

To: All BTU Members

From: Richard Stutman, BTU President

Re: Election Report, June 2015 elections

Date: 1/20/16

What follows is a report filed by the BTU president in response to a motion adopted by the membership last June in which the president was asked to speak to concerns regarding the BTU election. The report was delayed, as per a subsequent membership motion, until the AFT ruled on an election appeal filed by some of our members. The AFT decision to uphold the election results came on December 23. The report now follows.

As union president, let me start by saying that my answer will not likely please any one person or any one 'side' 100%. The election was controversial, and any report is likely as well to be controversial – or at the very least, only partially satisfying. This is a complex issue. And that's the nature of these things. What's more, I am not going to point fingers at anyone. I am going to attempt to explain and analyze what happened during the election process and, more importantly, how to fix our issues and provide a template for election from happening again.

The recommendations that follow are mine, and while I can *suggest* that they be implemented as part of the 'corrective steps' I am charged with enumerating (see below motion approved at the June membership meeting), any final decision as to what changes, if any, be implemented, will be recommended and implemented through by BTU bylaw changes and membership vote, according to the processes outlined in the BTU's bylaws.

None of my proposals is written in stone; The committee proposed to be created below will make its own recommendations. My recommendations are merely meant to highlight some of the issues and jump start this process.

### Background

As you undoubtedly recall, the BTU final election was held last spring amid much controversy. The procedures leading up to it -- in particular, the issues of incomplete membership lists, undelivered requests for ballots, undelivered ballots, the late establishment of the hotline, and alleged failure to follow procedures – were highly controversial and persistent. Some of the issues and problems were able to be solved easily during the election process, some not so easily. A number were not able to be solved at all.

There was some confusion at the school level, there was sometimes a lack of clarity coming from the union office, and there was fiery rhetoric all around from many corners. Much of the rhetoric was honest and heartfelt. Some, frankly, was irresponsible and designed to inflame, not to abate, tensions.

The election results in June brought no closure, and it's probably safe to say, that regardless of the outcome, few expected closure at that time. There was just too much controversy.

The most highly contested race, that for vice president, was close, and an appeal on the conduct of election procedures to the AFT was filed by 173 members in early July. Inasmuch as there is no procedure for contesting election procedures under the BTU bylaws, the appeal from our members went directly to the AFT, as per AFT's bylaws.

(There is a procedure in our BTU bylaws, however, for a recount, and while that was followed and a recount was completed, it did not speak to the issues raised by the 173 members.)

The AFT, following the procedures outlined in the AFT bylaws, asked the BTU to respond to the charges found in the member appeal. Acting on behalf of the BTU, Atty. Matthew Dwyer did respond on October 9, 2016. The AFT rendered its ruling on December 23, the summary finding of which is excerpted here.

“...The purpose of the preliminary investigation was to ascertain whether the challenge raised material questions that would require referral to the AFT executive council and a hearing for resolution or whether the issues at hand could be resolved based on the complaint itself and the BTU's response. Matthew Dwyer, counsel for BTU, conducted an investigation of the election based on the challenge and provided his findings to the AFT on behalf of BTU.

“After careful consideration of the evidence presented by the challengers, BTU's response to the challenge and the union's applicable governing documents, we conclude that the challengers' allegations are not substantiated and therefore do not require a full investigation by the AFT executive council for resolution. The basis for our conclusion is set forth below...”

Here are all relevant documents mentioned and [where they can be found](http://btu.org/uncategorized/electiondecision/).  
(<http://btu.org/uncategorized/electiondecision/>)

- Request for Investigation -- The July 6 appeal filled by 173 members
- Preliminary Investigation Letter -- The AFT's acknowledgement of the appeal contained in a July 22 letter to Richard Stutman
- Johnson Request Specific Info From Petitioners – July 24 letter from BTU to AFT requesting more information from petitioners.
- Lessin-Joseph to Cooper Challenge Reasons Greater Detail -- An August 26 response from those making the appeal
- The Cooper Response Allegation PDFs are here in four parts -- Our attorney's October 9 answer to the appeal—See here in four parts.
- Final Decision: December 23, 2015 -- The AFT summary judgment denying the appeal

Before the appeal process began, there was a motion made at the June Membership meeting asking the BTU president to investigate and respond to the myriad of complaints and issues raised. Specifically, the president was asked to do the following:

“The BTU president shall conduct a complete operational review of the 2015 election process and submit a written report to the membership at the September 2015 membership meeting. The review and report shall include at minimum:

“1. Findings on what missteps - internal and/or external - led to members not receiving mail-in ballots in a timely manner or at all.

