

Aug 12, 2019

Sent via email

Nate Sugg
Council 2 Election Committee Chair
suggn@live.com

Chris Dugovich, Council 2 President/Executive Director
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American Federation of State, County, and Municipal Employees (AFSCME), Council 2
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Richard Abelson, Judicial Panel Chair
AFSCME International, AFL-CIO
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RE: ELECTION PROTEST

Dear Chairman Abelson, Executive Director/President Chris Dugovich and Election Committee Chairman Sugg,

In accordance with the AFSCME Constitution, *Appendix D, Elections Code, Section 4, Elections Challenge*, and the Council 2 Constitution, *Article 10. Section D*, we respectfully submit the following election challenge to the WSCCCE, AFSCME Council 2 Convention held at the Tulalip Resort, Marysville, Washington on August 1-3, 2019.

We request a prompt investigation and/or hearing in order to present evidence and testimony supporting the allegations listed below:

We are unclear of the procedures and processes required by the Election committee and request written rules for proceeding in presenting our case.

APPLICABLE CONSTITUTIONAL PROVISIONS

Council 2 Constitution

Article V, Section C

*It is further provided that the convention of this council **shall** be held on a weekend during the month of **May, or June, or July, or September***

(emphasis added), provided it shall not be held on a weekend encompassing a legal holiday or the second weekend in May (Mother's Day) or the third weekend in June (Father's Day). The president, in consultation with the officers shall select the dates. The selection date of convention (sic) shall be made in time to notify all member locals and chapters four months in advance.

Article XVI, Section 1. Rules for Conduct of Meetings

Meetings of the state council, and the executive board shall be conducted in accordance with Robert's Rules of Order Newly Revised, except as otherwise provided in the constitution.

Article XVI, Section 2. Rules for Conduct of Elections

Elections shall be conducted in accordance with Election Code, Appendix D of the International Constitution.

AFSCME International Constitution

Appendix D - Elections Code

Section 1. General provisions.

- A. No funds or other resources of the Federation or of any subordinate body, and no funds or resources of any employer, shall be used to support the candidacy of any member for any elective office within the Federation or any subordinate body.*
- B. No publication sponsored by or supported by the Federation or any subordinate body shall endorse or support any candidate for elective office within the Federation or any subordinate body.*
- C. Any nominee or announced candidate for elective office shall have the right once prior to the election to have mailed, through the union office but at private expense, campaign literature. In a local union election, such literature may be mailed to each member in good standing. In an International Union or council election, such literature may be mailed to each affiliated subordinate body and/or to each member in good standing.*
- D. No member whose eligibility for membership is based upon employment in a position for which another organization is the exclusive representative with regard to wages, hours, or other terms and conditions of employment shall be eligible to seek or hold office at any level of the union; provided, that any member now serving a term of office shall not be barred by this Section from completing the remainder of such term of office.*

Section 2. Election of subordinate body officers.

- A. To be eligible for election, a nominee must be a member in good standing of the local union in which the nominee seeks office or of a local affiliated with the council in which the nominee seeks office, and must meet such other conditions as are stipulated in the constitution of the subordinate body.
- B. An Election Committee shall be established and shall have general responsibility for the conduct of the election in accordance with this Constitution and the constitution of the subordinate body. Any challenge concerning the eligibility of any nominee shall be referred to the Election Committee for decision and the decision shall be reported to the subordinate body prior to the election. The Election Committee shall also report, as expeditiously as possible, the results of the balloting, together with recommendations regarding any protests which have been lodged regarding the conduct of the election. No member of the Election Committee may be a candidate for office.
- C. The terms of office for officers of subordinate bodies shall be set forth in the constitution of each subordinate body, but may not exceed three years in the case of local union officers or four years in the case of council officers.
- D. Not less than fifteen days prior to the holding of nominations for local union officers, a notice of the nominations and elections shall be mailed to each member at the member's last known home address. Notice of nominations and elections for council officers shall be sent to each affiliated local not less than fifty days prior to the election or notice may be given as required by the council's approved constitution.
- E. Nominations may be made at a regular or special meeting by a local union member or by a council delegate. Nominations may also be made by a nominating committee, unless prohibited by the constitution of the subordinate body. Those nominated shall be afforded the opportunity to decline, and the name of any nominee who declines shall not appear on the ballot. Write-in votes shall not be valid for any purpose.
- F. In any case where there is only one nominee for office, such nominee shall be declared elected. In all other cases, election shall be by secret ballot. All local union members or council delegates shall be afforded a reasonable opportunity to vote.
- G. In all cases in which election of officers is occurring simultaneously for both at-large and district seats, distinct ballots shall be issued, separating the at-large from the district contests. Ballots from at-large contests shall be indistinguishable as to district or constituency, and such ballots shall be cast in such a manner that they cannot be identified as coming from a particular district or constituency.
- H. Local union elections may be conducted at the same meeting as nominations or at the following meeting or by referendum, as provided in the local union constitution. Council elections shall be held in accordance with the constitution of the council.
- I. Any candidate whose name is to appear on the ballot shall have the right to have present an official observer of the candidate's own choosing, who must be a member of the Federation, in all places where ballots bearing the candidate's name are to be cast or counted.
- J. Upon completion of the voting, the ballots shall be tabulated and the candidate for each office receiving a majority of the votes cast for that office shall be declared

