



VIA ELECTRONIC MAIL

August 26, 2020

Joanne Waddell, President  
Los Angeles College Faculty Guild  
Local 1521, CFT, AFT, AFL-CIO  
[jwaddell@aft1521.org](mailto:jwaddell@aft1521.org)

Grace Chee  
[gchee99@yahoo.com](mailto:gchee99@yahoo.com)

Larry Rosenzweig  
[lrpcorp@aol.com](mailto:lrpcorp@aol.com)

RE: Local 1521 Preliminary Investigation Decision

Dear President Waddell, Ms. Chee & Attorney Rosenzweig:

This letter shall constitute a final decision in the preliminary investigation begun by the AFT in response to the Local 1521 election investigation complaint. That complaint, dated June 16, 2020, concerned the West LA College Chapter presidency and was filed by Grace Chee. Pursuant to the procedures AFT follows in handling election investigation requests, we have treated this as a preliminary investigation under Article VI, § 14(b) of the AFT Constitution. The AFT has carefully considered all of the allegations made in Ms. Chee's complaint and subsequent filings as well as the responses solicited by the AFT from the Local, and information volunteered by members of the Local.<sup>1</sup> Our findings and determinations concerning the allegations are set forth below.

Article VI, § 14(b) of the AFT Constitution authorizes the AFT Executive Council to commence an investigation where it appears an election has been conducted "in violation of the Local or state federation constitution, the AFT constitution, or applicable federal law..." Before the Executive Council considers such requests, the AFT has traditionally undertaken a preliminary investigation to ascertain whether there is a bona fide challenge to an election and the electoral process. The purpose of that investigation is not to resolve all the issues surrounding the election but, instead, to determine whether the challenge raises material questions. Once the preliminary investigation is complete, only those challenges and inquiries that contain material issues in dispute are referred to the Executive Council for a full investigation.

The AFT has determined that the evidence presented in support of the allegations made by Ms. Chee does not warrant a referral of this matter to the AFT Executive Council. A full explanation of the findings of this preliminary investigation is set forth below. This letter shall serve as a final determination of all matters raised in the investigation request.

---

<sup>1</sup> The AFT received unsolicited submissions from two Local 1521 members, Daniel Judge and Charles Daniel.

---

VICE PRESIDENTS

J. Philippe Abraham  
Shelvy Y. Abrams  
Barbara Bowen  
Vicky Rae Byrd  
Christine Campbell  
Zeph Capo  
Alex Caputo-Pearl  
Donald Carlisto  
Larry J. Carter, Jr.  
Kathy A. Chavez  
Melissa Cropper  
Evelyn DeJesus  
Aida Diaz Rivera  
Jolene T. DiBrango  
Marietta A. English  
Eric Feaver  
Francis J. Flynn  
David Gray  
Anthony M. Harmon  
David Hecker  
Jan Hochadel  
Fedrick C. Ingram  
Jerry T. Jordan  
Ted Kirsch  
Frederick E. Kowal  
Louis Malfaro  
Terrence Martin, Sr.  
Joanne M. McCall  
John McDonald  
Daniel J. Montgomery  
Michael Mulgrew  
Candice Owley  
Andrew Pallotta  
Joshua Pechthalt  
Paul Pecorale  
David J. Quolke  
Jesse Sharkey  
Denise Specht  
Wayne Spence  
Tim Stoelb  
Jessica J. Tang  
Ann Twomey  
Adam Urbanski

## I. Introduction & Background

This investigation complaint concerns the election held in the spring for the presidency of the West LA College Chapter of Local 1521. There was an election as well as a runoff election, both conducted by the American Arbitration Association, and the results are not in dispute. The ballot count for the election took place on April 30, 2020; the complainant, Grace Chee, received 50 votes, Tim Russell received 32 votes, and Ken Taira came in third with 27 votes. In the runoff election, the ballot count took place on May 27, 2020. Ms. Chee received 77 votes in the runoff, prevailing over Mr. Russell, who received 67 votes.

