King County (Washington State Nurses Association), Decision 10172 (PECB, 2008)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Employer.	
CLAIRE BROWN, Complainant, vs. WASHINGTON STATE NURSES ASSOCIATION, Respondent.	CASE 21395-U-07-5456 DECISION 10172 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Claire Brown appeared pro se.

Timothy Sears, General Counsel, for the Washington State Nurses Association.

On December 3, 2007, Claire Brown filed an unfair labor practice complaint alleging that the Washington State Nurses Association (WSNA), committed unfair labor practices in violation of RCW 41.56.150(1) and RCW 41.56.150(3). In the complaint, Brown claimed that the WSNA brought a charge of dual unionism against her after she attempted to change unions by assisting in the filing of a Petition for Investigation of Question Concerning Representation with the Public Employment Relations Commission.

Brown filed an amended complaint on January 1, 2008, withdrawing charges alleging union discrimination in violation of RCW 41.56.150(3). She included an addendum to her previously filed statement of facts and requested remedy. Brown alleged that since

she had filed her original complaint, a WSNA disciplinary panel had found her guilty of the charge of dual unionism. As a result of the finding, the panel imposed discipline on Brown; it censured her and banned her from holding a union office for six months. WSNA then mailed the panel's report to all the members of the bargaining unit.

Examiner Katrina Boedecker held a hearing on Brown's complaint on April 25, 2008, in Kirkland, Washington. Both parties filed post-hearing briefs.

ISSUES

1. Did WSNA unlawfully interfere with Brown's rights as a public employee by bringing disciplinary charges against her, and imposing discipline on her, for her participation in the filing of a petition seeking to change unions?

2. Did WSNA unlawfully interfere with Brown's rights as a public employee by sending out a letter detailing Brown's discipline to each individual nurse in the bargaining unit?

3. If any of the above allegations are proven to be true, should the remedy should include extraordinary remedies because of the flagrancy of the violation(s)?

Based upon the record presented, the Examiner finds that the WSNA acted unlawfully when it censured Brown for engaging in activities protected by RCW 41.56.040, and in the manner in which it notified the bargaining unit. The WSNA censure interfered with Brown's rights in violation of RCW 41.56.150(1). The violation must be cured by certain extraordinary remedies.

APPLICABLE LEGAL STANDARDS

The Public Employees Collective Bargaining Act, Chapter 41.56 RCW, provides:

> **RCW 41.56.040** . . . No public employer or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.
>
> **RCW 41.56.150 Unfair Labor Practices for a bargaining representative enumerated.** It shall be an unfair labor practice for a bargaining representative:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

An interference violation will be found when an employee could reasonably perceive the union's actions are a threat of reprisal or force associated with the protected activity of that employee or other employees. *City of Seattle,* Decision 3066-A (PECB, 1989). An interference violation also will be found where a bargaining representative is guilty of an unfair labor practice by disciplining an employee for engaging in protected activity. *Washington State Patrol,* Decision 4757-A (PECB, 1995).

BACKGROUND

Claire Brown is a Registered Nurse and Public Health Nurse. She works for Public Health - Seattle and King County (employer). She is in a bargaining unit of approximately 310 nurses. The unit is represented by WSNA for collective bargaining purposes with the employer.

The parties' 2004 - 2006 collective bargaining agreement contains a union security clause. Article 3, Section 4 Association Membership:

> It shall be a condition of employment that all nurses working under this Agreement on its effective date who are members of the Association and all nurses who become members of the Association during their employment by the Employer shall remain members in good standing for the life of the Agreement. All nurses who are not members and all new nurses hired on or after the effective date of this Agreement may not be required to join the Association as a condition of employment but within thirty-one (31) days from the effective date of this Agreement or the date of hire shall, as a condition of employment, pay to the Association an amount of money equivalent to the regular Association dues or pay an agency fee to the Association for their representation to the extent permitted by law. The requirement to join the Association and remain a member in good standing shall be satisfied by the payment of regular dues or agency fees uniformly applied to other members of the Association for the class of membership appropriate to employment in the bargaining unit. . . .

On March 16, 2007, Eric Shirey, Interim Chair of the Public Health Union of Nurses (PHUN) filed a Petition for Investigation of Question Concerning Representation (QCR) with the Commission. In papers filed with the petition, Brown was identified as the Interim Co-Chair of PHUN.

Following the filing of the QCR petition with the Commission, WSNA and the employer both followed the requirements for processing the petition outlined in WAC 391-25: the employer delivered the names of all nurses in the bargaining unit to the Commission; it later posted required notices at all work sites. WSNA and the employer both participated with PHUN in the investigation conference call conducted by the Commission. During this investigation, all parties were asked if there were any concerns about the validity or timing of the petition. No party raised any objections.

