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Judicial Panel Chairperson

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Andrew Washington  
Washington, DC

October 15, 2019

**JUDICIAL PANEL CASE NO. 19-65**  
**Council 2 Election Protest**

GREETINGS:

Enclosed is my decision in the above-captioned case.

In Solidarity,

Richard Abelson  
Judicial Panel Chairperson

RA:spp

cc: Lee Saunders, President  
Elissa McBride, Secretary-Treasurer  
Walter Blair, Regional Director O&FS  
Jeremy Kruse, AFSD  
Matt Colston  
Polagaya McLaughlin  
Kirk Juneu  
Colin Maycock  
Nick Leininger  
Tom Veitch  
William Patterson  
Andy Wojciechowski  
Jael Komac  
Shayla Francis  
Ken Zangari  
James Finn  
Amy Lathrop

Donnna DePamphilis  
Keith Fredrikson  
Don Reitan  
Nate Sugg  
Anne Cisney  
Patty Bonner  
Linda Stover  
Chris Dugovich  
Car Duffy  
Brian Earnheart  
Jeff Jesmer  
Chuck Johnson  
Morgan Libby  
Sean Hare

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**JUDICIAL PANEL CASE NO. 19-65**  
**Council 2 Election Protest**

The matter concerns a protest of the election for Washington State Council of County and City Employees, Council 2. The election was conducted on August 3, 2019. The timely protest to the conduct of the election was filed by Brother Matt Colston and others, and Sister Polagaya McLaughlin.

The case was assigned to Judicial Panel Chairperson, Richard Abelson, for investigation and decision. The hearing on the protest was scheduled for October 3, 2019 in Everett, WA.

**ELECTION RESULTS**

(See attached)

**REPORT OF THE INVESTIGATING OFFICER**

The election protest filed by Brother Matt Colston, et al., and Sister Polagaya McLaughlin raises a number of issues. The significant issues will be discussed separately.

The first issue raised by Brother Colston is that the Council 2 Convention at which the election was conducted was illegally held in the month of August, which is not allowed pursuant to the Council 2 Constitution. The convention was conducted on August 1, 2, and 3, 2019. Article V, Section 1(C) of the Council 2 Constitution states that, "(T)he convention of this council shall be held on a weekend during the month of May, or June, or July, or September, 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 Constitution does not mention August as a permissible month for the Convention. There are extenuating circumstances. The Convention was originally scheduled in June 28, 29, and 30, 2019. However, because the Convention notice was not sent timely to some of the affiliated local unions, and objections were raised by some of the same protestants in the present case, those Convention dates were cancelled. Council 2 president, Chris Dugovich, testified at hearing that officials from Council 2 entered into discussions with the Convention hotel to discuss alternatives in which the Council would not lose up to \$120,000.00 which it had committed for the June Convention dates. The alternative offered by the hotel was the August 1, 2 and 3 dates with no financial penalty.

Article V, Section 1(C) of the Council 2 Constitution also states that, "The president, in consultation with the officers shall select the dates. The selection date of the convention shall be made in time to notify all member locals and chapters four months in advance." The record is undisputed that President Dugovich held a conference call, shortly after the error in the notice of the June 28, 29, and 30<sup>th</sup> Convention was discovered, with the members of the executive board. It was the unanimous decision of the executive board to hold the rescheduled Convention on the August dates. Protestant Colin Maycock, then a member of the executive board, participated in the conference call and voted in favor of having the Convention on the August dates. Subsequently, on July 12, 2019, Brother Maycock wrote to Council 2 that it was impermissible to hold the

Convention on the August dates selected. Brother Maycock testified at hearing in the present case that he did not discover the language of Article V, Section 1(C) of the Council 2 Constitution until shortly before he wrote the letter. By the time Brother Maycock raised his objection on July 12, 2019, there would have been no time to give the required 90 day notice to the officers, board members and each affiliated local and chapter as required in Article V, Section 1(D) of the Council 2 Constitution, and to hold the Convention by the end the September, 2019, the last constitutionally provided month during which to hold the Convention. It is noted that the record in the present case is silent regarding whether the hotel venue offered any September, 2019 dates to reschedule the Convention.

Cancelling the August dates for the Convention and holding the convention in the next constitutionally permissible month providing three months' notice as required in Article V, Section 1(D) of the Council 2 Constitution, would have meant delaying the Convention until May, 2020. This would have in turn would have triggered a violation of Article V, Section 1(A) of the Council 2 Constitution, which requires the Convention to held in odd-numbered years. Additionally, there was the possible loss of a significant amount of money. Lastly, delaying the Convention until May, 2020, would have illegally extended the terms of office for the incumbent officers well beyond their expirations.

In determining that it was not inappropriate, in view of the above considerations, to conduct the Convention on August 1, 2, and 3, 2019, the undersigned considered one additional factor. The record in the present case shows that attendance at the August, 2019 Convention had more delegates, representing more local unions and chapters, and

casting more votes, than the 2017 Council 2 Convention. Therefore, the August convention dates did not adversely impact turnout for the election. This item of the protest is dismissed.