“2. Proposed corrective steps that will help avert a repeat of this year's failures in future elections.

“3. A generic timeline for future elections in the form "X weeks out from Election Day" that includes all operational aspects of the election process.

“4. A review of the decision making process of the Election Committee that describes how all members are included in that process. “

BTU Atty. Matthew Dwyer advised the BTU president not to respond to the June motion until after the AFT issued its findings. In August the BTU president asked the E Bd. for permission not to respond until after the AFT ruling, which was expected in late fall and which arrived at the BTU office on December 23. At the September membership meeting, the membership approved a motion to allow the BTU president to delay his report as requested. What follows is my response to the above motion to conduct an ‘operational review’ of the election.

Let me give a general overview before I go over each question posed above.

#### Analysis of current election process:

The current hybrid election process is unwieldy and inefficient. Here’s what was supposed to happen: Members are sent a request for a ballot by a third party, in this case, the American Arbitration Association (AAA). Members then return the request form for the ballot to the third party. With the application for a ballot in receipt, AAA then sends out a ballot to the member, who then returns it to AAA. All four mailings are time sensitive, all four require transmittal through the US Postal Service, and all require a positive action by the recipient. What’s more, each member has to keep track of, and send back, two separate mailings – one an application that requests a ballot and another of the completed ballot itself. And AAA has to keep track, as well, of the comings and goings of four envelopes. Members, who, for whatever reason, do not vote by mail can alternatively walk in to the union hall on Election Day and vote.

This is too complicated. It is far too easy for something – any one of the four mailings – to go astray. Multiply this by roughly 10,000 potential voters, active members and retirees, and there’s too much needless confusion. What’s more, there are many different and unique ballots, and

each member is supposed to receive a *particular* ballot, not just any ballot. This adds more confusion. We ought to be able to eliminate the confusion.

Proposal to remedy:

I would propose that there be an actual ballot (not a *request* for a ballot) sent to every eligible voter. The ballot must be the ballot specified for the individual. One can return it or not by a certain deadline. There would be no application required in order to request a ballot. Ballots would be sent in an approved manner to all eligible voters using a list that has been thoroughly vetted and approved using a procedure to be described below well in advance of the election. Those who do not receive the ballot will have a fail-safe means to request and receive the ‘missing’ ballot well in advance.

Those who choose not to mail a ballot back can walk in on Election Day and vote. The polls would be open from 8 to 8 or 7 to 8 (to be determined) to give all a chance to vote to meet their individual work schedules. The current poll hours, 9 to 6, need to be expanded.

Some steps needed to be accomplished to get the remedy in place:

While simpler than the current system, the new system needs to contain a few key measures that have to be in place within a relatively short period of time, certainly no later than 12/31/16. Here are a few obvious measures that have to be in place.

We need to get our voting lists and addresses straight. We currently have or receive three separate pieces of information that generate key membership information that is needed to get our lists ready for the next election:

1. a monthly list of dues-paying members sent from the city,
2. a master, current list of all BTU members that comes from the school department on an as-needed basis,
3. and our own membership data bank that is derived from membership application cards and other information we obtain from our members. The information on each of the three lists is always changing as members get hired, change school sites, retire, resign, change address information and so on.

We need a rigorous system in place that matches each in-coming dues list from the city with the periodically-sent school department list of all BTU employees. The merging and vetting of both the city’s dues list and the school department’s list can be accomplished using the member’s employee ID number, and the resultant output of members should be placed in our own computer membership file. That becomes our master list of BTU employees who pay dues.

(BPS employees who don’t pay dues should be sent a note by us, and the city should be notified to begin taking dues out as appropriate.)

BTU Employees become BTU members and then eligible voters provided the following two additional steps are taken:

1. The BTU employee has filled out a card, applying for BTU membership. (We might want to investigate whether it is legal to have an on-line sign up.)
2. The BTU membership approves into membership (as it routinely does every month) the name of the employee.

Once the master list of BTU members is determined by all of the following conditions being met -- appearance on the city's dues-paying list, appearance on the school department's BTU list, and by membership vote approving an individual's application for membership, the person's name can then be entered into the membership data base, which is then used to generate a list of eligible voters.