Prior to the vote to see whether bargaining unit members wanted PHUN or WSNA to represent them, WSNA hosted, moderated, and attended three debates with PHUN. WSNA mailed multiple notices to all members of the bargaining unit, urging them to vote. WSNA held lunchtime meetings at work sites about the upcoming election. It openly sent WSNA supporters to worksite meetings held by PHUN. WSNA sent staff members and legal counsel to Olympia to witness the tally of the elections. At no time during the three months from the filing of the petition to the conclusion of the final election in June, 2007, did WSNA suggest that actions taken by PHUN founders or supporters were inappropriate.

WSNA won the run-off election held on June 21, 2007, receiving 115 votes to PHUN's 111 votes. Immediately after the tally, the three officers of PHUN, Eric Shirey, Jim Gleckler, and Brown, admitted defeat. Brown spoke to the staff of WSNA, who were still at the table where the tally had taken place. She stated that PHUN planned to support WSNA. She also said that since it had been a very close election, it was clear that PHUN represented the views of nearly half the bargaining unit. She expressed hope that WSNA would include some PHUN supporters when WSNA resumed negotiations with the employer.

After the election, Shirey, Gleckler, and Brown sent an e-mail to everyone on PHUN's e-mail list who had asked to be kept updated. In the e-mail, the officers acknowledged PHUN's defeat and its commitment to support WSNA. The content of the e-mail letter was also posted on PHUN's website.

In July 2007, WSNA held public meetings to provide updates about returning to contract negotiations with the employer. Brown attended one of these meetings where she expressed support for WSNA. Marie Peacock-Albers and William Johnston, two nurses in the

bargaining unit who are also local unit officers of WSNA, were in attendance at the meeting where Brown spoke. Also present was Hanna Welander, who is a WSNA staff member.

Later, Peacock-Albers spoke with Barbara Frye, Director of Labor Relations for WSNA, and other members of the WSNA negotiations team, about her intent to bring internal union charges against Brown. They were supportive of her decision. Johnston also asked Frye about bringing charges against Brown: "I had a number of conversations with Barbara Frye . . . she agreed with me that this was a time for building bridges, but that I could not, as local unit chair, ignore the fact that the bylaws were broken or violated. . . . She said that I needed to submit a letter to WSNA . . . ."

Frye testified: "I was kind of glad I didn't get to make the decision. . . . Part of me said, Oh my God, let's just move on, part of me said, people need to be held accountable. You know, I didn't get to make the decision, I didn't - that is not my role, it was the member's role."

Shortly after the July meetings, Peacock-Albers and Johnston sent a letter to Kim Armstrong, President of WSNA. In the letter, the two charged that Brown had violated the WSNA policy against dual unionism. In their letter, they stated that Brown was a founding member and co-chair of PHUN, "an organization in direct competition with the Washington State Nurses Association, and which sought by a Petition for change of representative to eliminate WSNA as the collective bargaining representative of nurses employed by Seattle-King County Public Health."

Judy Huntington, Executive Director of WSNA and the Chief Administrative Officer for the association, sent the Peacock-Albers and

Johnston letter to Brown by certified mail. Huntington accompanied this with her own letter dated August 13, 2007, informing Brown that a WSNA panel had met on August 9, 2007:

> and determined that sufficient evidence exists to proceed with a hearing on the charge. Documents, including the Petition for a Change of Representative filed with the State of Washington Public Employment Relations Commission, and various e-mails and newsletters, indicate that you participated in and gave assistance to the so-called Public Health Union of Nurses ('PHUN'), an organization in direct competition with the Washington State Nurses Association, which sought to eliminate WSNA as the collective bargaining representative of nurses employed by Seattle-King County Public Health.

WSNA held a hearing on the charges at its offices on October 4, 2007. A hearing panel of three nurses from other bargaining units was appointed by WSNA to conduct the hearing. Brown was in attendance at the hearing, as well as Timothy Sears the WSNA General Counsel, a court reporter, and the three other nurses who were similarly charged, Shirey, Gleckler, and Jacqueline Justus. Derek Van Eyck, another nurse from the bargaining unit attended the hearing as a witness.

Brown testified to the hearing panel that she believed that WSNA was acting in retaliation against the PHUN founders. She stated that she did not think that any charges should have been brought against them and that she intended to file an unfair labor practice complaint with the Commission.