Mr. Russell filed a timely appeal of the election results, dated May 27, 2020. In that appeal he argued that Ms. Chee committed multiple violations of Local 1521's election rules and he asked that the Elections Committee recommend that the Local 1521 Executive Board "invalidate the final outcome" of the runoff election. The issues complained of by Mr. Russell included multiple alleged violations of Election Rule #10, including: allegations of unethical campaigning, using employer resources to campaign, attempting to get additional voters to designate the West LA campus as their home campus, and scheduling an unsanctioned happy hour over Zoom for adjunct faculty. In response, Ms. Chee has alleged multiple due process violations concerning Mr. Russell's appeal and the Local's handling thereof. She has questioned whether the appeal was timely and questioned why there was a lack of "dates, names or documented evidence" in support of the appeal. Additionally, Ms. Chee has alleged that the Elections Committee failed to address her protests of candidate actions and she has made multiple allegations of a lack of candor by local officers and the members who provided evidence that the Local relied upon in arriving at its decision.

Article VI, § 1 of the Local Bylaws requires that candidates take office on June 1, 2020 following the election. On June 3, 2020, the Local's Elections Committee met to consider Mr. Russell's appeal and it was upheld, primarily on the basis of allegations made against Ms. Chee regarding violations of the Local's election rules. The Committee ruled that Mr. Russell's protest was timely received on May 28<sup>th</sup>, that Ms. Chee committed multiple violations of Election Rule #10, most notably by using employer's e-mail system to engage in campaigning in violation of that rule. On June 16<sup>th</sup>, the Local's Executive Board met and adopted the Elections Committee's decision by majority vote. In doing so, the Executive Board declared a vacancy in the office of West LA College Chapter President. Pursuant to the terms of Article VI, § 3(a) of the Local Bylaws, which states that a vacancy in a Chapter presidency shall be filled by the individual who received the largest number of votes in the previous election for Chapter Executive Board delegate, the vacancy was filled by Ken Taira on an interim basis until the election dispute is resolved. The Executive Board has stated its intention to hold another runoff election at the conclusion of this investigation.

The instant complaint is an appeal by Ms. Chee of the decision of the Local 1521 Executive Board to deny the outcome of the runoff election for the West LA College Chapter presidency and to place Mr. Taira in the position on an interim basis. The issue of whether Ms. Chee

should have been permitted to assume office pending the outcome of this investigation is a threshold matter that is discussed in Section III of this decision, below. This decision will also discuss and make determinations on issues concerning the alleged violation of election rule #10, raised first by Mr. Russell in his complaint and subsequently discussed and expanded upon by the Elections Committee and the Executive Board. Since the Local has made the decision to hold another runoff, a decision which was in our view the correct one, it is important that the rules governing that runoff election be fair and consistent with Title IV and the AFT Constitution.

## II. Standard for Election Review

Article IV, § 5 of the AFT Constitution provides, in relevant part, that “The conduct of [affiliate] elections shall be consistent with the standards for such elections developed under Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA).” As such, when reviewing the conduct of a local election, the AFT follows the standards set by the courts in interpreting the LMRDA to determine whether the results of such an election should be overturned.<sup>2</sup>

Section 402(c) of the LMRDA states, in relevant part, that, “If, upon a preponderance of the evidence” it is found that violations committed in the course of conducting an election “may have affected the outcome of an election”, the election shall be declared to be void and a new election may be declared “in conformity with the constitution and bylaws of the labor organization.”<sup>3</sup> This standard is the one that has been followed in considering the allegations raised by the complainant in the instant matter.

## III. Title IV and the Presumption of Validity of Election Outcomes

LMRDA § 402(a)(2) provides, in pertinent part, that a “challenged election shall be presumed valid pending a final decision thereon...”<sup>4</sup> As noted in the Interpretative Manual issued by the Department of Labor’s Office of Labor-Management Standards, this means that in “the interim between challenge and voiding, the challenged election shall be presumed valid and the affairs of the union shall be conducted by the elected officers.”<sup>5</sup>

As a threshold matter, in light of § 402(a)(2)’s presumption of validity concerning election outcomes, we must conclude that it was improper to deny Ms. Chee the office that she won in the May 27, 2020 runoff before a final decision on challenges to the outcome of the election. The Local has taken the position that a vacancy arose pursuant to Article IV, § 3(a) of the Local 1521 Bylaws which necessitated the filling of the position. Based on § 402, however, this was

---

<sup>2</sup> The text of the LMRDA may be found at 29 U.S.C. § 401 *et seq.*,

<sup>3</sup> *Id.* at 482(c).

