executive Board. The workload of the WTU under the administration of Chancellor Rhee has been substantial over the last few years, and is increasing under new collective bargaining agreement with DCPS, which requires the WTU to undertake a number of tasks to implement it, leading up to the start of the school year. The press of work requires the General Vice-President not only to accept and carry out directives and assignments from the President and the Executive Board but to complete them in a timely manner. His refusal has impacted the quality of services to the membership. The problem created by the General Vice-President's refusal of directives and assignments has become even more acute since the AFT's staff assistance to the WTU of two full time staffers ended in June after the ratification of the contract.

Because General Vice-President Saunders refused to comply with the March 25, 2010, resolution of the Executive Board, on June 15, 2010, the Executive Board passed a resolution sponsored by Maria Angala, which set the salary of General Vice-President Saunders "[a]s a discretionary employee for compensation purposes at \$0.00 effective June 15, 2010, "for failing to comply with the duties, roles and responsibility of the General Vice President position as stated in the WTU By-Laws (Article VII, Section 2), and failing to comply with the directives given by the Executive Board and his supervisor, the President, as provided in Article VIII, Section 2.A of the WTU By-Laws ... continuing to the end of the current DCPS Leave-of-Absence period ending June 30, 2010," until he fulfilled listed conditions. These were to obey the March 25, 2010, Executive Board resolution requiring documentation, and satisfactory evidence as to why he failed to implement previous directives of the President. The resolution also prohibited the President from "authorizing a DCPS Leave-of-Absence for the General Vice President for the school year 2010-2011 until further notice from the Executive Board." By letter dated June 22, 2010, the Recording Secretary transmitted the resolution to General Vice-President Saunders, stating: "You are respectfully requested to read the

motion in its entirety and respond accordingly.” He has continued to defy the Executive Board, but the important fact for this Committee is that Nathan Saunders remains eligible to run for office whether his salary is set at \$131,000 or \$0.00.

According to the contractual agreement with DCPS, a leave of absence request to work full time for the WTU for one year must be requested by the teacher and signed by the President. The term is July 1 to June 30. Under this agreement, the teacher returning from a leave of absence has the right to return to the same or comparable position. General Vice-President Saunders asked DCPS to approve a leave of absence without the required signature, and I wrote to DCPS explaining that, complying with the Executive Board’s resolution, I was not permitted to sign off on the request. By letter dated July 9, 201, Deputy DCPS Chancellor Kaya Henderson wrote to General Vice-President Saunders that in light of President Parker’s explanation, his request for a leave of absence was being denied. The consequence of the leave of absence denial is that General Vice-President Saunders has an option to return to the classroom when the school year begins. This fact does not affect his right to run for WTU president in the upcoming elections.

Likewise, the claim that he will be subject to expulsion from membership because he will not have been on payroll deduction is nonsense. The requirement that members must be on payroll deduction to qualify for membership means DCPS payroll deduction. Furthermore, members can remain in good standing by paying their dues in full by November 10th.

CONCLUSION

The facts demonstrate that the Executive Board, as the highest ranking body of the WTU able to act, exercised its jurisdiction over election matters reasonably and in accordance with an objective legal opinion from its attorney. There is no basis in the record to conclude that the decision of the Executive Board was taken in bad faith or for improper motives. The timing of the election comports with principles of union democracy by ensuring a representative compliment of members have an opportunity to vote for the officers who will be representing them. A valid vote, moreover, requires a reliable membership list, which is not available until several pay periods after the school year begins, to take into account the turnover of teachers in the DCPS system. It should be recalled that the Department of Labor sued the WTU over providing ballots to ineligible voters. The WTU rejects the efforts of any candidate for a vote to take place in the summer months when turnout will be suppressed and on the basis of an unreliable membership list as an effort to manipulate election procedures to advance their chances of victory, or to set the stage for election challenges if they are unsuccessful.

The action of the Executive Board to demand accountability of General Vice-President is not only authorized by the WTU Constitution, which makes salaries of officers discretionary and mandates that the General Vice-President accept and perform assignments of the President and the Executive Board, but a responsible and commendable safeguarding of the members’ dues and the WTU’s finances. It is also in the interests of the membership by ensuring that the work of the WTU is performed. The

Executive Board was well within its rights to forbid the President to endorse a leave of absence until the General Vice-President provides the accounting it required of him. None of these actions affects his qualification to run for office. The only consequence of not having a leave of absence is that he has an option to return to the classroom – being a teacher can hardly be considered punishment, as he alleges.

This Committee should recommend that the election proceed as scheduled by the Executive Board.