On December 17, 2007, Huntington sent Brown a certified letter notifying her that the hearing panel had reached a decision. Huntington included a copy of the Report of the Disciplinary Hearing Panel. The nine page report concluded that Brown was guilty of the charge of dual unionism. In support of this verdict,

the report stated, "In particular, the 'PHUN' petition for a representation election filed with PERC is critical, undisputed evidence relating to the charges." The report found, "The evidence proves that Claire Brown was the co-chair of the 'PHUN' group, and knowingly participated in 'PHUN' activities seeking to eliminate WSNA as the collective bargaining representative . . . These facts are shown conclusively by the documents in the record, including the petition for change of representation filed with the Public Employment Relations Commission." Further, the report goes on, "Ms. Brown asserted that she was not guilty of the charge of dual unionism in the mistaken belief that because her activities were permitted by PERC rules, she could not be disciplined under WSNA's Bylaws. . . ."

In deciding upon an appropriate penalty, the panel concluded, " the Hearing Panel notes the harm that Ms. Brown's misconduct has inflicted on her co-workers and every member of WSNA, blocking contract negotiations for months and undermining WSNA's bargaining position. . . . Accordingly, we hereby censure Ms. Brown and suspend her right to hold office within WSNA for a period of six (6) months, effective immediately." The WSNA sent copies of the report to every member of the bargaining unit.

In the weeks following WSNA's mailing of the hearing panel report to all members of the bargaining unit, a number of nurses contacted Brown to say that they were stunned by what the report said, and by the fact that WSNA had sent it out to all of the nurses. One of these nurses, Heather Almon, testified that, "I was shocked by [the letter]. I thought it was retaliatory. I thought it was to discipline publicly the members that had been interested in bringing forth the PHUN - - the PHUN committee." Almon described the effects of the report on her, "I, personally for me, feel like even coming here today if I have an issue that I might not be

represented fairly. . . . I feel like it divided people into separate camps again, instead of unifying us all on one mission, one goal, for the betterment of all of the nurses in the county." Later in her testimony, she stated, "I feel like even standing up here I am visually recognized as someone who is maybe choosing a side, and that concerns me . . . If this is how they were treated, if you would ever step forward that you could be treated in the same manner. That is how it felt to me, personally."

Jane Craig, a nurse in the bargaining unit, also testified about the impact on her of the WSNA's charges. "[I]f WSNA was going to be a willing participant in prosecuting these people, it would end up destroying any newly established unity with the nurses . . . I thought . . . why did WSNA agree to debate, you know, if it -- why did they wait until after the election to bring those charges?" When asked if she had personal fears of charges being brought against her, Craig stated, "Yeah, I was concerned because I didn't know who else they were going after."

In describing her response to the report of the hearing panel, Craig testified, "I was horrified, I was angry, I was embarrassed that WSNA chose to be so petty and vindictive. Instead of choosing to move forward and perhaps admit the PHUN group had some good ideas . . . I was particularly upset because PHUN made it very clear immediately after the vote count that they were behind WSNA." She believed "WSNA was trying to appear to be above the fray and objective, but it came across, clearly to me, that they were just being vindictive, retaliatory and petty . . . WSNA was sending a clear message that this is not a democracy, you don't have a choice as to who represents you, and if you do this again you will be punished . . . ."

After WSNA won the election, it returned to the bargaining table with the employer in autumn of 2007. It was able to negotiate a collective bargaining agreement with gains over the one which the bargaining unit voted down in January, 2007.

ANALYSIS

WSNA Censure of Brown

Under the Public Employees Collective Bargaining Act, Chapter 41.56 RCW, public employees have the right to choose, change or reject union representation. RCW 41.56.040. On the Commission's home page of its website (www.PERC.wa.gov), a frequently asked question (FAQ) is listed: I'm concerned that my union or employer will retaliate against me. Can they? The Commission answers, "It is illegal for a public employer or a union to retaliate against a public employee for filing a petition or giving testimony at PERC. If you believe that you have been the victim of retaliation for filing your case, contact PERC about filing an unfair labor practice complaint about that retaliation."

The nurses who filed a petition with the Commission to change unions from WSNA to PHUN did so because of dissatisfaction with WSNA. The objection certain nurses had with WSNA's representation, however, is not what this complaint is about. The issue presented here is whether WSNA had the right to discipline an employee who followed a process created by the state legislature, and administered by a state agency.