<sup>4</sup> 29 U.S.C. § 482(a)(2).

<sup>5</sup> OLMS Interpretative Manual § 478.005, *available at:*

[https://www.dol.gov/olms/regs/compliance/interp\\_manual/400\\_IM\\_Elections.htm](https://www.dol.gov/olms/regs/compliance/interp_manual/400_IM_Elections.htm)

not the case.<sup>6 1</sup> In their position statements, both the Local and Ms. Chee have treated the question of whether there was a vacancy as one governed by Article VI, § 3(a) of the Bylaws. The definition of what, specifically, constitutes a “vacancy” pursuant to that section is not entirely clear. In section 3 of the Article, a vacancy in the office of president (of the Local) is defined by a parenthetical that states “(as a result of death, resignation, or recall)”. That parenthetical is absent from section 3(a), which governs vacancies in the office of Chapter President. Regardless, the question is inapposite because, pursuant to the LMRDA, **there was no vacancy to begin with**. As discussed above, Title IV requires that the winner of an election be presumed to be the elected officer until that presumption is overcome in the final disposition of an election investigation. Article IV, § 5 of the AFT Constitution applies the Title IV standard to affiliate elections. The same section of the AFT Constitution holds that no provision of a local constitution or bylaws may be in conflict (or be interpreted to be in conflict) with the AFT Constitution.

Taking into account the foregoing, the results of the election should have been deemed valid, Ms. Chee ought to have been allowed to occupy the office to which she was elected, and the challenge procedure should have been allowed to proceed through its final disposition, which is the instant election investigation decision. Due to the violations discussed below, the results of the May 27, 2020 runoff are overturned, and a new election is ordered as soon as practicable after the beginning of the fall term. Nevertheless, until such time as that election is concluded, **Grace Chee must be presumed to be the incumbent president of the West LA College Chapter of Local 1521**. The results of the original election and the runoff were certified by AAA and the parties have acknowledged the results are not in dispute. As such, allowing Ms. Chee to assume the office to which she was elected is one that honors the will of the voters and is necessary to ensure compliance with Article IV, § 5 of the AFT Constitution and the presumption of validity granted by § 402(a)(2) of the LMRDA that must be respected pursuant to that section of the AFT Constitution.

#### IV. Discussion of Allegations Concerning Local Election Rule #10

Certain provisions of Local 1521’s Election Rule #10 are at issue in this investigation and are discussed below.<sup>7</sup> Election Rule #10 governs campaign conduct and it is the determination of

---

<sup>7</sup> It is important to note that the local has raised an allegation that Ms. Chee violated Election Rule #2. As the Local notes in its position statement, Election Rule #2 establishes the timeline for the election and the deadline for changing home campus designation was March 6, 2020. The Local has alleged that Ms. Chee violated Election Rule #2 because “the Committee saw evidence that Chee was attempting to have part-time instructors designate West LA as their home campus after March 6, so they could vote at West LA.” To the extent that a violation of Election Rule #2 is alleged because Ms. Chee may have tried to get individuals to change their home campus designation after the deadline, we see no violation. The decision to accept or reject a change of campus designation for purposes of the election is one that is left to the Committee; if the Committee’s consistently-applied policy pursuant to its rules was not to

the AFT that certain provisions of the rule, as well as its interpretation by the Local elections Committee, are unduly restrictive of campaign conduct by candidates that is routine in AFT local elections. The following issues with the rule and its interpretation must be cured prior to the holding of the runoff election for the West LA College Chapter presidency this fall.

