



VIA ELECTRONIC and US MAIL DELIVERY

December 20, 2021

Maryland Classified Employees Association Executive Board
American Federation of Teachers, Local 1935
7127 Rutherford Road
Baltimore, MD 21244

Re: Request for Extension of Time for Convention and LMRDA Compliance

Dear President Day and Members of the Executive Board:

On December 13, 2021, the AFT received MCEA's request for an extension of time to hold its biennial convention. In response, AFT requested that MCEA certify that it would comply with the AFT's December 8, 2021, Order regarding the election and convention. On December 16, 2021, MCEA replied to the AFT request for a certification of compliance. MCEA contested the Order on two grounds. As discussed below, MCEA has failed to provide any compelling reasoning or support for its opposition to the nominations and voting mandates in the Order. Otherwise, MCEA agreed to comply in all other respects. Therefore, the request to extend the time for the biennial convention is granted. MCEA must hold its biennial convention by January 29, 2022, consistent with the holdings below.

The December 8, 2021, Order (Order) directed MCEA to "hold its biennial convention to permit the unopposed nominees to take office consistent with the bylaws of the union. The option for remote participation in the Convention should be reinstated." In its December 16, 2021, Letter, MCEA opposed the Order and raised the following arguments:

- (a) "...Nominees' names will be on the ballot along with any other members who are nominated for the offices indicated in the convention packet being mailed."
- (b) "...Bylaw Article IV Officers, §2 Nominations Procedure and Time of Elections, states, 'The election shall be either remotely or in conjunction with the biennial convention.' It is the opinion of the board that this statement was intended to give the option of voting remotely in the event the convention was held on Zoom, and since that is not the case the election will be conducted by paper ballot at the convention. It was neither the intention nor was it stated in the

bylaws that the meeting or the election should be hybrid mix of in person and [i]nternet participation.”

Considering the record in this matter, MCEA’s opposition is without merit. AFT made uncontested findings in its preliminary investigation that 1) the nominees were unopposed after a properly conducted nomination process, and 2) that remote voting was necessary for the participation of the membership. Failure to fully implement the Order may cause MCEA to run afoul of the AFT constitution,¹ and the Labor Management Reporting and Disclosure Act (LMRDA) as applied through the AFT Constitution to AFT locals with public sector members.

MCEA rescheduled its October 9, 2021, biennial convention after it completed the nomination process. There is no evidence in the record that individuals other than the uncontested nominees qualified for the ballot.

Election procedures that fail to provide adequate safeguards to ensure a fair election are subject to invalidation if the outcome is affected by such failure.² The completed nominations process provided a reasonable opportunity for members to put forward candidates for office. Moreover, it was conducted in accordance with the procedures set out in the MCEA Bylaws. The record shows that the five nominees were unopposed. There were no protests filed to challenge the nominations procedures and the time to file challenges has now passed. Significantly, when AFT explained its reasoning on the nominations process in its December 8th Order, MCEA did not dispute those findings. Any inclusion of candidates now to create contested elections for seats that were previously unopposed undermines the fundamental fairness of the election procedures and is contrary to the MCEA Bylaws and AFT Constitution. Therefore, the unopposed nominees must be allowed to take office at the biennial convention consistent with the nomination process completed before MCEA rescheduled the October 9, 2021, Convention.

Moreover, MCEA Bylaws protect the right of members to participate in the business of the union consistent with the AFT Constitution and its incorporation of the standards of the LMRDA.

¹ AFT Constitution Article IV Section 5 “The conduct of elections shall be consistent with the standards for such elections developed under Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA).”

² BNA, Labor Union Law and Regulation, Chapter 1. Union/Member Rights and Obligations (citing 29 U.S.C. 481(e)).

The LMRDA provides that “Every member of a labor organization shall have equal rights and privileges . . .to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.”³ In some cases the Department of Labor has used an 110-mile standard in deciding whether members were far enough from polls to mandate the use of an absentee ballot.⁴

AFT was contacted by MCEA members who work in Salisbury, MD and they stated that the in-person voting requirement would disqualify them from participating in the convention and therefore demanded that they have an option for virtual access.⁵ Salisbury is approximately 119 miles from the proposed location of the convention at the MCEA headquarters. MCEA’s decision to restrict participation in the biennial convention to in-person only is not required by its bylaws and simply works to deprive its members of their right to participate in the meeting. It is material that one of the reasons that MCEA cancelled its December 10th Convention, which was intended to be in person, was a failure to generate a quorum. Only 30 members are required to satisfy the MCEA quorum requirement.⁶ It would be a gross injustice to the MCEA membership to conduct a convention when only a small fraction of the membership could participate.

Additionally, public health officials are warning of the potential resurgence of COVID-19 and its new Omicron variant. The Omicron variant is novel and public health officials are working to understand the risk associated with exposure. It is still a time to take precautions like vaccination, masking, and limiting large indoor gatherings. MCEA should safeguard the health of its members and provide access to the democratic processes of the union. The hybrid option for the convention does both. MCEA bylaws does not require an in-person convention and there are significant policy justifications for a remote or hybrid convention under the current public health predicament.

AFT, hereby, grants MCEA’s request to hold the biennial convention no later than January 29, 2021. MCEA has not presented any support for its opposition to the Order. As explained above, nothing contained in MCEA’s opposition compels AFT to require anything less than full compliance with the Order. MCEA must permit the unopposed nominees to take office consistent with the bylaws of the union and the

³ 29 U.S.C. 411(a)(1).

⁴ *Donovan v. Teamsters*, 598 F. Supp. 710, 120 LRRM 2176, (W.D. Mo. 1984)

⁵ Exhibit 6.

⁶ MCEA Bylaws Article V § 4.

option for remote participation in the Convention should be reinstated. Failure by MCEA to comply with this directive will require AFT to take the enforcement steps set out in its December 8th Order.

In unity,



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