The WSNA is not disputing that Brown had the right to file the petition with the Commission to change unions. It admits that it participated in the processing of the petition through to the final

election. The internal union charges that were brought against Brown and three others alleged that they were guilty of dual unionism.[1] Dual unionism is a violation of a WSNA bylaw which prohibits "participation in and assistance to one or more labor union organizations which are in direct competition with WSNA . . . ." WSNA is asserting that the charges that it brought, the disciplinary hearing that it held, and the verdicts and discipline handed out, are all internal union affairs. Therefore, they are sheltered from any examination by the Commission.

In *Seattle School District*, Decision 9135-A (PECB, 2007), the Commission discusses in depth what constitutes internal union affairs. In reversing the Examiner's decision, the Commission holds that the union was right in its discipline of a bargaining unit employee because she was engaged in activities that were not protected by statute. Furthermore, the Commission found that the union had legitimate interests in asking her to stop the activities. The employee, Liesl Zappler, worked for the Seattle School District as a gardener. Zappler was unhappy with some policies of her union. Instead of working out her complaints with the union, she went directly to the employer to make suggestions about things she thought needed changing. Some of her suggestions were in direct opposition to the interests of her coworkers and policies of the union. Specifically, she suggested cutting some bargaining unit positions so that the employer would not have to layoff a supervisor Zappler liked. The union told Zappler to stop what she was doing, or she would be disciplined. Zappler did not stop; the union fined her $1,200.00 and censured her. Zappler filed an

---

[1] The Commission does not have any procedures for class actions. Since Brown is the only named complainant in this proceeding, she will be the only one who could receive any remedy from this Order.

unfair labor practice complaint on the grounds that the union's actions were unfair and too severe.

In *Seattle School District,* the Commission cites several cases from the National Labor Relations Board (NLRB or Board) and the U.S. Supreme Court. Generally, the cases hold that a union cannot use internal union procedures to interfere with an employee's right to keep his or her job; nor can a union exercise physical violence against the employee. The holdings conclude that a union can take disciplinary steps against a member as related to the employee's rights of membership in the union, as long as the member is free to leave the union and thus escape the discipline.

The Commission found that the facts of the *Seattle School District* case lined up with the facts of *Scofield v. NLRB,* 394 U.S. at 430. In *Scofield,* the Supreme Court found that Section 8(b)(1) of the National Labor Relations Act (NLRA or Act) "leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." The Commission concluded in *Seattle School District* that the union had enforced properly adopted rules against Zappler, rules which did reflect a legitimate union interest. The union in *Seattle School District* had a legitimate interest in provided a united front to the employer. Zappler was attempting an end run around the union to meet her own personal goals.

Rules protecting a union's existence can be found to be legitimate. The NLRB has recognized that a union may, by internal union disciplinary action, lawfully expel, suspend, or otherwise impair the membership rights of a member who attempts to decertify the

union or supports a rival organization, provided such disciplinary action does not affect the member's employment status.

In the case of *Tawas Tube Products, Inc.*, 151 NLRB 46 (1965), two members of the union were tried by a committee of union members and expelled from the union for "the filing of the [decertification] petition and actively supporting the decertification cause." 151 NLRB at 47. In *Tawas*, the employer claimed that the expulsions were unlawful since such union disciplinary action interfered with employees' right to freely support decertification of the union. The Board rejected that claim, and concluded that the internal union disciplinary action was lawful for three reasons:

> First, the Union's disciplinary action in this case was limited to the union membership status of [the charged members], and no attempt to affect their job interests was involved. [Footnote omitted.] Second, the ground for the expulsions plainly related to a matter of legitimate union concern and one which may properly be a subject matter of internal discipline. In this connection, even a narrow reading of the [NLRA] would necessarily allow a union to expel members who attack the very existence of the union as an institution [footnote omitted], which is literally the case here . . . . As we said in the *Allis-Chalmers* case [149 NLRB 67 (1964)], when a situation "involves the loyalty of its members during a time of crisis for the union . . . we cannot hold that a union must take no steps to preserve its own integrity." That language is even more applicable here, for we can conceive of no conduct by a union member more hostile or threatening to his union than that engaged in by [the charged members]. Finally, the unique defensive aspect of the expulsions here should be noted. It would be difficult for the Union to carry on an election campaign were [the charged members], as members, entitled to "equal rights and privileges . . . to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings . . . ." rights now guaranteed to union members in Section 101(a)(1) of the Labor-Management Reporting & Disclosure Act. We therefore conclude that the expulsions here are

> reasonably to be viewed . . . as appropriate union disciplinary action under the circumstances.
> . . . .
> This case . . . presents a situation where union members have resorted to the Board for the purpose of attacking the very existence of their union. . . . We do not consider it beyond the competence of the Union to protect itself in this situation by the application of reasonable membership rules and discipline. Furthermore, the employees' attempt to repudiate the Union by a decertification proceeding demonstrates that loss of membership was of no significance to them; consequently their expulsion from the Union could hardly be an effective deterrent against resorting to the Board.