elected. Any remaining unfilled offices shall be filled through a run-off election in which there shall be a ballot bearing two names for each office to be filled, such names being those nominees who received the greatest number of votes in the first balloting and the candidates receiving the highest number of votes shall be declared elected. Those elected shall be installed in office immediately but in no event later than 10 days after the tabulation of the election ballots, and regardless of any election related protests that are filed. Upon installation of the new officers, the names, addresses and terms of office of the newly elected officers shall be submitted to the International Secretary-Treasurer so that credential cards may be issued in accordance with the provisions of Article IX, Sections 18 and 23, of this Constitution. The preelection incumbents shall remain in office until new officers are installed. The Election Committee will inform the subordinate body of the results of the tabulation of ballots.

- K. Vacancies in office shall be filled in accordance with provisions of the constitution of the subordinate body. If no constitutional provision exists, vacancies shall be filled by vote of the executive board of the subordinate body.*
- L. All election records, including ballots, shall be retained by the subordinate body for at least one year after the election.*

Section 3. Election of convention delegates.

- A. Local unions shall elect council delegates in the manner prescribed for the election of local union officers, subject to the provisions of paragraph C, below.*
- B. Locals and councils shall elect delegates to conventions of the International Union in the manner prescribed for the election of local and council officers, subject to the provisions of paragraph C, below, and of Article IV of this Constitution.*
- C. The election by local unions of council delegates and of delegates to conventions of the International Union shall not require a majority of the votes cast unless such requirement is specifically contained in the local union constitution.*

Section 4. Challenges and protests.

- A. Any member of a local union or any council delegate may challenge the eligibility of any nominee by filing such challenge with the Election Committee prior to the holding of the election. The Election Committee shall make a determination regarding the challenge, and shall report its ruling to the subordinate body. The subordinate body shall either accept or reject the ruling of the Election Committee prior to the election.*
- B. Any protest concerning the conduct of the election may be lodged at the meeting at which the election is conducted or by **filing such protest in writing with the subordinate body or the Election Committee within ten days following the election.** All interested parties shall be afforded an opportunity to be heard. The membership of the subordinate body shall either accept or reject the recommended decision of the Election Committee not later than thirty days after the filing of the protest.*
- C. If the subordinate body determines that there were violations which may have affected the outcome of the election, it may order such election or any part thereof*

set aside, and a new election held. Any officers who have been installed prior to such determination shall remain in office pending the outcome of any new election or of a future appeal.

- D. Any protestant or nominee adversely affected by a decision on a challenge or a protest may file a written appeal with the Judicial Panel within ten days of the subordinate body's decision, or, if no decision has been rendered, within forty days after filing the original protest with the subordinate body. Upon receipt of such an appeal, the Chairperson of the Judicial Panel shall designate one or more members of the Judicial Panel to conduct an investigation, affording all interested parties an opportunity to be heard, and such member or members shall issue a decision within forty days after the filing of the protest. If the investigation shows that there were violations which may have affected the outcome of the election, the election or any part thereof may be set aside and a new election held. In such circumstances, the new election may be conducted under the supervision of a representative designated by the Panel member or members who conducted the investigation.
- E. Decisions made by a Panel member or members may be appealed to the full Judicial Panel by filing written notice of such appeal within ten days after the decision is issued. Should a decision not be issued within the time limit set forth above, an appeal to the full Judicial Panel may be filed within ten days after the expiration of such time limit. The Judicial Panel shall hear and decide such appeal at its next meeting. The Judicial Panel shall provide an opportunity for all interested parties to be heard, and shall consider all other information obtained in the investigation conducted by a member or members of the Judicial Panel.
- F. Decisions of the Judicial Panel under this section may be appealed to the International Convention. Notice of such appeal shall be filed in writing with the International Secretary-Treasurer within thirty days after the decision of the Judicial Panel. Pending the decision of the Convention, the decision of the Judicial Panel will be in effect.
- G. No subordinate body funds shall be used to institute legal action outside the union to challenge election rulings.
- H. Challenges and protests regarding the election of council delegates shall be handled in the manner prescribed for challenges and protests regarding the election of officers of subordinate bodies.