1. Electronic Campaigning (Generally)

Election Rule #10 contains broad prohibitions on electronic campaigning, **the likes of which we have not encountered in other AFT affiliates' election rules.** The prohibitions cover personal electronic campaigning via cell phone and e-mail as well as campaigning via the employer's e-mail system. Personal and employer resources are treated differently under Title IV and will be addressed separately below. The overall prohibition on electronic campaigning is of importance at the present time due to the COVID-19 pandemic and is the focus of this subsection of the decision.

There are issues with both the language in Rule #10 as well as the Elections Committee's interpretation of that language. Rule #10 states, in relevant part, "To ensure fairness, there shall be no distribution of campaign material via email or phone (District or personal)." The text of the rule goes on to prohibit the use of the faculty e-mail system as well as social media to campaign in most instances. According to information provided by the Local, on March 15, 2020, Ms. Chee requested that the Executive Board amend Rule #10 to allow campaigning via the employer's e-mail system. That date coincides with the beginning of most COVID-19 pandemic related quarantines and was presumably made in anticipation of the fact that faculty would not be on campus to receive hard copies of campaign literature. According to the Local, President Waddell replied that "not every candidate would have equal access, and therefore the motion would not be allowed." On the following day, the Election Chair, Iris Zelaya replied to Ms. Chee's request and, again relying on the principle of avoiding "unequal access" there would be no change to Rule #10 and all electioneering through personal e-mail and phones as well as District e-mail would be prohibited.

**The blanket prohibition on all electronic campaigning is overly broad, unnecessarily restrictive, out of step with the practice of AFT locals across the country,** and particularly problematic during an ongoing national lockdown. Moreover, it is not required by Title IV or the AFT Constitution, which will be discussed more fully in the subsections below. While the goal of "equal access" to the electorate is a laudable one and no candidate should be allowed an unfair advantage in terms of access to employer or union resources, it is a step too far to prohibit union members from using the contacts they have legally obtained by means of social or organizing-related connections from utilizing those contacts to advance their campaign. While one candidate may have more contact information on the electorate (or just simply

---

accept such changes after March 6<sup>th</sup>, than any efforts to get them to do so were, at most, a waste of time. If this allegation is raised in order to demonstrate that Ms. Chee was utilizing telephonic and electronic means to campaign, then those issues are addressed in subsection 1 of this section.

know more people) than other candidates, that may give that candidate an advantage over other candidates in terms of being able to know whose vote to solicit. Though this is an advantage, it does not necessarily follow that it is an unfair advantage. We are trade unionists and many of us are organizers by nature. **The collection of contact information** is an inherent component of the organizing process and to utilize such information to advance a position – in favor of a candidate or an issue – is not “unfair,” **it is simply organizing**.

**It is the AFT’s position that a candidate may use their personally obtained contacts to campaign via any legal electronic means** (e.g. social media, personal electronic mail, telephone, text, WhatsApp, Signal, etc.). The use of employer or union resources for such campaigning represents a special circumstance that is discussed more fully in subsection 2 of this section, below. However, there is no fairness justification to prohibit campaigning via personal resources under ordinary circumstances. Moreover, such a prohibition arguably penalizes candidates who have done the work to engage with the membership on a regular basis in order to develop contacts if they cannot put this information to use in order to advance their campaigns. This is all the more true during the pandemic when we do not have access to our colleagues in the workplace and personal interaction via electronic means is absolutely essential.

For the foregoing reasons, **the prohibitions on campaigning via electronic means are deemed invalid** and should be struck from Rule #10. Furthermore, the rule should be interpreted in the upcoming runoff election and subsequent Local 1521 elections to allow candidates to campaign electronically via non-employer resources.<sup>8</sup>

## 2. Use of Employer Resources for Electronic Campaigning

The use of employer resources to campaign presents a special legal problem and must be considered separately from the use of personal resources. Section 401(g) of the LMRDA states, in relevant part, “[N]o moneys of an employer shall be contributed or applied to promote the candidacy of any person in any election...”<sup>9</sup> The Department of Labor has interpreted this section through regulation to include “indirect as well as direct expenditures” and to include “any costs incurred by an employer, or anything of value contributed by an employer, in order to support the candidacy of any individual in an election.”<sup>10</sup> Federal courts have interpreted Section 401(g) to strictly prohibit the use of employer e-mail systems in order to campaign for