151 NLRB at 47 - 48.

In *United Steelworkers of America Local No. 4028 (Pittsburgh-Des Moines Steel Company)*, 154 NLRB 692 (1965), the union suspended from membership for a period of five years a member who had filed a decertification petition with the NLRB. The Board noted that the "union disciplinary action [was] aimed at defending itself from conduct which seeks to undermine its very existence," and reaffirmed that a union did not interfere with a free and fair decertification election if it suspended or expelled a member "for filing a petition seeking the decertification of the union and actively supporting the decertification cause." 154 NLRB at 696.

The U.S. Court of Appeals for the Ninth Circuit upheld a Board decision, noting that a union's disciplinary action "did not affect [the member's] job, or, so far as it appears, any other economic right" in *Price v. National Labor Relations Board*, 373 F.2d 443, 446 (9th Cir. 1967), certiorari denied 392 U.S. 904 (1969). The Ninth Circuit ruled that "the union's action in suspending [the member] from membership for five years because he attempted to have the Union decertified" was not an unfair labor practice. "[The member] sought to attack the union's position as bargaining agent,

which is, as the Board says, in a very real sense an attack on the very existence of the union. We think that, at the least, the [NLRA] was intended to permit the union to suspend or expel a member who takes such a position. Otherwise, during the pre-election campaign, the member could campaign against the union while remaining a member and therefore privy to the union's strategy and tactics. We see no policy reason for requiring the union to retain a member who takes such a position."

The Board recently reaffirmed a union's right to take disciplinary action affecting only the membership status of a member who files a decertification petition. In *International Brotherhood of Teamsters Local 705 (K-Mart)*, 347 NLRB No. 42 (June 27, 2006), slip opinion at 4, the Board held "A union has a right to defend itself against a decertification petition, which attacks its very existence as the exclusive bargaining agent and, under the [NLRA], it may legitimately expel a member for engaging in decertification efforts."

However, the NLRB has carved out one area of employee rights in Section 7 and Section 8(b)(1)(A) of the Act. These sections of the NLRA correspond closely to the sections of Washington State Public Employees Collective Bargaining Act, Chapter 41.56 RCW, cited above.

The facts of Brown's case stand in contrast to Zappler's. They fit into the carved out area of protected employee rights. While WSNA has characterized its discipline of Brown as purely internal union affairs, in point of fact, she was censured for activities that are protected by state statute.

Office Employees Local 251 (*Sandia National Laboratories*) 331 NLRB No. 193, differentiates between internal union affairs and

activities protected by Section 8(b)(1)(A) of the NLRA. Although the discussion in the *Sandia* case appears to broaden the scope of what unions can legitimately call internal union affairs, one narrow area of employee rights was kept beyond this reach - those rights that employees retain when they engage in activities that are specifically defined by statute.

Sandia traced the protection of this narrow area. "Similarly in *Molders Local 125 (Blackhawk Tanning Co.)* 178 NLRB 208 (1969) [enforced sub nom *National Labor Relations Board v. International Molders & Allied Workers Local 125*, 442 F.2d 92 (7th Cir. 1971)], the Board held that a union fine imposed against an employee who had filed a decertification petition violated Section 8(b)(1)(A) because it interfered with the statutory right to invoke the Board's election process." 331 NLRB No. 193 (2000), at 1420. The Board distinguished between the fine imposed for filing the decertification petition in *Blackhawk Tanning* [178 NLRB 208 (1969)], and the expulsion from membership for filing a similar petition in *Tawas* (cited above). In the latter case, the Board found that the expulsion was lawful because retention of membership would have allowed the employee to remain privy to union strategy and tactics in opposition to the petition. In *Blackhawk Tanning*, the Board defined the problem as one of "reconciling the public policy of protecting access to the Board with a union's right to prescribe its own rules respecting 'the acquisition or retention of membership.'"

Sandia plainly defines the division between protected employee activities and internal union affairs. "[A] union may not enforce rules that unduly hamper the ability of its members to bring a matter to the Board for consideration. . . . the proscriptions of Section 8(b)(1)(A) apply when intra-union discipline clashes

directly with statutory policy interests and prohibitions incorporated in the Act." 331 NLRB No.193 (2000), at 1424.