Section 5. Challenges and protests regarding election of delegates to International Union Conventions.

- A. A challenge or protest regarding the election of delegates to a convention of the International Union must be filed with and decided by a subordinate body by or on the date of the meeting at which the report of the Elections Committee is voted on. A written appeal from the decision of the subordinate body may be filed with the Judicial Panel not later than the fifth day following the subordinate body's action on the challenge or protest; provided that the Judicial Panel shall not have jurisdiction to hear appeals filed within twenty (20) days of the opening day of the Convention. The Chairperson of the Judicial Panel shall designate one or more members of the Judicial Panel to conduct an investigation and decide the appeal

in the manner provided in Section 4(D) as expeditiously as possible. An appeal from the decision may be made in the manner provided in Section 4(E).

- B. If the right of a delegate from any subordinate body to be seated at the Convention is challenged, the Credentials Committee shall review the report and decisions, if any, of any prior appeals before making a decision concerning the validity of the delegate's credential.*

Section 6. *The provisions of this Elections Code shall conform with applicable law.*

CHARGE I

CONVENTION HELD IN VIOLATION OF COUNCIL 2 CONSTITUTION

The WSCCCE, AFSCME Council 2 Convention of August 1-3, 2019 was scheduled and conducted in the month of August, a month specifically prohibited by Article V, subsection C of the Council 2 Constitution. The President, whose responsibility it is to set the convention date, was repeatedly advised, in advance of the convention of his error and refused to change the date.

Numerous members of the Council were unable to attend the convention due to commitments made based on the Council 2 constitution's prohibition of holding the convention in August. It is the opinion of some that this was intentionally done to limit participation in the elections.

During the convention, two AFSCME members raised the issue of the constitutional violation as a Point of Order. The Presiding Officer at the meeting failed to rule either way on the Motion of the Point of Order. This action violates convention rules and Article XVI (Conduct of meetings and Elections) Section 1 of the Council 2 Constitution mandating the use of Roberts Rules of Order to govern the convention's business. President Chris Dugovich, the individual who improperly scheduled the convention and its elections was the presiding officer.

REMEDY

Because this convention was knowingly and willfully scheduled in direct violation of the constitution, we demand all elections be nullified and a properly-noticed convention and election be ordered. All financial costs shall be borne personally by the Executive Director/President of Council 2 as it is unfair to expect the members to cover the debts accrued by the actions of the Executive Director/President of Council 2.

CHARGE 2

ELECTION INTERFERENCE

- A. Requests for Election Rules Denied

At multiple Local 114 union meetings in the months leading up to the Convention, held in Bellingham, Washington members asked Deputy Director, Pat Thompson, for information pertaining to the convention election process and copies of relevant rules governing elections. This request was denied. Local members were told by Thompson that it is against Council 2 policy for paid staff to solicit votes, help anyone run for an elected position or help anyone get elected. He stated that all election rules would be included in the copy of the convention packet which would be mailed out in advance of the convention. A copy of the policy was requested and was never provided at any time prior to the convention.

Subsequent written requests were made to Mr. Dugovich. These requests were denied.

Of interest is the comments made by Mr. Dugovich at a meeting facilitated by Mr. Walter Blair from the International and attended by Local 114 membership. In Mr. Blair's presence, Dugovich indicated that "no positions would be open" at the upcoming State Convention as "all incumbents in all positions wished to continue." Member Tamara Miller asked if all positions were open for election at the upcoming position. Mr. Dugovich's answer was "No."