We work hard at this now and have employees dedicated to the integrity of the process, but very high employee turnover makes the task difficult and ongoing. Also, while the school department has improved the flow of this type of information to us, the city has oftentimes been less than cooperative. Add to that the general fluctuations and changes common to a 10,000-member data base, and we have three moving targets which have to be in sync for the process to work smoothly.

Once the system is in place, the city and the school lists should be cross referenced with our data bank and corrections should be made no less than quarterly. While most hiring is done by September, members are hired throughout the fall and address changes take place throughout the year. Leading up to the election season, the checks and cross checks should be made more frequently. That should be a decision made by the election committee (see later).

Given the technology now available, as well as the new BTU investment in its data system, the above-mentioned cross referencing shouldn't be an impossible task.

Once, we get membership lists straight, we also need to confirm the member's demographic information

- teacher/para/sub
- active/retired
- school site
- job title, if active teacher [SLP, OT, PT and so on].

All of the above information is needed to insure that the correct ballot is sent out to a particular member.

(A word about multiple ballots: All BTU members, active and retired, can vote for three officers: president, vice-president, and secretary-treasurer, as well as the political organizer. In addition, All BTU members, active and retired, can also vote for one of the following: the elementary field, the secondary field representative, or the paraprofessional/substitute field representative.

What's more, retired members have their own set of officers to vote for in a separate election procedure.

We need to insure that all members know in advance when they are to receive the mailed ballot and which ballot they are supposed to receive.)

Confirmation of each eligible member's home address and demographic (job title) as defined above needs to be finished at least one month before the file of eligible voters is sent to whatever third party is to be used. This can be done electronically and/or by mail. It should be up to the member to confirm that the information provided by the union is correct. If any information incorrect, the changes need to be made by a dedicated responder in the BTU office and sent back to the member within a specific timeframe.

To insure that all of the above is done in an orderly and efficient manner, I propose the following:

The president will make a call via e-bulletin to the membership to create an ad-hoc committee of no more than 15, none of whom are full-time BTU officers, to be nominated by the Executive Board, and chosen by the membership at the February Membership meeting. I would propose that E Bd. members be allowed to serve on the committee but would have to recuse themselves from the E. Bd. vote. The BTU president shall serve on the committee as convener and will vote as a tie-breaking member only. Two co-chairs of the committee will be elected at the first meeting, a charge will be decided, and meeting schedule will be set. The first meeting will be held on February 25<sup>th</sup> at 4:30. The BTU attorney will be present.

(The BTU bylaws, Article VI, 7, section 3, call for the establishment of an election committee in February of an election year. The proposal I am making conflicts with our current by-laws regarding the *election* committee. But this is not the election committee per se – it is a committee to review and/or change procedures regarding the election process. )

After consulting with our Executive Board at our January board meeting, I intend to get the process started right away.

The *ad hoc* committee shall be able to make any recommendations, including the above, it chooses. All proposals are subject to the membership approval.

The *ad hoc* committee shall meet regularly, beginning on Thursday, February 25, and bring recommendations to the Executive Board at its April meeting. At least one membership-wide town hall shall be held at a time after the February membership meeting and before the April 27 Executive Board meeting to listen to, and receive recommendations from, the BTU membership. The meeting will be held at 5:00 PM and advertised to the membership.

The BTU membership at its May 11 membership meeting will review the proposal, and if approved, the *ad hoc* committee shall work with the BTU attorney to draft new bylaws to be noticed in June and voted on in September. The secretary-treasurer shall serve on this committee. The work of the committee needs to be completed by the 2<sup>nd</sup> Wednesday in June, and notice of

the new procedures has to be given in June to be in effect in September, upon approval at that time.

Please note that the above timelines are suggestions only, but I see no other way to get all this accomplished in a fair and transparent manner by next September unless we stick to these or similarly-developed timelines. This may be an ambitious timeline, but given the notice requirements on by-law adoption and given the election cycles, we have to start now.