The Supreme Court has also embraced the Board's view that union discipline may run afoul of Section 8(b)(1)(A) when it interferes with a policy promoted by the Act. In *NLRB v. Shipbuilders*, 391 U.S. 418 (1968), the Court found a violation of Section 8(b)(1)(A) by a union which had expelled a member for filing an unfair labor practice charge with the Board before first exhausting internal union remedies.[2] The member had initially filed intra-union charges with his local alleging that the local president had wrongfully caused his employer to discriminate against him because he had engaged in certain protected activity. The local union ruled against him on the charge. Instead of pursuing the internal union appeals procedure that were available to him, the member filed a charge with the Board alleging that the local union president's actions had violated his rights under the Act. The union then tried and expelled him for violating a union constitutional provision requiring that members aggrieved by actions of their local unions first exhaust all appeals within the union before resorting to the courts or other tribunals. The Count upheld the Board's determination that the expulsion violated Section 8(b)(1)(A). It agreed with the Board that union rules requiring exhaustion of internal remedies under such circumstances were contrary to the policy of the Act to keep employees free from coercion when making complaints to the Board about perceived encroachments of their statutory rights as employees.

The Court found that, "the overriding public interest makes unimpeded access to the Board the only healthy alternative, except

---

[2] *Shipbuilders* is cited in *Sandia* 331 NLRB No. 193 (2000), at 1421.

and unless plainly internal affairs of the union are involved." *Shipbuilders* at 424. The Court concluded, "When the complaint or grievance does not concern an internal matter, but touches a part of the public domain covered by the Act, failure to resort to any intra-union grievance procedure is not ground for expulsion from a union." *Shipbuilders* at 438. *Shipbuilders* makes it clear that when an activity comes under the umbrella of protection offered by a relevant section of the Act, then a union's internal laws of governance are overruled because of the overriding public interest in unimpeded access to the Board, or in the instant case, the Commission.

Some of WSNA's actions against Brown do impair policies imbedded in the labor laws of the State of Washington. Filing a QCR petition is protected activity by a public employee under RCW 41.56.040. The statute also prohibits a union from interfering with an employee who takes such action. The WSNA could have expelled Brown from membership for filing the QCR. The logic of *Tawas* applies to the public sector as well. An employee who files a QCR petition cannot expect to retain membership in his or her union which would allow access to union strategy in fighting the petition. The WSNA acted lawfully when it suspended Brown's right to hold an office within the WSNA for six months. The right to hold office stems from Brown's union membership status.

However, WSNA acted illegally when it censured Brown for filing a QCR petition with the Commission. A censure does not affect an employee's union membership status. A censure is a condemnation, a rebuke, a reprimand. According to the *Random House Dictionary of the English Language*, 1969, a censure is "a strong or vehement expression of disapproval." As a verb, it is "to criticize or reproach in a harsh or vehement manner." The WSNA censure of Brown sends her a strong message that the union did not want Brown to

exercise her statutory rights. Public policy prohibits a union from penalizing a public employee because she has sought to invoke the Commission's processes.

The report of the WSNA hearing panel links Brown's censure directly to her filing the QCR petition with the Commission in March, 2007. A petition to change unions, brought before a state regulatory agency, by its very nature, is not an internal union issue. The election process is overseen by a state agency, which protecting legitimate interests imbedded in the statutes it regulates. WSNA cannot be allowed to send Brown a message that the union can override Brown's statutory guarantee of protection when trying to change unions.

WSNA argues that it did not retaliate against any of its members, it simply enforced its bylaws. WSNA contends that it could not have brought the charges or enforced the discipline during the time the election was going on, because doing so would have been illegal. No matter what the timing is, a union cannot censure an employee for following a state labor statute. It is illegal at any time. WSNA may be assuming that by delaying the censure until after the election is final, it can convince others that this is an internal union matter. Unfortunately, the evidence that WSNA presented to support its censure relates to documents such as the "petition that was filed with PERC, and activities in which both PHUN and WSNA participated." Those activities were an integral part of the election process to determine who would be the exclusive bargaining representative for this unit. Having won in that process, the union is not then free to censure those who did not prevail.

In *Seattle School District*, the union both fined and censured Zappler. In its decision, the Commission did not elaborate upon

the censuring; it concentrated its analysis on the fine. As analyzed above, NLRB precedent confines legitimate union punishment for decertifications, or attempts to change unions, to acts that affect membership status. Censureship is beyond expulsion. It should not be allowed. There is no way for Brown to escape the effect of the censure. Resigning from the WSNA will not lift the mantle of criticism that is on Brown's neck.