---

<sup>8</sup> While use of personal electronic resources should be permitted, it is not unreasonable for the local to prohibit harassment via such resources. It is important, however, not to take an overly broad approach to harassment. An individual may receive one or several campaign communications that they did not want to receive from a particular candidate but that would not necessarily constitute harassment. Should the local choose to add language to Rule #10 or interpret the rule to prohibit harassment, such language should be narrowly tailored and strictly interpreted.

<sup>9</sup> 29 U.S.C. § 481(g).

<sup>10</sup> 29 C.F.R. § 452.78(a).

union office.<sup>11</sup> In light of this strict prohibition on the use of employer email to campaign pursuant to Title IV, the prohibition by Local 1521 on candidates' use of employer-owned electronic resources to communicate about the election is not necessarily unfounded. It is our position, considering the entire context of this local and this campaign, that the total ban on the use of the employer's email system is overly broad and restrictive and a more liberal standard should be applied going forward.

The AFT has taken the position over time that public sector locals that allow some amount of campaigning over employer e-mail are not necessarily in violation of the AFT Constitution. We do not follow a *per se* rule to invalidate an election because a candidate for office uses the employer's e-mail system to reach out to a peer about the election. The AFT follows an analysis that looks at the context of the violation and its impact on the outcome. There are multiple reasons for this interpretation, not all of which are germane in the instant context. However, taking into account that Local 1521 is a public sector local, its members are not always on campus at the same time under ordinary circumstances, and the pandemic presents circumstances that will not permit in person campaigning via written or oral means, we do believe that some limited amount of electronic campaigning over the employer's e-mail system may be countenanced. In order to minimize the use of employer resources, **campaign e-mails that are initiated from personal accounts may be sent to work e-mail addresses** in circumstances when personal e-mail addresses for recipients do not exist or are unknown to a candidate. The Local is instructed to permit such campaigning on a going forward basis.

### 3. Fair & Equal Interpretation of the Rules

As discussed more fully above, it is the decision of the AFT that **a blanket prohibition on all electronic campaign communications during the course of a local election is not proper** and any the provisions of Election Rule #10, and interpretations thereof, must be rescinded. During the runoff election that will take place in the fall for the West LA College Chapter presidency, the Local must permit electronic campaigning consistent with the terms of this decision. The AFT's finding in this regard effectively **renders moot allegations by the Local that certain texts, e-mails, and telephone messages made by Ms. Chee were campaign communications**. Nevertheless, we have determined that it is important to briefly address this issue because there is a disagreement over the fair application of the campaign rules to the candidates and such disagreements can have a tendency to undermine the perceived legitimacy of election administration.

Federal courts have ruled that the factfinder (in the case of a complaint to the Department of Labor, the Secretary, and in the case of a complaint to an international union, the designated union officers) must determine on a case-by-case basis what constitutes campaign literature within some fixed time period when candidates are soliciting the votes and support of

---

<sup>11</sup> See *e.g.*, *Solis v. Local 9477*, 798 F.Supp.2d 701 (D. Md. 2011).

members.<sup>12</sup> In order to determine whether a communication constitutes a campaign communication, federal courts have looked to “the timing, tone, and content” of the publication, as well as any “general circumstances surrounding” it.<sup>13</sup> Courts have held that prohibitions on campaigning “do not apply every time an incumbent candidate speaks to union members. The question, rather, is whether the totality of the circumstances establish that the publication ‘exceeded the bounds of permissible reportage on union matters’ that is ‘an unavoidable consequence of performing’ the duties of elected office.”<sup>14</sup>

Applying this standard to campaign communications that were discussed by the parties in the instant matter, we find it difficult to conclude that, for example, an e-mail or text that merely states “it has been a long time since we talked” constitutes campaign communication. Even if the individuals in question do not typically correspond and even if the communication was initiated by a candidate without any campaign message, discussion of issues, or appeal for a vote, it is hard for us to arrive at a justification for concluding that such a communication is a campaign communication. It certainly does not constitute a request to vote for or against a candidate for union office.