The next item of the protest is that Brother Keith Fredrickson, a declared candidate for a District 1 executive board position, was prohibited from distributing an election flyer at a March 8 and 9, 2019 Council 2 Legislative Conference. Post-hearing a copy of the campaign flyer was sent to the undersigned. The flyer declares Brother Fredrikson's intent to run for the Council 2 executive board position, articulates his credentials and his reasons for running, and further articulates deficiencies in transparency focusing on the salary of the Council 2 executive director (President Dugovich), comparing his salary to the salaries of the executive directors of Washington State Council 28, and Oregon Council 75. Brother Fredrickson testified that he was barred from distributing his flyer by Council 2 staff. President Dugovich testified that at the March 8 and 9, 2019 Legislative Conference, the executive board of Council 2 passed a motion which prohibited the distribution of literature which contained information found on the websites of anti-union organizations such as the Freedom Foundation, which included his salary information.

Brother Fredrickson testified that because of his experience at the March 8 and 9, 2019 Legislative Conference, where he was barred by Council 2 staff from distributing his campaign literature, and the motion passed by the executive board which banned the distribution of literature which contained information found on the websites of anti-

union organizations, he did not attempt to send out a mailing or distribute any campaign flyers at the August Council 2 Convention. Brother Fredrickson testified that these actions had a chilling effect on the candidates' ability to campaign for office. The undersigned agrees.

The right to freely campaign and equal opportunity for competing candidates is guaranteed in the Bill of Rights for Union Members contained in the International Constitution. The uncontroverted right to free speech is also guaranteed. The undersigned was not provided with a copy of the motion passed by the Council 2 executive board which severely and improperly limited the information a candidate could put in a campaign flyer. However, President Dugovich testified as to the content of the motion, and the motion clearly violates the Bill of Rights for Union Members contained in the International Constitution, and the Elections Code, Appendix D of the International Constitution. It is noted that Brother Fredrickson testified at hearing that he discovered the salary information for Brother Dugovich and the executive directors of Council 28 and Council 75 from the IRS 990 forms which are readily available online, not through the Freedom Foundation website. This fact makes the barring of his campaign leaflet even more egregious.

This item of the protest is upheld, and the elections are accordingly vacated and ordered rerun.

The next item of the protest is that staff improperly ran as delegates to the Council 2 Convention, and improperly solicited and carried proxy votes of locals and chapters.

The Council 2 Constitution contains no restrictions regarding Council staff joining local unions or serving as delegates for local unions and/or chapters. In the absence of such restrictions, it was proper for Council staff to run for delegate in their local unions. It was also proper for them to carry proxy votes for other locals or chapters in accordance with the Council 2 Constitution. This item of the protest is dismissed.

An additional related issue concerns whether staff improperly used union resources to encourage locals and chapters to send their votes by proxy to the Convention, and further, whether they improperly solicited carrying local and chapter proxy votes for such locals and chapters. It is entirely appropriate for Council 2 staff to encourage local unions and chapters to send their votes by proxy in the event such locals and chapters do not intend to send delegates to the Convention. Such activity is part of the responsibility of Council 2 staff.

The incidents involving staff soliciting locals and chapters to send their votes with them also does not cross the line in the present case. Staff indicating that he/she has been elected a delegate from his/her local union and merely offering to carry a local's or chapter's votes does not indicate any coercion or improper use of union resources. Brother Ken Zangari, the president of Local 114WD testified at hearing that he was asked by Staff Member Joe Downs about his chapter's proxy votes. He further testified that he chose to not send his chapter's votes with Brother Downs because he was uncomfortable with Brother Downs carrying the votes when his boss, President Dugovich, was running for reelection. Brother Downs testified that he sent his chapter's votes with Sister Jael

Komac, the president of Local 114, who actively opposed President Dugovich's candidacy. There is no evidence that union resources were improperly used for campaign purposes, and this item of the protest is dismissed.

The next item of the protest is that the nominating caucuses, which were scheduled to begin at 12:15 p.m. pursuant to the rules adopted by the Convention, instead began at 12 noon. It is uncontested that the change was initiated by decision of the presiding officer, President Dugovich. It is a technical violation for the time of the nominating caucuses to have been changed by the presiding officer from the time adopted by the delegates when they adopted the convention rules. However, there is no evidence that any member wanted to be nominated for office and was denied the opportunity to be nominated because of the time change. Therefore, the change had no impact on the outcome of the election and this item of the protest is dismissed. However, in the future, changes to the times for the nominating caucuses adopted by the delegates as part of the convention rules should be adhered to and not altered from the chair.

The next items of the protest are general issues involving the receipt of the election rules; failure to provide a proxy form when requested; candidates and supporters not being allowed to address the Convention; staff and the company hired to conduct the voting improperly setting up voting instead of the election committee; and the incorrect number of ballots being given to delegates. These items are dismissed because of lack of proof and/or directly conflicting credible testimony.