WSNA Letter To All Of The Nurses In The Bargaining Unit

Huntington signed and sent out the letters that accompanied the original charges and the report of the hearing panel. Johnston and Peacock-Albers, the two nurses who signed the letter bringing the charges, both testified that Barbara Frye either directed them to bring the charges, or supported them in taking that action.

Huntington and Frye are responsible for not having instructed the member nurses who wanted to file charges that such actions were retaliatory, and therefore illegal. WSNA is also responsible for not informing the hearing panel that the nurses who were charged had engaged in protected activities, so that censuring them constituted retaliation, and was therefore illegal.

In defense of the discipline, WSNA asserts that none of the PHUN supporters lost their jobs. While this may be true, there are other manifestations of retaliation. The report of the hearing panel references harm that was caused by the PHUN effort to change unions; harm to the nurses of the bargaining unit and harm to all members of WSNA. However, when WSNA returned to the bargaining table with the employer in the fall of 2007, it was motivated to negotiate a collective bargaining agreement that had gains over the one which the bargaining unit voted down in January, 2007. From the letter, the members of the bargaining unit had no information

that the gains made in the contract which they ratified in December 2007, over the one previously voted down, resulted from WSNA having renewed motivation caused by the attempts to change unions.

Mailing the panel report to every nurse in the bargaining unit, adds to WSNA's unlawful retaliation against Brown. Nurses in the bargaining unit did not know that Brown had done nothing wrong by participating in a state sanctioned process to change unions. The WSNA adamantly told them otherwise. In *Seattle School District*, the union mentioned in two newsletters that it sent to its members that a female union member who worked on the grounds crew was urging the school board to eliminate summer grounds work and cut grounds lead positions. The articles added that discipline was possible. The Commission did not find this conduct objectionable. It did not conclude that the references negatively impacted Zappler's employment, nor interfered with her protected rights. Zappler's behavior was undermining the union's interests in bargaining. Brown, on the other hand, did have a protected right to file a QCR petition with the Commission. Sending her notice of censure for doing so, to each individual in the bargaining unit, caused other nurses concern about Brown's conduct. Brown should not have had to suffer such concerns.

The letter negatively impacted Brown. Other nurses testified they saw it as public discipline. The Commission has a strong interest in quashing this perception. Brown was unlawfully censured publicly for following state sanctioned procedures. Public employees must be given the message that they are safe to follow the statute.

REMEDY

Brown contends that the remedy should include ordinary remedies and extraordinary remedies because of the flagrancy of the violation.

Ordinary remedies will be ordered. Such remedies include the public posting of the Commission Notice that the WSNA violated the state bargaining act for public employees, when it censured Brown as a PHUN member who participated in protected activities. WSNA must publish the Commission Notice in its newsletter and on its web site. The WSNA will be directed to post the notices for sixty consecutive days. The WSNA will also be directed to read the Notice at a regular meeting of its governing body. Also, WSNA will be directed to mail a letter of apology to Claire Brown for censuring her when she pursued her statutory rights.

Certain extraordinary remedies are also ordered. WSNA must remove any censure imposed upon Brown for being found guilty of dual unionism. Since WSNA sent a letter to each individual in the bargaining unit announcing the discipline hearing panel's findings, it must now send a letter to the same individuals acknowledging that Brown's activities to change unions were part of a process established and protected by state law. It must also apologize to Brown in the letter and state that the WSNA acted illegally when it censured Brown. This mailing should also include a copy of the Commission's Notice. A letter sent by WSNA to every nurse who received the other letter is necessary in addition to the postings on WSNA's web site. WSNA's retaliatory letter was mailed to every nurse in the bargaining unit. Asking that WSNA acknowledge and retract its censureship in the same manner in which it announced its illegal retaliation is balanced and fair.

Brown also seeks reimbursement for her costs and time in presenting her unfair labor practice complaint. Such a remedy is not appropriate here. Brown choose to bring this action. The WSNA has not been previously found in violation of the statute for similar behavior. It is not engaged in a pattern of acting recklessly or in flagrant opposition to Commission Orders.

FINDINGS OF FACT

1. King County, d/b/a Public Health - Seattle and King County, is a public employer within the meaning of RCW 41.56.030(1).

2. Washington State Nurses Association (WSNA), a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of registered nurses and public health nurses of the employer.

3. Claire Brown is employed by Public Health - Seattle and King County as a registered nurse and public health nurse in the bargaining unit represented by the union.

4. On March 16, 2007, Brown assisted in the filing of a petition for a question concerning representation with the Public Employment Relations Commission seeking to change the exclusive bargaining representative to the Public Health Union of Nurses (PHUN). Brown was identified as the interim co-chair of the petitioning union.