B. Executive Board Candidate Barred from Passing Out Campaign Literature

During the Council 2 Legislative weekend meeting held on March 8-9, 2019 in Olympia, Washington, Executive Board District 1 candidate Keith Fredrickson was barred from distributing campaign literature by paid Council 2 employees, Mike Rainey and Pat Thompson. His flyer was deemed to be critical of President Dugovich because it spoke of his compensation package. On March 9, 2019 during the State Executive board meeting, President Dugovich reported that in closed session, the finance committee recommended that the executive board pass a motion prohibiting the distribution of "any information that can be found on the internet" during the approaching convention and at future executive board meetings and events. The motion was approved; however, the text of the resolution is not included in the official minutes. President Komac from Local 114 asked for the text of the motion in a written request as well as the audio recording of the meeting and the request was never responded to. President Dugovich appointed a Sergeant at Arms during this meeting specifically for the purpose of preventing the passing out of any information at the convention which he deemed as disruptive and unflattering to him personally.

C. Request for a Proxy Form Was Denied

On July 9, 2019, the president of Local 114 requested of Chris Dugovich a copy of the proxy form reportedly being used by a staff member to solicit local proxies. Mr. Dugovich's reply is below.

From: Chris Dugovich
Sent: Monday, July 29, 2019 4:19 PM
To: 'Union'; Miguel Morga
Subject: RE: Proxy form

Jael You seem to be able comb through our Council 2 constitution and dwell on every fact but you can't figure out the proxy process. Again we don't run seminars on how to run for office. However you can read Article 5 section 5 that talks about proxys. You need a letter stating that a specific elected delegate is authorized by the Local Union to carry and vote their votes. It needs to have the approval of the other Local Union and have the signature of the President.

Chris Dugovich
President/Executive Director
WSCCCE/Council 2
425-303-8818
chrisd@council2.com

D. Delegate Improprieties

Conflicting instructions were given regarding the use of proxies vs assigning delegate votes. For instance, see item C above for the instruction given by Mr. Dugovich. This seems to conflict with the instructions given in the Call to Convention which was sent in our official packet. It also conflicts with instruction given by individual staff reps to individual members. As Mr. Dugovich indicates above, ***"You need a letter stating that a specific elected delegate is authorized by the Local Union to carry and vote their votes. It needs to have the approval of the other Local Union and have the signature of the President."***

Jael Komac, President of Local 114 presented a proxy form (not a letter) at the convention registration desk signed by President of 114WD (a local not affiliated with 114). It appears that this was a violation. It makes one ponder how many other proxy forms were presented by attendees. Were meetings of the Locals held? Staff reps were reportedly scrambling in the last week to check in with each local to obtain their votes via a proxy form that was being distributed via email to only specific Locals. It appears that all meeting minutes State wide should be reviewed to ensure that each Local held a meeting to properly authorize their delegates.

This entire process has been called into question.

E. Union Resources Used to Solicit and Control Proxy Votes

On or about July 22, 2019, Local 114WD President Ken Zangari received the following text message from Joe Downes, Council 2 staff rep:

"I've been asked to check on my locals for proxies for the convention. We want to make sure that every local is accounted for. Have you had a chance to fill out and send in your proxy form?"

This request was made during a paid work day, using union-supplied mobile devices, computers and his union email address.

On July 19, 2019, staff representative Joe Downes asked Local 1848F, President Don Reitan, if he **“had a chance to fill out the proxy form for the upcoming state convention”** and told Mr. Reitan he was willing to vote for him: **“if you need a delegate to carry proxy votes.”** This request was followed up by correspondence from Joe Downes made at 4:51 pm during a paid work day, using union supplied mobile devices, computers and his union email address.

It should be noted the votes solicited by Joe Downes were controlled by Joe Downes. It should also be noted that Joe Downes’ direct supervisor is candidate and incumbent Chris Dugovich.

This is only two examples. There are more and we will present them all as evidence if required.

F. Candidate Paterson Not Allowed to Address the Convention

On August 2, 2019, Candidate Paterson was nominated for President from the floor (the only opportunity given to members to nominate anyone). However, he was barred from making any statements about himself or issues he supports. This is in sharp contrast to candidate Dugovich, who presided over the convention, controlled the podium, controlled the microphone and verbally addressed the convention about his own accomplishments repeatedly in his “president’s report”. This report was a lengthy campaign speech. It should be noted the president is obligated to report to the convention, but the constitution mandates this report be in **writing**.