Key to the implementation of all of the above is the creation of a new BTU Election Committee, which will have to implement the new, if any, election procedures. I will leave that to the *Ad hoc* committee, then the membership, but I would propose that the election committee be created in the early fall and be limited to a set number of people who will elect dual chair people. Further, I would suggest that the election committee maintain the following rules of practice at a minimum to insure transparency and an orderly transition to a new process, if that's the direction the committee goes in. At a minimum, for all election committee meetings under the newly-created process, I propose that:

1. The BTU attorney and/or the parliamentarian should be present during all meetings
2. Meeting Minutes be kept and be made available
3. Roberts Rules of Order be followed
4. Committee members will apply to become members under a process to be designed by the *ad hoc* committee and approved by the membership
5. The election committee be convened in the 2016 fall, well before the current February 2017 bylaw timeline

Now, I would like to get back to the points raised in the motion adopted at the June membership meeting. I believe I have answered as many of them as I can, so here they are, in order:

The BTU president shall conduct a complete operational review of the 2015 election process and submit a written report to the membership at the September 2015 membership meeting. The review and report shall include at minimum:

1. Findings on what missteps - internal and/or external - led to members not receiving mail-in ballots in a timely manner or at all.

There were some missteps, but many are of unknown cause. Take an example of a missing ballot. How do we determine if: 1) the person never got an application. 2) got the application but didn't send it in. 3) sent it in, but it got lost in the mail. 4) sent back the application, which was received at AAA, but AAA didn't send a ballot. 5) AAA mailed the ballot but the ballot wasn't received. And so on. Given the four mailings back and forth, there are many permutations, too many in fact for me to give an analysis of what went wrong in any particular case. Too many things could have – and did — go wrong. I do think that there were problems all around.

Some people didn't get the application. Some addresses were wrong. Some mail got lost. Some people sent in multiple requests on behalf of themselves as well as others. Some sent in late requests. Some didn't fill out the application correctly. And so on.

The important thing is to fix this, and I think the above streamlining proposal will cut down on the mailings and make sure that all members get the correct ballot in a timely fashion.

On the addresses, as mentioned earlier, I would propose that we look at our records and cross reference them with the school department's records. We can easily do that, and where the two mailing addresses are in conflict, we can send the member a letter asking which address is correct. This process ought to be done no less than a month before the ballots are sent out and once previously, no less than three months before the ballots are sent out.

People who do not receive a ballot within a week or so of the initial mailing ought to have a hot-line number to call and/or an email address to mail to. If ballots are sent out well in advance, this should not be a problem. If this seems to be insufficient, an ombudsman could be hired to intervene with the vendor and the member.

All of these processes should be advertised and sent out via the e-bulletin, the union newspaper, and/or a membership letter.

2. Proposed corrective steps that will help avert a repeat of this year's failures in future elections.

I believe that the above will take care of the problems we have had.

3. A generic timeline for future elections in the form "X weeks out from election day" that includes all operational aspects of the election process.

If we get all the preliminaries done by September, we will be able to get this election procedure well in place by the fall or early winter. Below I have developed a timeline to jump start the process. I have left some of the timelines up to the newly-constructed election committee, as I believe that is the only appropriate way to proceed. So, what is below are the items we can detail that are to take place prior to the creation of the election committee.

4. A review of the decision making process of the Election Committee that describes how all members are included in that process.

As mentioned above, I have listed five procedures I would propose the election committee follow at a minimum. Beyond that, the ad hoc committee and then the election committee, are both free to add to their protocols.



### **Timelines for construction of new processes, if any**

1. We will have an initial discussion at the January Executive Board
2. President makes e-bulletin all call to membership to sign up for election process review committee, late January/early February
3. Names for committee submitted before 2nd Wednesday in February, 2/10/16.
4. Executive Board meets on February 10 prior to membership meeting to approve 15 nominees
5. Membership meeting held on February 10, vote for nominees
6. First meeting of *ad hoc* group on February 25. BTU Atty. will be present.
7. Series of meetings scheduled from February 25 to end of April
8. Membership-wide 5:00 PM town hall to be held sometime in March or mid April to discuss recommendations of *ad hoc* committee
9. May membership meeting will decide on institutional changes, of any, to be made.
10. Whatever is approved during the May membership meeting will be sent to the BTU attorney for drafting of new, if any, bylaws. These new by laws will go to the BTU Executive Board at its May meeting and will be before the June membership meeting for notice for a vote to the September membership meeting.
11. The new by laws, if any, shall be in effect as of September 14.
12. New Election committee to be established no later than October membership meeting.