5. On June 21, 2007, the Washington State Nurses Association won the representation election.

6. On August 13, 2007, Judy Huntington, Executive Director and the Chief Administrative Officer for the association, sent notice to Brown that a WSNA panel had met on charges brought against her and determined that sufficient evidence exists to proceed with a disciplinary hearing on the charges. The evidence the panel considered included the petition for a question concerning representation Brown helped file with the Public Employment Relations Commission.

7. On December 17, 2007, Huntington sent Brown a certified letter that included a copy of the Report of the Disciplinary Hearing Panel. The panel concluded that Brown was guilty of the charge of dual unionism based particularly on Brown's filing of the representation petition.

8. The panel disciplined Brown by censuring her.

9. The panel disciplined Brown by suspending her right to hold office within WSNA for six months.

10. The WSNA sent copies of the report to every member of the bargaining unit.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW.

2. By its actions in Findings of Facts 6 through 8 and 10, the WSNA retaliated against Brown in violation of RCW 41.56.150(3) when Brown, trying to change unions, was in fact pursuing her statutory guarantee of protection found in RCW 41.56.040.

3. By its actions in Findings of Facts 6 through 8 and 10, the WSNA sought to impair policies imbedded in the labor laws of the State of Washington, in violation of RCW 41.56.150(3).

4. By its actions in Findings of Facts 6 through 8 and 10, the WSNA interfered with Brown's rights as a public employee, in violation of RCW 41.56.150(3).

5. By its actions in Finding of Fact 9, the WSNA did not violate RCW 41.54.150(3).

ORDER

The Washington State Nurses Association, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Censuring Claire Brown for attempting to use the processes of the Public Employment Relations Commission to have the PHUN certified as her bargaining representative.

   b. In any other manner interfering with, restraining or coercing public employees in the exercise of their collective bargaining rights under by the laws of the state of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

   a. Rescind the censure imposed on Brown because she filed a petition with the Public Employment Relations Commission to change the bargaining representative of nurses employed by Public Health - Seattle and King County.

   b. Mail a letter to each individual currently in the bargaining unit, and any individuals who are no

longer in the bargaining unit but received the letter announcing the discipline hearing panel's findings against Brown, acknowledging that Brown's activities to change unions were part of a process established and protected by state law. The letter must state that the WSNA acted illegally when it censured Brown. This mailing should also include a copy of the Commission's Notice.

c. Post copies of the notice attached to this order in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be signed by an authorized representative of the WSNA, and shall remain posted for 60 consecutive days from the date of initial posting. The WSNA shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

d. Read the notice attached to this order into the record at a regular public meeting of the governing body of the Washington State Nurses Association, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

e. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.

f. Notify the Compliance Officer of the Public Employment Relations Commission, in writing, within 20

days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Compliance Officer with a signed copy of the notice attached to this order.

ISSUED at Olympia, Washington, this 29th day of August, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker

KATRINA I. BOEDECKER, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

TO EMPLOYEES

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY retaliated against Claire Brown because she helped in the filing of a petition for investigation of a question concerning representation with the Public Employment Relations Commission, a state agency.

WE UNLAWFULLY censured Claire Brown because she helped in the filing of a petition for investigation of a question concerning representation with the Public Employment Relations Commission, a state agency.

WE UNLAWFULLY allowed a disciplinary hearing panel to issue an untruthful report censuring Claire Brown.

WE UNLAWFULLY mailed the hearing panel's report to all the members of the bargaining unit.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL rescind any censureship imposed on Claire Brown because she helped in the filing of a petition for investigation of a question concerning representation.

WE WILL mail a letter of apology to Claire Brown for retaliating against her when she followed her statutory rights.

WE WILL mail a copy of the letter of apology we send to Claire Brown to each member of the bargaining unit.

WE WILL read this notice into the record at a regular public meeting of the governing body of the Washington State Nurses Association, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

WE WILL notify the Claire Brown, in writing, within 20 days following the date of the order, as to what steps we have taken to comply with the order, and at the same time provide Claire Brown with a signed copy of this notice.

WE WILL notify the Compliance Officer of the Public Employment Relations Commission, in writing, within 20 days following the date of the order, as to what steps we have taken to comply with the order, and at the same time provide the Compliance Officer with a signed copy of this notice.

WE WILL NOT issue any censureship against any member of our union for attempting to circulate, or file with the Public Employment Relations Commission, a petition to decertify us as your bargaining representative.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our members in the exercise of their collective bargaining rights under the laws of the State of Washington.

DO NOT POST OR PUBLICLY READ THIS NOTICE. AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.