The election committee chairperson, Brother Nathan Sugg, testified that the election committee members supervised all aspects of the election. The vendor hired by Council 2 to oversee the voting, Ballot Point, along with the hotel, set up the room for voting and the election committee approved the setup. Brother Sugg testified that there was a "resolution table" in the voting area to resolve any conflicts or disputes. He testified that all conflicts were resolved. Delegates were also allowed to cast the votes for other delegates at the Convention who voluntarily assigned them their votes. Forms were distributed and had to be signed by those delegates assigning their votes to another delegate. When they appeared for voting, delegates were given separate sheets indicating the number of votes they were carrying for all proxied locals and chapters, as well as for those delegates who assigned them their votes at the Convention. The delegate has to sign off on the sheet for each proxy vote he or she is carrying. Brother Sugg testified that no unresolved issue involving incorrect numbers of votes were raised at the Convention. Brother Sugg also testified that the ballot box was always under the supervision of the election committee and that there was no compromise of the secret ballot. Lastly, Brother Sugg testified that no votes were "preloaded" into the computers utilized by Ballot Point.

Lastly, regarding the issue of candidates and supporters not being allowed to speak on the floor of the Convention, there is no evidence that any candidate or the supporter of any candidate properly sought recognition at the appropriate time to have addressed the Convention. Therefore, there is no violation of the Convention rules.

**DECISION**

The item of the protest concerning the interference in candidate campaigning is upheld. The election results of the October 3, 2019 contested elections for president of Council 2, District 1 Executive Board Members, and District 2 Executive Board Members are vacated. The candidates for office shall be those nominated for the October 3, 2019 election. In all other uncontested elections, those candidates who were unopposed are certified elected. The rerun elections shall take place no later than 120 days from the date of this decision and appropriate notice in accordance with Article V, Section 1(D) of the Council 2 Constitution shall be sent to each officer, board member, and affiliated local union and chapter.

October 15, 2019  
Washington, DC

Richard Abelson  
Judicial Panel Chairperson  
AFSCME, AFL-CIO

# **AFSCME** Convention Voting System

## WSCCCE President/Executive Director Election

### Official Results

Ballot ending: 08/04/2019 15:00:00 (Eastern)

#### President / Executive Director (Select 1 Candidate)

Candidate	Votes Received	Percentage
Chris Dugovich	13366	93.70%
William Patterson	899	6.30%
Total Votes Counted	14265	
Minimum Votes Needed	7133	

Winner


Runoff

#### Ballots NOT Included in Vote Totals:

Vote Type	Ballots	Votes	Details
Blank	3	102	Member made no selection
Voided	0	0	Ballot voided by election committee
Total	3	102	

WITNESS LIST NOT PROVIDED.

Report generated: 08/03/2019 13:29:02 (Eastern)

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**BallotPoint**   
Election Services

*Blazys* *McLuskin*

*Paul Davis*  
*Patricia Binner*

*Walter Smith*

*Andrew Gaver*  
*[Signature]*

# **AFSCME** Convention Voting System

## District 1 Executive Board Members Election

### Official Results

Ballot ending: 08/04/2019 15:00:00 (Eastern)

#### Executive Board Members (Select 4 Candidates)

Candidate	Votes Received	Percentage
Car Duffy	1810	15.42%
Brian Earnheart	2242	19.10%
Jeff Jesmer	1551	13.21%
Chuck Johnson	2189	18.64%
Colin Maycock	763	6.50%
Morgan Libby	1427	12.15%
Keith Fredrikson	269	2.29%
Sean Hare	1490	12.69%
Total Votes Counted	11741	
Minimum Votes Needed	1468	

Winner


Runoff

#### Ballots NOT Included in Vote Totals:

Vote Type	Ballots	Votes	Details
Blank	1	5	Member made no selection
Voided	0	0	Ballot voided by election committee
Total	1	5	

WITNESS LIST NOT PROVIDED.

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**BallotPoint**   
Election Services

*Patricia Bernier*  
*Madeline For*  
*Linda M. Stover*  
*Polycarpus McKeyser*

# AFSCME Convention Voting System

## District 2 Executive Board Members Election

### Official Results

Ballot ending: 08/04/2019 15:00:00 (Eastern)

#### Executive Board Members (Select 4 Candidates)

Candidate	Votes Received	Percentage
Jason Canfield	886	7.07%
Carrie Rolph	3071	24.52%
Virginia Griesbach	3134	25.02%
Jason Galloway	2470	19.72%
Jessica Lucas	2964	23.66%
Total Votes Counted	12525	
Minimum Votes Needed	1566	

Winner

Runoff

#### Ballots NOT Included in Vote Totals:

Vote Type	Ballots	Votes	Details
Blank	0	0	Member made no selection
Voided	0	0	Ballot voided by election committee
Total	0	0	

WITNESS LIST NOT PROVIDED.

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*David Brown* *Polagor* *McGowan Jr.*  
*Patricia Bonner* *Junda M. Brown*  
*Nathan Sp* *SA*