No written report was ever produced and given to the membership.

G. Candidate Paterson’s supporters were prevented from addressing the convention.

On August 2, 2019, two of Paterson’s supporters sought to address the convention in support of Paterson and in conformance with the Council 2 written election rules which were provided in the packet. The rules stated that candidates could not address the convention and that two supporters of a candidate could speak for one minute each. Both supporters were prepared with their timed, written speeches and were ready to comply with the one minute time limit. They were both timely and lined up at the microphone. The first member started to speak and was cut off. The sister was told by Vice-President, Ron Fredin that her attempt to speak to the convention was out of order. He was clearly irritated, rolling his eyes and stating that this portion of the agenda was for nominations and nominations only. Consequently, no attending delegate would hear from candidate Paterson or his supporters.

In stark contrast, multiple nominations for Dugovich were made by sitting members of the Executive board. These nominations had the content of campaign speeches, expressing how wonderful the incumbent is and encouraging people to vote for him. These comments were allowed by Vice-President Ron Fredin.

CHARGE 3

ELECTION RESULTS NOT PROPERLY CERTIFIED

On August 3, 2019, the Election committee failed to report the balloting results. There were no vote totals given, only the committee's findings of the winner of the office of the President and the top vote getters in the respective District board members. Consequently, Union members have no evidence proving who was the winner or by many votes that person won—making it impossible for challengers to determine if there was evidence of impropriety—for example--were there more votes cast than represented at the convention or if the 2/3rds majority requirement for changing the constitution was met. This action serves the interest of the successful candidate by defeating and discouraging election charges.

In addition, the Election committee failed to make a recommendation on the vital protest made on the floor of the convention ("point of order" motion by members objecting to the election being held in month prohibited by C2 constitution) as required by the International constitution.

CHARGE 4

EXECUTIVE BOARD ELECTION IMPROPRIETIES

On August 2, 2019, the convention attendees unanimously approved the agenda as presented in the packet. The time listed for the District executive board elections was 12:15pm.

The morning session ended very early (there was more than enough time for delegate speeches, see Charge 2E). The chair unilaterally decided to change the district election times to 15 minutes earlier (at noon). If you were not in the room or did not hear his last minute time change, you had the potential of arriving late to your assigned room. A number of people arrived late, referencing the approved agenda for the start time. It is unknown how many people never arrived to make nominations or hear the one minute candidate speeches.

The nomination proceeding was chaired by someone running for office which seemed like a conflict of interest. It is unknown why the election rules of one minutes speeches applied to this position and not to the position of President.

CHARGE 5

CHAPTERS ARE NOT RECOGNIZED AS SUBORDINATE BODIES

There is no provision in the AFSCME International constitution that recognizes a "chapter" as a subordinate body. Chapters do not have approved constitutions or are chartered by the Council. There is no term which defines "chapter" in the Council 2 constitution. Consequently, chapters have no authority to divide local votes and assign proxies to other locals. The splitting of a local's vote can only be accomplished at the convention by the chairman of the delegation of the local.

Any proxy issued by a chapter without consent of the local should be invalid.

Section 5. Votes

- (A) Each local and chapter shall be entitled to one vote for each member, based on their average membership for the months January and February preceding the Convention. The number of votes to which a local or chapter is entitled shall be divided equally among the delegates in attendance at the Convention, with any remaining votes to be cast by the chairman of the delegation as designated by the local. No fractional votes shall be permitted. A local or chapter shall have the right to vote four other locals' votes if the local or chapter is selected to do so in accordance with the Council and International Constitutions.
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REMEDY

For the reasons stated above, all elections conducted by the Election committee at the Council 2 State convention as well as amendments to the Constitution should be voided and a new election be ordered. The International is requested to advise Council 2 and directly oversee the process to ensure that it is done properly.

We demand that the International aggressively protect the rights of its affiliated Union members to express these concerns and have them heard and resolved without being retaliated against by anyone at any level of our Union structure.

Sincerely,

Kirk Juneau



Members in Good Standing in full support of these charges:

Colin Maycock

Jael Komac

Amy Lathrop

Nick Leininger

Shayla Francis

Donna DePamphilis

Tom Veitch

Ken Zangari

Keith Fredrikson

William Paterson

James Finn

Don Reitan

Andy Wojciechowski