By its own admission in its original position statement, the Local deemed the above e-mail and text communications to be impermissible when sent by Ms. Chee. However, in its July 31, 2020 submission in the course of this investigation, the Local admitted that it permitted a candidate for East LA College Chapter President to forward to all-faculty e-mail a communication from an administrator which “discussed the latest challenges of remote teaching and learning during the pandemic.” According to the Local, the Elections Committee took the position that the e-mail could be justified due to the individual’s role as campus President and that “the e-mail was in that gray area, whether it was ‘campaigning’ depended on the eyes of the beholder.” According to the Local, the Elections Committee relied upon the fact that, “Her email was not a direct appeal for votes.”

We recognize that service on a local Elections Committee is a sometimes challenging responsibility. It is not easy to police rules concerning campaign communications and we do not fault any Elections Committee member who makes a good faith effort to fulfill their role with the best of intentions. Furthermore, without being privy to all of the facts and circumstances surrounding both chapters’ presidential elections and the totality of the communications, we do not pass judgment here on whether the Elections Committee got any particular instance right or wrong. Having said that, it is difficult to reconcile the fact that the Committee chose to find that a one line text or e-mail sent by one candidate for office that did not discuss any issues at all was a violation of Election Rule #10, while another candidate was

---

<sup>12</sup> See e.g., *Guzman v. Local 32B-32J*, 151 F.3d 86, 92 (2d Cir. 1998).

<sup>13</sup> See *Chao v. N. Jersey Area Local Postal Workers Union*, 211 F.Supp.2d 543, 551 (D.N.J. 2002).

<sup>14</sup> *Hudson v. Am. Fed’n of Gov’t Employees*, 308 F. Supp. 3d 121, 128 (D.D.C. 2018) citing *Dole v. Drywall Tapers & Finishers Local Union 1976*, 733 F.Supp. 864, 867 (D.N.J. 1990).

permitted to use electronic means to send an e-mail concerning what might be the most important workplace issue to arise during the course of this campaign. Again, we are not taking the position that either decision was right or wrong under the text of Election Rule #10 as it currently is written and as it was interpreted during the recent campaign. We believe this entire class of issues will be moot when the rule is rewritten and reapplied to permit electronic communications and we mention this here in order to remind the Local that every effort must be made to ensure as much as possible that the rules are not only administered fairly, but also are perceived to have been administered fairly.

V. Conclusion

For the foregoing reasons, **the Local's decision to declare a vacancy in the West LA College Chapter presidency was improper.** The results of the May 27, 2020 runoff election for Local 1521's West LA College Chapter presidency should have been upheld pending the outcome of the election challenge. As such, **Grace Chee is declared to be the incumbent Chapter President, effective June 1, 2020.** A rerun election for the West LA College Chapter presidency is ordered and must take place as soon as practicable after the commencement of the fall term. Local 1521 is instructed to adopt election rules consistent with this decision that will govern the rerun election. The AFT will retain jurisdiction over this matter pending the conclusion of the rerun election this fall and the Local is requested to keep the AFT apprised of each step taken in the conduct of the rerun election as it is happening.

This election investigation decision is final and is not subject to appeal. Thank you for contacting your national union with regard to this matter.

In unity,



Dr. Lorretta Johnson  
Secretary-Treasurer

LJ : DS : SL

cc: Jeff Freitas, AFT VP & California Federation of Teachers President  
Randi Weingarten, AFT President  
Mark Richard, Office of the President, AFT  
Jessica Smith, Office of the President, AFT  
Tish Olshefski, Office of the Secretary-Treasurer, AFT  
Mark Bostic, Organization & Field Services, AFT  
Ramiro Hernandez, Western Regional Office, AFT  
David Strom, General Counsel, AFT  
Sam Lieberman, Legal, AFT